

# 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

January 16, 2008

- |    |  |                           |
|----|--|---------------------------|
| 1. | <b>WELCOME AND APPROVAL OF MINUTES</b> | <b>Joan Watt</b>          |
| 2. | <b>RULE 3(f)</b>                       | <b>Matty Branch</b>       |
| 3. | <b>RULE 41</b>                         | <b>Matty Branch</b>       |
| 4. | <b>RULES 30 AND 37</b>                 | <b>Clark Sabey</b>        |
| 5. | <b>RULE 19</b>                         | <b>Judge Gregory Orme</b> |
| 6. | <b>OTHER BUSINESS</b>                  |                           |
| 7. | <b>ADJOURN</b>                         |                           |

**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

January 16, 2008

**ATTENDEES**

Tawni Anderson  
Matty Branch  
Paul Burke  
Marian Decker  
Jennifer Gowans  
Larry Jenkins  
Judge Gregory Orme  
Bryan Pattison  
Clark Sabey  
Judge Kate Toomey  
Fred Voros  
Joan Watt

**STAFF**

Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

Joan Watt welcomed the committee members to the meeting. The committee members approved the minutes from the last meeting.

**II. RULE 3(f)**

Matty Branch presented a proposed amendment to Rule 3(f), to address filing fees. The issue is whether trial court clerks should accept a notice of appeal, even though the notice does not include the filing fee. Judge Orme stated that, because the filing fee is not jurisdictional, Rule 3(f) should be amended to state that the clerk should accept the notice of appeal even if it does not include the fee. Judge Orme stated that, in any event, the practice should be consistent throughout the state. Joan Watt asked what would happen at the appellate court if the filing fee is not transmitted with the notice of appeal. Ms. Branch stated that the party will be notified that the case will not proceed until the fee is paid. The case will be dismissed if the fee is not paid within a reasonable time.

Judge Orme moved to amend Rule 3(f) to state that “the clerk shall accept the notice of appeal regardless of whether the filing fee has been paid.” Fred Voros suggested an additional sentence to state that “the court will dismiss the case if the filing fee is not paid within a reasonable time.” Judge Orme suggested changing that language to “failure to pay the filing fee within a reasonable time may result in dismissal.” The committee then unanimously passed the motion with the language proposed by Judge Orme.

### **III. RULE 41**

Matty Branch distributed a proposed change to Rule 41. Ms. Branch noted that the rule does not address simultaneous briefing, as that issue has not been resolved. Clark Sabey stated that the court has always done simultaneous briefing because there isn't an appellant. Fred Voros stated that his office does not like simultaneous briefing. Mr. Voros suggested having the plaintiff in the federal court be the appellant. Judge Orme asked whether the federal court certifies the question in such a way that it is clear who the proponent is. Paul Burke asked whether it would be possible to have the parties agree on who should file the first brief.

Jennifer Gowans stated that she sees no problem with simultaneous briefing because the parties will already be familiar with the issue, having argued the issue in federal court. Paul Burke stated that the rule could just state that the court will set the briefing schedule. Fred Voros agreed that the rule could state that it is left to the court's discretion. After brief discussion, the committee members agreed that the rule could be silent on simultaneous briefing, leaving the issue to the court's discretion. Clark Sabey then moved to approve the rule as proposed by Matty Branch. Judge Orme seconded the motion. The motion carried unanimously.

Matty Branch also distributed a copy of the notice that will be sent from the supreme court to the parties. Ms. Branch asked whether the committee members believed that the notice included all the necessary provisions. The committee members agreed that it is sufficient. Joan Watt stated that the court could address oral argument scheduling when it sends the oral argument notice.

### **IV. RULES 30 AND 37**

Clark Sabey distributed proposed amendments to address the issue of the time within which a voluntary dismissal must be filed. Mr. Voros stated that he does not think the rules need to be changed, but does not object to amending the rule either. Ms. Anderson noted that she has seen various rules on dismissal, but has never seen a rule that contains specific time frames. Judge Orme stated that there will most likely be other times when a voluntarily dismissal will be filed shortly after an opinion is sent to the publisher and therefore the rule should be amended to make things clear.

Clark Sabey suggested that Rule 30 not be amended, but that Rule 37 be amended to state that the dismissal must be filed before the date of entry. Mr. Sabey noted that this would only

change the requirement by a couple of hours. The committee members discussed whether the rule should state that the dismissal must be filed by 8:00 a.m. on the date of the opinion or the date before entry. After brief discussion, Clark Sabey moved to approve Rule 37 to add language indicating that the voluntary dismissal must be filed prior to the date of entry. Larry Jenkins seconded the motion. The motion carried with Paul Burke opposing the motion.

## **V. OTHER BUSINESS**

Judge Orme stated that he had proposed amendments to Rule 19, but needed to locate those in an e-mail. He will find his previous e-mail and distribute it to committee members. The committee will discuss the proposed amendments at the next meeting.

Larry Jenkins had distributed by e-mail a proposal on motions to expedite. The committee will discuss this issue at the next meeting. The committee scheduled its next meeting for February 27, 2008. The committee adjourned at 1:30 p.m.