

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

October 17, 2000 - 4:40 p.m.

**ATTENDEES**

Todd Utzinger  
Julianne Blanch  
Joan Watt  
Fred Metos  
Fred Voros  
Larry Jenkins  
Matty Branch

**STAFF**

Brent Johnson

**EXCUSED**

Judge Judith Billings  
George Haley  
Karra Porter  
Clark Nielsen

**GUESTS**

Michelle Mattson  
Antje Curry  
Karen Thompson  
Elaine Larsen

**I. WELCOME AND APPROVAL OF MINUTES**

Todd Utzinger welcomed the Committee members to the meeting and welcomed as guests the staff attorneys from the Supreme Court and the Court of Appeals. Fred Voros moved to approve the minutes of the September meeting. Matty Branch seconded the motion. The motion carried unanimously.

**II. DOCKETING STATEMENT RULE**

For the benefit of those in attendance, Matty Branch provided the background of proposed changes to the docketing statement rule. Ms. Branch stated that the Committee has occasionally believed that the rule can be cumbersome and there have been occasional complaints that the Tenth Circuit Court of Appeals docketing statement is easier to create. Ms. Branch stated that there is also a problem with pro ses' understanding of the docketing statement requirement. Larry Jenkins and Fred Voros had worked on proposed changes and it was decided to obtain the input from appellate staff attorneys.

Larry Jenkins stated that there are two approaches to the rule change. The first approach is to attempt to make the rule simpler. The second approach is to create a form for practitioners to essentially fill-in-the-blank.

Todd Utzinger posed the question as to how the appellate courts use the docketing statement. Karen Thompson stated that the Court of Appeals uses the docketing statement for determining whether a case is suitable for summary disposition. They will screen the docketing statement for jurisdictional or insubstantial question issues. Ms. Thompson stated that one addition to the docketing statement that might be helpful is a statement as to whether the appellant has relied on the prison delivery rule.

Fred Voros questioned whether it might be helpful to create a certificate evidencing compliance with the prison delivery rule. Ms. Thompson stated that it might be useful.

Elaine Larsen stated that the Supreme Court uses the docketing statement regularly. They want the statement to be simple, but contain all necessary information. Ms. Larsen stated that it might be helpful to list the date of the order which is being appealed. Discussion ensued about whether it would be helpful to have both the date of the order which is being appealed and the date of the order from which the appeal is taken. Joan Watt stated that sometimes orders, such as orders on motions to suppress, are not reduced to writing. Karen Thompson stated that the Court of Appeals relies increasingly on CORIS for entry dates and is also using CORIS for information on Rule 59 motions. Michelle Mattson stated that the court mostly needs date-stamped copies of the judgment and the notice of appeal.

Fred Voros questioned whether the findings should be contained in the docketing statement. Ms. Larsen stated that findings that support the judgment should be in the statement. Fred Voros suggested including findings that are relevant to the issue being appealed. Fred Metos stated that in some capital cases there may be forty to fifty motions that are relevant to the appeal, and requiring all the findings may create an overly burdensome document. Fred Metos suggested allowing the court to request that the party add more to the docketing statement, rather than placing that burden at the beginning. Mr. Metos suggested requiring findings that are in the judgment, with the authority by the court to request additional findings.

Todd Utzinger questioned the staff attorneys on their thoughts about a form docketing statement. Antje Curry stated that the proposed form looks good. Todd Utzinger stated his objection to the form. Fred Metos stated that the Tenth Circuit form is not user friendly, but the idea is a good one because at least the court gets what it wants.

Antje Curry questioned whether it was important to include whether a defendant is incarcerated. Joan Watt stated that their office hopes that the court will take notice of that fact and expedite the proceeding. Ms. Watt stated that defendants with a zero to five sentence are often bumped by the Board of Pardons because of a pending appeal, thus increasing the time spent in prison.

Joan Watt questioned whether the courts look at controlling cases and statutes. Ms. Curry stated that the courts definitely review controlling statutes. Michelle Mattson stated that the Court of Appeals reviews controlling cases.

Todd Utzinger questioned whether it is helpful to have standards of appellate review in the docketing statement. Ms. Curry stated that this is good at the briefing stage. Ms. Thompson stated that the standard of review is not very helpful at the docketing statement stage.

After additional discussion, Fred Voros agreed to refine the proposed changes to the rule for the next meeting.

### **III. ORAL ARGUMENT, RULE 29**

Todd Utzinger questioned how the courts were using Rule 29. Ms. Branch stated that the Court of Appeals judges are claiming that the rule list does not make sense any more. Elaine Larsen stated that the rule started in 1981 when statutes were enacted to create priorities. At the time, the Supreme Court was six years behind in its caseload. Court staff created the list for the justices to develop a priority and resolve the significant caseload. Ms. Larsen stated that it was her opinion that the list should not have been published, that it should have been an internal document, but now the clerks use the rule and its numbers for notifying the justices of priorities. Joan Watt questioned whether the court used the numbers in the rule. Antje Curry stated that the court uses the numbers. Michelle Mattson stated that the Court of Appeals has many number fifteens that keep getting delayed. Joan Watt suggested that if the rule was an internal mechanism, the courts would have the flexibility to make the rule workable.

Todd Utzinger suggested changing the introductory language of the rule, requiring instead that the parties designate the category for the court's scheduling purposes. Joan Watt stated that misdemeanor cases can be important too because a person may be on probation but facing potential jail time. The Committee members discussed several of the classifications and whether they should remain a priority. Fred Voros suggested that perhaps the parties should include a statement in the brief as to why their case is suitable for fast-tracking.

After brief further discussion, Fred Voros agreed to take the Committee members and staff attorneys' comments and review the priorities set forth in the rule. These changes will be distributed prior to the next meeting.

### **IV. ADJOURN**

The next meeting of the Committee was scheduled for November 21, 2000 at 4:30 p.m. There being no further business, the meeting adjourned.