

**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

October 28, 2009 - 12:00 p.m.

**ATTENDEES**

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

**EXCUSED**

Fred Voros

**Staff**

Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

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

**II. RULE 15**

Larry Jenkins stated that he had talked to his partner about this issue. Judge Kate Toomey asked whether he had asked his partner about the rule that the committee is reviewing. Mr. Jenkins stated that his partner does not care either way, because his frustration is with the statute.

Joan Watt raised the question of whether the dismissal portion of the rule is substantive. Clark Sabey stated that the problem with dismissing the case by rule is that the statute says parties can appeal to both courts. The committee members agreed that the

dismissal provision should not be adopted, but the stay provision should remain. Staff recommended that the committee send the two versions to the supreme court to allow the court to determine whether the provision is substantive.

Marian Decker asked whether the committee was going to keep the “exceptional circumstances” language? Ms. Watt asked whether “good cause” might be a better standard. Paul Burke stated that this threshold is too low. Mr. Burke stated that the Supreme Court might be likely to grant all requests because of the lower standard. Tawni Anderson suggested that the standards are essentially the same and it is ultimately up to the Supreme Court to determine whether the parties will be able to avoid the stay. Judge Kate Toomey stated that a higher standard will at least discourage some parties from seeking to avoid the stay. The committee decided to change the phrase “exceptional circumstances” to “compelling circumstances.” Larry Jenkins moved to approve the rule, eliminating the dismissal provision and adding “compelling circumstances.” Judge Toomey seconded the motion. The motion carried unanimously.

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

Ms. Watt noted that Fred Voros was not at the meeting because he is ill. This issue was postponed until the next meeting.

### **IV. APPELLATE OPINION PRIVACY**

Matty Branch distributed materials discussing whether appellate court opinions should protect the parties’ privacy by eliminating references to parties names and instead using initials. Matty Branch stated that the appellate courts do not necessarily think a rule should be adopted. It might just be an issue of heightened awareness for the appellate courts. Ms. Branch stated that the appellate courts want the committee’s input.

Judge Toomey noted that the parties names will be in the trial court record and it would therefore be very difficult to protect privacy. Judge Orme stated that there would be a difference because individuals would have to search the trial court record for those names whereas the appellate court opinions are published in various public formats and the names are much more easily accessible in those formats. Judge Orme stated that a Google search of someone’s name, for example, might result in finding appellate decisions, but keeping the names out of the opinions would not produce the same result. Judge Orme stated that initials are very difficult to follow in opinions because all of the initials start to run together. Judge Orme stated that descriptive references are much more helpful, such as referring to “the 8 year old” or to “the victim.” Judge Orme stated that if the committee decides that a rule is appropriate, then the committee should also decide

the extent to which the rule would apply, such as whether it would apply to briefs as well as opinions. Judge Orme stated that the committee should also decide to which individuals the rule would apply, such as the parties, witnesses, victims, etc. Paul Burke noted that parties already have the ability to file motions to seal portions of the record. Judge Toomey stated that sealing is often very difficult for judges because they have to search through files to find documents, opening up each sealed envelope to find protected pleadings.

Joan Watt stated that the committee should gather information and review the issue at the next meeting. Tawni Anderson noted that the federal courts are more concerned about identity theft than embarrassment of parties and others. Ms. Anderson suggested that any rule should be directed toward discouraging parties from using names. Jennifer Gowans asked whether it is more helpful for courts and readers to reference names rather than designations such as “the victim” or “the appellant.” Ms. Gowans suggested that this might just be a policy issue for the courts. Larry Jenkins noted the rule requirement that parties list the other parties to the appeal. Mr. Jenkins asked why that requirement is there and wondered whether it is to alert the judges to potential conflicts. Mr. Burke stated that it might be a good idea to protect privacy in that area but still have a mechanism for judges to review the parties’ names for potential conflicts.

Judge Toomey suggested that the committee review the federal rules. Judge Toomey stated that as the committee looks at its rules, there might be a need to communicate with the other rules committees on potential changes. Judge Orme stated that the Judicial Council is in the process of enacting a rule about what information the parties should put in their trial court pleadings. The rule will state that the parties should, for example, only put the last 4 digits of social security numbers and the first 3 digits of drivers license numbers. Joan Watt suggested inviting Tim Shea to the next meeting to explain the changes. Ms. Watt stated that she will also review Rule 24 and perhaps propose changes.

## **V. OTHER BUSINESS/ADJOURN**

The committee members did not have any other business. The committee scheduled its next meeting for January 20, 2010. The committee adjourned at 1:05 p.m.