

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 84114-0241

March 16, 2005 - 12:00 p.m.

- | | | |
|----|--|---------------|
| 1. | WELCOME AND APPROVAL OF MINUTES | Todd Utzinger |
| 2. | RULE 23B AND CHILD WELFARE PROCEEDINGS | |
| 3. | RULE 23B TIME FRAMES | Clark Sabey |
| 4. | WORD COUNT PROPOSAL | Larry Jenkins |
| 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

APPROVED 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

March 16, 2005 - 12:00 p.m.

2 COPIES

ATTENDEES

Matty Branch
Marian Decker
Larry Jenkins
David Lewis
Margaret Lindsay
Brian Pattison (via telephone)
Karra Porter
Clark Sabey
Kate Toomey
Todd Utzinger
Fred Voros
Joan Watt

EXCUSED

Clark Nielsen
Judge Gregory Orme

GUESTS

Annina Mitchell
Martha Pierce
Carol Verdoia

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Todd Utzinger welcomed the Committee members to the meeting. Fred Voros noted a couple of changes to the February minutes. With the changes, Mr. Voros moved to approve the minutes. The motion carried.

II. RULE 23B AND CHILD WELFARE PROCEEDINGS

Todd Utzinger welcomed the guests to the meeting. The guests had been invited to discuss whether Rule 23B should be amended to include child welfare proceedings. Carol Verdoia stated that the biggest concern is the delay that may accompany Rule 23B proceedings. Ms. Verdoia stated that she is not aware of any successful ineffective assistance claims. Ms. Verdoia stated that abuse cases are different from criminal cases. Ms. Verdoia stated that the most common claim related to ineffective assistance of counsel in child welfare cases is that the attorney did not call certain witnesses. However, the evidence is typically overwhelming and calling the other witnesses would not have changed the outcome. The ineffective assistance claims are therefore rejected.

Martha Pierce stated that the best mechanism for raising and addressing ineffective assistance claims is through the Rule 55 petition, by which the appellant can request a remand to the trial court. Ms. Verdoia agreed with this, stating that the appellate court can remand a case or it can also ask for more briefing on an issue. Ms. Verdoia and Ms. Pierce stated that the current rules provide sufficient mechanisms to have these issues addressed.

Annina Mitchell stated that she had talked with Laura Dupaix and, in the criminal setting, it is taking four to five months for the appellate courts to deny a Rule 23B petition. Ms. Mitchell stated that delay is a major concern.

Fred Voros suggested that it would be helpful to hear from Lisa Lokken to see if she agrees with this assessment. Todd Utzinger stated that he will write a letter to Ms. Lokken saying that the issue had been discussed and that the Committee is inclined to not change anything. The letter will state that Ms. Lokken can address the Committee if she disagrees with this course of action.

Fred Voros then moved to take no action on Rule 23B unless Ms. Lokken presents an argument or reason why the issue should be addressed. Kate Toomey seconded the motion. The motion carried unanimously.

III. RULE 23B TIME FRAMES

Clark Sabey had distributed a proposal to establish time frames for when a brief would be due after a Rule 23B motion is denied. Mr. Sabey suggested fourteen days. Ms. Watt suggested that 30 days is more reasonable, because, if an appellant submits a legitimate motion, the appellant's time and attention will be diverted to the Rule 23B motion. Ms. Watt stated that the time frames should not be shortened just because of the few who abuse the rules. Ms. Watt stated that if the concern is abuse of the process, the rule should be left as it is and the court should establish time frames to deal with those who abuse the system. Fred Voros spoke with Laura Dupaix and she stated that when the court denies a Rule 23B motion it will set the time for briefing. The court can therefore deal with abuse through this mechanism.

Joan Watt then moved to leave the rule as it exists. Kate Toomey seconded the motion. The motion carried unanimously.

IV. WORD COUNT PROPOSAL

Larry Jenkins had distributed a proposal establishing either a 30 page limit or a 14,000 word count limit. Mr. Jenkins stated that he had tested 48 pages of "times new roman," 13 point type and it was approximately 12,000 words. Mr. Jenkins stated that his partner had tested 50 pages of "garamond" in 13 point type and it equaled 16,600 words. Mr. Jenkins noted that the federal courts have a lot of experience with word count limits and the system works.

Ms. Branch stated that she did not believe that the federal courts have the same experience with pro se litigants and she wondered if the system would work well for them. Mr. Voros noted that they rarely see pro se briefs exceed 30 pages and therefore they would be able to comply with this portion of the rule. Karra Porter expressed concern for people who do not have word-processing access. Ms. Toomey noted that they could still come under the 30 page limit. Ms. Porter stated that it may not be fair to those with computers to have a 50 page limit, while those without have a 30 page limit. Mr. Jenkins noted that those without can also get permission from the court for over-length briefs.

Joan Watt stated that she would like to receive input from the courts on how they may feel about a word count limit. Ms. Toomey suggested that the limit should perhaps be 13,000, which is closer to a 50 page limit. After brief discussion, the Committee decided that each Committee member would test their word counts and report at the next meeting.

V. OTHER BUSINESS/ADJOURN

Marian Decker had distributed a proposal to address requests for over-length briefs. The Committee did not have time to address this proposal. It will be discussed at the next meeting. The Committee scheduled its next meeting for May 18, 2005.

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