

# 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

June 17, 2009 - 12: 00 p.m.

#### **ATTENDEES**

Matty Branch  
Paul Burke  
Jennifer Gowans  
Larry Jenkins  
Judge Gregory Orme  
Clark Sabey  
Joan Watt

#### **EXCUSED**

Marian Decker  
Bryan Pattison  
Judge Kate Toomey  
Fred Voros

#### **GUESTS**

Mark Buchi  
Rick Schwermer

#### **STAFF**

Brent Johnson

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

Joan Watt welcomed the committee members to the meeting and welcomed the guests. Judge Orme moved to approve the minutes from the last meeting, with the correction of one typographical error. Clark Sabey seconded the motion. The motion carried unanimously with Paul Burke abstaining because he was not at the last meeting.

### **II. TAX APPEALS**

Mark Buchi presented a proposal to change the appeals process in tax cases. Mr. Buchi stated that about ten years ago the Constitution was amended to allow the Legislature to provide for trials de novo of tax cases in district court. The statute allows a party to file a tax commission appeal in either the district court or the Supreme Court. Judge Orme asked whether taxpayers consider the facts of the case and the legal issues involved in deciding where to file. Mr. Buchi stated that taxpayers will typically file in a district court when the issues are fact-intensive and in the Supreme Court when there are primarily a legal issues involved.

Mr. Buchi explained that counties are sometimes parties in these cases because the resolution taxpayer issues might affect county tax revenue. Mr. Buchi stated that these situations can create problems because the taxpayer might file an appeal in one court and the county then files an appeal in a different court. Mr. Buchi stated that problems arise from the fact that

standards of review are different, and resolution of one case might affect the other. Mr. Buchi stated that the statute does not address this situation so the proposed solution is to stay the Supreme Court proceeding pending outcome of the district court case. Judge Orme asked whether there is ever a situation in which one of the parties has a complicated issue and one of the parties has a simple issue that the party would like to take directly to the Supreme Court. Judge Orme stated that in this situation one party might want to work directly from the record before the tax commission, rather than having a complete new proceeding in the district court. Mr. Buchi stated that there is a possibility for that, but the issues in the district court could be complicated and therefore would affect the issue that is before the Supreme Court. Mr. Buchi stated that the party should therefore be involved on the district court, and in every situation in which he has been involved the parties take the opportunity to participate in the district court proceedings.

Paul Burke asked why the proposal require a stay of the Supreme Court proceedings, rather than a dismissal. Mr. Buchi stated that this is because the district court proceeding could be resolved in a way other than a resolution which creates a final, appealable judgment. In that situation, the party before the Supreme Court would want to continue the case after the district court proceeding is resolved.

Judge Orme asked where the proposal should be placed in the appellate rules. Clark Sabey suggested Rule 15, because that is currently reserved. Rick Schwermer asked whether there are any opponents to the proposal. Mr. Buchi stated that he cannot think of any because all interested parties can go in any direction as far as an appeal is concerned. Mr. Schwermer asked whether the tax commission might oppose this. Mr. Buchi stated that the tax commission does not oppose the proposal, they simply want a clarified process. Joan Watt asked how many cases there are in a year. Mr. Buchi stated that there are about six tax court proceedings a year and perhaps the same amount that are direct appeals to the Supreme Court. Ms. Watt stated that the parties have always been able to file a motion for a stay in the Supreme Court. Ms. Watt asked whether there have been any situations in which a motion was not granted. Mr. Buchi stated that he is not aware of any, but he is aware of one case in which a party had to file multiple motions for stays because the district court proceedings continued longer than anticipated by the Supreme Court.

Paul Burke asked why the proposal did not state that the Supreme Court could just send the issues directly to the district court. Mr. Buchi stated that this could force a party to accrue more costs by litigating issues that the party does not want to litigate. Also, the party might want to preserve issues from the record created before the tax commission. Mr. Burke asked whether there is a possibility that a party might not be notified when a final, appealable order is issued by the district court. Mr. Buchi stated that there might be situations in which the district court does not notify the party, but the party would receive notice from the Supreme Court that the appeal is going to be dismissed. The party could then take action in that circumstance.

Judge Orme suggested that there be an exception in the rule to allow the court to refuse to automatically dismiss an appeal when there is good cause. Clark Sabey suggested that such an exception might swallow the rule. Mr. Buchi stated that he would like a stronger presumption than good cause. Mr. Buchi suggested that the standard be “exceptional circumstances.”

Judge Orme moved to adopt the proposal with the addition of the “exceptional circumstances” standard and to incorporate Paul Burke’s suggestion to change the language to “upon the issuance of a final appealable order.” Clark Sabey seconded the motion. The motion carried unanimously.

### **III. SCOPE OF REPRESENTATION**

Joan Watt stated that Fred Voros was not able to attend the meeting and asked that the discussion on this issue be postponed until the next meeting. Ms. Watt agreed, stating that the Attorney General’s Office input is important.

### **IV. AUTOMATIC AMICUS STATUS FOR THE ATTORNEY GENERAL’S OFFICE**

Ms. Watt reminded committee members that the committee had invited Annina Mitchell to attend the meeting to explain the proposal to grant automatic amicus status to the Attorney General’s Office. Ms. Watt stated that Ms. Mitchell had decided to drop her proposal for the time being.

### **V. OTHER BUSINESS**

Paul Burke asked whether there had been any activity on a victim’s right to file a statement in appeals. Mr. Sabey stated that he is not aware of any cases. Ms. Watt stated that the Supreme Court decided to wait and see if the new process creates any problems.

The committee set its next meeting for September 30, 2009. The meeting adjourned at 1:00 p.m.