

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

November 17, 1998 - 3:30 P.M.

PRESENT

Annina Mitchell
Fred Metos
Karra Porter
Fred Voros
Larry Jenkins
Julie Blanch
David Arrington
Todd Utzinger
Joan Watt
Judge Judith Billings
Matty Branch
Clark Nielsen

EXCUSED

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Annina Mitchell welcomed the Committee members to the meeting. The minutes of the June 16, 1998 meeting were distributed. A motion was made to approve the minutes, the motion carried unanimously.

II. RULES 37 AND 38A

Annina Mitchell distributed proposed changes to Rule 37 and Rule 38A. The proposals were intended to clarify the procedure for voluntarily dismissing appeals and allowing withdrawal of counsel in child protection cases. The proposed change to Rule 37 confirms that an affidavit of the appellant is required before allowing dismissal of the appeal. The proposed change to Rule 38A will clarify that its procedures apply in child protection cases.

Fred Voros questioned whether there is truly a right to effective assistance of counsel, and not just a right to paid counsel in child protection cases. Ms. Mitchell stated that the courts had interpreted the statute as stating that if counsel is to be provided, the statute is meaningless unless effective

counsel is provided.

Fred Metos suggested that the proposal needs to include language which requires a statement in the affidavit showing that the dismissal by the appellant is voluntary.

Fred Voros questioned what it means to “demonstrate” knowledge or voluntariness. Matty Branch suggested using the word “state.” Joan Watt noted that there is a case, Bruner, that clarifies what has to be contained in the affidavit. The Committee members discussed language that would address ensuring the voluntariness of the dismissal and the use of the word “shall or may.”

After this discussion, Annina Mitchell moved to approve Rule 37 as proposed by her and as amended by the Committee. Joan Watt seconded the motion. The motion carried unanimously.

Julie Blanch questioned whether there should be a comment to explain the basis for the changes. Annina Mitchell stated that she will prepare a comment.

Annina Mitchell moved to approve the language of Rule 38A as proposed by her. Fred Voros seconded the motion. Clark Nielsen stated that he had a problem with existing language in Rule 38A. Mr. Nielsen was instructed to propose language for the next meeting. A vote was then held on Annina Mitchell’s motion. The motion carried unanimously.

III. VARIOUS PROPOSED CHANGES

Matty Branch distributed a memorandum proposing nine housekeeping changes to the rules and seven substantive changes. Judge Judith Billings moved to have Matty draft specific language for the housekeeping amendments to present at the next meeting. Todd Utzinger seconded the motion. Ms. Branch stated that she will not include proposal number nine, because that issue had been resolved. Fred Voros questioned why a certified copy of the notice of appeal would be required. Ms. Branch stated that the appellate courts have always asked for a certified copy and the certification insures that that they have the copy from the trial court, and not another copy that has found its way to the court.

Larry Jenkins questioned what amendment would be proposed to replace the reference to the Industrial Commission, which no longer exists. Annina Mitchell suggested that the rule should refer to the nature of the case, rather than to the entity.

Clark Nielsen stated that it is a good idea to require two copies to be served on counsel on Rule 35(b) (petitions for rehearing). The Committee agreed with this suggestion and that proposal will not be included in the housekeeping amendments.

After this discussion, a vote was had on Judge Billings’ motion. The motion carried unanimously.

Annina Mitchell stated that for the substantive proposals, a subcommittee should be formed to review the proposals and submit appropriate language. The subcommittee members will be Karra Porter,

Joan Watt and Matty Branch. Ms. Mitchell stated that Committee members should send any other issues that they have to this subcommittee. Any suggestions should include specific language.

The Committee discussed the issue of whether the rules should continue requiring attorneys to sign the certificate of service. Judge Billings stated that attorneys are officers of the court and they should be the ones required to sign the certificate. Clark Nielsen noted that if he personally signs the mailing certificate, he is the one that actually does the mailing.

IV. OTHER BUSINESS AND ADJOURN

David Arrington suggested that he would like to see the marshaling requirement in a rule. Annina Mitchell suggested putting the proposal together for the next meeting. There being no further business, the meeting adjourned at 4:55 p.m.