

# MINUTES

## SUPREME COURT'S ADVISORY COMMITTEE ON THE UTAH RULES OF APPELLATE PROCEDURE

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114

Judicial Council Room  
Thursday, June 4, 2015  
12:00 p.m. to 1:30 p.m.

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### **PRESENT**

Joan Watt – Chair  
Alison Adams-Perlac – Staff  
Troy Booher  
Paul Burke  
Alan Mouritsen  
John Plimpton – Recording Secretary  
Clark Sabey  
Lori Seppi  
Tim Shea  
Mary Westby

### **EXCUSED**

Marian Decker  
Judge Gregory Orme  
Rodney Parker  
Bryan Pattison  
Bridget Romano  
Anne Marie Taliaferro  
Judge Fred Voros

### **1. Welcome and Approval of Minutes**

**Joan Watt**

Ms. Watt said that the meeting would be the last of Mr. Pattison's term and, on behalf of the Chief Justice, she thanked him for his twelve years of service on the committee. Ms. Watt stated that there was no quorum, so the committee could not take any action at this meeting.

### **2. Confidential Requests for Mediation**

**Tim Shea &  
Michele Mattsson**

Ms. Watt asked Mr. Shea to explain the issue of confidential requests for mediation. Mr. Shea said that the supreme court was uncomfortable with the idea of confidential requests for mediation, which are allowed by the appellate rules, because they are ex parte communications. He said that there is no prohibition on ex parte communications that are allowed by law, but the supreme court has prohibited confidential requests for mediation in the supreme court for policy reasons. He said that some of the judges on the court of appeals have also expressed discomfort with confidential requests for mediation, but that the appellate mediator, Ms. Mattsson, continues to support them. Mr. Shea said that the amendment addressing the issue would be simple: the word "confidential" would be deleted from the rule. He said that requests for mediation would still be allowed, but that notice would need to be given to the other side.

Mr. Booher spoke in favor of confidential mediation requests. He said that a mediation request is made to a mediator, not the court, and the mediator cannot communicate with the court about a mediation request, so there is no concern about ex parte communication with the court. He said that the mediation program would be worse off without confidential mediation requests.

Mr. Sabey said that, according to Ms. Mattsson, there are very few confidential requests for mediation per year. He said that the policy favoring such requests is to allow parties to request mediation without showing weakness in their position to the court or the other side. He said that the flip side is that, when mediation is ordered, the party who requested mediation will know about the request, but the other party will think the court ordered the mediation. Mr. Burke said he had never thought that the court ordered mediation. Mr. Sabey said that the supreme court has already decided not to allow confidential requests for mediation in that court, so the only question is whether they will be allowed in the court of appeals. He noted that the supreme court only permits stipulated mediation requests in that court.

Ms. Watt said that this issue should be set over for the next meeting when there is a quorum. She asked Ms. Adams-Perlac if she would invite Ms. Mattsson. Ms. Adams-Perlac said that Ms. Mattsson was invited to this meeting, though she did not attend, and that she would invite Ms. Mattsson to the next meeting.

### **3. Subcommittee Updates**

**Tim Shea**

#### **a. Public Briefs**

The committee did not discuss public briefs.

#### **b. Forms**

Mr. Shea said that the supreme court approved the forms in May, so they are done.

#### **c. Federal Rules**

Mr. Shea said that the federal rules subcommittee is almost done, but it is still waiting on a vote from Mr. Burke. Mr. Burke said there is one more thing he needs to look at before he votes.

#### **d. Efiling Subcommittee**

Mr. Shea said that the efiling subcommittee continues to meet, and there are about eight to ten rules remaining for it to review. He said he hopes to finish with those rules next Monday. He said that the plan is for the subcommittee to go over the rules again at the end of the summer to make sure it is satisfied with its proposals.

Mr. Shea said that the subcommittee wants the committee to be comfortable with the final product, but the subcommittee's work was extensive and the committee should not necessarily cover all the ground that the subcommittee did. Ms. Adams-Perlac suggested passing out the subcommittee's recommendations for the committee's review, and the committee would only discuss specific recommendations that members took issue with.

**4. Public Comments to Rule 38A**

**Joan Watt**

This item was tabled until the next meeting.

**5. Rules 24, Rule 24 and *State v. Nielsen*, and Rule 27**

**Troy Booher**

This item was tabled until the next meeting.

**6. Other Business**

The committee did not discuss other business.

**7. Adjourn**

The meeting was adjourned at 12:32 p.m. The next meeting will be held on Thursday, September 3, 2015.