

MINUTES

Appellate Committee
on Procedure

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

August 18, 2010

ATTENDEES

Marian Decker
Jennifer Gowens
Larry Jenkins
Diane Abegglen
Judge Kate Toomey
Judge Fred Voros
Joan Watt
Clark Sabey

EXCUSED

Judge Gregory Orme
Paul Burke
Bryan Pattison
Tawni Anderson

STAFF

Brent Johnson

I. WELCOME

Joan Watt welcomed the committee members to the meeting. Ms. Watt introduced the new Appellate Court Administrator, Diane Abegglen, who is taking Matty Branch's place as a member of the committee.

II. RULES PUBLISHED FOR PUBLIC COMMENT

The committee reviewed the recent rules that were published for public comment. Marian Decker stated that the amendment to Rule 23B should be approved and published even though the committee is considering a repeal of Rule 23B. The committee agreed because it might be awhile before the rule is repealed. Judge Kate Toomey then moved to approve all of the rules that were published for public comment. Fred Voros seconded the motion. The motion carried unanimously.

III. E-FILING SUBCOMMITTEE

Judge Toomey stated that the e-filing subcommittee had met twice. Judge Toomey stated that the subcommittee decided to approach the appellate courts to gather their input about this issue. Judge Toomey stated that she sent communications to Chief Justice Christine Durham and Judge James Davis for their input. Judge Toomey stated that her subcommittee had looked at

other jurisdictions and noted that most jurisdictions had implemented appellate e-filing before e-filing in the trial courts.

IV. TRANSCRIPT FORMS AND RULE CHANGES

Judge Voros introduced changes to the forms and rules dealing with the process to obtain a transcript. Judge Voros stated that the changes came from Lisa Collins, who oversees the transcript process. Judge Voros stated that the changes were all designed to conform to the new system, which involves requesting transcripts electronically. Judge Voros briefly reviewed the proposals and then moved to approve the amendments. Judge Toomey seconded the motion. The motion carried unanimously.

V. SCOPE OF REPRESENTATION

Joan Watt stated that she had talked to Carol Verdoia about how the proposed rule defining the scope of representation would affect the juvenile courts. Ms. Verdoia stated that the change won't affect the juvenile courts because the juvenile statute and rule already cover the scope of representation. Ms. Watt stated that the committee will discuss the proposed rule language at the next meeting.

VI. RULE 23B SUBCOMMITTEE

Judge Voros reviewed the genesis of the proposal to repeal Rule 23B. Judge Voros stated that his subcommittee has met twice. Mr. Voros stated that the subcommittee recommends repealing Rule 23B. Judge Voros stated that they will also propose an amendment to Rule 65C of the Rules of Civil Procedure to remind judges that they can appoint counsel in capital cases. Clark Sabey stated that the original purpose of Rule 23B was to create a record while the defendant was still represented by counsel. Mr. Sabey stated that the proposed change to Rule 65C will help create such a record in post-conviction cases. Judge Voros stated that the subcommittee also recommends establishing training on how to do post-conviction cases. Judge Voros stated that a repeal of the rule should not completely prohibit the process covered by Rule 23B. Judge Voros stated that parties should still be able to request remand.

Joan Watt stated that she agrees with repealing the rule. Ms. Watt stated that Rule 23B was a great idea at the time it was enacted, but the process had become expensive and burdensome. Ms. Watt stated that the procedural hoops are difficult to navigate and there is no real ability to investigate the claims. Ms. Watt stated that the idea of still being able to do a motion for remand is a good idea.

Judge Voros then moved to accept the sub-committees recommendations:

- 1) Agree to the Appellate Representation Task Force's recommendation that Rule 23B be repealed,
- 2) Amend Rule 65C as stated,
- 3) Recommend that the Task Force implement a training component.

Larry Jenkins seconded the motion. The motion carried unanimously. Ms. Decker asked whether this meant that Rule 23B would be repealed before the Task Force acts. Ms. Watt stated that the committee's vote means that the rule will be repealed. Ms. Watt stated that the committee will simply wait for the Task Force to act.

VII. WORD COUNT RULE

Prior to the meeting, Larry Jenkins had submitted to committee members a proposed rule to implement a word count. Judge Voros stated that he had disseminated the rule to his colleagues and they would like an opportunity to comment before the committee discusses the rule. The committee members agreed with this. The committee will discuss the rule at the next meeting.

VIII. OTHER BUSINESS/ADJOURN

The committee scheduled its next meeting for October 20th. There being no further business, the committee meeting adjourned at 1:30 p.m.