

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

February 27, 2008 - 12:00 p.m.

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|----|---------------------------------|---------------|
| 1. | WELCOME AND APPROVAL OF MINUTES | Joan Watt |
| 2. | RULE 19 | Judge Orme |
| 3. | APPEALS | Larry Jenkins |
| 4. | OTHER BUSINESS | |
| 5. | 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

APPROVED MINUTES

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

February 27, 2008 - 12:00 p.m.

ATTENDEES

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

EXCUSED

Bryan Pattison
Judge Kate Toomey

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 from the last meeting. Marian Decker seconded the motion. The motion carried unanimously.

II. RULE 19

Judge Gregory Orme distributed a proposed amendment to Rule 19 that will require the petitioner to state whether a petition for interlocutory appeal has been filed and rejected, or to state why it is impractical or inappropriate to file a petition for interlocutory appeal. Fred Voros stated that, from experience, a petition for interlocutory appeal that is filed and rejected is always a procedural bar to a petition for extraordinary relief. Judge Orme stated that it is still possible that a petition for extraordinary relief could be reviewed even if a petition for interlocutory appeal has been rejected. Mr. Voros expressed a concern that the proposed language might invite more petitions for extraordinary relief because petitioners will know that an extraordinary writ can be sought even if interlocutory appeal is denied. Clark Sabey stated that it would be very helpful for the court to know whether a petition for interlocutory appeal has been filed. Joan Watt stated that it would also be helpful to know why a petition for interlocutory appeal was filed

and rejected. Judge Orme stated that it is probably not critical to note whether a petition for extraordinary relief has been rejected. The committee agreed that the language could be omitted. Judge Orme also suggested that the petitioner should also state why interlocutory appeal is not a plain, speedy or adequate remedy. With those changes, Paul Burke moved to approve the amendments to Rule 19. Clark Sabey seconded the motion. The motion carried unanimously. The committee members agreed that the proposed changes could be included as paragraph (b)(10).

III. RULE 23C

Larry Jenkins distributed a proposed rule to create a process for dealing with expedited appeals. Mr. Jenkins stated that a rule will be helpful to provide order and consistency in these cases. Paul Burke asked whether it is appropriate to have a good cause requirement when these motions are always discretionary. Mr. Jenkins stated that it would still be helpful to show that, even if good cause exists, granting the motion is still at the court's discretion. Mr. Voros noted that the good cause standard will require a movant to at least provide some justification for the motion.

Mr. Voros proposed several structural changes to clarify the intent of the rule and to make certain that language is parallel. Mr. Voros then asked whether the rule needed to refer to Rule 2. Mr. Jenkins stated that he wanted to include the reference so that practitioners will know what actions are not subject to Rule 2.

Paul Burke asked how an attorney could fulfill the attorney's obligation to consult with counsel when the other side is pro se. Matty Branch suggested changing the word counsel "to all parties." Ms. Branch stated that this would then require counsel to consult with everyone, whether or not represented.

Mr. Voros asked whether the rule should specifically address requests to expedite that are filed after briefing and oral argument. Clark Sabey noted that the rule states that a motion can be filed anytime after a notice of appeal is filed and therefore parties could still file a motion after briefing and oral argument. Judge Orme stated that perhaps there should be an additional section allowing a court to issue an order as soon as possible, subject to issuing a full decision at a later date. The committee members agreed with this suggestion.

Mr. Burke asked whether the rule should address situations in which another party does not oppose the entire motion, but just some of the relief requested in the motion. Mr. Jenkins indicated that the rule could be amended to require the moving party to state whether the motion had any opposition.

Mr. Voros asked whether the rule should be expanded to address expedited certiorari proceedings. Matty Branch stated that those could still be dealt with under Rule 8A.

The committee instructed staff to redraft the rule incorporating all suggested changes. Staff will then distribute the rule to the committee members for comment. The committee members will review the rule at its next meeting.

OTHER BUSINESS/ADJOURN

The committee scheduled its next meeting for May 21, 2008 at noon. There being no further business, the meeting adjourned at 1:30 p.m.