

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, April 5, 2016
12:00 p.m. to 1:30 p.m.

PRESENT

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

EXCUSED

R. Shawn Gunnarson
Paul Burke

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 requested that the third paragraph in page 3 of the minutes be changed from “Mr. Sabey expressed concern” to reflect that Ms. Watt had expressed that concern, and that he had asked her a question about it. The minutes were also amended to reflect that Ms. Romano was present at the meeting and that Ms. Taliaferro was not.

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

**2. Consideration of comments to Rule 4
Motion to reinstate the time to appeal.**

Tim Shea

Mr. Shea reported on the status of the package of civil and appellate rules designed to treat a motion or claim for attorney fees the same as other post-trial motions. There were no public comments to Rule 4. There were some comments to the civil rules in the package (54, 58A, and 73), but none that had to do with adding motions or claims for attorney fees to the list of Rule 4(b) motions. The civil committee has approved the civil rules in the package, and they are ready to be submitted to the Utah Supreme Court together with this committee's recommendation on Rule 4.

Mr. Shea reported that the civil rules committee views the package of amendments as tolling the time for appeal for both (1) post-judgment motions or claims for attorney fees; and 2) post-judgment motions or claims to determine the *amount* of attorneys fees, where the court has already entered an award of attorneys fees prior to the final judgment. This response resolved the concern this committee raised in the March meeting when discussing this issue. Ms. Watt invited a motion to approve Rule 4.

Mr. Sabey moved to approve the amended Rule 4 and recommend it to the Utah Supreme Court. Mr. Booher seconded the motion and it passed unanimously.

Mr. Shea raised the issue of whether there should be a time limit for appeals from criminal judgments of the district court, and, if so, what should the limit be. Ms. Watt suggested, and the committee agreed, to defer this discussion and place it on the agenda for a future meeting.

3. Consideration of comments to e-filing rules.

Tim Shea

Mr. Shea explained that development of the e-filing system has been delayed, and that it will not be ready by July 1, 2016 as originally estimated. The current estimate is that it will be available in the Fall. However, that is not a realistic estimate, and it is likely that the system will not be ready until next year.

Mr. Shea explained that the clerks of court have requested some interim action be taken to allow documents other than briefs (such as docketing statements, motions, etc.) to be filed by email only, until the e-filing system is ready. This is a matter of administrative convenience. Mr. Shea asked the committee to consider whether some of the new e-filing rules could be adopted before the e-filing system is launched to accomplish this. Another suggestion was to enter a standing order to allow the practice.

Ms. Seppi commented that it makes sense to leave the rules alone for now; adopt the e-filing rules when the e-filing system is ready; and enter a standing order that permits the documents to be emailed. Mr. Parker opposed adopting the e-filing rules in a piecemeal fashion and commented that doing so would lead to chaos. The committee discussed and agreed that the e-filing rules should not be adopted piecemeal, and that it is better to wait to adopt them until the e-filing system is ready.

The committee discussed whether a standing order should be entered to accommodate the clerks' request to allow email filing of documents. Judge Voros commented that he generally

does not like standing orders, and that anything that can go in a rule should go in the rule because practitioners are more likely see them. However, if email filing is made optional and is not required, he does not have a problem with it being in a standing order. Ms. Watt commented that a standing order is a good idea for an interim step, because it will take too long to get the rule changed and it will just be changed again when the e-filing system is ready. She suggested that briefs and anything jurisdictional should be exempted from email filing. Mr. Parker suggested that if a standing order is used, it should state that email filing is treated like service by mail, which allows for 3 extra days.

Ms. Romano asked whether the deadline for email filings should be 5 p.m. or midnight. The committee discussed and agreed that the court should decide, but that whatever the deadline is it should be the same for all filings.

Mr. Booher commented that instead of a standing order, the court could authorize email filing in the opening letter it sends to the parties on appeal, similar to the old practice of allowing documents less than 5 pages to be submitted by fax. Mr. Mouritsen commented that this would be similar to the court's current practice of permitting parties to file unbound copies of briefs.

Overall, the committee agreed that it is a good idea to have an interim system that allows email filing of documents other than briefs or jurisdictional filings, and that this could be accomplished either through a standing order or by authorizing the practice in the court's opening letter to the parties.

Comments to e-filing rules

Mr. Shea reported on the public comments that were received to the e-filing rules, as well as comments received during the e-filing CLE presentation. These comments were summarized in a hand-out that he distributed to the committee entitled "CLE Follow Up and Comments to E-filing rules." The committee discussed each comment and decided on the following actions:

- 1) The committee discussed and agreed that the e-filing system should allow for service to multiple email addresses. Mr. Shea said he would follow up on this point with the development team.
- 2) Several comments addressed the need to re-write Rule 21A to provide text strings for citing to the record for multiple cases in multiple courts. The subcommittee met and suggested a solution using modified test strings to address records from the district court (D:#:#), juvenile court (J:#:#), justice court (U:#:#), Court of Appeals (A:#:#), and Supreme Court (S:#:#). In a multiple case scenario, the text string will include a number (i.e., D1:#:#). The committee discussed and agreed that parties should identify other cases associated with the appeal in the docketing statement or in a supplemental letter to the court.
- 3) Several comments pointed out typos or suggested minor word changes in the rules. Mr. Shea said he will present a revised draft of the rules at the next meeting.

Mr. Shea stated he will keep the committee apprised of the status of e-filing. The other items on the agenda were tabled until the next meeting.

4. Adjourn

The meeting was adjourned at 1:34 p.m. The next meeting will be held on Thursday, May 5, 2016.