

Rules Committee of the Superior Court
Monday, January 13, 2020, 2:00 p.m.
Supreme Court Building, Supreme Court Courtroom

Notes regarding discussion of Item 05-04 Hybrid Appearances

There were two somewhat related issues that were raised during this discussion:

- 1) How to address pleadings filed by a self-represented party for whom an attorney has also filed an appearance, when such pleadings are not signed by an attorney pursuant to Section 4-2 (a) and
- 2) Whether or not hybrid appearances should be allowed and, if so, what rules should be put in place to govern their use.

Signature of Pleadings

There appear to be different interpretations of Section 4-2 (a). There were three different proposals to address the issue of signatures on pleadings filed by a self-represented party for whom an attorney has also filed an appearance. In general, the concern was about frivolous pleadings, pleadings that did not conform to the rules, and pleadings that the attorney was unaware of or that were inconsistent with the attorney's filings.

Proposals:

- 1) Amend Section 4-2 (a) to require that a self-represented party for whom an attorney has also filed an appearance must have the attorney sign their pleadings, but only to indicate that the court rules have been followed.
- 2) Amend Section 4-2 (a) to require that a self-represented party for whom an attorney has also filed an appearance must have the attorney sign their pleadings, to indicate that a) the court rules have been followed, b) that the pleading has a non-frivolous basis and c) that notice was made to the opposing parties in accordance with the rules.
- 3) Clarify to all civil and family judges that the current Section 4-2 (a) is to be interpreted to require that the attorney must sign all pleadings filed by a self-represented party for whom an attorney has also filed an appearance. If the attorney is unwilling to sign off on the pleading, the self-represented party can then file an "in lieu of" appearance to remove the attorney and go forward representing themselves.

Effect of Failure to Follow Rule Regarding Signature

A suggestion was made to amend Section 4-2 to specify that any pleading that lacks the attorney's signature would be "deemed rejected for filing".

This suggestion was intended to address cases where a self-represented party neglects to follow the rule and submits a pleading without the attorney's signature. This proposed revision is intended to make clear that no response is required to such pleadings, without requiring the court to enter a stay of any potential deadlines while ruling on the issue of whether or not the pleadings has been filed and requires a response.

Hybrid Appearances

Right now, the existing rule regarding hybrid appearances is interpreted differently by different judges. During discussion at the Rules Committee meeting, it was pointed out that there are at least three unreported cases from three different judges (Judges Tobin, Abrams, Adelman) about this issue, which conclude that the rule is unclear and that the cases should be decided on the "interest of justice standard". One of the main concerns is that litigants have different rules to follow depending on which judge they are before on a given matter.

There are three entirely different proposals on the table.

- 1) Amend Section 3-8 (a) to prohibit hybrid appearances absent good cause shown.
- 2) Clarify the rules to allow hybrid appearances in family cases but leave the rule regarding civil cases as it is.
- 3) Clarify the rules to allow hybrid appearances in family and civil cases.

1) Prohibiting Hybrid Appearances, absent good cause shown

This is the original proposal by Judge Adelman, and there were comments from other members of the Rules Committee in favor of this proposal. Of note, it was mentioned that there is no constitutional or statutory right to a hybrid appearance, and that hybrid appearances are not allowed in criminal cases, where the rights at issue are generally afforded more protection and the stakes are considered to be higher. Concerns that a party would not be able to make claims that their attorney did not agree with could be addressed by the party filing an "in lieu of" appearance and representing themselves until that claim is resolved.

One of the comments critical of the proposal pointed out that it may make it more difficult for a self-represented party to keep their attorney, and might run counter to the access to justice obligations to give latitude to SRPs who aren't lawyers.

There was some discussion about definitions for "good cause shown", but it seemed the consensus among supporters of this proposal was that judges would have discretion to set this standard.

2) Allowing hybrid appearances in family cases but not in civil

The working group's original proposal would amend the family rules to be clear that hybrid appearances are permitted does not amend the civil rules. This would not address the issue of different civil judges handling hybrid appearances differently. When this proposal was discussed at an early rules committee meeting, one theory was that family could be the "pilot program" for these rules changes, with the intent to change the civil rules depending on the outcome.

3) Clarify the rules to allow hybrid appearances in family and civil cases.

This idea was raised at a previous meeting, and Counsel prepared a draft of what the amended rule might be. When this idea was circulated among the civil judges, it did not seem to have strong support.

Conclusions

Input is needed from both Judge Abrams and Judge Albis, and it would be helpful if they are both present before the Rules Committee at the same time to have them discuss such a substantial change to the rules.

One suggestion that was a subcommittee be formed to explore this issue further.

One suggestion was made to review how other states address hybrid appearances.

Judge Heller is to contact Judge Albis to inform him of this discussion and advise him that Counsel may reach out to him to work on getting everyone on the same page about what should be done. Judge Cobb will do the same for Judge Abrams. Legal Counsel is to prepare a summary of everything that was discussed and invite both Judge Albis and Judge Abrams to discuss this issue with the Rules Committee. This item is to be tabled for one month.