

Meeting of the Advisory Committee on Appellate Rules

Thursday, October 24, 2024 at 2:00 p.m.

Justice D'Auria called the meeting to order at 2:00 p.m.

Members in attendance:

Justice Gregory T. D'Auria, Co-Chair
Judge Eliot D. Prescott, Co-Chair
Attorney Jeffrey Babbin
Attorney Colleen Barnett
Attorney Jill Begemann
Attorney Jennifer Bourn
Attorney Carl Cicchetti
Attorney Renee Cimino
Attorney Timothy Costello
Attorney Richard Emanuel
Attorney Paul Hartan
Hon. Sheila A. Huddleston
Attorney Daniel Krisch
Attorney Eric Levine
Attorney Jessie Opinion
Attorney Joshua Perry
Attorney René Robertson

Members not in attendance:

Attorney James Healy
Attorney Wesley Horton
Attorney Charles Ray

Additional attendees:

Attorney Kenneth Bartschi (for
Attorney Wesley Horton)
Attorney David Goshdigan
Attorney Andrew Redman
Attorney Michael Skold
Attorney Allison White (for
Attorney James Healy)

This meeting was held in the Attorney Conference Room at the Supreme Court. Justice D'Auria and Judge Prescott thanked Attorney Colleen Barnett for drafting the minutes of the committee's meetings over the past eight years and welcomed Attorney David Goshdigan, who has assumed Attorney Barnett's role.

I. OLD BUSINESS

Approval of the minutes of April 4, 2024 meeting

Attorney Krisch moved to approve the minutes of the April 4, 2024 meeting with the correction of certain typos, which was seconded by Attorney Robertson. The April 4, 2024 minutes were approved unanimously.

II. NEW BUSINESS

A. Whether to amend § 64-1 (b) to allow any party to file a notice that the memorandum of decision has not been filed

Attorney Cicchetti detailed that the current version of § 64-1 (b) provides that "the appellant" may file a notice that the trial court has not filed its memorandum of decision and that this proposed change will allow "any party" to file such notice. Attorney Krisch moved to approve the proposal, Attorney Barnett seconded the motion, and the motion passed unanimously.

B. Whether to amend § 84-1 regarding certification by the Supreme Court

Attorney Goshdigian reviewed the proposal, which is intended to give the Supreme Court jurisdiction over a petition for certification to appeal from the Appellate Court's denial of motion for permission to bring a late appeal. He explained that currently under General Statutes § 51-197f and § 84-1 a party may file a petition for certification to appeal from a "final determination of an appeal" in the Appellate Court. This potential change to General Statutes § 51-197f and proposed change to § 84-1 provide that a party also can petition for certification to appeal from "the Appellate Court's denial of a motion to file a late appeal."

Attorney Babbin asked whether this proposal would benefit judicial economy and suggested that a more streamlined procedure might be filing a motion for review of the Appellate Court's decision in the Supreme Court. Attorney Krisch noted that a party who files an appeal in the Appellate Court that is dismissed as untimely can petition the Supreme Court for review, but a party who files a motion for permission to file a late appeal that is denied cannot so petition; this proposal would treat both parties the same and allow both to petition for Supreme Court review. Attorney Robertson added similar comments and noted that, as a matter of fairness, both decisions should be reviewable by the Supreme Court. The committee then discussed generally if any particular type of case regularly seeks permission to file late appeals. The consensus was that, in general, late appeals in civil matters would be most affected by this proposal and that late criminal as well as habeas appeals would not be affected as much. Attorney Cicchetti reported that ten motions for permission to file a late appeal were denied last court year. Justice D'Auria noted that the proposed change to § 84-1 would be unnecessary if the General Assembly does not amend General Statutes § 51-197f. The committee therefore agreed to table this proposal.

C. Whether to amend §§ 81-1 and 84-4 regarding the filing requirements for petitions

With respect to §§ 84-1 (a) and 84-4 (b), Attorney Robertson explained that these proposals are intended to codify the practice of the Appellate Clerk's Office to send a copy of the petition to "the trial judge and the clerk of the trial court that rendered the decision sought to be appealed." Next, Attorney Robertson detailed that, when the Rules of Appellate Procedure recently were reorganized to avoid repetition, those prior proposals failed to account for the good cause requirement for a late zoning petition to the Appellate Court or a late petition for certification to appeal to the Supreme Court. These proposals reinstate the good cause requirement in §§ 81-1 (d) and 84-4 (e). Attorney Babbin moved to approve the proposals, Attorney Robertson seconded the motion, and the committee voted unanimously for approval.

D. Whether to amend §§ 81-2 (a) (5) and 84-5 (a) (5) regarding the form of petitions

Attorney Cicchetti described these proposed changes to the format of zoning petitions and petitions for certification to appeal to the Supreme Court as being consistent with recent changes to the brief format, specifically, a single pagination scheme as well as a petition and appendix that are filed as a one continuous document. Attorney Krisch

noted that briefs require a word count certification whereas there is no requirement that the word count be certified for other filings, although other practitioners reported that they certify the word count regardless. Attorney Cicchetti responded that the Appellate Clerk's Office is aware of this inconsistency and is open to a word count certification requirement throughout the Rules of Appellate Procedure; Attorney Babbin specifically referenced a word count certification for motions. Attorney Krisch advised that he will draft a proposal for an upcoming meeting and, then, moved to approve these proposals as drafted. Attorney Babbin seconded the motion, which passed unanimously.

E. Whether to amend §§ 83-1, 83-2, 83-3, 83-4, 83-5 and 83-6 regarding applications for certification pursuant to General Statutes § 52-265a

Attorney Cicchetti generally summarized these proposals as updating the rules to conform to current practice and as making the format for General Statutes § 52-265a applications more consistent with the format for motions. The proposal also shortens to three days the time within which to file an opposition to an application, as Attorney Cicchetti advised that the current five day deadline in the rule can coincide with the seven day statutory deadline for the chief justice to decide the application. In order to give the chief justice ample time to consider the opposition, Attorney Cicchetti is proposing that the time to file an opposition be shortened to three days.

Judge Huddleston noted that filing such an application on a Friday would result in the opposition being due on Monday, and Justice D'Auria offered that, if a party brought a scheduling issue to Appellate Clerk's Office, then the clerk may have some flexibility with respect to the deadline for the opposition. Attorney Perry opined that a three day opposition time is short and requested that the ability to vary that deadline be included in the proposal. Attorney Hartan proposed, and Attorney Cicchetti agreed, that practitioners can ask for an extension of time to file the opposition.

Justice D'Auria proposed amending these proposals to add that the opposition time is three days "unless otherwise ordered by the court." Attorney Costello agreed that a three day opposition time is short, as it may take that much time to secure the record from the trial court, and he was in favor of the proposed additional language. Attorney Perry also agreed with the proposed addition and added that, if available, he would feel comfortable filing a motion for an extension of time for these oppositions. Attorney Babbin questioned whether the Judicial Branch should propose changing the seven day deadline for the chief justice to decide the application under § 52-265a to fourteen days. Justice D'Auria was not opposed to the proposal but suggested that many of the matters that are brought to the Supreme Court by way of § 52-265a are urgent matters, which is why the legislature may have imposed a shorter deadline. Attorney Barnett requested that, if these proposals are approved, then it be without prejudice to the Office of the Reporter of Judicial Decisions renumbering the sections in the proposal. Attorney Perry moved to approve the proposals as amended and without prejudice to renumbering the sections, which was seconded by Attorney Krisch. The motion passed unanimously.

F. Whether to amend § 84-3 regarding the stay of execution

Attorney Barnett introduced this proposal and explained that its purpose is to make

clear that, if a stay is in effect when the Appellate Court decides an appeal and a timely petition for certification to appeal to the Supreme Court is filed, then "the proceedings shall continue to be stayed" until the Supreme Court decides the petition. Attorney Barnett cited a recent example that illustrates why the proposed change is necessary and moved for approval of the proposal, which was seconded by Attorney Cicchetti. The motion passed unanimously.

G. Whether to amend §§ 67-2 and 67-2A regarding the format of briefs and appendices

Attorney Robertson explained how these proposals provide that, for both paper and electronic briefs, the two legible copies that are filed with the Appellate Clerk's Office shall be printed on one side of the page only, although appendices may be printed on both sides. The proposal for § 67-2 also eliminates the requirement that the cover of the brief be "heavy paper." Attorney Krisch moved to approve the proposals, Attorney Robertson seconded the motion, and the motion passed unanimously.

H. Whether to amend § 67-5A regarding the reply brief

Initially, Attorney Robertson noted that this and the following three proposals are intended to clarify certain deadlines when there are multiple appellees; in general, the proposals provide that the relevant deadline is determined by the filing of the "last appellee's brief." As to the deadline for the reply brief under § 67-5A, this proposal deletes certain language and provides that "[t]he reply brief shall be filed within twenty days of the last appellee's brief."

I. Whether to amend § 67-13 regarding briefs in family and juvenile matters and other matters involving minor children

This proposal similarly provides that counsel for minor children and counsel for guardians ad litem in family and juvenile matters shall file a brief, a statement adopting another party's brief, or a detailed statement that the child's interests are not implicated "within ten days of the filing of the last appellee's brief." If there is no appellee that files a brief, this proposal provides that "the court will set the due date" for this filing.

J. Whether to amend § 79a-6 (c) regarding the format and time for filing briefs and appendices

This proposal mirrors the proposal for § 67-13, as § 79a-6 imposes in "child protection matters" the same requirements as that section does for counsel for minor children or the guardians ad litem.

K. Whether to amend § 67-7A regarding the amicus curiae electronic brief

Attorney Robertson went on to propose changes along those same lines to the rule regarding the amicus curiae brief. She also explained as background that, when an appellee fails to file a brief, the Appellate Clerk's Office issues a NISI order that provides the appellee with a final deadline for filing the brief. This proposal would require a potential amicus curiae to file its application within twenty days of that final deadline if

no appellee files a brief. Consequently, this proposal provides that, when a potential amicus curiae does not intend to support either party, "then the application shall be filed no later than twenty days after the filing of the last appellee's brief, or if no appellee files a brief, no later than twenty days after the due date for the filing of the last appellee's brief."

Additionally, Attorney Robertson described proposed changes to § 67-7A (f), which pertains to the appearance of the attorney general when "a noncriminal matter involves an attack on the constitutionality of a state statute." This proposal removes the requirement that the attorney general file an appearance separate from its brief because the Appellate Clerk's Office can consider the filing of the brief as the appearance. The proposal, in line with the prior proposals, also provides that, "[i]f there is no party that the attorney general supports or no appellee files a brief, the attorney general's brief shall be filed no later than twenty days after the due date for the filing of the last appellee's brief."

Judge Prescott inquired as to whether it always will be clear who is the "last appellee" and questioned how the Appellate Clerk's Office determines whether multiple appellees will be filing a joint brief. Attorney Robertson responded that the clerks assume that multiple appellees represented by the same counsel will be filing a joint brief and, furthermore, that a motion for an extension of time on an appellee's brief deadline may indicate if multiple appellees intend to file a joint brief. As a result, the brief due date for the "last appellee" should be clear. Attorney Krisch highlighted that in this rule there is no deadline for the brief, as opposed to the application, of the amicus curiae, and Attorney Cicchetti confirmed that the court sets the brief deadline.

Attorney Krisch moved to approve the proposals for §§ 67-5A, 67-13, 79a-6 (c) and 67-7A, and Attorney Barnett seconded the motion, which passed unanimously.

III. ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMITTEE

Attorney Perry announced that he is leaving state service and that this will be his last committee meeting, indicating that Attorney Skold would be continuing in Attorney Perry's place. The co-chairs thanked Attorney Perry for his service on the committee and wished him the best with his future endeavors.

Attorney Emanuel discussed his recent request for additional words for a motion for reconsideration of an appeal that had generated multiple opinions. He reported that the motion was denied "by the court" and was unsure whether one judge had denied his request or whether it had been denied by a panel of the court. Justice D'Auria indicated that, generally, "by the court" can include one judge or justice and Judge Prescott added that a party is free to call the Appellate Clerk's Office and inquire who was the judge or judges that issued the order.

IV. NEXT MEETING

The date of the next meeting will be at the discretion of the co-chairs, and it is anticipated for spring, 2024.

The meeting adjourned at 2:52 p.m.

Respectfully Submitted,

Attorney David Goshdigian