

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

AGENDA

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

April 16, 2003 - 12:00 p.m.

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| 1. | WELCOME AND APPROVAL OF MINUTES | Todd Utzinger |
| 2. | RULE 8 | Fred Voros |
| 3. | MISCELLANEOUS RULE PROPOSALS | Matty Branch |
| 4. | RULES 10, 25 and 50 | Clark Sabey |
| 5. | OTHER BUSINESS | |
| 6. | ADJOURN | |

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

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

April 16, 2003

ATTENDEES

Todd Utzinger
Fred Voros
Matty Branch
Joan Watt
Marian Decker
Julie Blanch
George Haley
Clark Sabey
Clark Nielsen

EXCUSED

Judge Gregory Orme
David Arrington
Fred Metos
Larry Jenkins
Karra Porter

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Matty Branch moved to approve the minutes from the March meeting, Clark Sabey seconded the motion. The motion carried unanimously.

II. RULE 8 AMENDMENTS

Fred Voros distributed proposed amendments to Rule 8 and a proposal for creation of Rule 8A. The proposals incorporate the Supreme Court's standing order number 1. The proposals are intended to clarify the situations and process for seeking emergency relief.

Joan Watt expressed a concern with the requirement to include a copy of the trial court's order, because often the trial court has not reduced its order to writing. Ms. Watt recognized that rule 2 might allow them to seek waiver of this requirement, but requested clarification in the new rule. Fred Voros stated that the requirement might not apply in criminal proceedings.

Mr. Voros explained the various provisions of the rule proposals. Mr. Voros stated that the proposal on interlocutory appeals is that the court will not consider an application for stay pending disposition of an interlocutory appeal until the petitioner has filed the petition for interlocutory appeal. Ms. Watt expressed concern with this language because sometimes they need to obtain a stay of trial court

proceedings before they have had a chance to prepare a petition. Clark Sabey suggested, in that situation, a motion could state an independent basis for the stay. Ms. Watt suggested that the rule should distinguish between a stay pending the filing of a petition and a stay pending disposition of the petition. Clark Sabey suggested that the language on stays pending disposition could be moved to rule 5. The Committee members agreed with this suggestion.

After brief further discussion, George Haley moved to adopt the proposed amendments to Rule 8 and the proposed new rule 8A, with the suggestion made by Clark Sabey to move the interlocutory provisions into the interlocutory rule. Clark Sabey seconded the motion. The motion carried unanimously.

III. MISCELLANEOUS RULE PROPOSALS

Matty Branch reviewed a memorandum from November 7, 2002 in which she made various proposals. The first proposal is to clarify rules 35 and 25 about whether an amicus can file a petition for rehearing. The Committee members agreed that an amicus may not file a petition for a rehearing, but could respond to such a petition. The Committee members agreed that the rules could be clarified.

The second proposals addressed the cover of briefs. Ms. Branch stated that the Court of Appeals suggested that the cover should include a statement about whether it is an Anders brief and a statement about whether the defendant is currently incarcerated. The Committee members agreed that these were reasonable suggestions and Ms. Branch stated that she will propose specific language.

The next proposal is to include a cross-reference for amicus curiae so that they understand the page limitations for their briefs. The Committee members discussed what would be the appropriate limitation for an amicus brief. Some Committee members felt that the brief should be limited to 20 or 25 pages, while others felt that 50 pages would be appropriate. George Haley suggested tabling the proposal until the next meeting to determine how the judges feel about the limitation.

In the next rule proposal, Ms. Branch noted that rule 6 of the Rules of Civil Procedure and rule 22 of the Rules of Appellate Procedure are inconsistent as to the computation of time after service by mail. The Committee members agreed that the rules should be consistent. Clark Nielsen suggested getting clarification from the Civil Procedure Committee about whether the inconsistency is based on a clerical error or amendment.

Ms. Branch stated that the Supreme Court had received a pleading captioned "suggestion of death." The court was not certain what proceeding should occur after receiving such a document and requested clarification from the Committee. George Haley suggested researching what other courts have done upon receiving such a document. He will have his office perform the research and report back at the next meeting.

The final rule proposal by Ms. Branch noted a typographical error in rule 5(d). The Committee agreed that the error should be corrected.

IV. OTHER BUSINESS/ADJOURN

The Committee postponed Clark Sabey's rule proposals until the next meeting. The next meeting was scheduled for May 21, 2003. The meeting adjourned at 1:30 p.m.