

**REPORT OF THE JUDICIAL CONFERENCE**

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

Your Committee on Rules of Practice and Procedure met in Washington, D.C. on June 18-20, 1992. All members of the Committee attended the meeting. Also present were Judge Kenneth F. Ripple, Chairman, and Professor Carol Ann Mooney, Reporter, of the Advisory Committee on Appellate Rules; Chief Judge Sam C. Pointer, Jr., Chairman, and Professor Paul D. Carrington, Reporter, of the Advisory Committee on Civil Rules; Judge William Terrell Hodges, Chairman, and Professor David A. Schlueter, Reporter, of the Advisory Committee on Criminal Rules; and Judge Edward Leavy, Chairman, and Professor Alan N. Resnick, Reporter, of the Bankruptcy Rules Advisory Committee.

The reporter to your Committee, Dean Daniel R. Coquillette; Professor Mary P. Squiers, Director of the Local Rules Project; and Bryan Garner, Esquire, Consultant to the Subcommittee on Style, attended the meeting. Also present were Joseph F. Spaniol, Jr., Secretary to your Committee; John K. Rabiej, Patricia S. Channon, Judith W. Krivit, and Anne Rustin of the Administrative Office

**NOTICE**

NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

Staff; and Mr. Joe S. Cecil of the Research Division of the Federal Judicial Center. Various members of the public also attended the meeting as observers.

I. Advisory Committee on the Federal Rules of Evidence.

After completing its monumental task of writing the Federal Rules of Evidence, the Advisory Committee appointed in 1965 was discharged in 1975 with appreciation. Since then needed amendments to the Rules of Evidence have been considered by the Standing Committee and by the Advisory Committees on Civil and Criminal Rules, mostly by the Criminal Rules Committee.

In 1981 a conference sponsored by the Federal Judicial Center considered problems arising under the evidence rules and concluded that the rules should be reviewed. Later that same year the Judicial Conference approved a Committee recommendation that the Chief Justice be authorized to appoint a new Evidence Rules Committee. To date, however, no action has been taken. Recently various law professors have urged the creation of an Evidence Rules Committee and Circuit Judge Edward Becker has collaborated in writing an article setting forth specific problems that he believes should now be addressed by an Advisory Committee.

Aware that the reactivation of an Evidence Rules Committee might in the future lead to changes in well-settled rules of evidence, something several Committee members considered undesirable, your Committee nonetheless concluded that there are sufficient unsettled areas in the Evidence Rules to warrant review.

Your Committee considered whether the review should be undertaken by one of the existing Advisory Committees, or jointly by two or more advisory committees, but decided to recommend the appointment of a separate Advisory Committee.

**Recommendation:** That the Chief Justice be requested to reactivate an Advisory Committee on the Federal Rules of Evidence with the suggestion of some overlapping membership with the Advisory Committees on the Federal Rules of Civil and Criminal Procedure, and further that the Chief Justice appoint a reporter to serve the reactivated Evidence Rules Committee.

## II. Amendments to the Federal Rules of Appellate Procedure and Forms.

The Advisory Committee on the Federal Rules of Appellate Procedure submitted to your Committee proposed amendments to Appellate Rules 3, 3.1, 4, 5.1, 6, 10, 12, 15, 25, 28, and 34, and Amendments to Forms 1, 2, and 3, together with Committee Notes explaining their purpose and intent.

Most of these proposed amendments were circulated for public comment in August, 1991. Public hearings were scheduled and later cancelled when no one requested an opportunity to testify.

In January, 1992 your Committee also directed that proposed amendments to Appellate Rules 3(c) and 15 be circulated for public comment on an expedited basis because of the perceived need to address an acutely urgent problem. Based upon comments received and further deliberation, the Advisory Committee revised the original proposal to amend Rules 3(c) and 15 and included an additional amendment to Rule 12.