

REPORT OF THE JUDICIAL CONFERENCE  
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN, AND THE  
MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Your Committee on the Rules of Practice and Procedure met in New Orleans, Louisiana, on January 16-17, 1992. All Committee members attended the meeting, except Chief Judge Dolores K. Sloviter, whose absence was excused. Also present were Judge Kenneth F. Ripple, Chairman, and Professor Carol Ann Mooney, Reporter, of the Appellate Rules Advisory Committee; Chief Judge Sam C. Pointer, Chairman of the Civil Rules Advisory Committee; Judge William Terrell Hodges, Chairman, and Professor David A. Schlueter, Reporter, of the Criminal Rules Advisory Committee; Judge Edward Leavy, Chairman, and Professor Alan N. Resnick, Reporter, of the Bankruptcy Rules Advisory Committee. Judge Wilfred Feinberg, a member of the Judicial Conference Committee on Long Range Planning, also attended at the invitation of the Committee Chairman. The Reporter to the Committee, Dean Daniel R. Coquillette, attended the meeting along with Professor Mary P. Squiers, Director of the Local Rules Project. Also present were Joseph F. Spaniol, Jr., Secretary to your Committee; John K. Rabiej, Patricia S. Channon, Ann R. Gardner, and Judith W. Krivit

of the Administrative Office Staff; and William B. Eldridge, Director of Research of the Federal Judicial Center.

I. Supreme Court Request for Improved Written Briefings

On behalf of the Supreme Court the Chief Justice requested "that at the time the Standing Committee submits proposed changes in the Rules to the Court it also send along some sort of outline or summary to indicate which of the proposed changes were the subject of substantial controversy, the arguments made on both sides, and the reasoning of the Committees in deciding the controversial matters the way it did." The Chief Justice also asked that the Court "be made privy to any divisions of opinion within the responsible Committees, and to any substantial objections to the proposed changes."

The Chairman and the Reporters to the various advisory committees have been requested to include this information in their final reports to the Standing Committee recommending rules changes. In turn the Standing Committee will present the information to the Judicial Conference in an appropriate form for recommended transmission to the Supreme Court.

II. Long Range Planning

Judge Wilfred Feinberg briefed the Committee on the functions of the Judicial Conference Committee on Long Range Planning and its deliberations to date. He indicated that the Committee would appreciate receiving ideas and suggestions from everyone, and especially from Committees which have been considering long-range planning.

Professor Thomas E. Baker, Chairman of the Standing Committee's Long Range Planning Subcommittee, submitted a report on the approaches to its work that the Subcommittee is now considering. Various suggestions of Standing Committee members have been noted for further study and consideration by the Planning Subcommittee.

### III. Advisory Committee on Appellate Rules

A. Local Rules Project. The Advisory Committee on Appellate Rules reported on the reactions of the courts of appeals to the April, 1991, circulation of the Local Rules Project Report to the Chief Judges of the courts of appeals. A copy of the report, already transmitted to the Chief Judge of each circuit, is attached as Exhibit A. The Standing Committee also authorized its Chairman to write a letter urging the courts to adopt the uniform numbering system for local rules previously approved by the Judicial Conference.

B. Proposed Rules Changes. The Advisory Committee submitted proposed amendments to Rules 3(c), 15, 25, 28, 32, 38, 40, and 41 of the Federal Rules of Appellate Procedure. The Advisory Committee recommended that the proposed amendments to Rules 3(c) and 15, pertaining to the means that may be used to identify the appellants in a notice of appeal, be circulated to the bench and bar for expedited comment citing an urgency in clearing up conflicts in decisions of the courts of appeals following the decision of the Supreme Court in Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988).

The Standing Committee voted unanimously to circulate the proposed amendments to Rules 3(c) and 15 to the bench and bar forthwith with the request that comments be received within approximately 90 days, so as to make it possible for the Standing Committee to consider these proposals in June, 1992. At that time the Standing Committee will also consider whether any other amendments proposed by the Advisory Committee are technical and can be recommended for adoption without the need for public comment. Any proposed amendments that are substantive in nature will be set aside for later submission to the bench and bar for comment.

C. Interlocutory Appeals. Section 105(b) of S.1569, 102nd Congress, would authorize the Supreme Court to prescribe rules "to provide for an appeal of an interlocutory decision to the courts of appeals...." It was referred to the Advisory Committee to consider whether the Rules Committees should recommend that the Judicial Conference express a view on the proposed legislation. The Advisory Committee reported the proposal to the Standing Committee without a recommendation, noting uncertainty as to whether the authority is needed. Several differing views were expressed by individual Standing Committee members as to the desirability of this proposal. The Committee was unable to arrive at a consensus, and elected to take no formal action at this time.

IV. Advisory Committee on Bankruptcy Rules.

The Advisory Committee on Bankruptcy Rules reported that the hearing on the proposed amendments to the Bankruptcy Rules scheduled for January 24, 1992, was cancelled for lack of witnesses and that the hearing scheduled for February 28, 1992, would probably be cancelled for the same reason. The Advisory Committee will meet in March to review the proposed amendments in the light of any comments received.

V. Advisory Committee on Criminal Rules.

The Advisory Committee on Criminal Rules submitted technical amendments to Rules 32.1(a), 35, 40(f), and 54 of the Federal Rules of Criminal Procedure. These proposed technical amendments will be considered for possible inclusion in the next set of criminal rules changes to be recommended by the Standing Committee to the Judicial Conference.

The American Bar Association had recommended that the Rules Committees urge local experimentation with special procedures for use in "Mega" criminal cases. It was the consensus of the Standing Committee that the problem presented was one of practice and case management, not rule making, and that the function of encouraging and monitoring local experimentation should not be undertaken by the Judicial Conference Rules Committees. An explanatory communication will be sent to the ABA Committee.

VI. Advisory Committee on Civil Rules.

The Advisory Committee on Civil Rules reported through its Chairman, Chief Judge Sam C. Pointer, that the Advisory Committee

had received so many requests for an opportunity to testify at the November 21, 1991 hearings in Los Angeles on the current proposed amendments to the Civil Rules that they had to be continued until February 19-20, 1992 in Atlanta, Georgia, to accommodate the overflow. Written comments have been numerous.

Judge Pointer also reported that the proposed amendments to Civil Rule 4 and certain other civil rules that were not transmitted to the Congress by the Supreme Court last year have been returned by the Court to the Committee for further study. They will be reconsidered at the next Advisory Committee meeting.

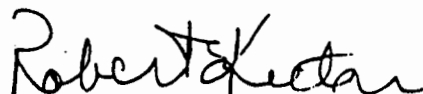
#### VII. Creation of An Advisory Committee on Evidence Rules.

The Standing Committee reviewed a proposal to create a separate Advisory Committee on Rules of Evidence. After full discussion the Chairman requested the Reporter of the Standing Committee, in consultation with the Chairmen of the Advisory Committee on Criminal Rules and the Advisory Committee on Civil Rules, to develop a paper on various options for conducting a review of Evidence Rules by a separate advisory committee or within the existing committee structure. The report will be considered at the next Standing Committee meeting.

VIII. Style Subcommittee.

The Style Subcommittee appointed by the Chairman of the Standing Committee has adopted a plan for the review of proposed amendments to the various federal procedural rules. A review of the proposed rules amendments currently in circulation will be completed before the next Standing Committee meeting.

Respectfully submitted,



Robert E. Keeton, Chairman  
Dolores K. Sloviter  
George C. Pratt  
Frank H. Easterbrook  
William O. Bertelsman  
Thomas S. Ellis, III  
Alicemarie H. Stotler  
Edwin J. Peterson  
Charles Alan Wright  
Thomas E. Baker  
William R. Wilson  
Alan W. Perry  
George J. Terwilliger, III

