

# 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, November 6, 2014  
12:00 p.m. to 1:30 p.m.

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### PRESENT

Joan Watt – Chair  
Alison Adams-Perlac – Staff  
Troy Booher  
Marian Decker  
Judge Gregory Orme  
Rodney Parker  
Bryan Pattison (by phone)  
John Plimpton – Recording Secretary  
Bridget Romano  
Clark Sabey  
Lori Seppi  
Tim Shea  
Judge Fred Voros  
Mary Westby

### EXCUSED

Paul Burke  
Alan Mouritsen  
Anne Marie Taliaferro

### 1. Welcome and Approval of Minutes

**Joan Watt**

Ms. Watt welcomed the committee to the meeting. She asked for any comments on the minutes from the previous meeting. Ms. Decker pointed out that on page 3, in the first sentence under the “Efiling Subcommittee” heading, the word “my” should be “by.”

Ms. Decker stated that the minutes accurately reflect what occurred at the previous meeting, but that she would like the committee to revisit Rule 4(f) and she would support a timeline for filing a motion to reinstate the period for filing a notice of appeal. Ms. Watt stated that Rule 4(f) would be added to the committee’s agenda.

*Mr. Booher moved to approve the minutes from the meeting held on September 30, 2014, as amended. Ms. Romano seconded the motion and it passed unanimously.*

## 2. Rules of Civil Procedure 7, 54, and 58A

Jonathan Hafen

Jonathan Hafen, the chair of the Utah Supreme Court Advisory Committee on the Rules of Civil Procedure (Civil Rules Committee), introduced himself. He explained that the Civil Rules Committee has been evaluating how Rules 7, 54, and 58A of the Utah Rules of Civil Procedure interact. He said that Rules 7, 54, and 58A concern the finality of orders and judgments, which, in turn, affects the time period for filing notices of appeal. He said that, accordingly, the Civil Rules Committee wanted to consult with the committee on proposed amendments to Rules 7, 54, and 58A before sending them out for public comment.

Mr. Hafen said that the Civil Rules Committee has struggled with determining when orders and judgments should affect the rights of parties, including the right to appeal. He explained that, under the current proposed amendments, a judgment starts the time to appeal when it is signed by the judge and entered, i.e., recorded in the docket.

Ms. Romano said that Rule 7(j)(1) needs to clarify that when a judge orders a party to prepare and file a proposed order pursuant to subsections (j)(2)-(5), the order is not complete and entered until the proposed order is signed by the judge and entered in the docket. She said that, as Rule 7(j)(1) is written, a signed and entered minute entry could constitute completion and entry of the order, regardless of whether the judge has ordered a party to prepare and file a proposed order. The rest of the committee members and Mr. Hafen agreed with Ms. Romano.

## 3. Rule 9(f)

Joan Watt

The committee proposed that Rule 9 be amended to read as follows:

### **Rule 9. Docketing statement.**

(a) Purpose. A docketing statement has two principal purposes: (1) to demonstrate that the appellate court has jurisdiction over the appeal, and (2) to identify at least one substantial issue for review. The docketing statement is a document used for jurisdictional and screening purposes. It should not include argument.

(b) Time for filing. Within 21 days after a notice of appeal, cross-appeal, or a petition for review of an administrative order is filed, the appellant, cross-appellant, or petitioner shall file an original and two copies of a docketing statement with the clerk of the appellate court and serve a copy with any required attachments on all parties. The Utah Attorney General shall be served in any appeal arising from a crime charged as a felony or a juvenile court proceeding.

~~(b) Interlocutory appeals. When a petition for interlocutory review is granted under Rule 5, a docketing statement shall not be filed, unless otherwise ordered.~~

(c) Content of docketing statement in a civil case. The docketing statement in an appeal arising from a civil case shall include ~~contain the following information:~~

(c)(1) A concise statement of the nature of the proceeding and the effect of the order appealed, and the district court case number, e.g., "This appeal is from a final judgment or decree of the First District Court granting summary judgment in case number 001900055." or "This petition is from an order of the Utah State Tax Commission."

~~(e)(2) The statutory provision that confers jurisdiction on the appellate court.~~

~~(c)(32) The following dates relevant to a determination of the timeliness of the notice of appeal and the jurisdiction of the appellate court:~~

~~(c)(23)(iA) The date of entry of the final judgment or order from which the appeal is taken.~~

~~(c)(23)(iiB) The date the notice of appeal or petition for review was filed in the trial court.~~

~~(c)(23)(iiiC) If the notice of appeal was filed after receiving an extension of the time to file pursuant to Rule 4(e), the date the motion for an extension was granted.~~

~~(c)(2)(iv) If any motions listed in Rule 4(b) were filed, the date such motion was filed in the trial court and the date of entry. The date of any motions filed pursuant to Rules 50(b), 52(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure, and the date and effect of any orders disposing of such motions.~~

~~(c)(2)(v) If the appellant is an inmate confined in an institution and is invoking Rule 21(f), the date the notice of appeal was deposited in the institution's internal mail system, a statement to that effect.~~

~~(c)(25)(vi) If a motion to reinstate the time to appeal was filed pursuant to Rule 4(g), the date of the order disposing of such motion.~~

~~(c)(3) If the an appeal is taken from an order in a multiple party or a multiple claim case, and the judgment has been certified as a final judgment by the trial court pursuant to Rule 54(b) of the, Utah Rules of Civil Procedure, a statement of what claims and parties remain before the trial court for adjudication.~~

~~(e)(5)(A) a statement of what claims and parties remain before the trial court for adjudication, and~~

~~(e)(5)(B) a statement of whether the facts underlying the appeal are sufficiently similar to the facts underlying the claims remaining before the trial court to constitute res judicata on those claims.~~

~~(c)(46) A statement of at least one substantial issue appellant intends to assert on appeal. An issue not raised in the docketing statement may nevertheless be raised in the brief of the appellant; conversely, an issue raised in the docketing statement does not have to be included in the brief of the appellant.~~

~~(c)(5) A concise summary of the facts necessary to provide context for the issues presented.~~

~~(c)(6) A reference to all related or prior appeals in the case, with case numbers and citations.~~

~~If the case is criminal,~~

~~(e)(6)(A) the charges of which the defendant was convicted or, if the defendant is not convicted, the dismissed or pending charges;~~

~~(e)(6)(B) any sentence imposed; and~~

~~(e)(6)(C) whether the defendant is currently incarcerated.~~

~~(e)(7) A statement of the issues appellant intends to assert on appeal, including, for each issue,~~

~~(e)(7)(A) citations to determinative statutes, rules, or cases;~~

~~(e)(7)(B) the applicable standard of appellate review, with supporting authority.~~

~~(e)(8) A succinct summary of facts material to a consideration of the issues presented.~~

~~(e)(9) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, and the appellant advocates or opposes such an assignment, a succinct statement of reasons why the Supreme Court should or should not assign the case. The Supreme Court may, for example, consider whether the case presents or involves one or more of the following:~~

~~(e)(9)(A) a novel constitutional issue;~~

~~(e)(9)(B) an important issue of first impression;~~

~~(e)(9)(C) a conflict in Court of Appeals decisions;~~

~~(e)(9)(D) any other persuasive reason why the Supreme Court should or should not resolve the issue.~~

~~(e)(10) A reference to all related or prior appeals in the case, with case numbers and citations~~

(d) Content of a docketing statement in a criminal case. The docketing statement in an appeal arising from a criminal case shall include:

(d)(1) A concise statement of the nature of the proceeding, including the highest degree of any of the charges in the trial court, and the district court case number, e.g., "This appeal is from a judgment of conviction and sentence of the Third District Court on a third degree felony charge in case number 001900055."

(d)(2) The following dates relevant to a determination of the timeliness of the appeal and the jurisdiction of the appellate court:

(d)(2)(i) The date of entry of the final judgment or order from which the appeal is taken.

(d)(2)(ii) The date the notice of appeal was filed in the district court.

(d)(2)(iii) If the notice of appeal was filed after receiving an extension of the time to file pursuant to rule 4(e), the date the motion for an extension was granted.

(d)(2)(iv) If a motion pursuant to Rule 24 of the Utah Rules of Criminal Procedure was filed, the date such motion was filed in the trial court and the date of entry of any order disposing of such motion.

(d)(2)(v) If a motion to reinstate the time to appeal was filed pursuant to Rule 4(f), the date of the order disposing of such motion.

(d)(2)(vi) If the appellant is an inmate confined to an institution and is invoking Rule 21(f), the date the notice of appeal was deposited in the institution's internal mail system.

(d)(3) The charges of which the defendant was convicted, and any sentence imposed; or, if the defendant was not convicted, the dismissed or pending charges.

(d)(4) A statement of at least one substantial issue appellant intends to assert on appeal. An issue not raised in the docketing statement may nevertheless be raised in the brief of the appellant; conversely, an issue raised in the docketing statement does not have to be included in the brief of the appellant.

(d)(5) A concise summary of the facts necessary to provide context for the issues presented. If the conviction was pursuant to a plea, the statement of facts should include whether a motion to withdraw the plea was made prior to sentencing, and whether the plea was conditional.

(d)(6) A reference to all related or prior appeals in the case, with case numbers and citations.

~~(d) Necessary attachments. Copies of the following must be attached to each copy of the docketing statement:~~

~~(d)(1) The final judgment or order from which the appeal is taken;~~

~~(d)(2) Any rulings or findings of the trial court or administrative tribunal included in the judgment from which the appeal is taken;~~

~~(d)(3) In appeals arising from an order of the Public Service Commission, any application for rehearing filed pursuant to Utah Code Section 54-7-15;~~

~~(d)(4) The notice of appeal and any order extending the time for the filing of a notice of appeal.~~

~~(d)(5) Any notice of claim.~~

~~(d)(6) Any motions filed pursuant to Rules 50(b), 52(b), 54(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure, and orders disposing of such motions; and~~

~~(d)(7) If the appellant is an inmate confined in an institution and is invoking Rule 4(g), the notarized statement or written declaration required by that provision.~~

(e) Content of a docketing statement in a review of an administrative order. The docketing statement in a case arising from an administrative proceeding shall include:

(e)(1) A concise statement of the nature of the proceedings and the effect of the order appealed, e.g., "This petition is from an order of the Workforce Appeals Board denying reconsideration of the denial of benefits."

(e)(2) The statutory provision that confers jurisdiction on the appellate court.

(e)(3) The following dates relevant to a determination of the timeliness of the petition for review:

(e)(3)(i) The date of entry of the final order from which the petition for review is filed.

(e)(3)(ii) The date the petition for review was filed.

(e)(4) A statement of at least one substantial issue petitioner intends to assert on review. An issue not raised in the docketing statement may nevertheless be raised in the brief of petitioner; conversely, an issue raised in the docketing statement does not have to be included in the brief of petitioner.

(e)(5) A concise summary of the facts necessary to provide context for the issues presented.

(e)(6) If applicable, a reference to all related or prior petitions for review in the same case.

(e)(7) Copies of the following documents must be attached to each copy of the docketing statement:

(e)(7)(i) The final order from which the petition for review is filed.

(e)(7)(ii) In appeals arising from an order of the Public Service Commission, any application for rehearing filed pursuant to Utah Code section 54-7-15.

~~(e) Appellee's statement regarding assignment. If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, an appellee may within 10 days of service of the docketing statement file a succinct statement of reasons why the appeal should or should not be assigned.~~

(f) Consequences of failure to comply. ~~In a civil appeal, failure to file a Docketing statements within the time period provided in subsection (b) which fail to comply with this rule will not be accepted. Failure to comply may result in dismissal of a civil the appeal or the a petition for review. In a criminal case, failure to file a docketing statement within the time period provided in subsection (b) may result in a finding of contempt or other sanction. An issue not listed in the docketing statement may nevertheless be raised in appellant's opening brief.~~

(g) Appeals from interlocutory orders. When a petition for permission to appeal from an interlocutory order is granted under Rule 5, a docketing statement shall not be filed unless otherwise ordered.

#### **Advisory Committee Notes**

The content of the docketing statement has been slightly reordered to first state information governing the jurisdiction of the court.

The docketing statement and briefs contain a new section requiring a statement of the applicable standard of review, with citation of supporting authority, for each issue presented on appeal.

The content of the docketing statement has been reordered and brought into conformity with revised Rule 4, Utah Rules of Appellate Procedure. This rule is satisfied by a docketing statement in compliance with form 7.

*Mr. Booher moved to approve Rule 9 as amended. Mr. Sabey seconded the motion, and it passed unanimously.*

#### **4. Rule 24, Rule 24 and State v. Nielsen, and Rule 27**

Rule 24, Rule 24 and *State v. Nielsen*, and Rule 27 were tabled until the next meeting.

#### **5. Other Business**

There was no other business discussed at the meeting.

#### **6. Adjourn**

The meeting was adjourned at 1:18 p.m. The next meeting will be held Thursday, January 8, 2015.