

MINUTES

APPROVED 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 84114-0241

June 16, 1998 - 3:30 p.m.

PRESENT

Annina Mitchell
Clark Nielsen
Todd Utzinger
Joan Watt
Karra Porter
Fred Voros
Judge Judith Billings
Matty Branch

ABSENT

Julianne Blanch
Larry Jenkins
David Arrington
Fred Metos

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Annina Mitchell welcomed the Committee members to the meeting. Fred Voros moved to approve the April minutes. Todd Utzinger seconded the motion. The motion carried unanimously.

II. RULE 26 SUBCOMMITTEE REPORT

Fred Voros reviewed the report of the Rule 26 Subcommittee. Mr. Voros stated that Rule 26 of the Utah Rules of Criminal Procedure was reviewed because of the reference in Rule 4 of the Rules of Appellate Procedure. As the Subcommittee reviewed Rule 26, it determined that most everything in that rule was covered by statute or another rule. In some instances, the exact language was found elsewhere, in other instances the substance of the rule was addressed. The conclusion of the Subcommittee was to repeal Rule 26 and delete the references to Rule 26 in Rule 4.

As a side note, Mr. Voros also stated that there are changes to the Federal Appellate Rules will be effective December 1, 1998. Mr. Voros suggested that the Committee look at those changes.

Joan Watt suggested that there was one issue that should possibly be addressed by the rule. Ms. Watt stated that in some circumstances a criminal judgment is signed without findings. Her office will file a notice of appeal after the judgment, and then will do another notice after the findings are signed to cover their bases. Ms. Watt stated that she did not know whether it was worth amending the rules

to address that.

After brief discussion, Fred Voros moved to adopt the Subcommittee's report recommending a repeal of Rule 26 and adopting the amendments to Rule 4(b). Todd Utzinger seconded the motion. The motion carried unanimously. Annina Mitchell noted that the footnotes in the Subcommittee report, cross-referencing the sections where the provisions of Rule 26 are covered, should be retained for the purposes of public comment.

III. INTERLOCUTORY APPEALS OF AGENCY ACTIONS

Ms. Mitchell reminded the Committee members that they had received a request from the Supreme Court justices to review whether a rule was appropriate to address interlocutory appeals of agency actions. The response of the Committee was that UAPA does not provide for interlocutory appeals and the Committee is without authority to adopt such a rule. Ms. Mitchell stated that the Barker case was now final, as the petition for rehearing was denied, and she expressed her opinion that there was no reason for the Committee to go further.

Fred Voros questioned why the Committee should not take action. Ms. Mitchell explained that the appellate rules specifically exclude agency actions. Rule 18 stated that Rules 3 through 8 are not applicable to agency appeals. Todd Utzinger stated that Appellate Rules 4 and 5 are covered under the UAPA provisions and therefore the Committee should not and cannot do anything further.

IV. RULE OF CIVIL PROCEDURE CHANGE

Ms. Mitchell stated that the civil procedure committee is amending Rule 6 on the computation of time. The amendment will state that when a time period is less than eleven days, weekends and holidays are not included in the computation of time. The current rule requires a time period of less than seven days. Ms. Mitchell had sent a letter commenting on the rules suggesting that the appellate rule be changed at the same time as the civil procedure rule. Clark Nielsen stated that there is a lot to be said for consistency, but is slightly bothered by the fact that there will not be anything that can be done in less than fourteen days. Karra Porter noted that in true emergencies asking the court for a shorter time is always possible.

Annina Mitchell moved to amend the rule of appellate procedure on computation of time at the same time as the rule of civil procedure. Karra Porter seconded the motion. The motion carried unanimously.

V. OTHER BUSINESS

Fred Voros again raised the issue of compressed format transcripts. Judge Judith Billings stated that she will ask the clerks and attorneys in her court if they are experiencing any problems with the compressed format. The issue may be addressed again in the future.

VI. ADJOURN

The next meeting was schedule for September 15, 1998. There being no further business, the meeting adjourned at 4:20 p.m.