

# 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

April 21, 2004 - 12:00 p.m.

- |    |                                 |                                  |
|----|---------------------------------|----------------------------------|
| 1. | WELCOME AND APPROVAL OF MINUTES | Todd Utzinger                    |
| 2. | RULE 25                         | Todd Utzinger<br>Annina Mitchell |
| 3. | RULE 8A                         | Fred Voros                       |
| 4. | RULE 19                         | Clark Sabey                      |
| 5. | MISCELLANEOUS RULE PROPOSALS    | Matty Branch                     |
| 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.

# APPROVED MINUTES

## MINUTES OF THE 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 21, 2004

### ATTENDEES

Matty Branch  
Marian Decker  
Larry Jenkins  
Clark Nielsen  
Judge Gregory Orme  
Clark Sabey  
Kate Toomey  
Todd Utzinger  
Fred Voros  
Joan Watt

### EXCUSED

David Lewis  
Margaret Lindsay  
Brian Pattison  
Karra Porter

### GUESTS

Annina Mitchell

### STAFF

Brent Johnson, excused

#### 1. Welcome and Approval of Minutes

Todd Utzinger welcomed the Committee members and guest to the meeting. The minutes from the February meeting were approved, with one correction to Section 3, line 5, changing "full" to "complete."

#### 2. Rule 25

Annina Mitchell, on behalf of the Attorney General, attended the committee meeting to articulate the concerns of the Attorney General's office as to Rule 25 of the Utah Rules of Appellate Procedure. The position of the Attorney General is that the rule should allow the State to file an amicus brief on appeal without leave of the court on the basis that § 78-33-11 provides that the Attorney General is entitled to be heard whenever there is a challenge to the validity of a state statute. Ms. Mitchell also discussed the issue of intervention under Rule 24, with its attendant formal party status, as opposed to an amicus curiae status on the narrow legal issue of a statute's validity. Judge Orme suggested that the appellate courts would always grant a motion permitting the Attorney General to file an amicus brief in cases where § 78-33-11 was the basis. Following additional discussion, it was the consensus of the committee and Ms. Mitchell that no change to Rule 25 was necessary.

The Committee and Ms. Mitchell then discussed methods of advising the courts and giving notice to the Attorney General's office when an appeal involves a claim of unconstitutionality of a statute. Clark Nielsen suggested that a requirement be added to Rule 9, docketing statement rule, that provides that if an issue is the unconstitutionality of a statute, the appellant must serve the docketing statement on the Attorney General. Ms. Mitchell indicated that she will speak with her colleagues to determine if they think changes to Rule 9 or Rule 21 might help with the notice issue. If the attorneys support this approach, Ms. Mitchell will submit proposed changes to Rule 9 and Rule 21 to the committee.

3. Rule 8A

Fred Voros reminded the committee that he had agreed to completely rewrite Rule 8A as to emergency relief rather than continuing to try to adapt the wording of Supreme Court Standing Order #1. The following changes were suggested to Mr. Voros's latest version of Rule 8A: section (a) first sentence shall state "[E]mergency relief is any relief sought within a time period shorter than specified by otherwise applicable rules." The second sentence of section (a) to be deleted. Section (b)(5) will be changed to read "The petition shall not exceed 15 pages, exclusive of attachments and addendum." Section (c) shall indicate that the response shall not exceed 15 pages. It was the consensus of the committee that these proposed changes should be made. Mr. Voros agreed to bring a revised version of Rule 8A, which includes these changes, to the next committee meeting.

4. Rule 19

Clark Sabey reviewed the changes he proposed to Rule 19, extraordinary writs, with the committee. It was suggested that section (a) should be revised to delete the phrase "except a writ of habeas corpus," and the phrase "or, in an emergency, with a justice or judge of the appellate court." Committee members expressed concern that section (d), as drafted, would permit a single judge to deny a petition for extraordinary relief, and that such decision appeared not to be subject to further review. Mr. Sabey indicated that he would make changes to the draft along the lines suggested by the committee, and that he would also redraft section (e) to provide a general permissive authority to get the record transmitted. Mr. Sabey will bring a revised Rule 19 to the next committee meeting.

5. Rule 29

Judge Orme advised the committee that the Board of Appellate Judges wanted the committee to consider whether Rule 29 needed to be revised to make clear that appellant is precluded from raising any new issues (issues not covered in appellant's opening during oral argument or in appellee's response), during his or her closing statement so as not to disadvantage the appellee. The committee was in agreement that such a change to Rule 29 was appropriate. Judge Orme agreed to draft proposed changes to Rule 29(c) to reflect this approach.

6. Other business

Items 2 through 6 stated in Matty Branch's memo to Brent Johnson will be considered at the next committee meeting.

7. Adjourn

The committee meeting adjourned at 1:40 p.m. The next meeting is scheduled for May 19, 2004, at noon. Todd Utzinger indicated that he may be in trial on that day, but that someone else would conduct the meeting.