

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 20, 2002

ATTENDEES

Todd Utzinger
Matty Branch
Karra Porter
Judge Greg Orme
Larry Jenkins
Fred Voros
Fred Metos

EXCUSED

David Arrington
George Haley
Julianne Blanch
Clark Nielsen
Joan Watt

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Judge Orme moved to approve the minutes of the August 2001 and January 2002 meetings. Fred Voros seconded the motion. The motion carried unanimously.

II. RULE 4(b)

Todd Utzinger reintroduced the proposal to amend Rule 4 by including a motion to withdraw a guilty plea as an act which will stay the time for filing a notice of appeal. Specific language was introduced. After brief discussion and review, Fred Voros moved to amend Rule 4(b) to include motions to withdraw pleas. Fred Metos seconded the motion. The motion carried unanimously.

III. RULES 3 and 14/FILING FEE JURISDICTIONAL REQUIREMENT

Matty Branch explained that, after the case of Dipoma v. McPhie, the Supreme Court had, on its own, amended Rule 3 of the Utah Rules of Civil Procedure to make the filing fee requirement jurisdictional. The rule had been published for public comment, but the Supreme Court's Advisory Committee on the Rules of Civil Procedure had expressed concerns as to the rule's impact on impecunious litigants. Ms. Branch stated that the Supreme Court was now asking this Committee to also review the issue.

Judge Orme stated that there are issues other than impecuniosity that should be considered. Judge Orme offered examples of a court clerk asking a litigant to return the next day because they could not receipt a payment, or a law firm runner misplacing a check, or an attorney forgetting to sign a check. Judge Orme suggested at least changing the language to “tender” of the filing fee. Judge Orme suggested that if the filing fee is to become jurisdictional, that there must be ways of avoiding the harsh penalties.

Karra Porter questioned whether the Committee could decline to publish a rule for public comment and instead express opposition to the idea. The Committee discussed options including proposing a rule change, proposing other solutions, or voicing opposition to the idea. After brief discussion, Fred Voros made a motion that the chair of the Committee send a letter to the Supreme Court that would: a) express the opinion that the consequences of making this a jurisdictional requirement outweigh any benefits; b) the isolated problems should somehow be dealt with, but; c) the problem should be addressed internally through court practices and policies, and clerk education. Mr. Voros also suggested noting that there are not a lot of people who are trying to abuse the system. Karra Porter seconded the motion. The motion carried unanimously.

IV. APPELLATE QUALIFICATIONS

Todd Utzinger noted that the Supreme Court had asked the Appellate Committee to discuss whether there should be minimum qualifications for attorneys practicing in the appellate courts. Mr. Utzinger noted that this discussion may take some time, and therefore the discussion should be reserved until the next meeting.

Judge Orme noted that there had been a task force to discuss statewide appellate representation of indigent defendants and it may be helpful to distribute some of those materials prior to the next meeting.

The Committee engaged in brief, informal discussions about possible solutions, but deferred formal discussion until the next meeting.

V. ADJOURN

The Committee scheduled its next meeting for April 17, 2002 at noon. The meeting adjourned at 1:05 p.m.