

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 31, 2010

ATTENDEES

Tawni Anderson
Matty Branch
Marian Decker
Larry Jenkins
Judge Gregory Orme
Brian Pattison
Clark Sabey
Judge Kate Toomey
Judge Voros
Joan Watt

EXCUSED

Paul Burke
Jennifer Gowans

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Joan Watt welcomed the committee members to the meeting. Judge Kate Toomey moved to approve the minutes from the last meeting. Tawni Anderson seconded the motion. The motion carried unanimously.

II. SCOPE OF REPRESENTATION

Joan Watt distributed a proposed rule to address the scope of representation issue. Ms. Watt stated that her office will file a petition for a writ of certiorari if they determine that a petition is warranted in a particular case. Ms. Watt stated that her office will also file a petition if the client pushes for such. Ms. Watt stated that an important concern is ensuring that all appeals are exhausted, so that the ability to pursue post-conviction relief is preserved. Ms. Watt noted that if the State files a petition for a writ of certiorari, counsel should stay on the case. Ms. Watt stated that it is also appropriate to include petitions for extraordinary relief under Rule 19, because the State often pursues those

when an appeal is not allowed. Clark Sabey asked whether interlocutory appeals need to be addressed. Judge Orme stated that the rules only address appointed appellate counsel and appellate counsel would not be appointed at the time a petition for interlocutory appeal is filed. Ms. Watt stated that, in her office, the trial attorneys will file petitions for interlocutory appeal and her division will take over if the petition is granted.

Larry Jenkins asked whether the rule does or should include parental defense lawyers in juvenile court cases. Judge Voros asked whether those attorneys represent the parents throughout the proceedings. Mr. Jenkins stated that the statute requires representation “at every stage of the proceedings.” Ms. Watt stated that she will talk to Carol Verdoia about the juvenile representation issue to see what the Juvenile Rules Committee might suggest. Ms. Watt stated that she might also talk to the Supreme Court to see if they want the rule to include representation in juvenile court cases. Ms. Watt stated that the proposal will be tabled until she makes those contacts.

III. APPELLATE OPINION PRIVACY

Judge Orme stated that the focus on privacy had shifted from telling judges what they should write in their opinions, to telling attorneys what should be included in their briefs. Judge Orme asked whether a rule is really necessary in this area but he proposed language for the committee to review. Judge Orme stated that if the attorneys can refer to a title or status rather than specific names then they should do so. Judge Orme stated that the rule also addresses the use of initials and that those should be avoided because they create confusion. Judge Kate Toomey stated that a rule might be helpful, but she stated that education is ultimately the key. Judge Toomey stated that the issue should be presented to the Professionalism and Civility Committee and that perhaps there should be a Bar Journal article discussing the practice.

Judge Orme stated that the proposal is drafted in a way that will encourage, but not mandate attorneys to follow certain practices. Judge Orme asked committee members whether they thought the proposal should be in the rule or in the comment. Brian Pattison stated that it should be in the rule because practitioners often do not read the comments. Judge Voros noted that the proposal only deals with briefs and asked whether these encouragements should be in other rules as well. Judge Voros stated that briefs are put in the law library, while other documents do not and therefore perhaps the rules only needs to address briefs. Joan Watt stated that she is uncomfortable with strong language in the rule. Ms. Watt stated that in complex cases it is really important to use names. Ms. Watt stated that she does not want to have attorneys filing motions just because another attorney chooses to use names rather than other appellations. Ms. Watt stated that there needs to be significant discretion in this area. Judge Voros stated that the rule should at

least get practitioners to think about this issue when preparing briefs. Judge Voros stated that he will draft a proposal for the next meeting.

IV. RULE 29(b)

Judge Voros distributed a proposed rule change on granting oral argument continuances. Judge Voros stated that he reviewed the letters that are sent out by both the Supreme Court and the Court of Appeals. Judge Voros stated that the Supreme Court letter addresses emergency situations while the Court of Appeals language does not discuss emergencies. Judge Voros stated that the practices, however, were basically the same. Judge Voros stated that it will be helpful to have a standard in rule and he proposed a two-tier standard. Judge Voros stated that the standard will be easier if the continuance is sought immediately after the notice goes out, and stricter after time has passed. Judge Voros presented two proposals, one that included examples of when continuances would be granted and the other without examples.

Clark Sabey stated that he liked the shorter version better. Mr. Sabey stated that examples could be used in the letters sent out by the court. Judge Voros asked whether the committee members agreed with the two-tier approach, delineating continuances requested within fifteen days and those requested after fifteen days. The committee members agreed with the fifteen days. The committee members also agreed that the standard should be “good cause” for the first fifteen days and “exceptional circumstances” for requests after that time. Tawni Anderson moved to approve the shorter version presented by Judge Voros. Matty Branch seconded the motion. The motion carried unanimously.

V. RULE 5

Marian Decker submitted a proposed change to Rule 5 which will clarify that petitioners must serve a copy of their petition on the criminal appeals division of the Attorney General’s Office. The committee members agreed that this would be a good idea. Matty Branch moved to approve the proposal. Marian Decker seconded the motion. The motion carried unanimously.

VI. RULE 23B

Marian Decker submitted a proposal to amend Rule 22(d) to clarify that the three day mailing rule should apply to Rule 23B motions. Ms. Decker proposed changing the word “filed” to “served.” This will help ensure that the Attorney General’s Office

receives the benefit of the three day mailing rule. Larry Jenkins moved to approve the proposal. Clark Sabey seconded the motion. The motion carried unanimously.

VII. OTHER BUSINESS/ADJOURN

The committee members decided to discuss Judge Orme's Rule 5 proposal at the next meeting. Matty Branch stated that the committee should consider creating a subcommittee to look at rules that will be needed in anticipation of e-filing. Ms. Branch suggested that the subcommittee include an appellate court clerk, a staff attorney member, and an IT person.

Joan Watt thanked Ms. Branch for her years of service. The committee scheduled its next meeting for May 5, 2010 (subsequently changed to May 26).