

FOR IMMEDIATE RELEASE

January 21, 2004

**HEARING ON PROPOSED AMENDMENT TO RULE COVERING
APPEAL BONDS**

The Rules Committee of the Illinois Supreme Court will hear comments at a public hearing Monday to amend or create a new rule covering requirements to stay enforcement of a judgement pending appeal.

The current rule requires any such appeal bond be in an amount sufficient to cover the amount of the judgement, costs and anticipated interest.

Critics of the current rule have contended that appeal bonds in high-exposure cases, as in some class-action cases, could force a company into bankruptcy.

The hearing will be held Monday, January 26, 2004 at 10 a.m. at 160 N. LaSalle Street, Chicago, Room C-500.

Illinois Supreme Court Justice Thomas L. Kilbride is the Court's liaison to the Committee.

Two separate proposals involving Supreme Court Rule 305 will be the subject of the public hearing.

The first is a proposal put forward by the Rules Committee which would allow a judge discretion in setting an appeal bond if the judge determines a bond in the amount of the judgement plus costs and interests is beyond the means of the judgement debtor. It also would allow the bond to be satisfied by other forms of security than only cash. Such instruments would include letters of credit, escrow agreements and certificates of deposit.

Commentary attached to the proposal said the amendments are designed to preserve the right of appeal in all cases.

"It is anticipated that the amount of the bond or other form of security will normally be in an amount sufficient to cover the judgment, interest and costs," the commentary notes. "In some instances, however, the appeal bond requirement may be so onerous that it creates an artificial barrier to appeal, forcing a party to settle a case or declare bankruptcy.

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“Thus, the amended rule gives the court discretion in a money judgement case to approve a bond or other form of security that covers less than the entire amount of the judgement plus anticipated interest and costs. This does not lessen the judgment debtor’s obligation on the judgement, but simply allows the judgment debtor to obtain a stay of execution on the judgment pending appeal.”

The second proposal is presented for consideration by a group including tobacco companies, the U.S. and Illinois chambers of commerce, and other business representatives.

It would put a ceiling on appeal bonds in class-action cases and cases involving punitive damage awards. The ceiling would be 10 percent of the defendant’s net worth or \$100 million, whichever amount is lower.

The issue received nationwide publicity in March 2003 after a \$10.1 billion verdict against Philip Morris in Madison County. Initially, the trial judge set the appeal bond at \$12 billion, an amount Philip Morris USA said it would be unable to meet. The Illinois Supreme Court ordered the appeal bond be reduced to \$6 billion and the appeal to be heard directly by the Supreme. Oral arguments in that case will be scheduled after the parties conclude filing their written briefs.

The proposals are posted on the Supreme Court’s website at www.state.il.us/court. To view the proposals, select “Supreme Court of Illinois” and then select “Supreme Court Committees/Commissions.” The proposal is under the subsection titled “Public Hearings.”

No proposal would take effect unless it is specifically approved by the Illinois Supreme Court.

Notice of the hearing, accompanied by copies of the proposed rule changes, have been distributed to members of the bench and bar throughout the state.