

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 84114-0241

August 17, 1999 - 3:30 p.m.

PRESENT

Todd Utzinger
Joan Watt
Karra Porter
Matty Branch
Julianne Blanch
Larry Jenkins

EXCUSED

David Arrington
Judge Judith Billings
Clark Nielsen
Fred Voros
Fred Metos
George Haley

STAFF

Brent Johnson

GUESTS

Judge Michael Wilkins
Karin Hobbs
Jerry Howe
Susan Creager-Allred

I. WELCOME

Todd Utzinger welcomed the Committee members to the meeting. Mr. Utzinger stated that George Haley had been appointed to the Committee to replace Annina Mitchell and Mr. Haley would be at the next meeting.

II. APPELLATE MEDIATION RULE

Mr. Utzinger stated that the only item for business at the meeting was a proposed appellate mediation rule. Judge Michael Wilkins provided the background on the rule. Judge Wilkins stated that the appellate mediation program was first conceived approximately three years ago. The Legislature began funding the program this past year.

The court has been acting under existing Rule 28, but felt that a specific rule would give parties a better indication of the program's processes.

Julianne Blanch questioned whether mediation could occur anytime in the process or whether the time will be set. Judge Wilkins stated that the judges had not thought about that. The court had not contemplated mediation occurring after briefing. Karin Hobbs stated that the court had received one

motion for mediation after briefing had occurred. Ms. Blanch stated that it may not need to be put in the rule, but she believed that mediations should occur as soon possible after the docketing statement is filed. Judge Wilkins stated a preference for allowing flexibility to deal with unique situations.

Karra Porter suggested that there may be problems if the mediation is scheduled too closely to briefing. Ms. Porter suggested one automatic tolling to account for the possibility that mediation might be successful. Judge Wilkins stated that the judges have thought a lot about this issue and have rejected automatic tolling, because the current process ensures that the attorneys focus on the case. Ms. Porter stated that the Tenth Circuit Court of Appeals Mediation Office has the authority to toll briefing based on a likelihood of settling. Judge Wilkins stated that judges can be anxious about delegating such authority. Judge Wilkins stated that the current process has worked well. If Karin Hobbs receives something that she is unable to deal with, she will take it to the presiding judge to resolve.

Judge Wilkins stated that there is no formal process for how cases are picked for mediation. Some types of cases are off limits to mediation: criminal, pro se and some juvenile cases. Judge Wilkins stated that copies of docketing statements are sent to Karin Hobbs. When mediation slots open, she will take the first cases from her stack of docketing statements to fill the open slots. It is a fairly random process. Judge Wilkins stated that the process may change in the future, and therefore they do not want to delineate a process in the rule.

Judge Wilkins explained that attorneys are permitted to submit confidential requests for mediation. This allows an attorney to explore the possibility of mediation, without compromising the attorney's duty to the case or the client.

Joan Watt questioned the mechanics of transmitting the court record. Ms. Branch stated that when mediation occurs, the trial court record will not have been prepared yet. The appellate court will ask for the case file from the trial court, and then will send it back after mediation.

Larry Jenkins questioned whether mediation could occur by telephone for rural attorneys. Ms. Hobbs stated that it could, and local attorneys also have that option. Larry Jenkins suggested changing the last word of the proposed rule "thereto" to eliminate the legalese. The Committee members agreed to this change.

Ms. Blanch asked whether mediation would occur before pour over. Ms. Hobbs stated that mediation will only occur after the pour over stage. Ms. Hobbs stated that the Supreme Court will entertain motions for mediation. Judge Wilkins stated that the mechanics of Supreme Court mediation has not been developed. Ms. Hobbs stated that the Supreme Court is supportive and she has done some Supreme Court cases. Judge Wilkins noted that Ms. Hobbs works for the Court of Appeals and when the Supreme Court becomes more involved in the mediation process, structural changes will be required.

Karra Porter moved to recommend the proposed rule for public comment, as amended by the Committee members. Matty Branch seconded the motion. The motion carried unanimously.

III. OTHER BUSINESS/ADJOURN

Todd Utzinger thanked the presenters for attending the meeting. Ms. Branch stated that at some point, the Committee needs to address Rule 36 on remittiturs. There being no further business, the meeting adjourned at 4:40 p.m.