

MINUTES

SUPREME COURT'S ADVISORY COMMITTEE ON
THE RULES OF CIVIL PROCEDURE

Wednesday, January 15, 1992 - 4:00 p.m. *January 27?*
Administrative Office of the Courts

Alan L. Sullivan, Presiding

PRESENT:

Alan L. Sullivan
Brad R. Baldwin
Terrie T. McIntosh
Francis M. Wikstrom
Glenn C. Hanni
Mary Anne Q. Wood
M. Karlynn Hinman
David K. Isom
Thomas R. Karrenberg
Jaryl L. Rencher
Prof. Ronald N. Boyce

EXCUSED:

Samuel Alba
Kevin N. Anderson
Hon. Boyd Bunnell
Elizabeth T. Dunning
Robert A. Echard
Perrin R. Love
Hon. Michael R. Murphy
Allan L. Larson
John L. Young
Prof. Terry S. Kogan
James R. Soper

STAFF:

Colin R. Winchester

GUEST:

Bruce M. Plenk

1. WELCOME. Mr. Sullivan welcomed the Committee members to the meeting. Because the minutes of Committee's previous meeting had not been distributed, no action on those minutes was taken.

2. RULE 69. Mr. Baldwin introduced the latest draft of Rule 69 which was distributed to Committee members in the pre-meeting mailing. He indicated that the purposes of the proposed amendments were three-fold:

1. Reconcile the Rule with the notice provision in Rule 64D and the 10th Circuit Court of Appeals case on the issue.
2. Make necessary language changes.
3. Incorporate gender neutrality.

Mr. Baldwin informed the Committee that he had received several comments from Mr. Plenk and reviewed those comments with the Committee. The Committee discussed the interplay between the issuance of a writ, the service of the writ, levy, service of the notice of execution, the opportunity for hearing, sale of the property, and redemption.

Mr. Sullivan asked Mr. Baldwin, Mr. Plenk and Mr. Karrenberg to re-draft the Rule incorporating the drafting suggestions suggested by Mr. Plenk and addressing the following issues:

1. Should a post-execution notice of sale be required?
2. Should a "commercially reasonable" standard be incorporated in execution sales?
3. Should personal property be subject to a redemption period?
4. How should the notice of execution and notice of sale be given?
5. Should the list of exemptions set forth in the draft be more specific or less specific?
6. Should the Rule include a procedure for levying upon and storing property pending sale?
7. Should a praecipe be required?
8. Should the provisions of the Rule dealing with supplemental orders, orders to show cause and bench warrants be clarified?

A new draft of the Rule should be distributed prior to the next Committee meeting, and the Committee should be prepared to complete its study of Rule 69 at that meeting.

3. SMALL CLAIMS FORMS AND PROCEDURES. Mr. Winchester introduced the small claims forms and procedures which the Supreme Court has adopted on an interim basis. He informed the Committee that the forms and procedures were being used, and that after a four-five month period of time, public input would be solicited. This Committee would then consider that input, along with concerns of its own, and make final recommendations to the Supreme Court. For the present, no action is required by this Committee.

4. RULE 1. Mr. Sullivan referred Committee members to the only public comment received. The comment came from attorney Walter C. Bornemeier. He expressed concern that the proposed draft of Rule 1 suggests that all Rules of Civil Procedure are applicable

in small claims cases. Mr. Winchester has sent two responses to Mr. Bornemeier regarding the issue. The Committee asked Mr. Winchester to review the affect of Rule 1 on small claims court, the appellate courts and juvenile court, and to report back at the next Committee meeting.

5. COMMITTEE NOTE TO RULE 35(a). Mr. Karrenberg distributed a document examining the current rule, the current federal rule, the Federal Advisory Committee notes to the 1991 amendment, California Code of Civil Procedure § 2032(g), and his recommendation. He recommended that the Committee Note specifically reference the Federal Advisory Committee's Note to the 1991 amendment and include the following:

The court, in the order establishing the conditions of the examination, may also order that the examination be recorded on audio tape or videotape, or both, as conditions may warrant, and may also order, in a suitable case, that a representative of the person to be examined be allowed to attend the examination. The representative may include the person's attorney, a physician or other suitably licensed or certified examiner.

6. PROHIBITION OF SPECIFIC CLAIMS FOR GENERAL AND PUNITIVE DAMAGES IN PRAYER OF COMPLAINT. Mr. Isom informed the Committee that he had surveyed several states regarding their restrictions, or lack thereof, on the reference to specific dollar amounts for general damages and punitive damages in the prayer of civil complaints. He raised the following issues:

1. A First Amendment right to plead specific amounts.
2. U.R.C.P. 8's requirement that complaints contain a demand for judgment for the relief to which the plaintiff deems himself entitled.
3. The Legislature has specifically prohibited reference to such claims in medical malpractice and product liability statutes, but has not prohibited reference to such claims in other civil actions.
4. The proposal might simply result in a specific dollar reference being made in the body of the complaint but omitted from the prayer of the complaint.

The Committee determined that Mr. Sullivan should write a letter to Jackson Howard indicating the issues raised by Mr. Isom and that the Committee does not intend to proceed further with the proposal.

7. NEXT MEETING. Mr. Sullivan reminded the Committee that

it will meet again on February 19 at 4:00 p.m.

8. ADJOURNMENT. There being no further business, the meeting was adjourned.