

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

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MEMORANDUM

DATE: December 9, 2005

TO: Judge David F. Levi, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Judge Carl E. Stewart, Chair
Advisory Committee on Appellate Rules

RE: Report of Advisory Committee on Appellate Rules

I. Introduction

The Advisory Committee on Appellate Rules cancelled its fall meeting, mainly because our study agenda (which is attached) was unusually light. We also had an unexpectedly complicated transition in leadership. Judge Samuel A. Alito, Jr., completed his successful tenure as chair on October 1, and then-Judge John G. Roberts, Jr., was scheduled to replace him. Judge Roberts, however, decided to take another job. I am honored that now-Chief Justice Roberts has asked me to replace him as the new chair of the Advisory Committee, and I look forward to working with the Standing Committee.

II. Action Items

The Advisory Committee is not seeking Standing Committee action on any matter.

III. Information Items

The Advisory Committee will next meet on April 28 in Los Angeles. We expect to address several matters at that meeting, including the E-Government amendment now out for public comment, recommendations from the Time-Computation Subcommittee, a proposal from the Department of Justice regarding the mandamus provisions of the Justice for All Act, a proposal to amend Rule 41 to address an issue that was ducked by the Supreme Court last Term in *Bell v. Thompson*, and several other matters.

**Advisory Committee on Appellate Rules
Table of Agenda Items — December 2005**

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
01-01	Add rule to regulate the citation of unpublished and non-precedential decisions.	Solicitor General	Awaiting initial discussion Discussed and retained on agenda 04/01 Discussed and retained on agenda 04/02 Discussed and retained on agenda 11/02 Draft approved 05/03 for submission to Standing Committee Approved for publication by Standing Committee 06/03 Published for comment 08/03 Approved with changes by Advisory Committee 04/04 . Standing Committee returned to Advisory Committee for further study 06/04; referred to Federal Judicial Center for study Approved with further changes by Advisory Committee 04/05 Approved by Standing Committee 06/05 Approved with changes by Judicial Conference 09/05
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 Referred to Civil Rules Committee 04/02 Draft approved 11/03 for submission to Standing Committee
03-02	Amend FRAP 7 to clarify whether reference to “costs” includes only FRAP 39 costs.	Advisory Committee	Awaiting initial discussion Discussed and retained on agenda 05/03 Draft approved 11/03 for submission to Standing Committee
03-09	Amend FRAP 4(a)(1)(B) & 40(a)(1) to clarify treatment of U.S. officer or employee sued in individual capacity.	Solicitor General	Awaiting initial discussion Discussed and retained on agenda 11/03; awaiting revised proposal from Department of Justice Tentative draft approved 04/04 Revised draft approved 11/04 for submission to Standing Committee

03-10	Add new FRAP 25.1 to "protect privacy and E-Government Subcommittee security concerns relating to electronic filing of documents," as directed by E-Gov't Act.	E-Government Subcommittee	Awaiting initial discussion Discussed and retained on agenda 04/04 Discussed and retained on agenda 11/04 Draft approved 04/05 for submission to Standing Committee Approved for publication by Standing Committee 06/05 Published for comment 08/05
04-04	Amend FRAP 25(a) to authorize courts to mandate electronic filing.	Hon. John W. Lungstrum (D. Kan.) on behalf of CACM	Awaiting initial discussion Draft approved 11/04 for submission to Standing Committee Approved for publication by Standing Committee 11/04 Published for comment 11/04 Approved with changes by Advisory Committee 04/05 Approved with changes by Standing Committee 06/05 Approved by Judicial Conference 09/05
05-01	Amend FRAP 21 & 27(c) to conform to Justice for All Act of 2004.	Advisory Committee	Awaiting initial discussion Discussed and retained on agenda 04/05; awaiting proposal from Department of Justice
05-04	Amend FRAP 41 to address <i>Bell v. Thompson</i> issue.	John G. Kester, Esq.	Awaiting initial discussion
05-05	Amend Rule 29(e) to require filing of amicus brief 7 <i>calendar</i> days after <i>service</i> of principal brief of party supported.	Brian Wolfman Public Citizen Litigation Group	Awaiting initial discussion
05-06	Amend Rule 4(a)(4)(B)(ii) to clarify whether appellant must file amended notice of appeal when court, on post-judgment motion, makes favorable or insignificant change to judgment.	Hon. Pierre N. Leval (CA2)	Awaiting initial discussion
06-01	Amend Rule 26(a) to adopt template proposed by Time-Computation Subcommittee.	Standing Committee	Awaiting initial discussion
06-02	Amend various rules to adjust deadlines to compensate for new time-computation method.	Standing Committee	Awaiting initial discussion