

MINUTES

SUPREME COURT'S ADVISORY COMMITTEE ON THE RULES OF APPELLATE PROCEDURE SEPTEMBER 17, 2008, NOON

Attendees

Matty Branch
Paul Burke
Marian Decker
Jennifer Gowans
Judge Gregory Orme
Clark Sabey
Tawni Anderson
Judge Kate Toomey
Fred Voros
Joan Watt

Absent/Excused

Brent Johnson
Larry Jenkins
Bryan Pattison

I. WELCOME AND APPROVAL OF MINUTES

Joan Watt welcomed the committee members to the meeting. The minutes of July 9, 2008, were reviewed. Mr. Voros pointed out a typo in the first line of Section II. Subject to correction of the typo, Mr. Voros moved to approve the minutes. Ms. Decker seconded the motion. The motion carried.

II. MEETING WITH SUPREME COURT

Ms. Watt reported that she and Mr. Voros met with the Supreme Court that morning to discuss the issues of concern to the appellate rules committee as to the victim amicus/statement legislation. Ms. Watt said she supported a "wait and see" approach before drafting any sort of appellate rule provision. Mr. Voros supported putting the victim's statement in the amicus category because there is an existing process for amici curiae. Ms. Watt advised that the Supreme Court is struggling with the same issues as the committee, and that it intends to pursue further discussion and get back to the committee with its recommendation.

III. RULE 9- DOCKETING STATEMENT AMENDMENTS

Clark Sabey advised that the amendments he proposed were an attempt to make the rule comport with the Supreme Court's current practice. Mr. Voros questioned why the Court required a separate letter as to assignment. Mr. Watt said she liked the letter approach but thought the "assignment" provisions of section (c)(9) should be eliminated

in light of the letter approach.

Paul Burke said he thinks the "assignment" provision in the docketing statement is adequate and that it is an extra expense for parties to respond to the retention issue by separate letters. Mr. Sabey said he would advise the Court as to committee members' concerns and report back as to the direction the Court wants the committee to pursue.

IV. RULE 25. AMICUS BRIEF

Mr. Sabey reviewed the proposed amendments and said their purpose is to give the amicus enough time to comply with the filing deadline without getting an extension. Mr. Burke said he thought requiring the motion for leave to file an amicus brief to be filed at least 30 days prior to the underlying brief's due date was too long of a time period. He suggests fifteen days. The committee discussed whether the person or entity seeking leave to file an amicus brief should be required to submit the proposed brief. The majority of the committee did not want submission to be mandatory. Mr. Burke said he thinks the relevant Tenth Circuit rule is a good one that should be considered by the committee. Mr. Voros suggested the committee defer further discussion until the committee reviews the Tenth Circuit Rule and the U.S. Supreme Court rule. Mr. Burke agreed to gather this information for the next committee meeting. Mr. Sabey asked committee members to give careful review to Rules 25 and 50 before the next meeting because he has proposed a lot of changes, and he wants to make sure the amendments fit together appropriately.

V. RULE 38(b)

Judge Gregory Orme pointed out that the cross-reference to 38(a) does not make sense as to substitutions for causes other than death. He suggested that a separate subsection dealing with other types of substitution be drafted. The committee agreed that Brent Johnson should be asked to draft a paragraph that lays out the appropriate procedure.

VI. RULE 40 ADVISORY COMMITTEE NOTE

Mr. Voros advised that the reference to Rule 11-302 of the Code of Judicial Administration in the committee note as to pro hac vice admission is incorrect. The correct rule was renumbered to Rule 14-806 of the Code of Judicial Administration. Ms. Branch said she will ask Mr. Johnson to have the advisory note corrected.

VII. STANDARD OF REVIEW DISCUSSION

Ms. Watt questioned whether the standard of review section of the docketing statement is actually used by the appellate courts. If it isn't useful, she thinks it should be removed because it is time-consuming to prepare. Ms. Tawni Anderson said she thinks it is of value in civil cases because it requires parties to research whether they have a promising appeal. Other committee members said they thought the standard of review

requirement helped parties in the mediation setting and generally helped parties to focus on the issues. Following the discussion, Ms. Watt withdrew the request to consider elimination of the standard of review from the docketing statement.

VIII. OTHER BUSINESS

Judge Orme wondered the status of an amendment he had proposed to Rule 19 on extraordinary writs. He had earlier suggested that a party should be required to state if an interlocutory appeal had been granted or why interlocutory relief was not available. Judge Orme said he could not determine from past minutes whether this issue had been resolved. Ms. Watt asked Mr. Johnson to do some "historical" research as to the status of Judge Orme's suggestion.

IX. NEXT MEETING

The next committee meeting is tentatively set for October 29, 2008, at noon. Mr. Johnson will notify members if the date needs to be changed.