

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

September 15, 2004 - 12:00 p.m.

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|----|---------------------------------|---------------|
| 1. | WELCOME AND APPROVAL OF MINUTES | Todd Utzinger |
| 2. | RULE 8A | Fred Voros |
| 3. | RULES 4 and 9 | Fred Voros |
| 4. | ELECTRONIC FILING | Matty Branch |
| 5. | OTHER BUSINESS | |
| 6. | 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

September 15, 2004 - 12:00 p.m.

ATTENDEES

Matty Branch
Margaret Lindsay
Judge Greg Orme
Bryan Pattison
Clark Sabey
Kate Toomey
Todd Utzinger
Fred Voros
Joan Watt

EXCUSED

Marian Decker
Larry Jenkins
David Lewis
Clark Nielsen
Karra Porter

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 of the August meeting. Fred Voros seconded the motion. The motion carried unanimously.

II. RULE 8A

Fred Voros had previously distributed the latest version of proposed Rule 8A, Emergency Relief. Mr. Voros explained that he had made the changes suggested by Committee members at the last meeting in which the rule was discussed. Mr. Voros then move to approve the rule as proposed. Kate Toomey seconded the motion. The motion carried unanimously.

III. RULES 4 and 9

Fred Voros reminded the Committee members of the purposes of the proposed amendments. Mr. Voros stated that the intent was to make a notice of appeal timely if filed between the time of judgment and 30 days. The Committee members agreed that the proposed amendments are needed. Judge Orme noted that, under the current rule, a second mistake can fix a first mistake. Judge Orme

stated that if an individual files a notice of appeal, and then an untimely motion, the notice of appeal is still good.

Fred Voros read the proposed amendments to the rule. Judge Orme noted that proposed Rule 4(b)(2) might be ambiguous. Judge Orme stated that a judge might announce a ruling on a motion from the bench, but an order is not signed and filed until later. In the meantime, a notice of appeal might be filed. Judge Orme stated that the rule should be clear as to whether such a notice of appeal is valid. Fred Voros asked Judge Orme whether he would prefer that the rule should run from the announcement of the ruling or from entry. Judge Orme stated that either is okay as long the rule is clear.

Judge Orme suggested that there should be a way to make the rule less hyper-technical so that mistakes are not fatal. Judge Orme suggested that the various motions should suspend the effectiveness of an appeal, but not nullify a previously filed notice. Joan Watt stated that under the current rule, her office often files two notices of appeal just to make certain that they are covered. Ms. Watt agreed with the idea of suspending the effectiveness of the appeal. Clark Sabey suggested that the rule should mirror the concept in paragraph (c) in which an earlier filed appeal becomes effective on a later date.

Fred Voros asked Committee members about how big a problem this is in civil practice. Judge Orme stated that the issue that arises on the civil side is determining whether motions are on the list. Mr. Sabey stated that the proposed amendment would resolve that issue because a notice of appeal would be valid with all types of motions. Fred Voros stated that he will review the rule and make changes based on the comments made by the Committee members.

IV. ELECTRONIC FILING

Matty Branch stated that the Board of Appellate Court Judges had asked the Committee for its opinion on electronic filing, with an eye towards perhaps setting a date when electronic filing would be permitted or required. Kate Toomey asked whether there was a benefit to the court in having electronic filing. Ms. Toomey stated that the court would then have to print-out the briefs for review, shifting the cost to the court. Judge Orme also noted that there are issues such as the color of brief covers, binding, and addendums. Margaret Lindsay stated that electronic filing might reduce the number of copies that a litigant must file, but a litigant would still be required to file an appropriate hard copy. Todd Utzinger suggested that the Committee should not worry about dates now, because even the federal system keeps moving its dates back because they do not have the system ready to accept electronic filings.

Fred Voros suggested that electronic filing is inevitable and desirable. Mr. Voros stated that briefs will become more accessible. Mr. Voros suggested, however, that another committee should be looking at the issue. Matty Branch stated that there is a court e-filing committee, and Mr. Voros suggested that the e-filing committee should review the issue. Todd Utzinger stated that until the Appellate Procedure Committee knows the available technology, the Committee will not be able to

set dates or propose any rule changes that might be necessary. Todd Utzinger stated that he will prepare a letter to the Chief Justice raising the points made by the Committee members. Judge Orme suggested that the Committee should go on record that it does not want to completely exclude the filing of a written document, because the court may need to check an electronically filed document against a written document.

V. OTHER BUSINESS

Todd Utzinger stated that he had received a letter from Matty Branch about CLE credit for Committee meetings. Ms. Branch stated that the issue has arisen in other contexts and the Bar has been reluctant to give CLE credit for committee service, because there are so many committees and it may be a slippery slope.

Todd Utzinger stated that CLE is not the motivation for serving on this Committee. Kate Toomey asked whether it could be an incentive for others to serve. Ms. Toomey then suggested that it may not be an appropriate incentive because people interested in CLE might not be the best members. After brief discussion, the Committee members agreed that CLE credit was not necessary.

The Committee scheduled its next meeting for October 20, 2004. The Committee adjourned at 1:15 p.m.