

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

August 18, 2004 - 12:00 p.m.

ATTENDEES

Matty Branch
Larry Jenkins
David Lewis
Bryan Pattison
Karra Porter
Kate Toomey
Todd Utzinger
Fred Voros
Joan Watt

EXCUSED

Marian Decker
Margaret Lindsay
Clark Nielsen
Judge Gregory Orme
Clark Sabey

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Todd Utzinger welcomed the Committee members to the meeting. Matty Branch moved to approve the minutes from the May meeting. Kate Toomey seconded the motion. The motion carried unanimously.

Fred Voros suggested that staff should put together a matrix for each committee meeting showing the status of each rule that is currently being considered by the Committee, and rules that have recently been considered by the Committee. Staff will try to put this together prior to the next meeting.

II. MISCELLANEOUS RULE PROPOSALS

The Committee returned to Matty Branch's e-mail of March 2004, which discussed a half-dozen rule proposals. Matty Branch explained the third proposal, which is to eliminate reply briefs on petitions for writs of certiorari. Because the court can consider a petition without waiting for a reply brief, court staff had suggested eliminating the provision.

Todd Utzinger suggested retaining the reply brief because there may be cases in which it is helpful. Joan Watt stated that the court should be able to determine whether certiorari is warranted from the

first two briefs. Ms. Watt asked whether reply briefs had ever been persuasive for the court. Fred Voros suggested that there may be circumstances in which a reply brief is necessary to respond to statements in a brief in opposition. Mr. Voros asked whether there was any harm in retaining the provision. Ms. Porter stated that the primary harm is a waste of time and resources. Bryan Pattison stated that the way the rule is written, including the reply brief is harmless and could be helpful in some circumstances. The Committee agreed that the reply brief language would remain in the rule.

Ms. Branch explained the fourth rule proposal is to eliminate the requirement that a petition for a rehearing be in brief format. Judge Orme had previously expressed his opinion that the brief format should be retained, because it made petitions for rehearing easier to identify. The Committee agreed that the rule language should remain.

Fred Voros raised the issue of appellate courts changing opinions based on a letter from one of the parties. Mr. Voros questioned whether the rules should address that issue. After brief discussion, the Committee agreed that changes should not be made.

Ms. Branch stated that there is also an issue about postmarks controlling the time of filing on petitions for rehearing. Ms. Branch stated that there is some disagreement among judges about whether the postmark controls. After brief discussion, Karra Porter volunteered to draft language to clarify that the postmark does not control filing on petitions for rehearing. Larry Jenkins suggested that the appropriate place for an amendment would be Rule 21(a).

Matty Branch stated that the fifth rule proposal is to eliminate the compressed format option for transcripts. Kate Toomey moved to eliminate the language allowing for this format. Joan Watt seconded the motion. The motion carried unanimously. Karra Porter suggested that there should also be language specifically forbidding the use of this format. Todd Utzinger stated that he will prepare proposed language and present it at the next meeting. Joan Watt noted that Rule 11 also has language about the compressed format option.

Matty Branch stated that the sixth rule proposal is to require a courtesy copy of the notice of appeal to be sent to the appellate court. Ms. Branch stated that this requirement would allow the appellate court to follow-up with a trial court if it does not send the original notice of appeal. Bryan Pattison stated that this is a good idea because his experience has been that the trial courts tend to sit on the notices of appeal. Karra Porter noted that the Wyoming rule has such a provision. David Lewis questioned whether a courtesy copy would accomplish anything. The Committee members agreed that a courtesy copy should be sent to the appellate court and Todd Utzinger will prepare language for the next meeting.

III. RULE 4

Fred Voros presented proposed changes to Rules 4 and 9. Mr. Voros stated that the proposals represent a major change. Mr. Voros stated that there are two main issues: (1) to eliminate a current trap for the unwary which exists when certain motions nullify a previously filed notice of appeal; and

(2) a change in statute which requires motions to withdraw guilty pleas to be filed before sentencing. Mr. Voros stated that the intent of the proposal is that, once a judgment is announced, a notice of appeal remains effective to challenge that judgment. Mr. Voros stated that right now the rules are tricky for practitioners, but the rules should be intuitive. Mr. Voros recognized that the Committee will have to carefully study the language to ensure that it achieves the Committee's intent. The Committee will discuss this issue at its next meeting.

IV. OTHER BUSINESS/ADJOURN

The Committee scheduled its next meeting for Wednesday September 15, 2004. There being no further business, the Committee adjourned at 1:20 p.m.

Administrative Office of the Courts

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

August 8, 2004

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

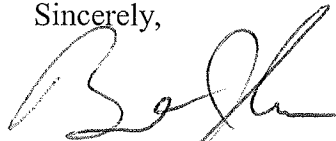
**To: Supreme Court's Advisory Committee
on the Rules of Appellate Procedure**

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 is Wednesday August 18, 2004 at 12:00 p.m. at the Administrative Office of the Courts. Enclosed you will find the minutes from the May meeting and materials that will be discussed. We will our continue a discussion of the rule proposals in Matty Branch's e-mail dated March 23, 2004. We will also discuss the rule proposals from Fred Voros and the memorandum from Matty Branch dated July 21, 2004.

Please feel free to contact me if you have any questions about the meeting, or if you will be unable to attend.

Sincerely,



Brent Johnson
General Counsel

enc.

**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.**

450 South State Street / P.O. Box 140241 / Salt Lake City, UT 84114-0241 / 801-578-3800 / Fax: 801-578-3843