

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

February 17, 2010

ATTENDEES

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

EXCUSED

Tawni Anderson

GUEST

Tim Shea

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Joan Watt welcomed the committee members to the meeting. Judge Gregory Orme noted one typographical error in the previous minutes. With that change, the minutes were approved.

Ms. Watt gave an update on Rule 15. Ms. Watt stated that the Supreme Court approved an earlier version that had been discussed by the committee. The approved rule satisfied the concerns of the proponents and was approved in time to avoid a statutory change.

As required by rule, the committee members each stated their area of practice.

Joan Watt: Criminal defense.

Paul Burke: Civil litigation, labor and employment law, appellate work.

Clark Sabey:	Central Staff Attorney for the Utah Supreme Court
Larry Jenkins:	Adoptions
Marian Decker:	Prosecution with the Utah Attorney General's Office.
Judge Gregory Orme:	Utah Court of Appeals Judge
Judge Kate Toomey:	Third District Court Judge
Matty Branch:	Appellate Court Administrator
Judge Fred Voros:	Utah Court of Appeals Judge
Brian Pattison:	Labor law and defending municipalities and counties
Jennifer Gowans:	
Tawni Anderson:	Medical malpractice defense, trial & appellate.

Matty Branch announced that she will be retiring on April 22, 2010. The committee members tried to persuade her to remain on the committee (although why she would maintain connections with her previous employment might be beyond comprehension).

II. APPELLATE OPINION PRIVACY

Joan Watt welcomed Tim Shea to the committee meeting. Mr. Shea explained some of the efforts that have been made to address privacy issues. Mr. Shea stated that there have been two main efforts. Mr. Shea stated that several years ago there was an ad hoc committee chaired by Judge Pamela Greenwood that reviewed all the relevant statutes and rules on access to information. The committee attempted to balance the interests of the media and public with the privacy interests of individuals. Mr. Shea stated that the committee developed a set of rules that describe types of records and then lists the individuals who may have access to those records.

Mr. Shea stated that another effort has been undertaken by the Policy and Planning Committee of the Judicial Council. Mr. Shea stated that the committee has been looking at information within documents. Mr. Shea stated that, for example, a divorce petition is a public record, but the record might contain private information, such as a social security number. Mr. Shea stated that the Policy and Planning Committee has been looking at rules to identify specific pieces of information that should have restricted access.

Judge Kate Toomey stated that attorneys will sometimes inadvertently file private information and then they will come back and ask for the file to be sealed. Judge Toomey stated that this will often be done by stipulation, but she noted that sealing cannot be done based solely on the stipulation of parties. Judge Toomey suggested that this issue might just be one of education and heightened sensitivity, so that attorneys are not sanctioned for including private information and court employees are not sanctioned for inadvertently disclosing private information.

Judge Fred Voros stated that it seemed like the committee had shifted its focus from victims to parties. Judge Orme stated that the discussion started with non-parties, but the committee had also discussed including parties. Judge Voros stated that keeping the parties' names private would create difficulties because the parties are in the case title and the parties' names will be found in the record. Judge Voros stated that the public should have a right to know who are the parties to litigation.

Joan Watt asked how often the Court of Appeals sees a problem with the use of minors names. Judge Orme stated that sometimes minors' names will be referred to by using initials, but at the same time, the full names of others are used, which results in individuals being able to figure out who the minors are. Jennifer Gowans stated that there could be a sexual abuse case on appeal and there are attempts to keep victim's name private, but people can ultimately determine the victim's name from the defendant's name. Judge Voros stated that parties would also be able to find that information from the district court file.

Joan Watt suggested that this might be a rule of civility issue. Judge Toomey stated that this could also be addressed in the Rules of Professional Conduct. Judge Orme stated that something needs to be codified because practitioners will not remember all of the requirements unless they are found in the bound volumes. Judge Orme suggested that some of the issues could be addressed in Rule 24. Judge Orme agreed to draft proposed language. Joan Watt stated that this should also be proposed to the Supreme Court's Rules on Professionalism. Matty Branch noted that Judge Orme and Judge Toomey are on the committee and can raise the issues with them. Larry Jenkins stated that he is concerned with juveniles' privacy and he will draft a proposal in that area.

III. SCOPE OF REPRESENTATION

Joan Watt reminded the committee members about the effort to define the right of first appeal so that there is consistency throughout the state on the scope of representation. Ms. Watt stated that her office will take a case though certiorari if it is warranted, but other public defenders will only take a case through the first appeal. Judge Voros stated that the statute is arguably ambiguous and there is a need to clarify the statute. Matty Branch stated that changing the statute might be difficult. Ms. Branch stated that there was previously an attempt to change the statute in the judiciary's housekeeping bill, but the counties objected to the change because of fiscal implications.

Clark Sabey stated that the Supreme Court can require attorneys to handle cases up through certiorari, but the court cannot require counties to pay for it. Ms. Watt stated that a rule will allow defense attorneys to go back to their counties and negotiate contracts for those services. Judge Voros noted that the Appellate Representation Committee is addressing some of these issues and the counties are amenable to solving problems.

Judge Voros stated that the committee is looking at a model retainer agreement and that a rule would help because the model agreement could refer to the rule.

Judge Orme noted that both courts already believe that representation is required through certiorari. Judge Orme stated that there was a letter from Chief Justice Christine Durham to Judge Russell Bench establishing this position, and the two courts have relied on this letter. Judge Orme stated that a rule would be better than relying on the letter. Ms. Watt stated that she will revise her proposed rule and bring it back to the committee at the next meeting.

IV. RULE 29

Judge Orme suggested that there is a need to address the protocols for continuing oral arguments. Judge Orme stated that if a litigant responds quickly to an oral argument notice, the court will typically grant a continuance if there is a good reason, such as a previously planned vacation. Judge Orme stated that if a party waits and requests a continuance less than a month before oral argument, the court will not be as lenient. Judge Orme stated that the Supreme Court does not grant continuances as often as the Court of Appeals. Judge Orme suggested that, because the courts have different practices, that a standard rule might not be workable.

Judge Voros stated that, in his experience, the practices of the two courts are not that different. Judge Voros stated that they were able to get continuances when necessary. Judge Voros stated that he would prefer a rule because practitioners will look to the rules and not just rely on the notices that are received from the courts. Ms. Watt expressed a concern about too much detail in a rule, because then parties will ask for continuances much more often. Judge Voros suggested a dividing line of thirty days, with requests more than thirty days being granted for good cause and requests of less than thirty days only being granted for emergencies. Judge Voros stated that he will draft a proposal and submit it at the next meeting.

V. OTHER BUSINESS/ADJOURN

The committee scheduled its next meeting for March 24, 2010. The meeting adjourned at 1:30 p.m.