

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
Tuesday, October 11, 2016
12:00 p.m. to 1:30 p.m.

PRESENT

Joan Watt- Chair
Troy Booher
Paul Burke
Marian Decker
R. Shawn Gunnarson
James Ishida-Staff
Alan Mouritsen
Judge Gregory Orme
Adam Pace – Recording Secretary
Rodney Parker
Lori Seppi
Judge Fred Voros
Mary Westby

EXCUSED

Bridget Romano
Clark Sabey
Ann Marie Taliaferro

1. Welcome and approval of minutes

Joan Watt

Ms. Watt welcomed the committee to the meeting and invited a motion to approve the minutes from the September meeting.

Ms. Westby moved to approve the September minutes. Ms. Decker seconded the motion and it passed unanimously.

2. Supreme Court action on proposed rules amendments

Ms. Watt reported that the Utah Supreme Court has adopted the committee’s proposed Rules 2, 14, 25A, and 52. Mr. Ishida pointed out a typographical error in the proposed Rule 2, where the article “the” just before the word “provisions” had been deleted. The committee agreed to restore the deleted article. Ms. Watt said her next meeting with the court will be to discuss the committee’s proposed Rule 24, but that rule has not yet gone out for public comment.

3. Discussion of “e-filing” rules

The committee discussed whether it should send the packet of proposed e-filing rules to the Utah Supreme Court for review, due to the recent change in procedure where the court now reviews proposed amendments before sending them out for public comment. Ms. Watt recommended that the committee do this, and that it also send the court a summary explaining what the committee has done with the rules. Mr. Parker agreed, and suggested that the committee could use the memorandum that Tim Shea prepared as the summary. *Mr. Burke made a motion to instruct the e-filing subcommittee to do a final review of the e-filing rules, and then submit them back to the committee for further consideration before sending them on to the Utah Supreme Court for review. Mr. Gunnarson seconded the motion and it passed unanimously.*

4. Rule 22. Computation and enlargement of time- Conforming amendment

Clark Sabey

Ms. Watt asked the committee to consider Mr. Sabey’s proposal to amend Rule 22(b)(2) to clarify the circumstances under which the court can extend jurisdictional deadlines, similar to the recent change made to Rule 2. The committee decided to table the issue until the next meeting because Mr. Sabey was not present at the meeting to comment on it.

5. Rule 37. Suggestion of mootness; voluntary dismissal

Judge Voros

Judge Voros introduced the proposed amendment to Rule 37. He explained that the change to 37(a) is intended as a language clean-up. Mr. Burke suggested deleting the word “likely” in the phrase “circumstances that likely render moot one or more of the issues...” He said this would maintain the current standard, and also avoid putting counsel in the awkward position of trying to determine when an appeal is “likely” moot. *Mr. Burke moved to adopt the proposed amendment to Rule 37(a) with this change. Mr. Gunnarson seconded the motion and it passed unanimously.*

Judge Voros explained the change to 37(c) is intended to provide a way out for attorneys who are unable to contact their clients to obtain the necessary affidavit to support a motion for voluntary dismissal. Ms. Watt commented that this should only be allowed in circumstances where the client told the attorney to not pursue an appeal, and that the mere inability to contact the client should not be a basis for dismissing the appeal. Mr. Burke and Judge Orme both commented that a certification from the attorney should be sufficient, because it would be problematic to require the attorney to reveal communications with the client in an affidavit. Judge Voros proposed changing the last sentence of Rule 37(c) to read: “If the attorney is unable to obtain an affidavit or declaration from the appellant, the motion must be accompanied by the attorney’s affidavit or declaration to that effect and certifying that based on communication with the appellant, the attorney reasonably believes the appellant no longer wishes to pursue the appeal.” Judge Voros said that he would prepare a clean version of the proposed changes to Rule 37(c) for further discussion at the next meeting.

Judge Voros explained the history behind the proposed change to Rule 37(b). There was a situation years ago where the parties filed a voluntary dismissal of an appeal the morning that the

court was scheduled to issue its opinion, and the opinion went out anyways but then was withdrawn and vacated. The court then requested the committee consider an amendment to Rule 37(b) that allowed it to deny a stipulated motion to voluntarily dismiss. Several committee members were uncomfortable with that approach. Mr. Burke suggested at the time that he thought the change was unconstitutional, because there is no longer a justiciable case or controversy if the parties have settled. The committee recommended at the time that Rule 37(b) be left alone, but the Utah Supreme Court amended it anyways. Judge Voros and Mr. Burke filed a public comment at the time opposing the change. This was before Judge Voros was appointed to the Court of Appeals. Judge Voros explained that he believes the current composition of the Utah Supreme Court might be inclined to revisit this issue. The committee discussed changes to the proposed language, including whether the language referring to fees and costs should be deleted. Following this discussion Ms. Watt suggested that Judge Voros should prepare a clean version of the proposed change to Rule 37(b) for discussion at the next meeting.

6. Adjourn

The meeting was adjourned at 1:39 p.m.. The next meeting will be held on November 3, 2016.