

MINUTES

**Supreme Court's Advisory Committee  
on the Rules of Appellate Procedure**

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114-0241

January 16, 2002 - 12:00 p.m.

**ATTENDEES**

Todd Utzinger  
Julianne Blanch  
Matty Branch  
Larry Jenkins  
Karra Porter  
Clark Nielsen  
Joan Watt  
Judge Greg Orme

**EXCUSED**

Fred Voros  
David Arrington  
Fred Metos  
George Haley

**STAFF**

Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

Todd Utzinger welcomed the members to the Committee meeting. The minutes from the previous meeting will be distributed and approved at the next meeting.

**II. RULE 4(b)**

Joan Watt explained that the Utah Supreme Court had recently issued a decision which affected the time limit for seeking review of a decision involving a guilty plea. In a previous Court of Appeal's decision, the court had held that a defendant has 30 days from the date of a plea colloquy in which to file a motion to withdraw a guilty plea. The Supreme Court, in State v. Ostler, overruled the Court of Appeals and determined that a defendant has 30 days from the date that the district court enters its final judgment of conviction. Ms. Watt explained that, under the current law, if a defendant wishes to file a motion to withdraw a guilty plea and also challenge the sentence that was imposed, the defendant must file both a motion to withdraw the plea and a notice of appeal before 30 days expires. However, the filing of the notice of appeal will deprive the trial court of jurisdiction to act on the motion to withdraw. Ms. Watt suggested amending the rule to include a motion to withdraw a guilty plea as an act that will stay the time for filing a notice of appeal.

After brief discussion, it was decided to postpone additional discussion of the issue until the next meeting to allow Fred Voros to attend and provide the state's perspective.

### **III. RULE 11(g)**

Matty Branch explained that the 1994 Supreme Court case of City of Murray v. Kaylin Robinson, 878 P.2d 1151 suggested that an impecunious defendant should have the right to file a statement of the evidence in lieu of a transcript. However, Ms. Branch explained, Rule 11(g) currently limits the statement of the evidence to civil cases. The Committee members agreed that impecunious criminal defendants should have that option. Clark Nielsen moved to amend Rule 11(g) by deleting the lines referring to civil cases. Karra Porter seconded the motion. The motion carried unanimously.

Larry Jenkins also questioned whether it might be appropriate to allow parties to stipulate to using the audio or video tape in lieu of a transcript. Judge Orme stated that such a rule would have to be limited to cases that did not involve sufficiency of the evidence, because it would be difficult for the appellate courts to review audio and video tapes. Judge Orme noted that many appeals are resolved without ever resorting to the transcript. The Committee decided that the discussion of alternate media for appellate court review did not warrant further discussion at this time.

### **IV. RULE 11, DESIGNATION OF THE RECORD**

Matty Branch submitted a proposal that Rule 11(d)(2)(B) on designation of the record, be eliminated. Ms. Branch stated that parties to an appeal rarely follow the rule. Clark Nielsen suggested that perhaps the rule should simply be amended to increase the page limit, such as up to 1000 pages. Ms. Branch stated that the courts have inherent authority to require the parties to submit a designation of record, even without specific rule language. Judge Orme suggested adding language which presumes that the entire record would be submitted, unless otherwise directed by the appellate court.

After brief further discussion, Julianne Blanch moved to eliminate existing provisions dealing with designation of the record and to state that “unless otherwise directed, in any appeal the entire record shall be transmitted to the appropriate appellate court.” Larry Jenkins seconded the motion. The motion carried unanimously.

### **V. JUDICIAL COUNCIL’S REQUEST FOR RULE REVIEW**

Staff explained that the Committee had received a request from the Judicial Council’s Policy and Planning Committee to review certain rules in the Code of Judicial Administration to determine whether they should be incorporated into the rules of appellate procedure. Judge Orme questioned whether it would be appropriate to have rules addressing the same topics, in different sets of rule. Judge Orme stated that this could result in inconsistent rules. For instance, the Appellate Procedure Committee might adopt a rule limiting the citation of unpublished opinions, while the Civil Procedure Committee could adopt a rule approving the citation of such opinions. A practitioner may then be faced with being successful on an argument based on an unpublished opinion at the trial court level, but then being unable to use the opinion on a subsequent appeal.

The Committee discussed the concepts submitted by the Judicial Council and ultimately determined that more information was needed to determine what is expected of the Committee. The Committee decided to invite a staff member from the Policy and Planning Committee to the next meeting.

## **VI. ADJOURN**

The Committee set their next meeting for March 13, 2002, at noon. The Committee adjourned at approximately 1:15 p.m.