Agenda

Advisory Committee on Rules of Civil Procedure

September 22, 2004
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, Suite N31

Approval of minutes.	Fran Wikstrom
Rule 62. Cap on supersedeas bond.	Keith Teel
Rule 9. Naming persons for allocation of fault.	Tim Shea
Rule 47. Peremptory challenges for multiple parties.	Frank Carney
Rule 7. Motions to reconsider.	Cullen Battle

Meeting Schedule

October 27, 2004
November 17, 2004
January 26, 2005
February 23, 2005
March 23, 2005
April 27, 2005
May 25, 2005
July 27, 2005
September 28, 2005
October 26, 2005
November 16, 2005

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, July 28, 2004
Administrative Office of the Courts

Tim Shea, Presiding

PRESENT: Francis J. Carney, Cullen Battle, Terrie T. McIntosh, Leslie W. Slaugh, Paula Carr, Virginia S. Smith, Honorable Anthony W. Schofield, Honorable Lyle R. Anderson, Honorable David Nuffer, James T. Blanch

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Francis M. Wikstrom, David W. Scofield, Thomas R. Karrenberg, Janet H. Smith, R. Scott Waterfall, Honorable Anthony B. Quinn, Todd M. Shaughnessy, Glenn C. Hanni, Debora Threedy, Lance Long

GUESTS: Matty Branch
Rep. Greg Curtis
Gary Thorup
Ray Hintze
Jim Olson
Esther Chelsea-McCarty

I. APPROVAL OF MINUTES.

In the absence of Committee Chairman Francis M. Wikstrom, Tim Shea called the meeting to order at 4:00 p.m. The minutes of the May 26, 2004 meeting were reviewed, and an error in Leslie W. Slaugh's middle initial was pointed out. Mr. Slaugh moved that the Minutes be approved as amended. The Motion was seconded by Paula Carr, and approved unanimously.

II. RULE 62; HJR 16. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

During the 2004 General Session, the Utah Legislature enacted HJR 16, which amended URCP 62. HJR 16 passed by two-thirds majority of both houses. On May 12, 2004, the Supreme Court entered an order pursuant to its emergency rules that changed URCP 62 back to its form prior to HJR 16. The court then asked this Committee to consider the merits of the HJR 16 amendments and make recommendations. Prior to this meeting, Rule 62 as amended by HJR 16 was published for comment. One comment was received prior to the close of the comment period on July 21, 2004.

Mr. Shea introduced the following guests who attended the meeting to either address the Committee regarding HJR 16 or to observe: (1) Rep. Greg Curtis, House Majority Leader and sponsor of HJR 16; (2) Gary Thorup, attorney with Holme Roberts & Owens; (3) Ray Hintze, Chief Deputy to Utah Attorney General Mark Shurtliff; (4) Jim Olson, executive director and president of Utah Food Association; (5) Esther Chelsea-McCarty, Office of Legislative Research and General Council, drafter of HJR 16. Prior to the meeting, Committee members received a printout with a summary of each state's supersedeas bond requirements.

Rep. Curtis presented a brief history of HJR 16. He stated that he was approached by the Utah food industry with a request that monetary limits be set for supersedeas bonds. Their concern was that if a party has a judgment against them so large that it hinders their ability to even file a bond, does the amount of the bond required amount to a denial of access to the courts? The amendment would limit bond amounts where judgments are $5 million or greater.

Mr. Slaugh expressed concern that limiting the bond amount seems to assume the trial judge or jury was wrong in cases where a judgment is over $5 million. He pointed out that there is no requirement that a bond be posted in order to appeal; a bond is required only to stop execution on the judgment. Mr. Slaugh asked Rep. Curtis why $5 million is the point where limits would begin. Judge Lyle Anderson also questioned why $5 million was made the limit, and commented that it makes more sense to devise a rule where there is a relationship between the judgment amount, defendant's assets, and amount of bond. Responding to these comments, Rep. Curtis explained that the amendment was an attempt to draft a rule that would set some standards for limitation, and that there is concern that defendants, particularly businesses, may be forced into bankruptcy if they are required to post an extremely large supersedeas bond.

Judge Anthony Schofield observed that if the issue is due process there is no reason to distinguish between a judgment of $150,000 and a judgment of $5 million, since a $150,000 judgment may force a mom and pop business into bankruptcy as readily as a $5 million judgment may force a larger company into bankruptcy. Mr. Slaugh agreed and commented that although the rule likely needs adjustment, he is concerned that HJR 16 appears designed to protect only large companies.

Rep. Curtis was asked whether any defendant had actually been forced into bankruptcy by the requirement of posting a bond, and he admitted that he did not know of any such instances. He commented that the amendment is an attempt to preclude such an occurance and that it is not good policy to essentially tell big companies that they will have to file bankruptcy if they wish to appeal. Judge Schofield again commented that it is not treating everyone equally when a large company with a $5 million judgment against it receives a break whereas a mom and pop business with a $150,000 judgment against it does not. The Committee further questioned Rep. Curtis as to the impetus for HJR 16, and asked whether the Legislature believed that there was a problem with large tort judgments. Rep. Curtis commented that the Legislature is concerned with both large tort judgments and class actions.