

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

August 15, 2007 - 12:00 p.m.

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| 1. | WELCOME AND APPROVAL OF MINUTES | Joan Watt |
| 2. | EXPEDITED BRIEFING RULE | Larry Jenkins
Judge Gregory Orme |
| 3. | ORAL ARGUMENT ON CERTIFICATION | Judge Gregory Orme |
| 4. | WORD COUNT RULE | Joan Watt |
| 5. | ADOPTIONS IN EXPEDITED APPEAL PROCESS | Larry Jenkins
Judge Gregory Orme |
| 6. | RULE 19(c) | Judge Gregory Orme |
| 7. | PETITIONS FOR REHEARING | Judge Gregory Orme |
| 8. | POST ARGUMENT BRIEFING | Judge Gregory Orme |
| 9. | OTHER BUSINESS | |
| 10. | 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

August 15, 2007 - 12:00 p.m.

ATTENDEES

Matty Branch
Paul Burke
Marian Decker
Larry Jenkins
Bryan Pattison
Clark Sabey
Judge Kate Toomey
Joan Watt

EXCUSED

Judge Gregory Orme
Karra Porter
Tawni Sherman
Fred Voros

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Joan Watt welcomed the committee members to the meeting. Matty Branch moved to approve the minutes of the previous meeting. Clark Sabey seconded the motion. The motion carried, with Paul Burke abstaining because he was not at the previous meeting.

II. ORAL ARGUMENT ON CERTIFICATION

Judge Gregory Orme had suggested that the committee should create a rule that addresses briefing and oral argument when an issue is certified to the appellate courts. Bryan Pattison stated that the issues will be who proceeds first, both with briefing and with argument. The committee decided to put the issue over until the next meeting, when Judge Orme can attend.

III. EXPEDITED APPEALS

Larry Jenkins and Judge Orme had presented a proposal on expedited appeals to the committee. Mr. Jenkins stated that he had looked at other states and how they deal with expedited appeals. Clark Sabey questioned what the genesis is for the proposed rule because people already present motions for expedited appeals. Mr. Jenkins stated that in past circumstances the court had set an early briefing schedule, but had not addressed other issues

such as preparation of the record on appeal. Paul Burke suggested requiring the parties to confer before a motion is filed.

Clark Sabey expressed a couple of concerns. The first is that there are some things that are out of an appellate court's control, such as pagination of the record. The second is that the rule should contain language saying that this is an extraordinary remedy and that an expedited appeal will only be granted under exigent circumstances. Joan Watt stated that there are circumstances in which a party might want an expedited decision, but not expedited briefing. Bryan Pattison suggested clarifying whether the other party can respond to the motion, and what the time frame for responding should be. Paul Burke suggested clarifying whether a party can request expedited resolution of a petition for writ of certiorari. Mr. Jenkins stated that he will make changes suggested by the committee members and bring the rule back to the committee at the next meeting.

IV. CHILD WELFARE COMMITTEE REVIEW

Staff reported on the Child Welfare Committee's review of adding adoptions to the rules on expedited appeals in child welfare cases. The Child Welfare Committee had approved of the concept of adding adoptions to the list of cases that can be expedited. The issue for the committee was whether adoptions should be added to the child welfare rules, or whether the committee would just rely on the new proposed Rule 23C providing for expedited appeals. The committee agreed that it would just rely on Rule 23C.

V. WORD COUNT PROPOSAL

Staff explained that the word count proposal is back to the committee based on Fred Voros' suggestion. The suggestion had resulted from the U.S. Supreme Court's adoption of a word count limit. Paul Burke stated that if the committee adopts a word count limit that there not be a requirement that an attorney certify the specific number of words, but only that the brief is within the word count limit. After some discussion, the committee decided that it would again table the word count proposal rule and wait for rules on electronic filing.

VI. RULE 19(c)

Judge Orme had submitted an e-mail in which it was suggested that Rule 19(c) be amended to eliminate the reference to a memorandum in support of a response to a petition for extraordinary relief. The practice is simply to put the authority in the response itself. The committee members agreed with the suggestion. Matty Branch moved to eliminate the reference to the memorandum. Clark Sabey seconded the motion. The motion carried unanimously.

VII. PETITIONS FOR REHEARING

Judge Orme had submitted a proposal to add criteria as to when a petition for rehearing

might be granted. Marian Decker stated that if criteria is added, the rule should also include something about when the court has addressed an unbriefed issue that is not dispositive. Joan Watt stated that there needs to be a better catchall provision in the rule, but she stated that she is uncomfortable trying to specify when petitions might be granted because there might be various reasons that it would not be listed. Clark Sabey noted that the rule already states that the petition should state whether the court has overlooked or misapprehended an issue. Ms. Watt stated that that is a pretty good standard and perhaps the rule should not be changed. Matty Branch suggested putting this proposal over until the next meeting so that Judge Orme can talk about the issue.

VIII. POST-BRIEFING ARGUMENTS

Matty Branch stated that there were some attorneys at the appellate court conference who had suggested that there should be some clarification about adding additional material after briefing has occurred. Paul Burke noted that the Tenth Circuit rule states that a party can add a certain number of words when adding additional authority. Joan Watt stated that a party should be able to say something about why the supplemental authority is being submitted. Bryan Pattison noted that the rule permits the other party to respond to the submission of additional authority, but it is difficult to respond if argument on the authority is not allowed. After some discussion, Joan Watt suggested that the committee take out the reference to “without argument” in the rule and then add the same language as the Tenth Circuit rule, permitting 350 words in the letter. Paul Burke then moved to approve the suggestion. Judge Kate Toomey seconded the motion.

IX. OTHER BUSINESS

Matty Branch stated that the Court wants to add a provision in the voluntary dismissal rule that the Court must approve stipulated dismissals. Clark Sabey noted that the Court recently had a stipulated dismissal come in at literally the 11th hour after the opinion had already been distributed. Clark Sabey noted, however, that requiring Court approval might affect parties ability and willingness to settle. Paul Burke noted that there would be a difference between dismissals in the court of appeals and the supreme court, because the supreme court might be issuing a decision which reverses a court of appeal’s decision and the parties should not be able to affect issuance of such an opinion. Matty Branch agreed to take the issue back to the Court and report back at the next meeting.

The committee scheduled its next meeting for October 17, 2007. The committee adjourned at 1:20 p.m.