MINUTES

SUPREME COURT'S ADVISORY COMMITTEE ON THE
UTAH RULES OF APPELLATE PROCEDURE

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Judicial Council Room
Thursday, March 6, 2014
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Joan Watt – Chair	Paul Burke
Alison Adams-Perlac – Staff	
Troy Booher	
Marian Decker	
Alan Mouritsen	
Judge Gregory Orme	
Rodney Parker	
Bryan Pattison (by phone)	
John Plimpton – Recording Secretary	
Bridget Romano	
Clark Sabey	
Tim Shea	
Lori Seppi	
Judge Fred Voros	
Mary Westby	
Anne Marie Taliaferro	

1. Welcome, Introduction of Recording Secretary, and Approval of Minutes Joan Watt

Ms. Watt welcomed the committee to the meeting. Ms. Watt introduced John Plimpton as the new recording secretary. Ms. Watt explained that the role of the recording secretary is to take minutes. She stated that the recording secretary is a non-voting participant. Mr. Plimpton will take over for Ms. Adams-Perlac in preparing the minutes of the meetings, but Ms. Adams-Perlac will continue to assemble the packets and will send the minutes to committee members. Ms. Watt announced that Mr. Shea was recently appointed to be the Appellate Court Administrator. Members of the committee congratulated Mr. Shea. Ms. Watt asked the committee if there were any issues with the draft of the minutes from the previous meeting. Judge Orme stated that they are wonderful.

Mr. Booher moved to approve the minutes from the January 9, 2014 meeting. Ms. Romano seconded the motion and it passed unanimously.

2. Public Comment to Rules 3 and 8A **Joan Watt**

Three public comments were made to rule 3 as follows:

> A good change to the Rules. Please consider providing that service of briefs, etc., may be by electronic transmission.
>
> -Posted by J. Bogart November 30, 2013 08:59 AM
>
> This is a conspicuous attempt to deprive rights by complicating the process, and it is in defiance of this state's parens patriae burden to protect children. If this passes, I will personally track how much money GALs make from this, and how helpful they are to parents who try to file these in the interests of children they supposedly represent.
>
> -Posted by Matthew Falkner January 6, 2014 06:03 PM
>
> Overall, as appliccable to both rules, pioneering new rules, logistical or technical burdens or anything that may complicate or convolute the law, carries with it by nature of reason and natural duty, a very real and affirmative need to first remedy known harmful effects of existing misconstructions or logistical failures first, explicitly and dutifully justifying the need, and enacting, consolidating or repealing in conjunction, bridges that ensure the common person is not prejudiced by rules that tend to serve the government more than the People.
>
> It applies to URAP 3 as follows:
>
> An appeal as of right, (inherent to a right) indicates governmental burden to uphold and protect the right with fidelity. When there's a time window on the practical application of a right, and the application of the right is inadvertently petitioned in wrongful jurisdiction but in good faith, due government effort to preserve the practical access to the right, and not impose undue interference is affirmative. The appeal should either be forwarded to the most direct and rightful jurisdiction, with the Court seeking approval by the petitioner, or an extension of timeframe should be automatically granted with a template for making a correction.
>
> -Matthew Falkner, by email 1/15/2014.

Three public comments were made to rule 8A (Renumbered to 23C) as follows:

> WHY MAKE THE RULES SO COMPLICATED AND COMPLEX FOR TRUE EMERGENCY SITUATIONS? RULE 8A, RENUMBERED OR OTHERWISE, SHOULD BE DESIGNED TO ACCOMODATE THE NEED FOR EMERGENCY RELIF WITHOUT THE JURISDICTIONAL DEBATE AND NEED FOR SOME OTHER FILING. WHY NOT USE RULE 8A TO INVOKE JURISDICTION:

“There may be circumstances where limited provisional forms of relief (e.g., an emergency stay to preserve the status quo) can be obtained prior to the formal invocation of appellate jurisdiction,1 but rule 8A cannot be employed to independently invoke that jurisdiction.” Snow, Christensen & Martineau, 2009 UT 72, ¶ 6.

“[W]e determine that we lack jurisdiction to take further action on the rule 8A petition because no invocation of our jurisdiction was accomplished by a separate pleading.” ¶8.

-Posted by ROBERT J. FULLER November 26, 2013 05:54 PM

This is a conspicuous attempt to deprive rights by complicating the process, and it is in defiance of this state's parens patriae burden to protect children. If this passes, I will personally track how much money GALs make from this, and how helpful they are to parents who try to file these in the interests of children they supposedly represent.

-Posted by Matthew Falkner January 6, 2014 06:03 PM

Overall, as appliccable to both rules, pioneering new rules, logistical or technical burdens or anything that may complicate or convolute the law, carries with it by nature of reason and natural duty, a very real and affirmative need to first remedy known harmful effects of existing misconstructions or logistical failures first, explicitly and dutifully justifying the need, and enacting, consolidating or repealing in conjunction, bridges that ensure the common person is not prejudiced by rules that tend to serve the government more than the People.

It applies to URAP 8A as follows:

1) The People are guaranteed equal due process protections under the law. These micromanaged rules of process for identical natures of claim between courts imposes unnecessary, unequal, and wasteful burdens on both the courts and the People.

2) Courts are already logistically burdened in a manner that inadvertently deprives the People of the right to a speedy trial. To wit: Litigation extending beyond timeframes. Unnecessary rule enforcement aggravates and perpetuates prolonged litigation, causing furtherance of the overriding logistical rights issue. When existing burdens prove overwhelming to the point of harm, reason and responsible rule-making dictate that consolidation, simplification, and repeal evidencing efficacy to remove harm are in pre-requisite order to pioneering new grounds of burden.

Considering the 2004 case of judge Anderson, such burden expands the risk of removal for judicial officers.

The pleadings in conflict are by nature, emergency pleadings involving the rights of victims and witnesses. They are designed to be a form of relief free from legal and technical burdens that tend to prejudice due and necessary emergent relief.

> It is the policy of this state that it has a parens patriae burden to protect children. If a child is forced to endure prolonged abuse because a civically minded person used the wrong template to file a protective order, and spent the day learning that there are arbitrary rules that need to be files, and one but an attorney can advise them on them, now the civic ally minded person is remanded to finding short notice adequate representation, and an attorney profits on the fight for a constitutional right being deprived to the extent of irreparable harm.
>
> -Matthew Falkner, by email 1/15/2014.

The committee agreed that it had gone over the proposals for Rules 3 and 8A and that the proposals are reflective of case law.

Mr. Shea moved to recommend that the proposals on Rules 3 and 8A be approved by the Supreme Court. Ms. Taliaferro seconded the motion and it passed unanimously.

3. Classification of Records Rule **Alison Adams-Perlac**

Ms. Adams-Perlac presented her proposal addressing classification of records. The proposal takes into account three previously raised concerns: (1) that the rule needs to cover more than just briefs, (2) that the rule needs to be consistent with the records classification scheme in the Code of Judicial Administration, and (3) that the different levels need to be addressed. Ms. Adams-Perlac was unsure about where to place the proposed rule within the Rules of Appellate Procedure, but suggested that it should be in the general provisions. She suggested making it 21A, unless the committee wants to renumber many other rules to make room for it.

Ms. Adams-Perlac's proposal provides for minimal court involvement—the records would retain the classification they had in the lower court; the information can be redacted; if there is more information that needs to be protected, the party can file an addendum; and then the party can request that the information be non-public, which is where the court would get involved. Ms. Adams-Perlac suggested that the committee might want to include a provision that would allow a party to challenge a classification, but stated that she did not include this in the draft presented.

Mr. Sabey suggested that there could be a provision stating that any objection must be filed within a certain period of time. Mr. Booher asked if this motion would be governed by the rule governing general motions. Ms. Adams-Perlac stated that requesting that the information to be classified as non-public would be the motion, and Mr. Sabey agreed. Mr. Sabey stated that he would interpret the first part as creating a duty to file it that way.

Mr. Sabey stated that an opposing party or even a non-party may want to challenge a request to classify records as non-public. Mr. Booher stated that he believed the rule should be the same as it is in the district court. Mr. Shea described the three-levels of non-public classifications in the district court: (1) an entire case (or most of it), (2) certain documents in a case, and (3) information with a record. Mr. Shea stated that in circumstance (1), the clerk identifies the case as non-public (or private) in the computer case management system. He stated that in circumstance (2), the parties are directed and it is their obligation to not disclose the information or to redact it in existing documents if it is already there. He stated that there is a process to object to classifications in the district court. Mr. Shea stated that he did not know of a procedure for a party to object to a redaction.

Judge Orme suggested that most of the time, there will not be an objection, and that most parties will figure out how to litigate the rare case without a specific rule to guide them. Judge Voros suggested that not all parties would be able to figure it out. Ms. Westby stated that, because most classifications will be sorted out at the trial level, there will be minimal need to object to a classification on appeal. She stated that problems will only arise where the non-public information is so intertwined with the arguments on appeal that the party requests the entire brief to be classified as non-public.

Judge Orme suggested leaving the rule as is for the time being, and revisiting it down the road if problems arise. Mr. Sabey and Ms. Watt agreed with Judge Orme's approach. Ms. Watt stated that currently a party can file an objection under the general rule governing motions or can ask for a suspension of the existing rule under Rule 2. Mr. Sabey suggested that the court clerks could provide guidance, even in the absence of a specific rule.

Judge Voros stated that he had some questions about the language of the proposed rule. Judge Voros read the first sentence in the draft: "Briefs and other appellate filings are generally classified as public under the code of judicial administration." Judge Voros questioned when they were not; he asked if the committee could "tighten up" the word "generally." Ms. Adams-Perlac stated that appellate filings are not public when some other classification is given to them. Mr. Shea suggested deleting the first sentence and beginning the rule with the second sentence.

Judge Voros proposed moving the reference to 4-202 to an advisory committee note. Mr. Parker stated that if the first sentence is removed, subsection (a) becomes about trial court filings. Mr. Sabey stated that the reference to briefs and other appellate filings is still needed.

Judge Voros asked what subsection (a) is really about. He stated that the first thing the rule should say is that briefs are public. Mr. Parker agreed. Judge Voros stated that there are two categories of documents, those that are part of the record on appeal which keep the classifications they had in the trial court, and those that are filed with the appellate court which are public unless otherwise designated. He suggested stating that point more directly. He suggested that the rule should then explain what to do if a party is filing something with the court which is otherwise public, but including information that is non-public, and then go on to discuss redaction and the addendum, etc. He stated that he would like to see a structure of the rule that more clearly reflects the two kinds of information and the problem of what happens when you combine them.

Judge Voros suggested the following revision: "(a) Anything filed with the appellate court is public unless otherwise designated as provided by this rule. (b) Anything in the record on appeal bears the same designation as it bore in the trial court unless otherwise designated by the appellate court pursuant to this rule." Judge Voros stated that the rule should then go on to explain how a party can include non-public information in a public brief, and then explain how a party can object to such a request. Ms. Adams-Perlac asked whether (c) should then be broken down further. Ms. Adams-Perlac suggested giving each subsection a title with the type of record. Judge Voros stated that the structure should easily reflect the problem which is the intersection of a public brief with non-public information.

Mr. Shea stated that briefs are not mentioned in CJA 4-202.02, so they are presumed public. Mr. Shea stated that the first sentence is not necessary and that the important information in the rule is that unless otherwise classified, the items in the record on appeal have the same classification that they did in the trial court. Ms. Adams-Perlac suggested that this may confuse parties because they do not know how a brief is classified. She stated that the purpose behind the proposed rule is that briefs have been more protected than they should be. Mr. Sabey agreed. Mr. Sabey suggested moving the

reference to briefs and other appellate filings into the heading because the purpose of the rule is to instruct practitioners on how to file a brief that contains non-public information. He suggested "briefs and other appellate records containing non-public information." Judge Voros agreed, and stated the rule should clearly state that if a party files a document with an appellate court, it will be public unless otherwise designated. Ms. Watt agreed, and stated the rule should provide clear guidance to practitioners, who are perhaps not very familiar with other rules, regarding public and non-public classifications on appeal.

Judge Voros stated that an advisory committee note could state that the first sentence in the rule is a restatement of the policy contained in 4-202 of the Code of Judicial Administration. Ms. Watt stated that she liked Judge Voros's suggestion for the structure of the rule, and the suggestions for the headings. Ms. Adams-Perlac said that she could revise the rule for the next meeting to incorporate the suggestions raised.

Mr. Parker suggested that the language in the rule should be expanded to include administrative agencies, not just "trial courts." Ms. Westby stated that there is another rule that provides that administrative agencies are considered "trial courts" for purposes of the appellate rules. Mr. Shea stated that the court's rules do not classify administrative agencies' records.

Mr. Booher stated that cross-references should be used as much as possible, instead of identical language, to prevent conflicts with rule changes elsewhere. Mr. Booher also stated that the rule should also have a section dealing with extraordinary writs or original proceedings, such as elections, because there you are creating the record. Judge Voros agreed. Ms. Romano stated that there was an issue on classifications with an election recently. Ms. Watt asked Ms. Romano if she could research those election cases to see how the courts dealt with the issue. Ms. Romano said she would look into it.

Mr. Parker raised an issue with language in subsection (b), which stated that the party needed to show why certain information should be redacted. Mr. Parker asked how a party is supposed to show that. Ms. Adams-Perlac stated that subsection (c) says "certify," so "show" could be changed to "certify." Ms. Romano stated that, if Ms. Adams-Perlac's suggested change is made, the title should be changed because "certification" comes before "motion" in the rule. Mr. Shea stated that the word "certify" would not work, because the provision requires a legal argument, not a certification. Ms. Westby stated that the certification would relate to the fact that the document was classified as non-public in the trial court. Mr. Sabey said the rule could require the party to file a certification explaining why the information should be redacted.

Ms. Watt asked Ms. Adams-Perlac if she looked at rules from other jurisdictions. Ms. Adams-Perlac stated that she looked at the federal rules, which she did not find to be particularly helpful, but she did not look at any other jurisdictions.

Mr. Sabey stated that the answer to the question, "how does a party show that information should be redacted?", is "by filing a certification that the information should be redacted." Mr. Booher suggested that the rule should just require a certificate, with a brief or other filing, that non-public information has been redacted, or a certificate that says nothing in the filing needs to be redacted. Ms. Adams-Perlac stated that the committee has already considered this idea and dispensed with it because it did not want to require an additional certification. Judge Voros stated that including an extra sentence about certification has merit because it puts the burden on the attorney to ensure that classifications are followed. Ms. Watt agreed.

Mr. Shea suggested deleting "something" from "something other than public." The committee agreed.

Ms. Watt stated that the committee seems to be okay with the approach, but the goal now is to revise the rule to make it more usable and succinct. Judge Voros stated that the rule should require a certification that the brief complies with rule 4-202. Judge Voros stated the rule still needs to instruct practitioners how to change the classification of a document or information on appeal. Ms. Westby asked whether the trial court needs to do it. Judge Voros stated that the appellate court can, and already does it, in some cases.

Ms. Watt stated that the certification required by the rule should just be a certification that the attorney has abided by the classifications set in the trial court. Judge Voros stated that this certification plus the public/non-public addendum would be sufficient. Mr. Parker asked if there is one more component at issue: the brief itself, as the brief may directly discuss information in addenda that is "other than public." Mr. Booher stated that the certification is simply a certification of compliance, and compliance may mean that certain words in the brief are redacted. Judge Voros stated that compliance should be explained. He asked if the certificate needs to be included with all appellate filings, or just briefs. Mr. Booher said yes, it would need to be included with all filings. Mr. Booher stated that the rules on each filing will need to include a provision requiring the certification. Ms. Westby suggested that if this certification is required for all filings, it will become meaningless to practitioners, which will undercut the purpose of the requirement.

Ms. Watt stated that the requirement is most important for addenda, so that something classified as non-public is not made public by virtue of being part of a brief. Ms. Westby stated that the rule started with briefs and that is where the rule is most likely to apply. Judge Voros asked if any committee members had seen the issue arise outside of the context of a brief. Mr. Booher raised petitions for interlocutory appeal and petitions for certiorari as possibilities. Mr. Booher clarified his earlier remarks, stating that whenever the certification is required for a certain kind of filing, the rule governing that kind of filing needs to state the requirement that the filing be accompanied by the certification. He suggested that where an "other than public" certification is necessary with regard to a particular document, the rule addressing that document should be amended to include an "other than public" certification requirement, e.g., Rule 5 and Rule 24.

Ms. Adams-Perlac will revise the proposal for the committee's review at the next meeting.

4. Rule 11(e)(4) Clark Sabey

Mr. Sabey stated that this proposal relates to the same subject matter as that dealt with by the proposed classification of records rule and that the committee should table this proposed rule for the time being. The committee members agreed.

Further discussion of this rule was tabled indefinitely.

5. Rule 1(f) Mary Westby

Ms. Westby discussed a proposal to revise Rule 1(f). Ms. Westby stated that the revision is intended to permit the application of certain summary disposition mechanisms provided in Rule 10 to apply in child welfare appeals. Ms. Westby stated that, under the revision, parties would be able to move for summary disposition for manifest error and stipulate to reversal, or move for summary disposition on a jurisdictional question. Ms. Westby stated that the insubstantial question provision

would not apply because that is a summary proceeding and child welfare petitions are already a summary proceeding.

Ms. Romano suggested including the language "due to their summary nature..." to the insubstantial question provision. Judge Voros stated he liked the suggestion. Ms. Romano also suggested including language in the rule to the effect that "all other provisions of Rule 10 apply."

Judge Voros suggested that "Title VIII" should be removed and replaced with "Rules 52 through 59," because, as a practical matter, no one refers to the title divisions in the Rules.

Judge Voros moved to strike "Title VIII" in Rule 1(f) and replace it with "Rules 52 through 59." Mr. Booher seconded the motion and it passed unanimously.

Mr. Booher stated his concern that Rule 1(d) is false. He stated that Rule 1(d) is inconsistent with applications of *Bradbury*. Mr. Sabey suggested that 1(d) might include a residual reference to an outdated statute. Judge Voros stated that he questions whether 1(d) is a problem. Mr. Booher stated that Rule 1(d) is inconsistent with applications of *Bradbury* and Rule 4, because cases citing *Bradbury* hold that if you filed your notice of appeal beyond 30 days, then Rule 4 strips the court's jurisdiction, and Rule 1(d) says the rules shall not be construed to strip the court's jurisdiction. Judge Voros stated that Rule 1(d) is focused on subject matter jurisdiction, not the manner in which the court's jurisdiction is invoked. He stated that he does not see it as a contradiction, but he is not opposed to making the rule clearer. Mr. Parker suggested that there was no reason to modify it.

Ms. Watt stated that she agreed with leaving Rule 1(d) as written because the language in the case law is in flux. The committee generally agreed that the language could be more precise. Mr. Booher agreed with Ms. Watt and stated that it would be wise to wait and see how the language changes in the case law.

Judge Voros moved to "wait and see" how the language changes in the case law. Ms. Romano seconded the motion and it passed unanimously.

Judge Voros stated that one does not really appeal from a commissioner or agency board. He stated that the committee may want to revise line 13 to state "petition for review" in lieu of "appeal" for the rule to be accurate. Ms. Westby stated that she would rework the language of line 13 as well.

Mr. Parker moved for Ms. Westby to revise Rule 1(d)-(f) for the committee's review at the next meeting. Ms. Romano seconded the motion and it passed unanimously.

6. Rule 35 **Mary Westby**

Ms. Westby stated that Rule 35 is meant to incorporate Standing Order 2. It is intended to cut off petitions for rehearing from anything that was disposed of by order of the court. She stated that opinions, memorandum decisions, or per curiam decisions may be subject to rehearing.

Judge Orme suggested revising the language since cases are not issued, but opinions are. He suggested that the proposal should state, "in which an opinion, memorandum or per curiam decision has been issued." Judge Voros asked whether a rule 31 order should be included in the list. Ms. Westby stated that she thought those were by consent, but Judge Voros stated that they do not have to be by consent. Judge Orme suggesting using, "dispositive order." Judge Voros suggested that "dispositive order" is not narrow enough.

Mr. Booher asked whether the list is meant to suggest that a party can get a rehearing for cases in which a court has issued an opinion, but not when the court has issued an order. Ms. Westby stated that a disposition pursuant to Rule 10 may either be on the merits or jurisdictional, and this was meant to be reflected in the distinction between some sort of decision and some sort of order. The line of distinction is whether the disposition of the case was based on the merits.

Mr. Parker suggested stating that a petition can be filed within 14 days of an opinion, memorandum, or per curiam decision, since the list may not be complete. Ms. Westby suggested that subsection (a) end after the first sentence. Judge Voros suggested changing the language to state, "A party may petition for rehearing only after the issuance of an opinion, memorandum decision, or per curiam decision." Mr. Shea suggested narrowing it even further, but Judge Voros disagreed, stating that it would be useful to have a paragraph up front explaining when a petition for rehearing is permitted, and then subsection (b) would tell a party how to file a petition. The proposal was amended to read:

Rule 35. Petition for rehearing.

(a) Petition permitted. A party may petition for rehearing only of an opinion, memorandum decision, per curiam decision, or rule 31 order.

(b) Time for filing; contents; answer; oral argument not permitted. A rehearing will not be granted in the absence of a petition for rehearing. A petition for rehearing may be filed with the clerk within 14 days after the entry of the decision of the court, unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which the petitioner claims the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires. Counsel for petitioner must certify that the petition is presented in good faith and not for delay. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court. The answer to the petition for rehearing shall be filed within 14 days after the entry of the order requesting the answer, unless otherwise ordered by the court. A petition for rehearing will not be granted in the absence of a request for an answer.

(c) Form of petition; length. The petition shall be in a form prescribed by Rule 27 and shall include a copy of the decision to which it is directed. An original and six copies shall be filed with the court. Two copies shall be served on counsel for each party separately represented. Except by order of the court, a petition for rehearing and any response requested by the court shall not exceed 15 pages.

(d) Action by court if granted. If a petition for rehearing is granted, the court may make a final disposition of the cause without reargument, or may restore it to the calendar for reargument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(e) Untimely or consecutive petitions. Petitions for rehearing that are not timely presented under this rule and consecutive petitions for rehearing will not be received by the clerk.

(f) Amicus curiae. An amicus curiae may not file a petition for rehearing but may file an answer to a petition if the court has requested an answer under subparagraph (b) of this rule.

Judge Voros moved to approve the proposal as amended. Mr. Sabey seconded the motion and it passed unanimously.

7. Global Review of Rules **Global Rules Subcommittee**

Mr. Booher discussed the proposal to Rule 24. Mr. Booher stated that the initial amendment had to do with informing counsel about *Broderick* because the way that the rule was written seemed exhaustive. He stated that the rule should communicate to appellees that if they fail to file a brief, then they might lose the opportunity to be heard at oral argument, but if their brief is deemed inadequate, under *Broderick*, the consequences may be even worse. He stated that the goal of the proposal is to inform litigants that *Broderick* consequences are a possibility.

The committee discussed that *Broderick* itself stated that it was limited to its facts. Mr. Sabey stated that the curious thing about *Broderick* is that it reversed the district court without holding that it committed any error.

Ms. Watt questioned whether the committee can propose a rule that overrules the Utah Supreme Court. Mr. Shea stated that he would strongly advise the committee to run the proposal by the supreme court before opening it up for public comments. Mr. Sabey stated that the committee could send a letter to the supreme court saying that *Broderick* was "dead wrong" and ask the court to pass a rule that would effectively overrule it; or second, the committee could try to craft a rule that would limit *Broderick* to its facts.

Mr. Shea suggested writing a letter to the supreme court outlining the anomalous consequences of *Broderick* and saying that the committee would like to correct them. Judge Voros stated that he did not believe the outcome in *Broderick* would have been different if the appellee had failed to file a brief.

Ms. Watt stated her concerns about proposing a rule that would take away a remedy that the supreme court obviously thought was appropriate in a particular case. Mr. Booher stated that if he was an institutional appellant, he would love *Broderick*. Ms. Watt stated that the supreme court will likely give direction on the limitations of *Broderick* in the near future.

Judge Orme stated that Rule 24 says that an appellee *may* file a brief. He stated that frequently, the court will receive a letter from an appellee informing the court that it would not be filing a brief, for whatever reason, if that is the case. Judge Orme recommended that the committee should outline in Rule 24 what an appellee who intends not to file a brief should do, and to add an advisory note saying that the rule might undercut *Broderick*. He suggested that the committee should come at the issue less directly than the prior proposals.

Judge Voros stated that the alternative would be to codify *Broderick*. Mr. Booher said he would be happy to codify *Broderick*. Judge Voros stated he wondered how *Broderick* looks from a district judge's point of view.

Mr. Sabey said the committee could send the supreme court a letter stating the committee's concerns. Ms. Watt stated that the committee could simply ask the supreme court how it would like the committee to deal with the issue. Judge Orme said the letter could present three possible scenarios: (1) codify *Broderick*, (2) disavow it, and (3) leave it be, but in the advisory notes, call practitioners' attention to the possibility of *Broderick* consequences. Mr. Booher stated that *Broderick* stands for the proposition that an appellee is better off filing no brief than a horrible brief. Judge Voros stated that he would oppose the third option of doing nothing. Judge Voros wondered why the sanction in *Broderick* did not run to the appelee's attorney, as opposed to the district judge

and the appellee. Mr. Sabey stated that the issue in *Broderick* was that the appellant had cleared a prima facie hurdle, but the supreme court was not prepared to adopt the appellant's argument as law and it did not want to commit its clerks to doing the appellee's job.

Ms. Watt stated that it was evident that the committee had not reached consensus on how to approach the issue. Ms. Watt stated that the committee members should consider whether to write a letter to the supreme court, whether to propose a rule that codifies *Broderick*, or whether to propose a rule that disavows *Broderick*. Ms. Watt stated that the committee should be ready to address this issue for the next meeting.*The committee agreed to consider what to do about Rule 24 and to be prepared to discuss it at the next meeting.*

8. Other Business

There was no other business discussed at the meeting.

9. Adjourn

The meeting was adjourned at 1:45 p.m. The next meeting will be held Thursday, April 10, 2014.