

MINUTES

**SUPREME COURT’S ADVISORY COMMITTEE ON THE
UTAH RULES OF APPELLATE PROCEDURE**

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

Judicial Council Room
Thursday, March 3, 2016
12:00 p.m. to 1:30 p.m.

PRESENT

Joan Watt- Chair
Troy Booher
Marian Decker
R. Shawn Gunnarson
Alan Mouritsen
Judge Gregory Orme
Adam Pace – Recording Secretary
Rodney Parker
Bridget Romano
Clark Sabey
Lori Seppi
Tim Shea-Staff
Judge Fred Voros
Mary Westby

EXCUSED

Paul Burke
Ann Marie Taliaferro

1. Welcome and approval of minutes

Joan Watt

Ms. Watt welcomed the committee to the meeting and invited a motion to approve the minutes from the March meeting.

Mr. Sabey moved to approve the March minutes. Ms. Decker seconded the motion and it passed unanimously.

2. Linking to the trial court record

Penny Rainaldi

Mr. Shea introduced Penny Rainaldi, a member of the IT team working to develop the court’s system for appellate e-filing. Ms. Rainaldi presented an early proof of concept for the e-filing system that allows attorneys to hyperlink record citations in appellate briefs to the electronic record. She demonstrated how to create the links and electronically file a brief using a sample brief supplied by Mr. Parker. The committee’s overall impression of the demonstration was very positive.

Mr. Booher suggested and others agreed that it would be a good idea to have a uniform naming convention for briefs and other motions that are e-filed. Mr. Shea explained that the e-filing interface will have a narrow range of naming options for briefs and motions.

Mr. Sabey asked whether pro se litigants will also have access to the system. Mr. Shea explained that they will have access to the electronic record and the tools for creating a document with links, but that an attorney login will be required to e-file the brief.

Ms. Taliaferro expressed concern about the amount of time and work it will take attorneys or their staff to manually create links using the system. Judge Voros commented, and others agreed, that it would be more efficient if the system could automatically populate the links, instead of requiring attorneys to input them manually. Mr. Shea and Ms. Rainaldi said they will explore that option.

3. Consideration of comments to:

Tim Shea

Rule 4. Appeal as of right: when taken.

Rule 28A. Appellate mediation office.

Mr. Shea reported that there were no public comments on the proposed amendments to Rule 28A or Rule 4, and that these rules are now ready for the committee's recommendation to the Utah Supreme Court. Mr. Shea explained that the civil rules committee is still considering amendments to some rules that may impact Rule 4, and that Rule 4 will be submitted for consideration to the court in a packet together with the civil rules committee's recommendations when they are finished.

Judge Voros expressed surprise that there were no public comments, and concern as to whether anyone was reading the proposed amendments.

Ms. Westby commented that she does not like the amendment to include URCP 60b motions in the list of motions that tolls the time for appeal under Rule 4(b). She asked whether the deadline for those motions could be changed to be consistent with the deadline for motions under URCP 59. Mr. Shea stated that the committee has agreed to make that change to 28 days.

The committee continued to discuss whether a motion or claim for attorney's fees should be included in Rule 4(b). Mr. Booher suggested that the rule should be clarified to state that the tolling provision also applies to motions or claims for attorney's fees other than those brought under URCP 73—for example, when a request for fees is granted earlier in the litigation. Ms. Watt proposed that the committee should wait to approve Rule 4 or make further changes to it until they hear back from the civil rules committee about the proposed changes to related civil rules. The committee agreed with this proposal.

Ms. Watt invited a motion for the committee to approve the amended Rule 28A and recommend it to the Utah Supreme Court.

Mr. Booher moved to approve Rule 28A and recommend it to the Utah Supreme Court. Mr. Sabey seconded the motion and it passed unanimously.

4. Rule 4. Appeal as of right: when taken

Tim Shea

Mr. Shea explained that the Utah Supreme Court requested a recommendation from the committee about whether a time limit should be imposed for filing a motion under Rule 4(f) to reinstate the time to file a direct appeal in criminal cases. Mr. Shea proposed amending the rule to impose a one year time limit.

Ms. Watt recalled that the committee already discussed this issue and decided to not include a time limit. Ms. Decker stated that she asked for the issue to be revisited. The committee proceeded to discuss whether a time limit should be imposed.

Ms. Decker supported including a time limit and agreed with Mr. Shea's proposal of one-year. Judge Voros suggested including a one year time limit with a good cause exception. Ms. Westby commented that a year is too short. Ms. Watt expressed concern, and others agreed, that the district court might construe a time limit in the rule as a presumption that an untimely motion should be denied.

Ms. Watt opposed including a time limit. She commented that there are very few of these requests, and that it is important to protect the constitutional rights of defendants to appeal. She said that a time limit is not necessary in Rule 4(f) because the procedure established in *Manning v. State* for analyzing these motions already requires the court to consider whether good cause exists to reinstate the time for a direct appeal.

Ms. Watt asked whether the concern about imposing a time limit is related to appeals from justice court. Ms. Westby recalled that the committee's conclusion from the last time this issue was discussed was that a time limit should be imposed only for appeals from justice court.

Mr. Shea and Mr. Sabey proposed revisiting this issue after they gather more information from the court and the criminal rules committee. The committee agreed with this proposal.

5. Rule 2. Suspension of rules

Clark Sabey

Mr. Sabey introduced the proposed amendment to Rule 2 to include Rule 14(a) in the list of rules the court cannot suspend in a particular case. There were no comments on the proposal. Ms. Watt invited a motion approving the amendment.

Ms. Taliaferro moved to approve the proposed amendment. Mr. Booher seconded the motion and it passed unanimously.

6. Other Business

Tim Shea

The other items on the agenda were tabled until the next meeting. The committee did not discuss other business.

7. Adjourn

The meeting was adjourned at 1:30 p.m. The next meeting will be held on Tuesday, April 5, 2016.