

# Administrative Office of the Courts

Chief Justice Michael D. Zimmerman  
Chair Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
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Deputy Court Administrator

## AGENDA

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

Heber Wells Building  
Sixth Floor  
Salt Lake City, Utah

January 20, 1998 - 3:30 p.m.

- |  |                        |
|--|------------------------|
| <b>I. WELCOME AND APPROVAL OF MINUTES</b>                    | <b>Annina Mitchell</b> |
| <b>2. FINALIZATION OF RULES PUBLISHED FOR PUBLIC COMMENT</b> | <b>Annina Mitchell</b> |
| <b>3. PRISON MAIL-BOX RULE, RULE 4</b>                       | <b>Staff</b>           |
| <b>4. RULE 26 SUBCOMMITTEE REPORT</b>                        | <b>Fred Metos</b>      |
| <b>5. PROPOSED AMENDMENTS BY CLARK SNELSON</b>               | <b>Annina Mitchell</b> |
| <b>6. RULE 38A, WITHDRAWAL OF COUNSEL</b>                    | <b>Annina Mitchell</b> |
| <b>7. OTHER BUSINESS</b>                                     |                        |
| <b>8. ADJOURN</b>  |                        |

**MINUTES**

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

Heber Wells Building  
Sixth Floor  
Salt Lake City, Utah

January 20, 1998 - 3:30 p.m.

**PRESENT**

Annina Mitchell  
David Arrington  
Matty Branch  
Todd Utzinger  
Fred Voros  
Joan Watt  
Julianne Blanch  
Larry Jenkins  
Fred Metos

**EXCUSED**

Judge Billings  
Karra Porter  
Clark Nielsen

**STAFF**

Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

Annina Mitchell welcomed the Committee members to the meeting. Fred Voros moved to approve the minutes of the November 18, 1997 meeting. Todd Utzinger seconded the motion. The motion carried unanimously.

**II. RULES PUBLISHED FOR PUBLIC COMMENT**

Staff noted that not every person had returned an action slip on the rules recently published for public comment. Those action slips that were returned were not in agreement as to finalizing the rules as published. Staff noted that there was some question as to whether the reference in Rule 9 to Rule 26, Utah Rules of Criminal Procedure should remain.

Fred Voros noted that Rule 9 contains the same references as Rule 4(b), which also contains a reference to Rule 26. Mr. Voros suggested that even though the reference to the rule appears inappropriate, the reference should remain until the reasons for the reference can be determined and it can be determined whether the reference should be eliminated.

Joan Watt suggested researching the history and source of the reference and then determining whether to eliminate the reference. Todd Utzinger then moved to approve Rule 9 as published for

public comment, unless staff can determine that the inclusion of the Rule 26 reference is a clerical error, in which case staff should eliminate the error. Julianne Blanch seconded the motion. The motion carried 5 to 2, with Fred Voros and Larry Jenkins voting against the motion.

Ms. Mitchell questioned whether the Committee members had any concerns about Rule 11 or Rule 23B as published for public comment. The Committee members approved those rules as they were published.

Ms. Mitchell then questioned the Committee members as to whether there was support for Leslie Slauch's suggestion that the rule should include an example of the manner in which the record should be referenced. Matty Branch stated that she likes the idea because court personnel will continually have to respond to questions as to how it should be done. There was no other support for Mr. Slauch's suggestion.

Annina Mitchell then moved to approve all of the rules as they were published for public comment. Fred Metos seconded the motion. The motion carried unanimously.

### **III. RULE 4, PRISON MAIL-BOX RULE**

Staff distributed a proposed amendment to Rule 4, incorporating the Prison Mail-Box Rule based on the federal rule. Todd Utzinger questioned whether the rule language stating that the time for cross appeal begins when the trial court receives the notice of appeal will be effective. Staff explained that when trial courts receive documents they are stamped the day that they are received, and that date is entered into the computer even if the data is not entered for several days.

Fred Voros questioned whether the rule should extend to all inmates confined in an "institution." Annina Mitchell noted that the phrase is broader than the Committee has reviewed. Fred Metos noted that the population outside of prison will be sufficiently small so as not to create a much larger class taking advantage of the rule.

After noting a typographical error in the rule, Fred Metos moved to approve Rule 4 as presented by staff. Joan Watt seconded the motion. The motion carried unanimously.

### **IV. RULE 26 SUBCOMMITTEE REPORT**

Fred Metos stated that the Rule 26, Utah Rules of Criminal procedure subcommittee had met and agreed to incorporate various provisions of Rule 26 in the appellate rules. Mr. Metos stated that language will be proposed at the next meeting.

### **V. CLARK SNELSON PROPOSAL**

Ms. Mitchell noted that Clark Snelson had submitted a proposal to expand the docketing statement requirement to include a statement in tax commission appeals that the amount of the tax had been paid. David Arrington noted that there are many other jurisdictional issues that the Committee does not include in its rules. Ms. Watt noted that it may confuse people to put this particular requirement

in, but not to include other jurisdictional requirements. After brief discussion, the Committee agreed that the proposal would not be adopted. Ms. Mitchell stated that she will write a letter to Mr. Snelson stating that the language would better fit in tax commission orders.

## **VI. ADJOURN**

Ms. Mitchell stated that she will have language on Rule 38A by the time of the next meeting. The next meeting was scheduled for March 17, 1998 at 3:30 p.m. The meeting will be held at the Administrative Office of the Courts, unless notice is otherwise provided. There being no further business, the meeting adjourned at 4:50 p.m.