

MINUTES OF THE MEETING OF THE ADVISORY COMMITTEE ON CIVIL RULES

HELD ON SEPTEMBER 21st, 1971, WASHINGTON, D. C.

Present: Judges Tuttle, Christensen, Harper, Harris, Hastings, Hunter, Hufstedler, Mansfield, Russell, Thomsen and Wilson; Messrs. Coleman, Kintner, Kirby, Meserve and Oberdorfer.

The meeting was called to order at 9:30 A. M.

The Chief Justice attended briefly and addressed the Committee. He noted certain expressions of dissatisfaction with a number of specific procedural devices and suggestions for improvement. But he emphasized the need, not simply for the betterment of existing procedures, but for major changes in the way in which litigation is being handled. He advised the Committee that it was unique in that it could make recommendations in any area of civil litigation where it considered change desirable.

Item 1.

The Committee first considered a request from the Judicial Conference for advice as to the effective means of reducing the size of juries in civil trials in the District Courts, i.e., whether by a rule change or by statute.

After extended discussion, the Committee unanimously adopted the following resolution:

Whereas, the Judicial Conference has approved in principle a reduction in the size of juries in civil trials in the District Courts of the United States and an accompanying diminution in the number of peremptory challenges to be allowed; and

Whereas, the Conference has referred to the Committee on the Operation of the Jury System and this Committee the means of

effectuating those objectives, i.e., whether by procedural rule or statute;

Therefore Be It Resolved that in the opinion of the Advisory Committee on Civil Rules the better method of effectuating the proposals would be by statute, and that the Judicial Conference be so informed.

Approved Sept. 21, 1971

Item 2.

The Committee next considered the desirability of changes in the existing Federal Rules of Civil Procedure. After extended discussion the Committee requested the reporter to undertake a study of the desirability of effecting changes in the following Rules:

1. Rule 23 (Class Actions).
2. Rule 16 (Pre-Trial Procedure).

Item 3.

The Committee discussed generally: (a) the desirability of re-thinking the entire role of discovery; (b) the desirability of shortening the time provided by Rules 33 and 34 for responding to requests for discovery; (c) the desirability of amending Rule 56(d) to make it mandatory that the District Court, upon refusing motion for summary judgment, determine the facts that exist without controversy; (d) the desirability of amending Rule 68 to oblige the parties to make an offer of judgment or a statement that no offer is acceptable, and to oblige counsel to advise clients of offers and counteroffers; (e) the desirability

of a study of the power of courts to allow fees and to impose sanctions; (f) the desirability of encouraging the use of masters in certain cases.

Item 4.

The Committee requested the reporter to study the local rules of the District Courts to determine whether those rules contain procedural devices that can profitably be incorporated in the general rules. The Chairman accepted a suggestion that he write to the District Judges for suggestions as to local rules that might be so incorporated.

Item 5.

The Committee considered the Tentative Report by the Chief Justice's Special Advisory Group on Federal Civil Litigation, entitled "Suggestions for Improving the Processes of Civil Litigation in the Federal Courts." It requested the reporter to study the suggestions contained in the report for improving the pleading structure and accelerating judgment.

The meeting was adjourned at 4:45.


Bernard J. Ward, Reporter

By Direction