

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 8, 2000

PRESENT

Todd Utzinger
George Haley
Julianne Blanch
David Arrington
Karra Porter
Matty Branch
Fred Voros

EXCUSED

Joan Watt
Clark Nielsen
Larry Jenkins
Fred Metos
Judge Judith Billings

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Todd Utzinger welcomed the Committee members to the meeting. Matty Branch moved to approve the minutes of the November meeting. George Haley seconded the motion. The motion carried unanimously.

II. UPDATE ON MEDIATION RULE

Staff provided an update on the Appellate Mediation Rule. At the previous meeting of the Committee, the Committee had approved the idea of meeting with the Judicial Rules Review Committee to discuss their concerns about the rule. A meeting had been scheduled in early December with Greg Curtis, Judge Michael Wilkins and Karin Hobbs, but Mr. Curtis eventually canceled the meeting. The Judicial Rules Review Committee is not as concerned with the language of the rule, as wanting more information about the appellate mediation office. Given this, the Mediation rule was submitted to the Supreme Court for final approval and was approved with an effective date of April 1, 2000.

III. RULE 3

Matty Branch stated that at the last meeting she had been asked to discuss with staff attorneys the possibility of putting the type of case in the docketing statement, rather than the notice of appeal. Ms. Branch stated that the staff attorneys noted that too many times the docketing statement is delayed until near the time of briefing. The staff attorneys questioned whether the notice of appeal could simply state the degree of offense.

Karra Porter questioned whether a failure to include such a statement would be jurisdictional. Ms. Branch stated that she did not believe it would be.

Fred Voros stated that pro se's could be overwhelmed with the requirements from the notice of appeal and the docketing statement. Mr. Voros proposed simply making certain that the docketing statement is filed timely and the docketing statement could be amended later. George Haley and Julianne Blanch expressed the opinion that they did not believe including the statement in the notice of appeal would be a big deal. After brief discussion, George Haley moved to defer discussion on the issue until Fred Metos and Joan Watt could contribute to the discussion. Julianne Blanch seconded the motion. The motion carried unanimously.

IV. RULE 36

Matty Branch stated that the 1996 case of Hi-Country v. Foothills Water contained language criticizing the footnote to Rule 36. The footnote contains language referencing a 14-day requirement, which does not exist anywhere else. Karra Porter suggested simply changing the language to require a "timely" motion to stay the remittitur. Committee members also discussed the language which references the U.S. Supreme Court, and injunctions and supersedeas. After brief discussion, David Arrington moved to table further discussion of the rule until the history of the rule and its amendments could be researched. Karra Porter seconded the motion. The motion carried unanimously..

V. RULE 44

Matty Branch noted that if a notice of appeal or petition for review is timely filed, but in the wrong court, the court can transfer the matter to the appropriate court. Ms. Branch noted, however, that the rule does not cover petitions for interlocutory appeal. After brief discussion, Matty Branch moved to include the following language in the rule: "a petition for permission to appeal from an interlocutory order." Karra Porter seconded the motion. The motion carried unanimously.

VI. RULE 40

Matty Branch noted that Rule 40 contains outdated language when referring to the Bar's disciplinary council. Ms. Branch stated that the rule also references rules that are no longer in effect. After brief discussion, George Haley moved to amend Rule 40 to reference the "office of professional conduct of the Utah State Bar" or other proper name, and to eliminate the language telling the office which rules to follow. Todd Utzinger seconded the motion. The motion carried unanimously.

VII. ADJOURN

The next meeting was scheduled for March 14, 2000. There being no further business, the meeting adjourned at 4:45 p.m.