

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, November 17, 2004
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Thomas R. Karrenberg, Paula Carr, Francis J. Carney, Terrie T. McIntosh, Virginia S. Smith, R. Scott Waterfall, Leslie W. Slaugh, Todd M. Shaughnessy, Lance Long, Honorable Anthony B. Quinn, Honorable Anthony W. Schofield, Honorable David Nuffer

STAFF: Tim Shea, Judith Wolferts

EXCUSED: James T. Blanch, David W. Scofield, Cullen Battle, Janet H. Smith, Glenn C. Hanni, Debora Threedy, Honorable Lyle R. Anderson

GUESTS: Gary Thorup
Dallas Powell
Paul Barron
Jerome Battle
Susie Sundberg

I. APPROVAL OF MINUTES.

Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the October 27, 2004 meeting were reviewed, and Francis J. Carney moved that they be approved as submitted. The Motion was seconded by Judge Anthony W. Schofield, and approved unanimously.

II. RULE 62. CAP ON SUPERSEDEAS BONDS.

The Committee further discussed the proposed amendments to Rule 62. Mr. Wikstrom referred members to a memorandum received from attorney Michael Mayfield which comments on the amendments, and to the e-mail concerning the proposed amendment that has been received from Gary Thorup and Keith Teel.¹ Several members expressed a preference for suggestions in Mr. Thorup's e-mail, commenting that they appear to comport with the Committee's prior preference. The principal focus of the discussion was the language of the proposed advisory committee note, and suggestions were made that it be altered to comport with

¹These were contained in the materials provided to members prior to the meeting.

the suggestions in Mr. Thorup's e-mail. Issues were also raised concerning the statement in the proposed note regarding the trial judge limiting payment of dividends. Mr. Carney pointed out that this issue has already been discussed, and was moved to an advisory note due to concern about including this language in the text of the rule. Suggestions were also made for minor language changes, which were all agreed to by the members.

After further discussion, Judge Schofield moved that Rule 62 and the advisory committee note be approved as amended. Judge Anthony B. Quinn seconded the motion. The motion passed, with one member voting no.

Mr. Wikstrom pointed out that if the amendment process takes its usual course, the earliest that an amended Rule 62 could take effect is November of 2005. Judge David Nuffer moved that the proposed amended rule be sent immediately to the Supreme Court under the emergency action provision. Mr. Carney seconded the motion, which was approved unanimously.

II. RULE 7. MOTION TO RECONSIDER.

Lance Long reported on his findings on research into motions to reconsider in other jurisdictions. He stated that in no other jurisdiction did he find a rule that is similar to the one before the Committee. Some jurisdictions have rules stating that a motion to reconsider may be brought, but none of those rules states that the opposing party need not respond to a motion to reconsider until ordered by the court to do so. Mr. Long commented that in California, the legislature has expressly limited a judge's authority to reconsider, and this has brought up issues involving separation of powers and the proper standard of review for such motions. He expressed concern that a rule specifically allowing motions to reconsider will only encourage such motions, and that this might have an impact on present Rules 59 and 54.

Mr. Wikstrom asked whether anyone wished to make a motion to adopt proposed Rule 7. No motion was made.

III. ELECTRONIC FILING DEMONSTRATION. RULES REGULATING E-FILING.

Members of the district court technical team, including Jerome Battle and Paul Barron, demonstrated the procedures that are presently in use, and also being worked on, for electronic filing. Members asked questions, and made comments and suggestions.

IV. ADJOURNMENT.

The meeting adjourned at 5:50 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, January 26, 2005, at the Administrative Office of the Courts.

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