

**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

February 20, 2013

**ATTENDEES**

Judge Gregory Orme  
Judge Fred Voros  
Joan Watt - Chair  
Bridget Romano  
Troy Booher  
Paul Burke  
Marian Decker  
Bryan Pattison  
Clark Sabey  
Lori Seppi  
Diane Abegglen  
Mary Westby

**EXCUSED**

Ann Marie Taliaferro  
Brent Johnson

**I. Welcome and Approval of Minutes**

Joan Watt welcomed the committee members to the meeting. The minutes were approved without amendment and seconded. The motion carried unanimously.

**II. Rule 4 / 58A Update**

Ms. Watt reported that rule 4 and Utah Rule of Civil Procedure 58A have been approved by the respective committees. Judge Voros suggested that the rules of criminal procedure might need to be amended to include language similar to the language found in rule 4(f), the "*Manning* rule." Ms. Watt noted that the criminal rules committee would have to make such an amendment and agreed to pass that suggestion along to the chair of that committee.

**III. Docketing Statements**

Judge Voros reported the he and Mary Westby have drafted proposed amendments to rule 9 that would streamline the docketing statement to include only that information important to the central staff of the appellate courts.

Ms. Westby stated that the proposed amendments include a new Purpose section to explain the purpose of the docketing statement, thereby, helping to eliminate irrelevant material from docketing statements. She further explained that the proposed amendments divide docketing statements into three categories—civil, criminal, and administrative—and provide the requirements for each category separately.

Judge Voros suggested that the committee might also want to consider eliminating rule 9's requirement that certain documents be attached to the docketing statement. Ms. Westby agreed that attachments might not be necessary due to central staff's access to electronic data. She explained that the appellate clerks already refer to Exchange in most cases because the documents attached to the docketing statements are not always date stamped. She mentioned, however, that attachments would still be needed in administrative cases because the clerks do not have access to electronic filings in those cases. Diane Abegglen stated that appellate e-filing is not imminent and that it may be a good idea to continue to require attachments until e-filing is instituted.

Bridget Romano suggested that the Forms might need to be amended to conform to the new docketing statement rule.

Clark Sabey mentioned that the staff for the supreme court does not use docketing statements for the same purposes as the court of appeals. The Court uses a pour over statement that is filed before the docketing statement. He stated that the proposed Purpose section is consistent with the supreme court's understanding of docketing statements, but that it could probably be streamlined by eliminating repetitive language.

Ms. Watt suggested incorporating the language from the current rule that clarifies that docketing statements are not necessary for interlocutory appeals. The language is already in rule 5, but it is helpful for practitioners who do not regularly file interlocutory appeals. Ms. Watt also stated that she likes the language included in the Purpose section that says issues raised in the docketing statement need not be raised on appeal. She suggested that it might be a good idea to include language stating the opposite idea as well.

Ms. Watt asked the committee to review the proposed amendments and be prepared to further discuss them at the next committee meeting. Ms. Westby and Judge Voros will follow up on the idea of eliminating the requirement for attachments.

#### **IV. Rule 5**

Ms. Romano distributed proposed amendments to rule 5. Subsection (1)(d) of the proposed amendments institutes a 15-page limitation on petitions for interlocutory appeal. The committee unanimously agreed to change the limitation to 20 pages. The proposed subsection also includes language about "the subject index." The committee members do not know what a subject index is. Ms. Romano said that the language comes from rule 49 regarding petitions for certiorari. Judge Voros suggested that the language might need to be eliminated from rule 49.

Ms. Romano stated that the proposed Subsection (1)(f) tracks the language of the rule 35, and the proposed Subsection (1)(h) tracks the language from rule 49.

Ms. Watt asked whether not permitting an answer would affect the courts. Ms. Westby stated that a large percentage of interlocutory appeals do not require an answer, and that she believes the proposed rule would expedite at least fifty percent of interlocutory appeal cases. Mr. Sabey agreed that it would streamline the interlocutory appeal process. Troy Booher stated that the amendments would expedite civil cases and reduce unnecessary expenditure of resources. Ms. Watt agreed that it would have similar benefits in criminal cases.

Ms. Romano asked whether the 10-day time limit for answers would provide enough time. The committee members concluded that it would. Ms. Romano suggested adding language that would require answers to comply with the 20-page limitation. The committee agreed.

The committee discussed whether to permit replies. Ms. Westby and Mr. Sabey believe that replies are not necessary. Mr. Booher and Ms. Watt suggested a reply might be important to correct a factual misstatement, but Ms. Roman suggested that a motion to strike would fix such a problem.

Ms. Romano and Mr. Sabey stated that they do not believe cross-petitions for interlocutory appeal should be permitted. Mr. Booher agreed but wanted to make sure that a party who does not file a petition for interlocutory appeal off a mixed order does not waive the right to appeal even if the opposing party files a petition off the order. The committee agreed that the right to appeal would not be waived.

Ms. Watt assigned Ms. Romano to rework the proposed changes and to circulate the changes to the committee for further discussion at the next meeting.

## **V. Rule 44**

Judge Voros withdrew his proposed changes to rule 44. He stated that the consensus of the court is that the rule is working fine as it is. Mr. Sabey suggested that a change to the Advisory Committee Note might still be appropriate and said he would review the Note and determine whether any further action would be helpful.

## **VI. Rule 8A**

Mr. Sabey stated that he re-read Snow, Christensen, & Martineau v. Lindberg and believes that his proposed changes to rule 8A incorporate the decision. Judge Voros asked whether a rule 8A petition confers jurisdiction on the appellate court before a notice of appeal, a rule 5 petition for interlocutory appeal, or a rule 19 petition for extraordinary relief has been filed. Ms. Watt and Ms. Romano wondered whether Snow requires rule 5 and/or rule 19 petitions to be filed simultaneously with a rule 8 or rule 8A petition. Ms. Seppi stated that she thinks Snow requires rule 5 and rule 19 petitions to be filed separately from rule 8 or 8A petitions. Mr. Sabey stated that he believes rule 8A confers jurisdiction on the appellate court prior to the notice of

appeal. Ms. Seppi stated that she believes rule 8A only invokes jurisdiction over the emergency stated in the petition.

Judge Voros stated that rule 8A should answer these questions without relying on the opinion. He also noted that the proposed changes to rule 8A do not appear to follow Snow because the proposal says rule 8A does not confer jurisdiction on the appellate court. Mr. Booher suggested that the proposed language identified by Judge Voros should be stricken. Bryan Pattison stated that he believes practitioners can invoke rule 8 to ask the appellate court to do what the trial court refused to do. Mr. Sabey stated that rule 5 and rule 19 petitions should be permitted to be filed after rule 8 and rule 8A petitions because the emergency relief needed might be a small piece of the whole issue on appeal. Judge Voros stated that it is too late to say that rules 8 and 8A do not invoke jurisdiction, but the rule should make clear that the jurisdiction is only for purposes of the emergency relief requested. Judge Voros also wondered whether rule 8A would ever be invoked for relief other than a stay. Mr. Booher stated that it might be invoked for an expedited decision, such as when a decision is needed before an election. Ms. Westby stated that she would read a rule 8A petition as including a rule 8 petition.

Mr. Sabey suggested that rule 8A should be fixed to make jurisdiction and Snow's holding explicit in the rule. He stated that he would go back to the drawing board and draft language that would better clarify the Snow holding and the differences between rules 8 and 8A. Ms. Westby suggested a cross-reference between 8 and 8A might be a good idea.

## **VII. Rule 14**

Ms. Westby suggested changing the language in rule 14(b) about filing fees to make it consistent with rule 3's language about filing fees. Currently, rule 14 makes payment of the filing fees jurisdictional, but rule 3 does not. Paul Burke asked if the change would affect fee waivers. Ms. Westby said that it would not. Mr. Burke suggested changing the proposed language to read "required filing fee" instead of just "filing fee." The change was made. Judge Voros moved to adopt the proposed amendment, as changed. Ms. Romano seconded the motion. The motion passed unanimously.

## **VIII. Rule 27**

Ms. Decker proposed language allowing the case number in a caption on an appellate brief cover to be placed above the name of the appellate court. Ms. Watt said that she thinks the amendment is a good idea. Judge Voros moved to adopt the amendment. It was seconded and approved unanimously.

## **IX. Rule 11**

Due to time constraints, Ms. Watt stated that the committee will address rule 11 at the next meeting.

**X. Rule 23B**

Ms. Watt stated that the 23B subcommittee is waiting for the habeas committee to meet. She will give another update at the next meeting.

**XI. Juvenile Court Record on Appeal Update**

**XI. Other Business / Adjourn**

Mr. Booher suggested that the committee do a global review to assess what rules do and do not permit replies to responses/answers to motions/petitions. Ms. Westby agreed to look into it for the next meeting. The committee scheduled its next meeting for April 10, 2012, at noon. The meeting adjourned at 1:30 p.m.