
LAW OFFICES OF MARY DRYOVAGE

DATE: March 16, 2004

TO: Mr. Joseph Maloney, Assistant U.S. Attorney
Civil Division
501 "I" Street, Suite 10-100
Sacramento, CA 95814 via fax: 916-554-2900

RE: Cheryl A. Koel v John Ashcroft
9th Cir. Docket No. 04-15183; No. C-02-01289 EDL

Dear Mr. Maloney;

In response to your March 16, 2004 letter, I suggest that you look at Circuit Rule 10-3.1(f), which supercedes Federal Rules of Appellate Procedure 10(b)(3)(C). I'm sure you weren't really referring to Rule 10 of the Federal Rules of Civil Procedure, were you?

Please provide me with the reasons why you believe that the entire trial transcript is necessary to resolve the issues raised in the 9th Circuit Docketing Statement, when the evidentiary issues raised in the motion for new trial were all decided before the trial. If you recall, the trial witnesses did not testify regarding issues which were excluded in the pre-trial rulings and Magistrate Laporte did not change any of her pre-trial rulings during trial. If you believe on further examination of your trial notes that there are particular portions of the record which truly need to be transcribed, other than that designated by Appellant, please bring them to my attention. You could also propose an allocation of costs, so that the portions of the transcript defendant believes is necessary to the appeal can be prepared in accordance with the briefing schedule set by the Ninth Circuit. This would seem to be fair, given the relative disparity of resources of the parties. I am assuming that you are not making this request merely to increase the costs of appealing this case. Do not hesitate to call me, if you would like to discuss this further.

Thank you for your cooperation.

VERY TRULY YOURS,

MARY DRYOVAGE

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