

**Advisory Committee on Appellate Rules
May 24, 2016**

The meeting was called to order by Judge DiPentima at 10:30 a.m. in the Attorney Conference Room of the Supreme Court.

Members in Attendance:

Chief Judge Alexandra D. DiPentima, Co-Chair
Attorney Jeffrey Babbin
Attorney Gregory D'Auria
Attorney John DeMeo
Attorney Richard Emanuel
Attorney Paul Hartan
Attorney Wesley Horton
Attorney Pamela Meotti
Attorney Jamie Porter
Attorney Charles Ray
Attorney Thomas Smith

Members not in Attendance:

Justice Richard N. Palmer, Co-Chair
Judge Sheila Huddleston
Attorney Kathryn Calibey
Attorney Susan Marks
Attorney Lauren Weisfeld
Attorney Giovanna Weller

Additional Attendees:

Justice Peter T. Zarella
Attorney Colleen Barnett
Attorney Jill Begemann
Attorney Jessie Opinion

I. Old Business

A. Approval of Minutes of July 23, 2015

The committee unanimously approved the minutes of the July 23, 2015 meeting.

B. Proposal that section 62-9 be amended to require that *Anders* briefs be filed under seal.

The Appellate Clerk's office processes *Anders* briefs by placing them in an exhibit envelop, rather than in the file. The committee will consider whether a specific rule is needed that grants authority to the appellate clerk for its current procedure.

II. New Business

A. Proposed amendments to rules of appellate procedure to permit e-filing by self-represented parties (effective August 1, 2016)

Section 60-4

The definition of "signature" was amended to include the entry of a self-represented party's user identification number during the filing transaction.

In the future, the committee will discuss possible revisions to the term "counsel of record" and will review sections that refer to counsel, attorney, counsel of record and self-represented party to ensure that usage is accurate and consistent.

Section 60-7

This section was amended to specify that self-represented parties who are not incarcerated must file all appellate papers electronically unless an exemption has been granted. The electronic filing requirements previously applied only to attorneys.

Section 62-6

Under the amended rule, a self-represented party may satisfy the requirement that all appellate papers must be signed by counsel of record by entering his or her user identification number during the filing transaction.

Section 62-10

The proposed commentary to this rule explains that files in certain cases are available on the internet to members of the public, whereas files in other cases are only available to attorneys or self-represented parties who have an appearance in the case. Attorney Babbin suggested clarifying that in civil and criminal cases that do not involve protected information, a case summary page and electronically filed documents are available to the public. He also suggested adding language to explain that the applicable procedures are set forth in the Appellate E-filing Procedures and Technical Standards and require a self-represented party to submit an "Appellate Electronic Access Form" and to provide the Appellate Clerk's Office with a valid photo ID.

Section 63-3

The commentary to this rule was amended to delete the statement that the electronic filing requirements do not apply to self-represented parties.

Section 67-2

This section was amended to clarify that self-represented parties must submit briefs and appendices electronically.

Section 79a-12

The proposed commentary explains the procedures that attorneys and self-represented parties must follow to view files in their cases over the internet. Attorney D'Auria suggested changing "juvenile" to "child protection" in this rule and commentary and in other rules. The committee decided to amend the proposed commentary, but to consider amendments to this rule and to other rules as future business.

Attorney Porter moved that the committee adopt the amendments as modified. The motion was seconded by Attorney D'Auria and passed unanimously.

B. Proposed amendments to section 66-3

When the court considers a motion for permission to file a late document, it prefers to review the underlying document at the same time. The proposed amendment would eliminate the need for a separate motion for permission to file late. Instead, when a party seeks to file a document late, the party would include in that document a separate section entitled "good cause for late filing."

Some committee members were concerned that if the court denies permission to file late, the fee already would have been paid and could not be recovered. Attorney Babbin explained that there is no practical difference between rejecting a motion as untimely and rejecting a timely motion for some other defect. In response to Attorney Ray's concern that the parties would now have only 10 pages to address all issues, Judge DiPentima noted that the courts could adopt a policy to grant requests for extra pages to address lateness issues. Judge DiPentima also noted that the Appellate Court will draft language to ensure that any orders clearly state the basis for the decision.

The committee agreed to change the word "paragraph" to "section" in the rule and commentary. The committee also agreed to add language to the rule and commentary clarifying that motions that are directed to the trial court must include the proposed trial court motion.

Attorney Horton moved that the committee adopt the amendments as modified. The motion was seconded by Attorney D'Auria and passed unanimously.

C. Proposal that rules of appellate procedure consistently refer to self-represented parties who are incarcerated as "incarcerated self-represented parties"

Attorney Smith suggested using the phrase "incarcerated self-represented parties" in sections 66-4, 70-1 (c) and 79a-9 (c) to allow consistency within the rules and to eliminate confusion on the part of self-represented parties.

Attorney Horton moved that the committee adopt the amendments. The motion was seconded by Attorney Porter and passed unanimously.

D. Proposal that section 66-5 be amended to require that transcript be furnished with some motions for articulation

Attorney Ray is concerned that the amendment, which would require a party seeking an articulation to send transcript sections to the trial court, could lead to disputes between the parties as to what transcript sections are relevant. Judge DiPentima and committee members noted section 61-10 now permits the trial court to request assistance from the parties in obtaining transcripts and other materials.

The committee deferred action so that Judge DiPentima may discuss these considerations with Judge Bright and determine what materials would be most helpful to the trial judges (memo of decision or transcript) and to determine whether section 61-10 is sufficient to meet these needs.

E. Proposal that section 69-1, 69-2, 69-3 and 63-9 be amended to reflect that some appeals are disposed of without oral argument

Attorney Begemann explained that these amendments are necessary to reflect that the court sometimes disposes of cases without oral argument. Attorney Ray further suggested eliminating the second paragraph of the rule pertaining to standby cases. Attorney Hartan has no objection to this change, but the committee will not consider this additional suggestion until it meets in the fall.

Attorney Porter moved that the committee adopt the amendments. The motion was seconded by Attorney Horton and passed unanimously.

F. Appellate Clerk's proposals re: sections 60-8, 62-7 (applicable to appeals filed before 7/1/13), 66-8, 72-3 and 81-1

Section 60-8

The amendments to the rule and commentary clarify that it is not necessary to certify that no filing fee is required unless the filing generally requires payment of a fee.

Section 62-7 (applicable to appeals filed before 7/1/13)

The amendment clarifies that it is not necessary for a filer to submit 15 copies of a motion or petition submitted under this rule.

Section 66-8

The amendment clarifies that a motion to dismiss must be filed within 10 days after a writ of error has been filed, rather than within 10 days of the return of the writ. This would be consistent with recent amendments to section 72-3 indicating that the filing of the writ, rather than the return of the writ, is the operative date with respect to docketing and calculating when future filings are due. Because section 72-3 requires revisions in the near future, the committee marked over the present matter so that the changes may be considered together.

Section 72-3

The amendment eliminates the requirement to file one copy of documents associated with a writ of error.

Section 81-1

The amendment requires the appellate clerk's office to send notice to the trial court when a petition for certification is filed under this section.

Attorney Horton moved that the committee adopt the amendments to sections 60-8, 62-7, 72-3 and 81-1. The motion was seconded by Attorney D'Auria and passed unanimously.

G. William O. Petaway's complaint re: section 84-3

Mr. Petaway is seeking a rule change to clarify that the trial courts must rely on

Appellate Court law, even when the Supreme Court has granted certification to review the case. Many committee members noted that a judicial decision, rather than a rule change, would be the appropriate way to address this issue. Attorney Horton noted that a rule change might be necessary, however, if the phrasing in the rule is leading to confusion among trial court judges. Judge DiPentima will discuss this issue with the Administrative Judges to determine if the rule is confusing.

After careful consideration, the committee decided that no action was necessary at this time.

H. Attorney Morgan's proposal that section 67-2 be amended to provide that the date of the e-filing of an appellate brief governs the timeliness of its filing

Attorney Babbin supported Attorney Morgan's proposal. He noted that because the paper briefs must contain a certification that the brief has been submitted electronically, they cannot be bound until the last minute. Attorney Hartan does not disagree with the change, but noted that the clerk's office may find it difficult to obtain the paper briefs if the electronic submission satisfies the timeliness requirement. Judge DiPentima noted that the bar, as represented by the members present at the meeting, generally is in favor of this amendment.

The matter was marked over so that Judge DiPentima may discuss the proposal with Justice Palmer and so that the Appellate Clerk's office may consider the ramifications of the proposed changes in greater detail.

i. Attorney Horton's proposal re: section 63-4 and the judgment file

Before 63-4 was amended in 2015, it listed cases in which a judgment file was *not* required. When 63-4 was amended to eliminate references to the draft judgment file, and to point the parties to sections 6-2 and 6-3 in preparing the judgment file, that list of cases was deleted. Attorney Horton pointed out that, with the deletion of the list, the rules now suggest that a judgment file is necessary in every case.

Attorney Horton moved that the committee examine section 6-3 with respect to when judgment files must be prepared for appeals and identify possible changes to section 6-3 to be referred to Justice Eveleigh for consideration by the Superior Court rules committee.

III. Any other business that may come before the committee

The Appellate Court judges would like the committee to review the effect of recent amendments to section 61-10 at the next meeting.

IV. Next Meeting

The date for the next meeting was left to the discretion of the committee chairpersons and is likely to be scheduled in September.