

Meeting of the Advisory Committee on Appellate Rules
Tuesday, April 6, 2021

Justice D’Auria called the meeting to order at 2 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 Richard Emanuel
Attorney Paul Hartan
Attorney James Healey
Hon. Sheila Huddleston
Attorney Clare Kindall
Attorney Daniel J. Krisch
Attorney Eric Levine
Attorney Bruce Lockwood
Attorney Jessie Opinion

Attorney Charles Ray
Attorney Giovanna Weller

Members not in attendance:

Attorney Wesley Horton
Attorney Jamie Porter

Additional Attendees:

Attorney Ken Bartschi (for Attorney Horton)
Attorney Dave Goshdigan
Attorney René Robertson
Alison Chandler (External Affairs)

Preliminary matters:

This meeting was conducted via videoconference on the Microsoft Teams platform and was livestreamed on the Youtube channel for the Judicial Branch.

The co-chairs extended their welcome to Attorney Jen Bourn from the Office of the Chief Public Defender, Attorney Carl Cicchetti, the new Chief Clerk of the Appellate System, and Attorney James Healey, of Cowdery & Murphy, LLC, as members of the advisory committee. It was noted that Attorney Bartschi was attending the meeting in place of Attorney Horton.

I. OLD BUSINESS

A. Approval of minutes for the October 27, 2020 meeting.

Attorney Babbin moved to approve the minutes of the October 27, 2020 meeting. Attorney Kindall seconded. The motion passed unanimously.

B. Whether to amend the rules regarding the filing of reply briefs.

With thanks to former chief clerk Carolyn Ziogas, Attorneys Krisch and Babbin proposed adopting a new rule—Sec. 67-5A—addressing reply briefs. The primary purpose is to clarify a lacunae in the rules regarding the timing of reply briefs when there are multiple appellees. The proposal also amended Sections 61-7 and 67-3 to reference the new rule. Following discussion, in Sec. 61-7 (c), two instances of "brief and appendix" were amended to read "brief, reply brief or appendix."

Attorneys Krisch moved to adopt the proposal, as amended, and Attorney Babbin

seconded. The motion passed unanimously.

C. Whether to amend the rules to require the filing of electronic briefs.

A package of proposed amendments to existing rules and proposed new rules was circulated to the committee members. Justice D'Auria proposed addressing the proposals in groups.

1. The Party Appendix and Formatting E-Briefs. Sections 67-1 (Brief and Appendix), 67-8 (Party Appendix), 67-2A (Format of Electronic Briefs and Party Appendices; Copies).

Attorney Robertson presented these proposals. The appellate clerk's office would prepare the clerk appendix, discussed *infra*. There is no requirement that a party file a separate appendix. However, a party appendix may be used to include unpublished opinions, transcript excerpts, exhibits, and visual aids. If a party appendix is included, citations in the party's brief must hyperlink to the party appendix.

Attorney Robertson also discussed the format for electronic briefs and the requirement that parties must file two paper copies of that electronic brief and appendix, securely bound. It was understood that this would be a "hard copy" of the electronic brief – it did not have to meet the formatting requirements of paper briefs.

Members of the committee discussed concerns about particular provisions.

Attorney Ray proposed numbering the list of things that may be included in the party appendix as seen in Sec. 67-8 (a).

It was noted that there was some language in the proposal for Sec. 67-8 that was not in the current version of Sec. 67-8 because the proposal was modeled on an older version of the rule.

Subsection (c) of 67-8, concerning personal identifying information, was reworked to read: All briefs and party appendices shall protect personal identifying information as defined in Sec. 4-7, or other information protected by rule, statute, court order or case law. Appeals that have been ordered sealed in part or in their entirety or are subject to limited disclosure shall comply with Sec. 77-2.

2. Word Limit (Sections 67-3A, 67-7A).

One of the significant differences between paper briefs and electronic briefs is that length of the brief is determined by word limit, not page count. Judge Prescott indicated that given the volume of cases at the Appellate Court, there was a strong feeling among the judges that the proposal not make the briefs any longer than they are now. Attorney Cicchetti gathered data on many briefs currently filed and it was determined that a 13,000 word limit captured the vast majority of them, when excluding the table of cases and other permitted exclusions from the word count.

Attorney Bourn surveyed 43 briefs prepared by the public defender's office and, by her reckoning, 68% exceeded 13,000 words. This was a significant reduction in brief length.

Attorney Babbin discussed word limits in federal practice. The reduction to 13,000 words was controversial and the Second Circuit retained 14,000 by local rule.

Several members of the committee requested that an increase from 13,000 be considered. Members also discussed gamesmanship in reaching word limitations (articles will be dropped, the space will disappear between the section symbol and the statute number, etc.).

The word limitations for amicus briefs (4000) and reply briefs (6500) were also discussed.

It was noted that the proposal concerning reply briefs—previously adopted at this meeting—would have to be amended to conform with the word limit / e-briefing proposal.

3. Clerk Appendix (Chapter 68 and Sec. 63-4).

Attorney Goshdigian presented this proposal. The new rules concerning the clerk appendix were modeled on the "Yellow Record" rules that existed prior to 2013. There was no requirement that the parties provide paper copies of the clerk appendix to the courts. There was no requirement to hyperlink to documents included in the clerk appendix, but parties are expected to cite the appendix in their briefs. The time for filing the appellant's brief will be after the clerk appendix is prepared.

Attorney Babbin noted that there was language in the proposed Sec. 68-10A (a) concerning administrative appeals that was inconsistent with current appendix rules and it was agreed that the following phrase—"but in no event, unless the judge who tries the case directs otherwise, the testimony before the agency or documentary evidence offered at its hearings"—should be deleted.

The committee discussed the proposal to amend the Sec. 63-4 papers to add a designation of the contents of the clerk appendix, and whether the suggested pleadings (operative complaint etc.) should be listed somewhere, as they are presently in Sec. 67-8 concerning appendix part I.

4. Remaining amendment (Sec. 67-2.)

Attorney Robertson discussed this proposal, which amends the rule pertaining to the format for paper briefs for filers exempt from e-filing. The intent is for the paper briefs to more closely conform to the style of the electronic briefs. Attorney Babbin suggested that the rule specify white paper for the cover, as there is no longer a color cover requirement. This proposal was received favorably.

With respect to the entire proposal set forth in I C—whether to amend the rules to require the filing of electronic briefs—Justice D'Auria suggested that in light of the several amendments discussed at this meeting, an e-mail vote on a revised package would be appropriate.

Note: A second meeting was convened to vote on the revised package.

See minutes to meeting of April 13, 2021.

II. NEW BUSINESS

A. Whether to amend § 63-4 to clarify whether the trial court exhibits are physical, electronic, or a combination of both.

As noted by Attorney Weller, if this proposal is approved, it will have to be incorporated into the other proposals that affect Sec. 63-4. Attorney Kindall moved to adopt the proposed amendment. Attorney Ray seconded. The motion passed unanimously.

B. Whether to add § 84-6A regarding responses to petitions for certification by counsel for the minor child and/or guardian ad litem in family and child protection matters.

Justice D'Auria noted that input from the child protection unit of the public defender's office would be helpful and marked this proposal over.

Note: This proposal was considered and approved on April 13, 2021.

See minutes to meeting of April 13, 2021.

C. Whether to amend § 84-2 and § 84-5 regarding the form of petitions for certification.

Attorney Opinion presented this proposal that was submitted by the Appellate Advocacy Section of the Connecticut Bar Association. The purpose of the proposal is to amend the form of these petitions to allow petitioners to make their best case for certification. Attorney Babbitt moved to adopt the proposal. Attorney Weller seconded. The motion passed unanimously.

III. ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMITTEE

None at this meeting.

IV. NEXT MEETING

Scheduling of this next meeting was left to the discretion of the chairs.

The meeting adjourned at 4:45 p.m.

Respectfully submitted,

Colleen Barnett