

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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DATE: November 30, 2001

TO: Judge Anthony J. Scirica, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Judge Samuel A. Alito, Jr., Chair
Advisory Committee on Appellate Rules

The Advisory Committee on Appellate Rules did not meet this fall. As you know, an extensive package of proposed amendments to the Federal Rules of Appellate Procedure was approved by the Standing Committee in June and by the Judicial Conference in September. The "new" items on the Advisory Committee's study agenda were not sufficient in number or urgency to justify a fall meeting.

The Advisory Committee will meet again in April in Washington, D.C. At that meeting, we will consider several of the items on our study agenda, which is attached.

**Advisory Committee on Appellate Rules
Table of Agenda Items --- Revised December 2001**

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
95-03	Amend FRAP 15(f) to conform to new FRAP 4(a)(4)(B)(i).	Hon. Stephen F. Williams (CADC)	Awaiting initial discussion Retained in part on agenda with medium priority 09/97 Draft approved 10/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Held in abeyance pending consultation with D.C. Circuit 04/01
95-04	Amend computation of time to conform to Civil Rules method. (Related to Nos. 97-01 and 98-12.)	James B. Doyle, Esq.	Awaiting initial discussion Retained on agenda with medium priority 09/97 Discussed and retained on agenda 04/98 Draft approved 10/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Approved for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01
95-07	Amend FRAP 4(a)(5) to make it clear that a "good cause" extension is available after expiration of original period.	Luther T. Munford, Esq.	Awaiting initial discussion Retained on agenda with low priority 09/97 Draft approved 10/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Approved with minor revisions for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01
97-01	Amend FRAP 26(a) so that time computation is consistent with FRCP 6(a). (Related to Nos. 95-04 and 98-12.)	Advisory Committee & Los Angeles County Bar Ass'n	Awaiting initial discussion Retained on agenda with medium priority 09/97 Discussed and retained on agenda 04/98 Draft approved 10/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Approved for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01

97-05	Amend FRAP 24(a)(2) in light of Prison Litigation Reform Act.	Advisory Committee	<p>Awaiting initial discussion Retained on agenda with high priority 09/97 Draft approved 04/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Approved with minor revisions for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01</p>
97-07	Amend FRAP 28(j) to allow brief explanation.	Jack Goodman, Esq.	<p>Awaiting initial discussion Retained on agenda with low priority 09/97 Draft approved 04/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Approved with minor revisions for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01</p>
97-09	Amend FRAP 32 — cover color for petition for rehearing/rehearing en banc, response to either, and supplemental brief.	Paul Alan Levy, Esq. Public Citizen Litigation Group	<p>Awaiting initial discussion Retained on agenda with low priority 09/97 Draft approved 04/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Approved for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01</p>
97-12	Amend FRAP 44 to apply to constitutional challenges to state laws.	Advisory Committee	<p>Awaiting initial discussion Retained on agenda with low priority 09/97 Draft approved 04/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Approved for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01</p>

97-14

Amend FRAP 46(b)(1)(B) to replace the general "conduct unbecoming" standard with a more specific standard or, alternatively, supplement FRAP 46(b)(1)(B) by recommending a model local rule governing attorney conduct.

Standing Committee

Awaiting initial discussion

Retained on agenda with low priority 09/97
Discussed and retained on agenda 04/98
Discussed and retained on agenda 10/99
Discussed and retained on agenda 04/00
Discussed and retained on agenda 04/01

97-18

Amend or delete FRAP 1(b)'s assertion that the "rules do not extend or limit the jurisdiction of the courts of appeals."

Hon. Frank H. Easterbrook (CA7)

Awaiting initial discussion

Retained on agenda with high priority 09/97
Draft approved 10/98 for submission to Standing Committee in 01/00

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Approved by the Standing Committee 06/01

Approved by the Judicial Conference 09/01

97-21

Amend FRAP 31(b) to clarify that briefs must be served on unrepresented parties, as well as on "counsel for each separately represented party."

Advisory Committee

Awaiting initial discussion

Draft approved 09/97 for submission to Standing Committee in 01/00

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Approved for submission to Standing Committee 04/01

Approved by the Standing Committee 06/01

Approved by the Judicial Conference 09/01

97-30

Amend FRAP 32(a)(7)(C) to require use of a standard certificate of compliance with type-volume limitation.

Luther T. Mumford, Esq.

Awaiting initial discussion

Retained on agenda with high priority 09/97

Draft approved 04/98 for submission to Standing Committee in 01/00

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Approved by the Standing Committee 06/01

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97-31

Amend FRAP 47(a)(1) to require that all new and amended local rules take effect on December 1. (Related to No. 98-01.)

Luther T. Mumford, Esq.

Awaiting initial discussion

Retained on agenda with medium priority 09/97

Draft approved 04/98 for submission to Standing Committee in 01/00

04/98 draft withdrawn; discussed further and retained on agenda 10/99; will await action by other Advisory Committees on similar proposals

97-41

Amend FRAP 4 to specify time for appeal of order granting or denying writ of coram nobis.

Solicitor General Waxman

Awaiting initial discussion
Draft approved 04/98 for submission to Standing Committee in 01/00
Approved for publication by Standing Committee 01/00
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Approved by the Standing Committee 06/01
Approved by the Judicial Conference 09/01

98-01

Amend FRAP 47(a) to provide that local rules do not become effective until filed with the Administrative Office. (Related to No. 97-31.)

Standing Committee

Awaiting initial discussion
Draft approved 04/98 for submission to Standing Committee in 01/00
04/98 draft withdrawn; discussed further and retained on agenda 10/99; will await action by other Advisory Committees on similar proposals

98-02

Amend FRAP 4 to clarify the application of FRAP 4(a)(7) to orders granting or denying the motions for post-judgment relief listed in FRAP 4(a)(4)(A).

Hon. Will Garwood (CA5)
Luther T. Munford, Esq.

Awaiting initial discussion
Discussed and retained on agenda 04/98
Draft approved 10/98 for submission to Standing Committee in 01/00
10/98 draft withdrawn; discussed further and retained on agenda 04/99
Revised draft approved 10/99 for submission to Standing Committee in 01/00
Standing Committee deferred action 01/00
Further revised draft approved 04/00 for submission to Standing Committee in 06/00
Approved for publication by Standing Committee 06/00
Published for comment 08/00
Approved with minor revisions for submission to Standing Committee 04/01
Further minor revisions approved by poll of Committee 05/01
Approved by the Standing Committee 06/01
Approved by the Judicial Conference 09/01

98-06	Amend FRAP 4(b)(5) to clarify whether and to extent the filing of a FRCrP 35(c) motion for correction of sentence tolls the time to file appeal.	Hon. Will Garwood (CA5)	Awaiting initial discussion Discussed and retained on agenda 10/98; awaiting specific proposal from Department of Justice Discussed and retained on agenda 04/99; awaiting draft amendment and Committee Note Draft approved 10/99 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Approved for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01
98-11	Amend FRAP 5(c) to clarify application of FRAP 32(a) to petitions for permission to appeal.	Christopher A. Goelz (CA9 Circuit Mediator)	Awaiting initial discussion Discussed and retained on agenda 04/99 Draft approved 10/99 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Revised draft approved 04/00 for submission to Standing Committee in 06/00 Approved for publication by Standing Committee 06/00 Published for comment 08/00 Approved with minor revisions for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01
98-12	Amend FRAP 4(a)(4)(A)(vi), 27(a)(3)(A), 27(a)(4) & 4I(b) to account for amendment to FRAP 26(a) regarding calculating time. (Related to Nos. 95-04 and 97-01.)	Advisory Committee	Awaiting initial discussion Discussed and retained on agenda 10/98 Draft approved 04/99 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00 Approved with minor revisions for submission to Standing Committee 04/01 Approved by the Standing Committee 06/01 Approved by the Judicial Conference 09/01
99-01	Amend FRAP 24(a)(3) to address potential conflicts with Prison Litigation Reform Act.	Hon. Will Garwood (CA5)	Awaiting initial discussion Discussed and retained on agenda 04/99 Draft approved 10/99 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00

99-02	Amend FRAP 32 to require that briefs, written motions, rehearing petitions, etc. be signed.	Hon. Will Garwood (CA5)	<p>Awaiting initial discussion</p> <p>Draft approved 04/99 for submission to Standing Committee in 01/00</p> <p>Revised draft approved 10/99 for submission to Standing Committee in 01/00</p> <p>Approved for publication by Standing Committee 01/00</p> <p>Published for comment 08/00</p> <p>Approved with minor revisions for submission to Standing Committee 04/01</p> <p>Approved by the Standing Committee 06/01</p> <p>Approved by the Judicial Conference 09/01</p>
99-03	Amend unspecified rules to permit electronic filing and service.	Subcommittee on Technology	<p>Awaiting initial discussion</p> <p>Discussed and retained on agenda 04/99</p> <p>Draft approved 04/00 for submission to Standing Committee in 06/00</p> <p>Approved for publication by Standing Committee 06/00</p> <p>Published for comment 08/00</p> <p>Approved with minor revisions for submission to Standing Committee 04/01</p> <p>Approved by the Standing Committee 06/01</p> <p>Approved by the Judicial Conference 09/01</p>
99-06	Amend FRAP 33 to incorporate notice provisions of FRBP 7041 and 9019.	Hon. L. Edward Friend II (Bankr. N.D. W. Va.)	<p>Awaiting initial discussion</p> <p>Discussed and retained on agenda 04/00; awaiting proposal from Bankruptcy Rules Committee</p>
99-07	Amend FRAP 26.1 to broaden financial disclosure obligations.	Standing Committee	<p>Awaiting initial discussion</p> <p>Discussed and retained on agenda 10/99</p> <p>Draft approved 04/00 for submission to Standing Committee in 06/00</p> <p>Approved for publication by Standing Committee 06/00</p> <p>Published for comment 08/00</p> <p>Approved with minor revisions for submission to Standing Committee 04/01</p> <p>Alternative draft approved by poll of Committee 05/01</p> <p>Approved by the Standing Committee 06/01</p>

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
99-09	Amend FRAP 22(b) to specify procedure for obtaining certificate of appealability.	Hon. Anthony J. Scirica (CA3)	Approved by the Judicial Conference 09/01 Awaiting initial discussion Discussed and retained on agenda 04/00; awaiting proposal from Department of Justice Discussed and retained on agenda 04/01
00-03	Amend FRAP 26(a)(4) & 45(a)(2) to use "official" names of legal holidays.	Jason A. Bezis	Awaiting initial discussion Discussed and retained on agenda 04/00 Discussed and retained on agenda 04/01
00-05	Amend FRAP 3 to address notice of appeal filed on behalf of corporation but not signed by attorney.	Hon. Diana Gribbon Motz (CA4)	Awaiting initial discussion Discussed and retained on agenda 04/00 Discussed and retained on agenda 04/01
00-07	Amend FRAP 4 to specify time for appeal of order granting or denying motion for attorney's fees under Hyde Amendment.	Hon. Stanwood R. Duval, Jr. (E.D. La.)	Awaiting initial discussion Discussed and retained on agenda 04/01; awaiting proposal from Department of Justice
00-08	Amend FRAP 4(a)(6)(A) to clarify whether a moving party "receives notice" of the entry of a judgment when that party learns of the judgment only through a verbal communication.	Hon. Stanwood R. Duval, Jr. (E.D. La.)	Awaiting initial discussion Discussed and retained on agenda 04/01
00-11	Amend FRAP 35(a) to provide that disqualified judges should not be considered in assessing whether "[a] majority of the circuit judges who are in regular active service" have voted to hear or rehear a case en banc.	Hon. Edward E. Carnes (CA11)	Awaiting initial discussion Discussed and retained on agenda 04/01; awaiting report from Federal Judicial Center
00-12	Amend FRAP 28, 31 & 32 to specify the length, timing, and cover colors of briefs in cases involving cross-appeals.	Solicitor General Waxman	Awaiting initial discussion Discussed and retained on agenda 04/01; awaiting revised proposal from Department of Justice
00-13	Amend FRAP 29 to empower court to preclude the filing of a particular private amicus brief, even if all parties have consented.	Hon. Michael Boudin (CA1)	Awaiting initial discussion Discussed and retained on agenda 04/01
01-01	Add rule to regulate the citation of unpublished and non-precedential decisions.	Solicitor General Waxman	Awaiting initial discussion Discussed and retained on agenda 04/01
01-02	Amend FRAP 5(c), 21(d), 27(d)(2), 35(b)(2), & 40(b) to replace page limits with word limits.	Advisory Committee	Awaiting initial discussion Discussed and retained on agenda 04/01

- 01-03 Amend FRAP 26(a)(2) to clarify interaction with “3-day rule” of FRAP 26(c). Roy H. Wepner, Esq. Awaiting initial discussion
Discussed and retained on agenda 04/01
- 01-04 Amend Rule 4(b)(1)(A) to give criminal defendant 30 days to appeal. Advisory Committee Awaiting initial discussion
Discussed and retained on agenda 04/01
- 01-05 Amend Forms 1, 2, 3, and 5 to change references to “19__.” Advisory Committee Awaiting initial discussion