

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

October 20, 2004 - 12:00 p.m.

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| 1. | Welcome and Approval of Minutes | Todd Utzinger |
| 2. | Rules 4 and 9 | Fred Voros |
| 3. | Rule 12 | Fred Voros |
| 4. | Miscellaneous Proposals | Matty Branch |
| 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

October 20, 2004

ATTENDEES

Matty Branch
Marian Decker
Clark Nielsen
Judge Gregory Orme
Clark Sabey
Kate Toomey
Todd Utzinger
Fred Voros
Joan Watt

EXCUSED

Larry Jenkins
David Lewis
Margaret Lindsay
Bryan Pattison
Karra Porter

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Todd Utzinger welcomed the Committee members to the meeting. Matty Branch moved to approve the minutes of the September meeting. Marian Decker seconded the motion. The motion carried unanimously.

II. RULE 11 AMENDMENTS

Matty Branch stated that, at a recent clerks of court meeting, many of the clerks expressed concern about the recent amendment to Rule 11, which will require the clerks to put the trial court record in chronological order. There clerks stated that putting together the record on appeal may require significant additional work. Ms. Branch stated that the clerks noted that most courts currently maintain their records in reverse chronological order. Ms. Branch presented the question of whether the Committee wished to reconsider the amendment.

The Committee briefly discussed this issue and agreed that it would not revisit the rule at this time. The Committee noted that the Third District Court is able to prepare the appropriate record, and with appropriate training, it should not be an issue. Ms. Branch stated that she will report back to the clerks of court.

III. COMPRESSED FILE FORMAT

Todd Utzinger presented proposed amendments to Rules 11 and 12 eliminating the compressed file format. Fred Voros moved to approve the language. Judge Orme seconded the motion. The motion carried unanimously.

IV. RULE 4

Fred Voros distributed the latest version of the proposed amendments to Rule 4. Clark Sabey stated that a remaining issue is the trap created by pending attorney fee issues. Mr. Sabey noted that the Supreme Court has held that a judgment is not final until the issue of attorney fees is resolved. Kate Toomey stated that she recently had a case in which one party had stated that they might file a motion for attorney's fees and the Supreme Court had stated that the judgment is not final until the attorney fee issue is resolved. Judge Orme suggested that this should be addressed through Rule 3, rather than through this rule. The Committee members agreed. Clark Sabey will prepare a proposal.

Clark Nielsen stated that the proposed amendment is not clear on the resolution of a motion for a new trial. Mr. Nielsen stated that the proposed amendment changes the substantive law, that the granting of a motion for a new trial is not a final appealable order. Mr. Voros stated that he did not intend to change the substantive law and that the rule language should be revised in a way that does not change the substantive law. Fred Voros then moved to approve the rule changes, with the suggestion made by Clark Nielsen. Joan Watt seconded the motion. The motion carried unanimously.

V. RULE 12

Fred Voros proposed an amendment to Rule 12 which would treat post-conviction cases the same as criminal cases for purposes of transmitting the record. Clark Nielsen moved to approve the amendment. Judge Orme seconded the motion. The motion carried unanimously.

VI. OTHER BUSINESS/ADJOURN

Because of a lack of a quorum, the meeting adjourned at 1:05 p.m. The next meeting was scheduled for December 1, 2004 at 12:00 p.m.