

Administrative Office of the Courts

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

AGENDA

Supreme Court's Advisory Committee on the Rules of Appellate Procedure

Administrative Office of the Courts
230 South 500 East, Ste. 300
Salt Lake City, Utah 84102

March 17, 1998 - 3:30 p.m.

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|--|------------------------|
| 1. WELCOME AND APPROVAL OF MINUTES | Annina Mitchell |
| 2. RULE 38A, WITHDRAWAL OF COUNSEL | Annina Mitchell |
| 3. RULE 26 SUBCOMMITTEE REPORT | Fred Metos |
| 4. INTERLOCUTORY APPEALS FOR AGENCY ACTIONS | Matty Branch |
| 5. OTHER BUSINESS | |
| 6. ADJOURN | |

MINUTES

**Supreme Court's Advisory Committee
on the Rules of Appellate Procedure**

Administrative Office of the Courts
230 South 500 East, Ste. 300
Salt Lake City, Utah 84102

March 17, 1998 - 3:30 p.m.

IN ATTENDANCE

Annina Mitchell
Karra Porter
Fred Voros
Larry Jenkins
Todd Utzinger
David Arrington
Matty Branch
Fred Metos
Clark Nielsen

ABSENT

Julianne Blanch
Judge Judith Billings
Joan Watt

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Annina Mitchell welcomed the Committee members to the meeting. Todd Utzinger moved to approve the minutes of the January 20, 1998 meeting. Fred Voros seconded the motion. The motion carried unanimously.

11. RULE 38A

Annina Mitchell stated that the Rule 38A proposal is being tabled for the time being, pending an opinion from the Supreme Court.

III. RULE 26 SUBCOMMITTEE REPORT

Fred Metos stated that the subcommittee has done considerable work to incorporate Rule 26, Utah Rules of Criminal Procedure into the appellate rules. One concern deals with appeals from justice courts to district courts. Staff stated that there is a Code of Judicial Administration rule proposal which will grant automatic stays on those appeals. Mr. Metos stated that this may take care of the subcommittee's concerns.

Annina Mitchell cautioned the Committee on adopting substantive provisions into the rules. Fred

Metos stated that many of the provisions in Rule 26 are covered by statute. Mr. Metos suggested cross referencing the statutory provisions. Fred Voros stated that the Committee does not like to cross reference statutes because of changes.

Fred Metos stated that the subcommittee will have proposals by the next meeting.

IV. INTERLOCUTORY APPEALS FOR AGENCY ACTIONS

Matty Branch explained that the Supreme Court justices had recently raised the issue of whether it was intentional or an oversight that there was no right to interlocutory appeal of agency decisions. David Arrington suggested that Rule 18 makes it seem intentional.

Annina Mitchell stated that the issue has arisen out of the Flynn decision recently issued by the court. UAPA does not allow interlocutory appeal nor do any other statutes. Ms. Mitchell stated that the Supreme Court got around the interlocutory appeal question by finding that the order was final. Ms. Mitchell stated the rules cannot create the right to appeal. The jurisdictional statutes for the appellate courts allow the courts to hear interlocutory appeals from agency actions, but no other statute gives parties the right to seek interlocutory appeal. Ms. Mitchell stated that two model administrative acts create the right to interlocutory appeal but Utah has not adopted those model provisions.

Clark Nielsen noted that the rules predate UAPA and the old rules did not have the right to interlocutory appeal either.

Fred Voros moved to table this issue until the petition for rehearing in the Flynn case was determined. As a part of the motion, Mr. Voros suggested that the Flynn opinion be distributed once it is final, along with the relevant parts of UAPA and perhaps provisions from the model statutes. Clark Nielsen suggested locating the notes from the UAPA Committee, which was chaired by Alan Sullivan and Robert Thorpe. Fred Metos seconded Fred Voros' motion. The motion carried unanimously.

V. OTHER BUSINESS

Todd Utzinger stated that he has had some difficulty with the compressed transcript format. Mr. Utzinger suggested having the issue placed on a future agenda. Annina Mitchell suggested that Mr. Utzinger speak with other attorneys who have dealt with this issue and if there is enough support for considering whether to eliminate the compressed format option, that he should bring the issue back to the Committee.

VI. ADJOURN

The next meeting was scheduled for April 21, 1998 at 3:30 p.m. There being no further business, the meeting adjourned at 4:35 p.m.