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Appellate Attorneys Should Note Rule Changes

Amendments include new ways to format court briefs

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Beginning Jan. 1, 2011, amendments to the Connecticut Rules of Appellate Procedure will take effect. There will be changes to several rules, including Practice Book Sections 64-1 (requirements for trial court decisions), 66-2 (requirements for motions, petitions and applications); 67-2 through 67-5 (appellate briefs); 70-7 (en banc hearings); 71-1 and 71-4 (appellate judgments and opinions); and 72-2 and 72-3 (writs of error).

This article focuses on the amendments concerning briefs and appellate judgments and opinions, and the practical consequences of these amendments.

Briefing Format, Deadlines

Practice Book 67-2 addresses briefing format and similar matters. Under the new rule, there are new formatting requirements. First, language has been added to Section 67-2(a) specifying that the appeal brief "shall not exceed three lines to the vertical inch or twenty-seven lines to the page." This language tracks the language contained in Section 66-3, the rule that addresses motion procedures and filings.

Second, Sections 67-2(g) and (i) have added requirements for the information that must appear on the covers of briefs and separately bound appendices. The primary change is that e-mail addresses for all counsel must be included. Third, Section 67-2(h) states that "[i]f a supplemental brief is ordered or permitted by the Court, the cover shall be the same color as indicated for that party's original brief."

Practice Book Section 67-2(l) specifies that "[n]o argument shall be allowed any party who has not filed a brief or who has not joined in the brief of another party."

Practice Book Section 67-3 addresses page limitations and time for filing briefs. Under the old rule, the time for filing the appellant's brief was "within forty-five days after the delivery date of the transcript ordered by the appellant. In cases where no transcript is required or the transcript has been received by the appellant prior to the filing of the appeal, the appellant's brief shall be filed within forty-five days of the filing of the appeal."

Under the new rule, the time limitation has been clarified with the following language: "The delivery date of the paper – not electronic – transcript shall be used, where applicable, in determining the filing date of briefs." This clarification makes clear that the transcript referred to in the rule is the paper transcript rather than the electronic transcript that an appellant must order when an appeal is filed, pursuant to Practice Book Section 63-8A.

Practice Book Sections 67-4 and 67-5 have eliminated the requirement for a table of contents in appellate briefs. However, the commentary to these rules indicates that the courts "welcome the inclusion of a table of contents."

Practical Consequences

The new formatting requirements under Section 67-2 add to a long list of formatting requirements already contained in the rule. Under both the old and new Section 67-2(i), counsel must certify that the brief complies with all the provisions of the rule, so it is especially important to make sure that your brief meets all of the old and new formatting requirements. The appellate clerk also may reject any brief or appendix that fails to comply. Although pursuant to Practice Book Section 62-7, you will have the opportunity to correct a noncomplying filing, it is certainly preferable not to be in that position if it can be avoided.

Because you will not be permitted to argue before the Appellate or Supreme courts if you have not filed a brief or joined in the brief of another party, you need to give serious thought early on in the appeal process as to whether your client benefits from remaining in a neutral position vis-à-vis the appeal. Often, that is the situation where an attorney represents a minor child in a dissolution action and the issue on appeal addresses a matter that does not directly impact that child, *e.g.* alimony.

Keep in mind, however, that Practice Book 67-13 requires counsel for a minor child and counsel for the *guardian ad litem* in family and juvenile matters to file either: 1) a brief; 2) a statement adopting the appellant's or appellee's brief; or 3) a detailed statement that the factual or legal issues do not implicate the child's interests. One of those filings is required within 10 days of the filing of the appellee's brief. Any other party whose interest in the judgment will not be affected by the appeal, and who does not wish to file a brief, must so inform the appellate clerk prior to the deadline for the filing

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of the appellee's brief, pursuant to Practice Book Section 67-3.

If you represent an appellant, then you must pay close attention to the briefing deadlines under Section 67-3, especially if you have ordered only electronic transcripts. In this situation, the time limit for filing your brief will likely be much shorter than it would be if you had ordered paper transcripts as well. In some instances, your briefing deadline may come up even before the appeal has been docketed, before a case manager has been assigned to your appeal, and before the court issues the standard order extending the appellant's briefing deadline until 45 days after the first pre-argument conference.

As a result, if you want additional time to prepare your brief, you may need to file a motion seeking an extension of your briefing deadline before there is an appellate docket number and a case manager assigned to your appeal, and before the court issues the pre-argument conference order. As a practical matter, your motion will not be acted on before a case manager is assigned, but if the motion is on file at least 10 days before the briefing deadline, that should suffice.

Practice Book Section 66-5 covers motions for rectification and articulation, and the time limits for such motions are also tied to transcript delivery dates. The rule provides that "[a]ny motion for rectification or articulation shall be filed within thirty-five days after the delivery of the last portion of the transcripts or, if none, after the filing of the appeal, or, if no memorandum of decision was filed before the filing of the appeal, after the filing of the memorandum of decision." If the court *sua sponte* sets a different deadline for filing the appellant's brief – for example, by issuing the standard pre-argument conference order – then the motion must be filed 10 days prior to the deadline for filing the appellant's brief.

The language of Practice Book 66-5 has not been amended, so it is not entirely clear whether "delivery of the last portion of the transcripts" in that rule refers to paper or electronic transcripts. However, in light of the amendment to Section 67-3, it is prudent to assume that, in situations where only electronic transcripts have been ordered and a memorandum of decision has been filed, a motion for rectification or articulation is due 35 days after the filing of the appeal.

Consequently, you may need to file such a motion, or seek an extension of time to file the motion, before the appeal has been docketed, before a case manager has been assigned, and before the Court issues the standard pre-argument conference order. It is not wise to bank on the issuance of that order at a later date, because there are instances where the order is not issued, such as where a *pro se* party has filed an appearance in the case.

Notice Of Court Opinions

New Practice Book Section 71-1 provides that "if an opinion or decision is issued by slip opinion or by oral announcement from the bench, the judgment shall be deemed to have been rendered on the date that appears as the officially released date in the slip opinion or the date that the oral announcement is made." Under the old rule, the judgment was deemed to have been rendered on the date the slip opinion is mailed.

The following language has been added to Practice Book Section 71-4: "Notice of the decision of the court shall be deemed to have been given, for all purposes, on the official release date that appears in the court's opinion." The new rule also deletes language which had tied the official release date of a slip opinion to the date the opinion is mailed.

Practical Consequences

Unless the court delivers an oral ruling from the bench, which is very rare, the official release date appearing in all opinions must be used in calculating the time you have to file a motion for reconsideration pursuant to Practice Book Section 71-5, a motion for stay pursuant to Practice Book Section 71-7, or a petition for certification pursuant to Practice Book Section 84-4. The only time notice by mail would apply for any of these purposes is when the clerk issues notice of an order on a motion or petition. See Practice Book Section 71-4(c). ■