

MINUTES

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

State Office Building
Room 2112
Salt Lake City, Utah 84114

November 18, 1997 - 3:30 p.m.

ATTENDEES

Annina Mitchell
Larry Jenkins
Julianne Blanch
Joan Watt
Matty Branch
Fred Voros
Todd Utzinger
Karra Porter
Clark Nielsen

EXCUSED

David Arrington
Fred Metos
Judge Billings

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Annina Mitchell welcomed the Committee members to the meeting. Todd Utzinger suggested adding a clarification to the October minutes that a remand to the Court of Appeals after cert will be to resolve issues not resolved by the Supreme Court on cert. Annina Mitchell moved to approve the minutes with that suggestion. Larry Jenkins seconded the motion. The motion carried unanimously.

II. AMENDMENTS TO RULE 4

Staff explained that proposed amendments to Rule 4, incorporating the prison mailbox rule, would be distributed at the next meeting. The proposed amendments would be verbatim the federal rule, except that reference would not be made to a specific statutory section on perjury. Staff explained that Utah does not have a provision which mirrors the federal statute and the consequences of submitting a false certificate are not necessarily known. A certificate of delivery requirement will be incorporated, but prosecuting attorneys will have to determine the penalty for lying on a certificate.

III. RULE 27

Matty Branch noted that the federal rule on word count limit will be in effect in December 1998. Utah should take a wait-and-see attitude, but do something in the interim to resolve the problem of

brief size depending on type size. Ms. Branch distributed a proposed rule which would have a thirteen point or larger requirement for proportionate spacing and ten point or larger for mono space.

Fred Veros questioned whether the rule should distinguish between serif type and sans-serif type. After a brief discussion, the Committee agreed that the rule should not contain language on serified style.

Fred Voros moved to approve Rule 27 as proposed by Matty Branch. Larry Jenkins seconded the motion. The motion carried unanimously.

The Committee agreed that the proposed rule should be sent to the Supreme Court for an effective date in April 1998. The Committee agreed that there was no need for additional public comment.

IV. FAILURE TO RECEIVE NOTICES

Matty Branch explained that the Supreme Court had suggested that the Appellate Advisory Committee review amendments made by the Civil Procedure Committee concerning the consequences of a failure to receive notice. Ms. Branch explained that she had talked to Tim Shea who stated that the issue had been resolved by the Appellate Procedure Committee some time ago, with the understanding that the Appellate Procedure Committee would not make any changes. There is therefore no need to proceed further.

V. FAX FILING UPDATE

Matty Branch explained that the Court of Appeals may implement an experimental project on fax filings. The parameters of the project have not been finalized, but would be limited to documents that are less than ten pages and do not require a fee. Filings would only be stamped during business hours and the sender would bear the risk of equipment failure. The sender would also be required to follow-up the fax with an original document.

VI. RULE 26, UTAH RULES OF CRIMINAL PROCEDURE

This issue was put over until the next meeting, because the subcommittee was not yet ready to report.

VII. OTHER BUSINESS

Annina Mitchell stated that the website address for the appellate practice section of the Bar is ww.UtahBar.org. This is the main page for the Utah Bar. Once to the main page the user clicks member services, sections, sections and chairs, and then appellate practice.

The next meeting was scheduled for the third Tuesday in January, which will be the 20th. There being no further business, the meeting adjourned at 4:30 p.m.