

**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

July 9, 2008 - 12:00 p.m.

**ATTENDEES**

Tawni Anderson  
Matty Branch  
Paul Burke  
Jennifer Gowans  
Larry Jenkins  
Judge Gregory Orme  
Brian Pattison  
Clark Sabey  
Judge Kate Toomey  
Fred Voros  
Joan Watt

**EXCUSED**

Marian Decker

**STAFF**

Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

Joan Watt welcomed the members to the meeting. Paul Burke suggested a change to the minutes which would more accurately reflect his statements on voluntary withdrawals. With that change, the minutes were approved.

**II. RULE 23C**

Fred Voros distributed an e-mail from attorneys un us office with suggested changes to Rule 23C. Among the suggestions was to list the grounds for expedited appeals. Mr. Voros stated that there is a concern that the proposed rule will create a potential for abuse. Mr. Voros stated that the rule might be used as a litigation tactic to try and limit an opposing party's time for preparation and argument. Mr. Sabey agreed with this concern, noting that the court already sees some abuses of Rule 8A. Mr. Sabey stated that the abuses are mostly by pro se parties, but it creates a burden on the other side to respond. Mr. Sabey noted that Rule 8A does not contain a provision which allows the court to deny a petition without a response from the other side.

Joan Watt stated that the courts already expedite appeals. Ms. Watt asked Mr. Sabey how

many appeals are expedited each year. Mr. Sabey stated that the Supreme Court does two or three a year. Judge Orme stated that the Court of Appeals does not do many. Mr. Sabey suggested that the courts might see more requests for expedited appeals if the rule is passed. After brief additional discussion, Clark Sabey suggested integrating the Rule 23C proposal into Rule 31. Mr. Jenkins stated that he would review the rule and incorporate the provisions into Rule 31 and then circulate a new draft.

### **III. PAGINATION OF RECORDS IN CHILD WELFARE APPEALS**

Larry Jenkins had distributed an e-mail asking the committee to look at pagination of records in child welfare appeals. Matty Branch stated that this has not been much of a problem. The courts just tell the parties to reference documents by name and include the dates. After brief discussion, Mr. Jenkins stated that it probably is not worth a rule change. The committee members agreed.

### **IV. VICTIM AMICUS BILL**

Fred Voros stated that he had met with Ron Gordon who had proposed the victim amicus bill and had negotiated a compromise with the courts. Mr. Gordon had stated that he liked the compromise because it made it easier for a victim to file something, because victims are usually pro se. Mr. Voros stated that the Victims Council wants to make certain that victims receive their right to be heard. Mr. Voros suggested putting the provisions in the amicus category, because there is an existing process for amici curiae and the parties can receive copies and move to strike if they choose. Mr. Voros stated that the Victims Council supports this proposal, but they also believe that a victim could still submit another type of statement to the court. Mr. Voros stated that there will be very few of these because most victims understand that these will be of little value and could complicate the case.

Ms. Gowans asked whether this process was only to benefit victims and whether there is any benefit to the court. Mr. Voros stated that these might help expedite cases. Ms. Watt stated that she is opposed to automatic amicus briefs for victims. Ms. Watt stated that the current rule allows victims to pursue amicus status. Ms. Watt suggested not putting anything in rule, but let the legislation speak for itself. The committee members engaged in discussion about the constitutional issues and the parameters of the rule. The committee agreed that it did not want to address the constitutional issues raised by the statute. Ms. Watt stated that the procedural versus substance issues should be allowed to play out before anything is done in the rules.

Judge Orme suggested asking the Supreme Court whether they want a rule, and if so, whether they want an amicus rule or something else. Joan Watt agreed, as long as the defense side is able to present their prospective. Mr. Voros stated that everyone on the committee should make certain that the committee does what is best for the system in light of what the Legislature has stated. Mr. Voros expressed a concern that if the committee does not create a rule then victims will develop their own process, with their own content. Mr. Voros stated that he is not as concerned about complicating the appeal, but there are valid workload concerns. After brief discussion, the committee members agreed to meet with the Supreme Court to discuss this issue.

Matty Branch stated that she will make arrangements to have members attend an upcoming Supreme Court conference.

#### **V. OTHER BUSINESS**

Because of time, Clark Sabey agreed to postpone his proposed rule changes until the next meeting. Ms. Watt stated that she would like to discuss the docketing statement and whether the standard of review is used by the court. If not, she would like to see the requirement removed, because it is time-consuming to prepare. Tawni Anderson stated that it is valuable in civil cases because it requires parties to research whether they have a case. The committee members agreed that they would discuss this at the next meeting. The next meeting was scheduled for September 17, 2008 at 12:00 p.m. The meeting adjourned at 1:55 p.m.