

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Summary of Report

The annexed report recommends that the Judicial Conference approve and forward to the Congress for enactment a bill to amend section 2072 of title 28, U.S.C., so as to extend the present civil rulemaking power of the Supreme Court to include practice and procedure in the courts of appeals in civil cases and in proceedings to review or enforce orders of administrative agencies, boards, commissions and officers. The Committee also recommends that the bill extend the civil rulemaking power of the Supreme Court to include bankruptcy proceedings and to consolidate in section 2072 the existing civil and admiralty rulemaking authority.

REPORT OF THE COMMITTEE ON RULES OF
PRACTICE AND PROCEDURE

TO THE JUDICIAL CONFERENCE OF THE UNITED STATES:

Your Committee met in Washington, D. C. on February 12, 1964, all members being present except Honorable J. Lee Rankin, who was unavoidably detained by other public business. Judge E. Barrett Prettyman and Professor Bernard J. Ward, Chairman and Reporter, respectively, of the Advisory Committee on Appellate Rules, and Professor Edward L. Barrett, Jr., Reporter of the Advisory Committee on Criminal Rules, were present by invitation. Mr. Olney and Mr. Shafroth also attended the meeting.

Our Committee noted with sorrow the passing since our last meeting of our member, Honorable Charles E. Clark, a distinguished scholar and jurist whose greatest interest was in the field of procedural reform. Judge Clark was a tower of strength in all the deliberations of the Committee. His knowledge and judgment in the field of our work and his enthusiasm for improved judicial procedure were unexcelled. He will be sorely missed by our Committee and all others who are working in this field.

Our Committee received from the Advisory Committee on Appellate Rules a preliminary draft of a complete set of Uniform Rules of Federal Appellate Procedure. Our Committee authorized the draft to be published for circulation to the bench and bar for their comments and suggestions. Our Committee also gave consideration to the question as to the manner in which such a set of appellate rules, when finally perfected, can be put into force. The Advisory Committee on Appellate Rules recommended to us that legislation be sought to enlarge the present civil rulemaking authority of the Supreme Court to include such appellate rules. Our Committee approved this suggestion and has prepared a draft bill to this end, a copy of which is annexed to this report as Appendix A. The bill as drawn would also extend the civil rulemaking power of the Supreme Court to include bankruptcy proceedings and proceedings for the review and enforcement of orders of administrative agencies. The present admiralty rulemaking power would be consolidated with that for all other civil actions by including both in the amended section 2072 of title 28. We recommend that the Judicial Conference approve this draft bill and forward it to the Congress for enactment.

The Advisory Committee on Admiralty Rules reported that a preliminary draft of amendments to the Federal Rules of Civil Procedure and supplementary rules in admiralty cases, designed to merge the admiralty procedure into the civil procedure, has been prepared by it and

approved by the Advisory Committee on Civil Rules. Likewise we were informed that additional amendments to the Federal Rules of Civil Procedure, not directly involved in the union of admiralty and civil procedure, have been formulated by the Advisory Committee on Civil Rules and approved by the Advisory Committee on Admiralty Rules. Both sets of proposed amendments will be printed and distributed to the bench and bar for comments and suggestions.

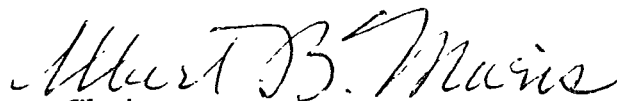
The Advisory Committee on Criminal Rules submitted proposed amendments to certain of the Federal Rules of Criminal Procedure in December 1962, and these were printed and distributed to the bench and bar. Many comments and suggestions have been received with respect to them and the Advisory Committee has decided to revise a number of them in the light of the suggestions thus received. In addition, it has formulated proposed amendments to all except one or two of the remaining criminal rules, which it believes require amendment at this time. Under the circumstances, the Advisory Committee has requested us to republish and recirculate all of its proposals, both old and new, so that all of them will be presented in one pamphlet. This is being done.

In connection with all of the foregoing proposed amendments -- Appellate, Civil-Admiralty, Civil and Criminal -- your Committee proposes

to request that the comments and suggestions of the bench and bar be made not later than April 1, 1965, to the end that it may be possible to prepare and approve final drafts in the Summer of 1965 and transmit them to the Judicial Conference in September of that year.

Your Committee is requesting the judicial conferences of the circuits and the appropriate bar association sections and committees to allot substantial time at their meetings during the coming year for the consideration of the various rules proposals which we are submitting for public consideration at this time.

Respectfully submitted,


Chairman

February 12, 1964

A BILL

To amend section 2072 of title 28, United States Code, with respect to the scope of the Federal Rules of Civil Procedure

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the catchline and first paragraph of section 2072 of title 28 of the United States Code is amended so as to read as follows:

"§ 2072. Rules of Civil Procedure

The Supreme Court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions, including admiralty and bankruptcy proceedings, and appeals therein, and in proceedings to review or enforce orders of administrative agencies, boards, commissions, and officers."

Sec. 2. Section 2073 of title 28 of the United States Code is repealed.

Sec. 3. Item 2072 in the analysis of Chapter 131 of title 28 of the United States Code, appearing immediately preceding section 2071 thereof, is amended so as to read as follows: "§ 2072. Rules of Civil Procedure." and item 2073 is stricken from such analysis.