

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, 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 Street
Salt Lake City, Utah 84114

October 16, 2002 - 12:00 p.m.

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| 1. | WELCOME AND APPROVAL OF APRIL 2002 MINUTES | Todd Utzinger |
| 2. | PROPOSED AMENDMENTS TO RULES 8 & 23 | Fred Voros |
| 3. | QUALIFICATIONS OF APPELLATE COUNSEL | Todd Utzinger |
| 4. | OTHER BUSINESS | |
| 5. | 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

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

October 16, 2002 p.m.

ATTENDEES

Todd Utzinger
George Haley
Clark Sabey
Fred Metos
Larry Jenkins
Marian Decker
Fred Voros
Clark Nielsen
Judge Gregory Orme

EXCUSED

Matty Branch
Karra Porter
Julie Blanch
David Arrington
Joan Watt

GUEST

Esther Chelsea McCarty

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Todd Utzinger welcomed the Committee members to the meeting. Judge Gregory Orme moved to approve the minutes of the April 17, 2002 meeting. Larry Jenkins noted one typographical error in the minutes. Fred Metos seconded the motion with the error corrected. The motion carried unanimously.

Todd Utzinger welcomed Clark Sabey as a new member of the Committee. Mr. Sabey is a staff attorney with the appellate courts.

II. RULE 8 AMENDMENTS

Fred Voros had previously distributed proposed amendments to Rule 8. Mr. Voros distributed a second proposal at the meeting. Mr. Voros stated that the proposed amendments address the process to be followed when a party seeks an emergency stay in the appellate courts. The amendments provide for the opposing party to receive notice of the moving party's actions. The proposed

amendments require five days notice to the opposing party before seeking a stay, unless the moving party can show that reasonable efforts have been made to give actual notice, and that the clerk of the court attempts to contact the opposing party.

Todd Utzinger relayed the concerns of Joan Watt. Ms. Watt had stated a concern with the 5 day requirement. She stated that there are legitimate circumstances when an emergency stay is needed, perhaps at the last minute. Ms. Watt suggested a "good cause" exception to the five day requirement. George Haley suggested that good cause is already built-in, because the court can suspend its rules at anytime. Fred Voros suggested that his proposal already has a good cause exception, because a party can show reasonable efforts to contact the opposing party if last minute relief is requested..

Mr. Voros noted that the second Rule 8 proposal is based on the Supreme Court's standing order number 2 which partially addresses the same subject matter. Larry Jenkins suggested looking at other court standing orders and incorporating them into the rules. Judge Orme suggested contacting the court to ask their permission to begin making such proposals. Todd Utzinger stated that he will send a letter to the Chief Justice notifying the court of the Committee's intent.

Judge Orme stated that he had some concern with the language establishing a ten page limit. Judge Orme noted that the language would allow a person with an eleven page motion, to also submit a ten page summary of argument, extending the motion to twenty-one pages. Fred Metos suggested leaving the requirement at ten pages total. Judge Orme agreed, stating that, if it takes more than ten pages to explain why a case is an emergency, then it probably is not an emergency.

Mr. Voros asked the Committee whether there will be any problem including the trial court order. Mr. Utzinger stated that sometimes the order is not available. Clark Nielsen noted that sometimes the order has not been reduced to writing. Judge Orme suggested adding language such as "if written," or "if any." Fred Metos suggested that a minute entry could be obtained.

Mr. Voros asked the Committee whether it is important to require the court clerk to contact the opposing attorney. All the Committee members agreed that it is.

Judge Orme asked whether the rule should be divided into two separate portions, for two different types of stays. Judge Orme noted that some stays do not require immediate action, but there may be some need to have separate provisions for emergency situations. Judge Orme suggested that there could be a self-standing rule to address ex parte, emergency relief. Fred Voros agreed to address that suggestion and present new proposals at the next meeting.

III. QUALIFICATIONS FOR COUNSEL

Todd Utzinger suggested creating a subcommittee to look at this issue and to propose recommendations. Fred Metos said there are two important issues: 1) what should the court do with shoddy work; and 2) qualifications for the counsel that counties are going hire. Fred Voros noted that the problem is not limited to criminal, appointed counsel. However, Judge Orme stated that the

Supreme Court's concern is primarily focused on appointed counsel because private counsel can be fired. Judge Orme noted that the court has been frustrated by the lack of an appellate defender office and the need to have something done. Judge Orme stated that the Committee should be responsive to this concern and create several proposals, recognizing that a statewide office will not be created, and giving preferences to allow the court some latitude. After brief discussion, it was determined that the sub-committee would be composed of Todd Utzinger, Joan Watt, Marian Decker, Fred Voros, and Judge Gregory Orme. ^{Metas}

IV. ADJOURN

The Committee scheduled the next meeting for Wednesday November 20, 2002. There being no further business, the meeting adjourned at 1:30 p.m.