

# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

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State Court Administrator  
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## 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

January 15, 2003 - 12:00 p.m.

1. **WELCOME AND APPROVAL OF MINUTES** Todd Utzinger
2. **RULES 8 & 30** Fred Voros
3. **APPELLATE QUALIFICATIONS SUBCOMMITTEE REPORT** 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.

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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

January 15, 2003

**ATTENDEES**

Todd Utzinger  
Judge Gregory Orme  
Matty Branch  
Karra Porter  
Fred Voros  
Marian Decker  
Clark Sabey

**EXCUSED**

Fred Metos  
Larry Jenkins  
Julianne Blanch  
George Haley  
Clark Nielsen  
Joan Watt

**STAFF**

Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

Todd Utzinger welcomed the Committee members to the meeting. Fred Voros moved to approve the minutes from the last meeting. Matty Branch seconded the motion. The motion carried unanimously.

**II. RULES 12 & 30**

Fred Voros explained his role on the committee that is reviewing changes to the Code of Judicial Administration. Based on language in the Supreme Court case of Grand County v. Rogers, the Code of Judicial Administration is being reviewed to identify those rules which are procedural and therefore should be promulgated by the Supreme Court rather than the Judicial Council. Mr. Voros explained that there are only two provisions in the Code of Judicial Administration which require incorporation into the Rules of Appellate Procedure. Mr. Voros proposed an amendment to Rule 30 which addresses the citation of opinions, both published and unpublished.

Karra Porter stated that it is possible for the Supreme Court to have an unpublished opinion and therefore their opinions should also be included. She noted the Campbell v. State Farm case which had not yet been published in a citable digest, but was being cited by attorneys, and even by the Supreme Court. Mr. Voros stated that he would change the language to unpublished opinions of "either court." Judge Orme suggested using a more generic term than "opinion," because other court decisions might be cited. The Committee agreed on the term "decision."

Fred Voros moved to adopt Rule 30 as amended by the Committee. Matty Branch seconded the motion. The motion carried unanimously.

Mr. Voros also proposed an amendment to Rule 12. Mr. Voros stated that the language had been taken verbatim from Rule 4-203. The change relates to submitting pre-sentence investigation reports on appeal. Judge Orme suggested including the pre-sentence report when it is “relevant to an issue on appeal.” The Committee agreed with this suggestion. Fred Voros then moved to approve Rule 12 as amended by the Committee. Matty Branch seconded the motion. The motion carried unanimously.

### **III. APPELLATE QUALIFICATIONS**

Todd Utzinger explained the work of the subcommittee which had reviewed appellate qualifications. Mr. Utzinger stated that the subcommittee believes that the Supreme Court seeks a detailed recommendation from the Committee. The subcommittee agreed that the recommendation should be limited to cases involving appointed counsel and that the rule should be expanded to juvenile court cases. Mr. Utzinger stated that the rule will not follow the procedure that has been established, for example, in Rule 8 of the Utah Rules of Criminal Procedure. A list of qualified attorneys will not be maintained. The trial courts will appoint counsel on a case-by-case basis according to the rule criteria. Judge Orme explained that the subcommittee wanted to make the rule self-executing.

Karra Porter suggested that qualifying an individual under proposed paragraph (b) may eviscerate the provisions in (a), because the provisions in (b), were very broad. Mr. Utzinger explained that the subcommittee felt that paragraph (b) was needed to allow proficient attorneys, who had never filed an appeal, to nevertheless practice in the appellate courts. Mr. Utzinger provided the example of a Utah county attorney who had never done an appeal prior to appointment, but has done excellent work. Ms. Porter stated that she understands the need to have a catch-all provision, but was not certain that the examples provided in paragraph (b) were appropriate. Judge Orme suggested using more generic language, giving discretion to the trial court. Fred Voros suggested that the Utah county attorney would not have been able to show proficiency under the language proposed in paragraph (b). Judge Orme suggested language which states that the trial court can appoint if the trial court is convinced the attorney is competent to handle an appeal.

Fred Voros noted that the rule language needs to specifically provide for juvenile court cases. Judge Orme moved to delete proposed paragraph (c), which would have required the Administrative Office to maintain a list. Marian Decker seconded the motion. The motion carried unanimously.

Todd Utzinger explained that two different provisions had been created concerning disqualification and suspension. Mr. Utzinger stated that both courts will have authority to disqualify attorneys on a case-by-case basis. However, suspension from appellate practice would be reserved to the Supreme Court. Mr. Utzinger explained that there may be some concern that the Court of Appeals does not have the authority to suspend an attorney from all appellate practice, and therefore the Court of Appeals would refer suspension questions to the Supreme Court. Judge Orme suggested that the

Supreme Court may not be amenable to this provision and may prefer that suspension questions be referred to the State Bar. Judge Orme stated that the Bar process, however, is very slow. Fred Voros stated that the suspension process will be very rare and would only result after several disqualifications in several individual cases, and those attorneys may simply choose not to practice appellate law, or their contracts will not be renewed by the counties.

Judge Orme stated that in one particular case it took several years of shoddy appellate work before an attorney was disbarred. The Court of Appeals felt that the process took too long and that it is preferable to have a rule that allows the Court of Appeals to suspend an attorney.

Clark Sabey suggested that the rule should focus on the appointment of appellate counsel and the suspension provisions may not be necessary if the rule clearly directs the trial courts to not appoint attorneys who have been previously disqualified from individual cases. The Committee agreed with this approach. Todd Utzinger stated that he will revise the rule to focus on this aspect.

Fred Voros suggested adding "inadequate briefing" to the list of disciplinary actions that will prevent the appointment of appellate counsel. After brief discussion, the Committee agreed that inadequate briefing should not be added to the list, because the phrase has been used in different contexts. Mr. Utzinger stated that he will review the list of items that will prevent an attorney from being appointed and perhaps add others to the list.

#### **IV. ADJOURN**

The next meeting was scheduled for Wednesday February 19, 2003. There being no further business, the Committee adjourned at 2:10 p.m.