

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

November 16, 2011

ATTENDEES

Judge Fred Voros
Judge Gregory Orme
Marian Decker
Bryan Pattison
Clark Sabey
Joan Watt
Ann Marie Taliaferro
Lori Seppi
Troy Booher
Diane Abegglen
Paul Burke
Bridget Romano

EXCUSED

Tawni Anderson

STAFF

Brent Johnson

I. Welcome and Approval of Minutes

Joan Watt welcomed the committee members to the meeting. The committee members made several changes to the minutes from the last meeting. With those changes, Judge Fred Voros moved to approve the minutes. Judge Gregory Orme seconded the motion. The motion carried with Paul Burke and Bridget Romano abstaining because they were not at the previous meeting.

II. Rule 38B

Judge Voros explained the proposed procedure for being added to the roster of qualified appellate counsel. Judge Voros stated that there will be a committee to review applications. Judge Voros stated that after this review the committee will recommend to the Board of Appellate Court Judges the attorneys to be added to the roster. Judge Voros stated that the committee could also make recommendations on removal from the roster. Judge Voros stated that the committee will provide recommendations by August 1 of each year, as the Board of Appellate Court Judges meets during the annual judicial conference in September.

Judge Voros stated that the subcommittee removed the CLE requirement and eliminated the process for grading briefs. Judge Voros stated that the review committee will have more discretion on determining what is and what isn't relevant for qualification. Judge Voros stated that applicants will no longer have to reapply every two years.

Judge Voros stated that there will also be an exception in the rule for public defender entities that have contracts in counties of the first class. Judge Voros stated that Salt Lake County is currently the only county of the first class and therefore the Salt Lake Legal Defenders Association would be exempt from the rule. Judge Voros explained that there will also be a provisional appointment process. Judge Voros stated that because the review process will occur only once a year, an attorney may apply to be provisionally qualified until final recommendations are made. The attorney would be qualified immediately upon submitting an application, subject to review.

Joan Watt stated that the subcommittee tried to follow the spirit of the task force's recommendations but the subcommittee also wanted to address specific concerns about how the process would affect offices such as hers. Ms. Watt explained that there are not many attorneys clamoring to be defense counsel and therefore the process should not have too many hurdles. Ms. Watt also stated that the problems are occurring outside of Salt Lake County, and therefore those areas should be the focus of the rule.

Troy Booher stated that subparagraph 1(d) seemed overly restrictive by removing committee members for one absence. Judge Voros suggested changing the language to two consecutive absences, which would reflect the subcommittee's intent. Ms. Watt stated that the subcommittee discussed whether to include prosecutors on the committee and ultimately decided to include them because they will be aware of some of the fiscal concerns facing their local government entities. Judge Voros also suggested that the judges on the committee could be either active or retired judges.

Ms. Watt suggested that the committee members review the proposals and come prepared to discuss the proposals at the next meeting. Ms. Watt suggested that the committee members also review the task force report.

III. Child Welfare Rules

Paul Burke explained that he had recently had a child welfare appeal and he discovered some issues with the child welfare rules. Mr. Burke stated that there are different time-frames for filing final appeals and interlocutory appeals and perhaps those time-frames should be the same. Judge Orme stated that there is less of a concern on time-frames for interlocutory appeals because shorter time-frames on final appeals are to insure that kids do not remain in limbo for long periods of time. Bridget Romano stated that the committee should obtain the input from Carol and John in her office before making any final recommendations. Judge Voros stated that Martha Pierce should also be involved. Judge Orme suggested that Lisa Lokken be given an opportunity to provide input. Judge Orme noted that the court sees very few interlocutory appeals and grants even fewer.

Mr. Burke also stated that Rule 54 contains time-frames that may be too short. Judge Orme noted that the rules presume no transcript and that the petitions and responses end up being more like proffers. Judge Orme stated that the court then reviews that information to decide whether full briefing is warranted. Judge Voros noted that the rule needs to be changed to conform with Rule 11 requesting transcripts through electronic means. Mr. Burke also stated that Rule 60, on “type-written” briefs, should be changed.

Mr. Burke also stated that individuals should be represented by an attorney because of the constitutional rights involved. Ms. Romano suggested that the court should appoint a GAL and an attorney for the parent, given that the recommendations of the GAL and the attorney might be different. Mr. Burke stated that he will take the committee’s comments and present proposals at the next meeting.

IV. Rules 24 and 9

Ms. Watt stated that Leslie Slaugh had made a proposal to conform language in Rule 24(a)(7) with Rule 9(c)(1). Judge Voros suggested that the language should perhaps be more clear on what is meant by the statement of the case. Judge Voros stated that some attorneys will provide a procedural history of the case while some attorneys will encapsulate what the case is about. Judge Voros stated that he finds the latter to be most helpful. Bryan Pattison noted that Mr. Slaugh had eliminated some language in his proposal and that the omitted language should be separated into subparagraphs so that each of those provisions are defined. Ms. Romano stated that the 10th Circuit separates these provisions and perhaps the committee should look at the 10th Circuit rule. Judge Orme volunteered to draft a proposal and bring it to the next meeting.

V. Appellate Representation in Child Welfare Appeals

Staff explained that he had received a telephone call from Michael Rawson suggesting that the child welfare rules be amended to permit appellate counsel to file petitions on appeal rather than just allowing trial counsel to file. Staff stated that Mr. Rawson was having some problems with his county contract and the issues could be resolved if such a change were made. The committee decided to review that issue with the other child welfare rules/proposals.

VI. Other Business/Adjourn

Clark Sabey stated that he had some items for the next agenda. The committee scheduled its next meeting for Wednesday, January 11, 2012. The meeting adjourned at 1:20 p.m.