

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 22, 2004

ATTENDEES

Matty Branch
Marian Decker
David Lewis
Margaret Lindsay
Judge Gregory Orme
Karra Porter
Clark Sabey
Kate Toomey
Fred Voros
Joan Watt
Todd Utzinger

EXCUSED

Larry Jenkins
Clark Nielsen
Brian Pattison

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Todd Utzinger welcomed the Committee members to the meeting. Because staff was not present at the November meeting, the November minutes were incomplete. The Committee members discussed the minutes and the rule changes that were approved at the meeting. The Committee members could not recall the specific amendments that were made to the Rule 12 proposal offered by the Attorney General's Office. The proposal was to require the indexing of all transcripts. After reviewing his notes, Judge Orme moved to amend the proposal to limit the indexing requirement to those that are prepared by a certified court reporter. Karra Porter seconded the motion. The motion carried unanimously.

Matty Branch moved to approve the minutes from the November meeting. Margaret Lindsay seconded the motion. The motion carried unanimously.

2. RULE COMMENTS

Todd Utzinger addressed the public comments that were received on the rules published for comment. George McCune had submitted a comment questioning whether lay citizens and others

would know about “*Anders*” briefs. Karra Porter suggested adding a comment to the rule explaining *Anders*, and including citations to that case and Utah cases on the same issue. Fred Voros moved to include such a comment. Marian Decker seconded the motion. The motion carried unanimously. Todd Utzinger will propose the language for the comment and distribute it to Committee members.

Annina Mitchell had submitted a comment on Rule 25 suggesting that the current rule is not consistent with Utah Code Ann. § 78-33-11, which grants the Attorney General the right to be heard in any case in which there is a challenge to the validity of a statute. Ms. Mitchell also suggested that Utah follow the federal rule, which allows the government the right to file an amicus in any case without consent of the parties or leave of the court.

Fred Voros suggested inviting Ms. Mitchell to propose specific amendments. Karra Porter agreed that Ms. Mitchell’s first suggestion had merit, but Ms. Porter disagreed that the Attorney General’s Office should have a right to be heard on every case. Ms. Porter suggested having Ms. Mitchell prepare language on the first proposal, but to have Ms. Mitchell attend a Committee meeting to convince the Committee as to why the second proposal should be considered. Ms. Branch noted that Ms. Mitchell’s comment is actually a new proposal and that the Committee should deal with the current rule proposals separately. Todd Utzinger suggested sending the rule to the Supreme Court and informing the Court that additional changes are being considered by the Committee. Judge Orme stated that he is not certain that a change is required in the rule. Judge Orme stated that the statute would control in any event and would be persuasive on a motion. Judge Orme stated that, administratively, the courts would prefer a motion, rather than having the Attorney General’s Office file an unexpected brief. After further discussion, Todd Utzinger suggested inviting Ms. Mitchell to the Committee to address the issue and to go ahead and approve the current rule in the meantime.

Troy Booher had submitted a comment suggesting that the Rule 19 be amended to allow reply briefs in extraordinary writ proceedings. The Committee agreed that this was a proposal for a new rule and would be addressed in a future meeting.

Leslie Slaugh had submitted several comments concerning Rules 8A and 38A. Fred Voros stated that he agreed with Mr. Slaugh’s initial comment and suggested that the rule could be clarified by changing the sentence structure. The Committee members agreed with the suggestion. The Committee then discussed Mr. Slaugh’s suggestion that Rule 8A should not contain the phrase “before the court at a time certain.” Clark Sabey stated that he agreed with Mr. Slaugh’s suggestion, because the court rarely conducts a hearing on a request for emergency relief. Mr. Voros suggested eliminating the requirement that an attorney certify that the party has notified the opposing party that it will seek a hearing at a certain time. Mr. Voros suggested the remaining portions of the rule should resolve the issue, because the attorney is required to certify that the attorney has submitted documents to the other side. After further discussion, the Committee members agreed that the rule proposal does not reflect the current practice in the courts. Mr. Voros suggested that the rule proposal be withdrawn and that he make another attempt to propose language. Mr. Voros stated that he will not use the current standing order as a model, but will draft completely new language. The Committee agreed with the suggestion.

The Committee then discussed Mr. Slaugh's suggestion that Rule 38A include a requirement that proficiency be established in the criminal area. Judge Orme stated that the original reason for the rule was not to address an attorney's proficiency in a particular area of law, but to address proficiency on appeals. The Committee then discussed the pros and cons of including a proficiency requirement in a substantive area. Karra Porter suggested leaving the rule as currently proposed, and that the Committee could revisit the issue if it became a problem. The Committee members agreed with the suggestion.

The Committee members then discussed Judge Norman Jackson's suggestion that the rule clarify that appointment of counsel will still occur at the trial court, and not at the appellate court. Judge Orme suggested adding a comment to the rule and the Committee members agreed with this proposal. Judge Orme volunteered to prepare the comment. The comment would then be distributed to Committee members for their approval.

The Committee members then addressed Fred Voros' suggested changes to Rules 10 and 38A. The changes were typographical, and Matty Branch moved to include the changes proposed by Mr. Voros. Joan Watt seconded the motion. The motion carried unanimously.

Judge Orme moved to send the rule proposals to the Court, with the changes that had been made by the Committee during the meeting. Matty Branch seconded the motion. The motion carried unanimously.

3. OTHER BUSINESS/ADJOURN

Because of the time, the Committee members agreed that the Child Welfare Rule amendments would be discussed at the next meeting. The Committee members also agreed that Carol Verdoia and Judge Pam Greenwood should be invited to the meeting to provide an update on the status of the proposals. The next meeting was scheduled for February 18, 2004. There being no further business, the Committee adjourned at 1:45 p.m.

Administrative Office of the Courts

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

January 14, 2004

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

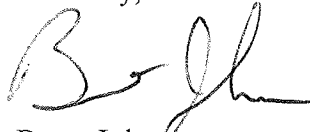
**To: Supreme Court's Advisory Committee
on the Rules of Appellate Procedure**

Dear Committee Member:

This letter is to remind you of the next meeting of the Supreme Court's Advisory Committee on the Rules of Appellate Procedure which will be Wednesday January 21, 2004 at noon. The meeting will be at the Administrative Office of the Courts. Enclosed you will find a copy of the minutes (unfinished) from the last meeting. I am also enclosing copies of the comments that we received on rules that were recently published for public comment. The January 21 agenda will consist of finalizing the minutes, discussing the rule comments, and discussing the rules proposed for child welfare proceedings.

If you have any additional items of business, or if you will be unable to attend the meeting, please contact me.

Sincerely,



Brent Johnson
General Counsel

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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.