

# Administrative Office of the Courts

Chief Justice Richard C. Howe  
Chairman, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

## AGENDA

### Supreme Courts Advisory Committee on the Rules of Appellate Procedure

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114

March 14, 2000 - 3:30 p.m.

- |    |   |                                     |
|----|---|-------------------------------------|
| 1. | <b>WELCOME AND APPROVAL OF MINUTES</b>  | <b>Todd Utzinger</b>                |
| 2. | <b>RULE 3 IN CAPITAL CASES</b>          | <b>Matty Branch</b>                 |
| 3. | <b>DOCKETING STATEMENT SUBCOMMITTEE</b> | <b>Larry Jenkins</b>                |
| 4. | <b>RULE 36 FOOTNOTE HISTORY</b>         | <b>Brent Johnson</b>                |
| 5. | <b>RULE 29 ORAL ARGUMENT PRIORITY</b>   | <b>Fred Voros/<br/>Matty Branch</b> |
| 6. | <b>OTHER BUSINESS</b>                   |                                     |
| 7. | <b>ADJOURN</b>                          |                                     |

**The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.**

**MINUTES**

**APPROVED 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

March 14, 2000 - 3:30 p.m.

**ATTENDEES**

Todd Utzinger  
Fred Metos  
Julianne Blanch  
Larry Jenkins  
Joan Watt  
Judge Judith Billings  
Fred Voros  
Matty Branch  
Clark Nielsen

**EXCUSED**

Karra Porter  
David Arrington  
George Haley

**STAFF**

Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

Todd Utzinger welcomed the Committee members to the meeting. Fred Voros moved to approve the minutes of the February 8, 2000 meeting. Matty Branch seconded the motion. The motion carried unanimously.

**II. RULE 3**

Matty Branch reminded the Committee members that the issue before the Committee was whether the notice of appeal in criminal cases, particularly capital cases, should state the degree of offense. Joan Watt stated that her office always knows when the appeal is a capital case or a first degree felony, but they do not always immediately know whether a case is a second or third degree felony. Ms. Watt stated that requiring a statement as to the degree of offense would create problems unless it is limited to capital and first degree felony cases. Ms. Watt stated that she assumed a failure to include the statement would not affect jurisdiction.

Fred Metos suggested that if the rule is amended, that it contain a clarification that a failure to include the information would not be jurisdictional.

Fred Voros stated that he still is against changing the notice of appeal requirement, but will go along with the majority. Mr. Voros stated that his recommendation would be that docketing statements be filed timely with amendments granted liberally. Joan Watt stated that the reality for her office is that, when docketing statements are written, they often do not have a lot of information. After

brief further discussion, the Committee agreed that it would not recommend any changes at this time.

### **III. DOCKETING STATEMENT SUBCOMMITTEE**

Larry Jenkins distributed copies of the form docketing statement used by the Tenth Circuit Court of Appeals. Mr. Jenkins stated that he has begun the process of converting this form to Utah rules. Mr. Jenkins stated that the federal docketing statement takes less time than any Utah docketing statement.

Fred Voros suggested adding central staff attorneys to the subcommittee. Judge Billings suggested one from each court. Todd Utzinger suggested that Mr. Jenkins set up a meeting and that central staff attorneys be invited to participate, and that the subcommittee also receive input from Joan Watt's office.

### **IV. RULE 36**

Brent Johnson researched the history of the Rule 36 committee advisory note, but was not able to determine from the minutes the specific reasons why certain language was contained in the note, and why the note was not amended when the rule was amended in 1992. Prior to 1992, the rule stated that the remittitur would issue 15 days after the entry of judgment. The advisory committee note accurately reflected the practice of petitions for writ of certiorari. The rule was amended in 1992 to differentiate between the time the remittitur would issue in the Supreme Court and the time the remittitur would issue in the Court of Appeals. The advisory committee note was not altered to reflect the rule change.

Fred Voros questioned whether it would simply make better sense to reverse the presumption and state that a petition for a writ of certiorari will stay the remittitur. Joan Watt suggesting checking with central staff to determine whether that would create a problem. Judge Billings suggested having staff and Matty Branch draft a rule proposal that would stay the remittitur until there is a decision to grant or deny the petition. The rule will be proposed at the next meeting.

### **V. RULE 29**

Matty Branch stated that the Appellate Board had discussed Rule 29 at its recent meeting. The Board had suggested a policy of first-in/first-out except for criminal convictions when the defendant is incarcerated and in child custody/termination cases. The Appellate Board wanted the input of the Committee as to other cases that should receive priority.

Joan Watt stated that she has always been concerned about interlocutory appeals being so far down the list. Fred Voros questioned whether the priority should be limited to criminal defendants who are incarcerated. Judge Billings stated that it would not be proper to add all criminal defendants, because other cases are just as important. Joan Watt suggested that the rule provide a way for a litigant to file a motion for priority. Clark Nielsen stated that this may inundate the court with

motions. Julianne Blanch stated that staff might have a difficult time determining priorities based on motions. Todd Utzinger suggested that there was a need to get additional input from others who may have an interest in this issue. The Committee agreed to defer discussion until the next meeting and the Committee members would survey their employees and other attorneys as to their feelings about the rule.

## **VI. OTHER BUSINESS**

Matty Branch stated that the appellate courts have been discussing a pilot project to allow for electronic filing of certain types of documents. Ms. Branch stated that there may be a need at some point in the future to look at rule changes to implement electronic filing. The Committee members agreed that it would be premature to discuss this issue until specific proposals were presented.

## **VII. ADJOURN**

The next meeting of the Committee was scheduled for April 18, 2000. There being no further business, the meeting adjourned at 4:40 p.m.