

# Administrative Office of the Courts

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

## AGENDA

Daniel J. Becker  
State Court Administrator  
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Deputy Court Administrator

### 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 18, 2007 - 12:00 p.m.

- |    |                                 |                |
|----|---------------------------------|----------------|
| 1. | WELCOME AND APPROVAL OF MINUTES | Joan Watt      |
| 2. | WELCOME NEW MEMBER              | Joan Watt      |
| 3. | FINAL VOTE ON RULE 55           | Joan Watt      |
| 4. | RULE 51                         | Brian Pattison |
| 5. | RULE 50                         | Clark Sabey    |
| 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

### Supreme Court's Advisory Committee on the Rules of Appellate Procedure

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114-0241

April 18, 2007

#### **ATTENDEES**

Matty Branch  
Marian Decker  
Larry Jenkins  
Judge Gregory Orme  
Bryan Pattison  
Clark Sabey  
Tawni Sherman  
Fred Voros  
Joan Watt

#### **EXCUSED**

Paul Burke  
Margaret Lindsay  
Judge Kate Toomey

#### **STAFF**

Brent Johnson

### **I. WELCOME AND APPROVAL OF MINUTES**

Joan Watt welcomed the committee members to the meeting. Judge Gregory Orme moved to approve the minutes from the last meeting. Matty Branch seconded the motion. The motion carried unanimously.

Joan Watt welcomed Tawni Sherman as a new member of the committee.

### **II. RULE 55**

Staff explained that Rule 55 had been published for public comment and the committee did not receive any comments on the rule. Matty Branch moved to approve the rule and send it to the Supreme Court. Tawni Sherman seconded the motion. The motion carried unanimously.

### **III. RULE 51**

Bryan Pattison distributed a proposed amendment to Rule 51. The proposal stated that for certiorari briefs, the party should include a statement showing that the issue was presented in the petition for certiorari, or fairly included in the petition, rather than providing a statement addressing whether the issue was preserved in the trial court. Mr. Pattison stated that the

proposal essentially conforms the rule to existing practice. Clark Sabey and Fred Voros stated that they liked the concept of the proposed change. Fred Voros noted that the issue on certiorari is whether the Court of Appeals erred in reviewing the claim, and not whether the claim was preserved. Therefore it is appropriate to address the issues presented in the petition. Mr. Voros questioned whether there should be a cross-reference in Rule 24 to Rule 51. Mr. Pattison stated that he tried to include something in Rule 24, but ultimately determined that the language did not fit very well. Mr. Pattison noted that existing language in Rule 51 already includes different requirements and there isn't a cross reference to those differences in Rule 24.

Judge Gregory Orme asked whether there were any other provisions in Rule 24 that are inconsistent with Rule 51. Mr. Pattison stated that he had not looked at the rule in detail, but in doing certiorari briefs in the past he had not come across any other problems. Joan Watt agreed that this seemed to be the only issue.

Matty Branch then moved to approve the rule for public comment. Judge Gregory Orme seconded the motion. The motion carried unanimously.

#### **IV. RULE 50**

Clark Sabey distributed a proposed change to Rule 50. The proposal included language parallel to Rule 25, discussing participation of amicus curiae. Mr. Voros wondered whether the proposal should be in another rule discussing the briefing stage. Mr. Sabey noted that Rule 51 is the rule discussing amicus participation and he thought that this rule is best. Mr. Voros agreed that, even though the language is in the petition rule, it would cover both the petition stage and the briefing stage.

Judge Orme suggested deleting the last proposed sentence which discussed oral argument participation by an amicus. The committee members agreed that this would be covered by other provisions in the rules and could be deleted.

Clark Sabey noted that the court generally does not grant amicus status at the petition stage, but only the briefing stage. Bryan Pattison questioned whether there should be language noting that amicus motions are not favored at the petition stage. Mr. Sabey stated that he did not want to send the wrong message about amicus participation in general and therefore did not include the language. The committee members agreed that it should not be included.

Judge Orme then moved to approve the rule for public comment, without the last proposed sentence. Fred Voros seconded the motion. The motion carried unanimously.

#### **V. OTHER BUSINESS**

Larry Jenkins stated that he would like to explore including provisions in the rules to address expedited briefing. Mr. Jenkins noted that he has experienced problems with getting an

accurate and full record from the trial court when expedited briefing is granted. Judge Orme suggested that it might be a good idea to have a self-standing rule and the rule should explore doing things differently in expedited cases. Mr. Jenkins and Judge Orme agreed to form a subcommittee to review the issue and present a proposal to the committee.

## **VI. ADJOURN**

The committee scheduled its next committee meeting for August 15, 2007. There being no further business, the committee adjourned at 1:00 p.m.