

Administrative Office of the Courts

Chief Justice Richard C. Howe
Chairman, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

AGENDA

Supreme Court's Advisory Committee on the Rules of Appellate Procedure

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

April 17, 2002 - 12:00 p.m.

1. WELCOME AND APPROVAL OF MINUTES Todd Utzinger
2. INTRODUCTION OF NEW COMMITTEE MEMBER Todd Utzinger
3. RULE PROPOSAL FOR QUALIFICATIONS
OF APPELLATE COUNSEL
4. RULE 27(k) Julianne Blanch
5. PROPOSED AMENDMENTS TO RULES 8 & 23 Fred Voros
6. OTHER BUSINESS
7. ADJOURN

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

MINUTES

APPROVED 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

April 17, 2002

ATTENDEES

Todd Utzinger
Matty Branch
Larry Jenkins
Fred Voros
Fred Metos
Judge Gregory Orme
Julianne Blanch
David Arrington
Joan Watt
Marian Decker

ABSENT

Brent Johnson
Karra Porter
George Haley
Clark Nielsen

I. WELCOME AND APPROVAL OF MINUTES

By motion, a second and unanimous vote, the minutes of the March 20, 2002 meeting were approved.

**II. UPDATE ON SUPREME COURT'S PROPOSED AMENDMENTS TO
RULES 3 AND 14**

Todd Utzinger advised the Committee that he and Judge Orme had attended a Supreme Court conference held on April 10, 2002, on behalf of the Appellate Rules Committee, to express the Committee's concerns as to proposed amendments to the rules that would make the timely payment of the filing fee jurisdictional. Mr. Utzinger indicated that Cullen Battle and Terrie McIntosh attended the court conference on behalf of the Civil Procedure Committee and expressed similar concerns as to the proposed amendments. The court, based upon the comments made by the committee members and the extent of the concern expressed, decided to not go forward with the proposed amendments.

III. RULE PROPOSAL FOR QUALIFICATIONS OF APPELLATE COUNSEL

Fred Voros stated that he and other members of the Attorney General's Appellate Division have a problem with the qualification rule approach. Mr. Voros brought several examples of briefs drafted by appointed appellate counsel outside of Salt Lake City that were inadequate even though the attorneys who draft them would have met the proposed qualifications requirement. Mr. Voros advised that the Attorney General's Office has encouraged various county commissions to hire

competent appellate counsel. Some of the county commissions have been receptive, others have not. Joan Watt indicated that she also thought that a qualification rule would not solve the problem. She also questioned whether training would help a person who just was not “into” appellate work. Ms. Watt also stated that she did not think the problem was with new law school graduates doing substandard appellate work, but rather with older, more experienced attorneys who were simply out of step with current appellate procedures and practices.

The Committee discussed at length the idea of a “three strikes and you’re out” rule to be enforced by the appellate courts. Under this rule, the appellate courts would be more aggressive in striking in adequate briefs. Once an attorney had three briefs stricken, that attorney would not be able to practice before the appellate courts without either fulfilling certain appellate training or working with an assigned mentor. There was discussion about whether rather the Supreme Court should issue a Standing Order dealing with attorney competency qualifications, the three strikes rule and appellate training rather than developing a rule. The Committee agreed that discussion as to this issue needed to be carried over to the May meeting.

IV. RULE 24(k)

Judge Orme moved for approval of the proposal made by Julianne Blanch that Rule 24(k) be deleted since adequate information about the brief cover requirement was already in Rule 27(d). Joan Watt seconded the motion. The motion was unanimously approved.

V. ADJOURN

Matty Branch indicated that the third Wednesday in May, which is the 15th, is during annual appellate conference, and that she and Judge Orme would not be able to attend. It was proposed that the May meeting be held at noon on May 7, 2002. Ms. Branch agreed to e-mail those Committee members who were not at the meeting to determine if the May 7th date was workable.

There being no further business, the meeting adjourned at 1:15 p.m.