

Administrative Office of the Courts

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

AGENDA

Daniel J. Becker
State Court Administrator
Myron K. March
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

May 21, 2008 - 12:00 p.m.

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| 1. | WELCOME AND APPROVAL OF MINUTES | Joan Watt |
| 2. | RULES PUBLISHED FOR PUBLIC COMMENT | Joan Watt |
| 3. | RULE 23C | Larry Jenkins |
| 4. | VICTIM AMICUS BILL | Joan Watt
Clark Sabey |
| 5. | VARIOUS RULE CHANGES | Judge Greg Orme |
| 6. | RULE 24h | Matty Branch |
| 7. | VARIOUS RULE PROPOSALS | Clark Sabey |
| 8. | OTHER BUSINESS | |
| 9. | 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

APPROVED 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

May 21, 2008 - 12:00 p.m.

ATTENDEES

Matty Branch
Paul Burke
Larry Jenkins
Judge Greg Orme
Clark Sabey
Fred Voros
Joan Watt

EXCUSED

Tawni Anderson
Marian Decker
Jennifer Gowans
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. Paul Burke seconded the motion. The motion carried unanimously.

II. RULE 41

The committee reviewed the public comments that it received. Louise York had submitted a comment about accommodating electronic transfer between the courts. Matty Branch stated that it is a good comment, but it does not need to be accomplished by rule. Ms. Branch stated that the court could simply do it by practice. Joan Watt also noted that the committee will still need to address electronic filing rules at some point.

Fred Voros then moved to approve Rule 41 as published for public comment. Clark Sabey seconded the motion. The motion carried unanimously.

III. RULE 3

Louise York had submitted a comment suggesting that the proposed language was not clear as to when the notice of appeal is sent to the appellate court. Matty Branch stated that the comment is well taken and suggested clarifying the rule as suggested by Ms. York. Paul Burke

then moved to approve the rule as published and amended. Clark Sabey seconded the motion. The motion carried unanimously.

IV. RULE 37

Matty Branch moved to approve Rule 7. Larry Jenkins seconded the motion. The motion carried, with Paul Burke opposing the motion. Mr. Burke stated that his issue is the same as before, that the court would lack jurisdiction to issue a decision if the parties settled prior to the issuance of the decision, since no case or controversy would exist. Judge Orme noted that the parties could still move to dismiss even after an opinion is issued. Judge Orme noted that the rule only addresses voluntary dismissals. Joan Watt stated that the court could even vacate without a motion.

V. RULE 23C

Staff distributed a revision of Rule 23C incorporating the changes from the last meeting. Matty Branch then moved to approve the rule for public comment. Larry Jenkins seconded the motion. The motion carried unanimously. [Subsequent to the meeting, Fred Voros contacted staff and asked to delay publishing the rule until he could provide additional comment from his office.]

VI. VICTIM AMICUS BILL

The Legislature recently passed a law permitting victims to file a “statement” with an appellate court. The committee discussed whether the Legislature had the constitutional authority to do this, but ultimately decided that it was an issue that it did not wish to take on.

Joan Watt suggested that the committee not draft a rule change, but simply let the statute govern. Judge Orme agreed, suggesting that the committee wait and see if this becomes an issue. Fred Voros stated that it will become an issue because there are aggressive victims’ right attorneys. Mr. Voros suggested that it would be best if the rules permit a victim to file an amicus brief and not just a statement. Clark Sabey stated that this could be difficult for the appellate courts because most victims will be pro se and will usually not comply with the rules. Joan Watt stated that there will be a problem with victims entering a case and providing facts that might not have been in the record. The parties would not have an opportunity to cross-examine or provide additional information. Ms. Watt stated that this could affect the outcome of a case. Mr. Voros stated that even if a statement is submitted to the court it will have to be sent to all parties. Mr. Voros expressed a concern that the statement might create post-conviction issues and lengthen litigation. Mr. Voros stated that he wanted to talk with Ron Gordon to see if his office understands the consequences of the statute. Mr. Voros also suggested talking to Rick Schwermer to see what kind of concerns the court had and what the court might accept.

VII. FRIVOLOUS AND INAPPROPRIATE FILINGS

Judge Orme distributed an e-mail noting several rules which discuss sanctions for frivolous filings and other issues. Judge Orme suggested having a single rule to address all these issues, rather than to have the provisions scattered throughout other rules. The committee agreed with this suggestion. Staff was instructed to review all the rules and propose a single rule.

VIII. RULE 24(h)

Matty Branch stated that she wanted to bring this back to the committee to see if it intended that a request for over-length brief involve both the requirement that the request be within 7 days and that it involve a request for more than 5 pages. After brief discussion, the committee agreed that the rule was drafted as intended.

VIII. OTHER BUSINESS/ADJOURN

Larry Jenkins noted that he has an agenda item on pagination. The committee agreed that it would discuss it at its next meeting. The committee scheduled its next meeting for July 9. The committee adjourned at 1:30 p.m.