Report to Standing Rules Committee
Advisory Committee on Civil Rules

May 25, 1994

Introduction

The draft minutes of the April 1994 meeting of the Civil Rules Advisory Committee are attached. The draft was prepared by the Committee Reporter, Edward H. Cooper, and reviewed by me. These minutes supply a detailed account of the matters summarized in this Report.

Action Items

Proposed Amendments Submitted for Approval To Transmit to the Judicial Conference

Summary of Amendments

The Committee recommends transmission to the Judicial Conference of proposed amendments to Civil Rules 50, 52, 59, and 83. The proposals were published for comment on October 15, 1993. Each of these amendments parallels amendments being proposed by other advisory committees. The Committee does not recommend transmission to the Judicial Conference of proposed amendments to Rules 26(c), 43(a), and 84 that were published at the same time. Rule 84 is discussed in this section; Rules 26(c) and 43(a) are discussed in the next section.

The amendments to Rules 50, 52, and 59 establish a uniform period for the post-trial motions authorized by those rules. A post-trial motion under any of these rules must be filed no later than ten days after entry of the judgment. Until now, these rules have variously required that within the ten-day period the motion be served and filed, or be "made," or be served. Stylistic changes also have been made to conform to the new style conventions.

The discussion of Rules 50, 52, and 59 is set out at pages 8 to 9 of the draft minutes.

The amendments to Rule 83 deal with local rules and with orders regulating matters not covered by national or local rules. In keeping with the language of 28 U.S.C. § 2071, the requirement of conformity with national statutes and rules would be expressed by requiring that they "be consistent," in place of the present "be not inconsistent." Local rules would be required to conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule imposing a requirement of form could not be enforced in a manner that would cause a party to lose

rights because of a nonwillful failure to comply. And no sanction or other disadvantage could be imposed for failure to comply with any procedural requirement not in federal law, federal rules, or local district rules unless actual notice of the requirement has been furnished in the particular case. Style changes also would be made.

The discussion of Rule 83 is set out at page 9 of the draft minutes.

The amendments to Rule 84 are described here, although the Committee recommends that they not be transmitted to the Judicial Conference. Instead, the Committee recommends that the Judicial Conference be asked to support legislation that would embody the principles of these amendments. These amendments would authorize the Judicial Conference to add to, revise, or delete the forms that illustrate the operation of the rules. The Judicial Conference also would be authorized to amend the rules to correct errors in spelling, cross-references, or typography, or to make technical changes needed to conform the rules to statutory changes. Modest style changes also would be made. On reexamination, the Committee believes that these proposals would violate the procedure established by the Rules Enabling Act, 28 U.S.C. § 2072. The underlying principle, however, is sound. Legislation should be proposed authorizing the Judicial Conference to make the described changes through the Standing Committee and advisory committees structure.

The discussion of proposed Rule 84 is set out at pages 9 to 10 of the draft minutes.

Text of Amendments

GAP Report

Few changes were made in response to public comments.

The Note to Rule 59 was changed at the request of the Bankruptcy Rules Advisory Committee by adding a new sentence that refers to the difference between the Bankruptcy Rules and the Civil Rules in calculating the period actually covered by a nominal ten-day time limit.

The text of Rule 83(a)(2) was changed – again at the request of the Bankruptcy Rules Advisory Committee – by substituing "nonwillful" failure to comply for "negligent" failure. The Bankruptcy Committee was concerned that limiting the rule to negligent failures to comply with local rule requirements of form might permit sanctions for entirely innocent failures, such as those caused by circumstances beyond the lawyer's control. A parallel change was made in the Committee Note.

Summary of Comments

Rules 50, 52, and 59. There were few comments on the Rule 50, 52, and 59 proposals. One lengthy comment was premised on the erroneous belief that Rule 6(a) now permits a motion under any of these rules to be "filed" by mailing within ten days, without regard to the time of actual delivery to the court. (The requirement of delivery to the court to establish filing is illustrated by Cavaliere v. Allstate Ins. Co., 11th Cir.1993, 996 F.2d 1111.) Another comment addressed the failure to clarify the question whether Rule 50(b) requires renewal of a motion for judgment as a matter of law "where the court simply fails to rule on the motion made at the close of the evidence rather than denies it." This part of Rule 50(b) was extensively amended in 1991, and the Committee decided not to revisit the issue for the present.

Rule 83. The Federal Magistrate Judges Association opposed the Rule 83 proposal. They urged that there is no compelling reason to establish national uniformity in local rule numbers, that the Rule 83(a)(2) restriction on enforcing local rules is vague, and that the Rule 83(b) requirement of actual notice would forbid enforcement of widely accepted norms that are not codified in any form of order. Another comment was that while all of the proposed changes are desirable, still greater efforts should be made to control the variable, confusing, and often unwise requirements adopted by local rules and standing orders. Perhaps the authority of the Judicial Councils of the Circuits under 28 U.S.C. §§ 332(d)(4) and 2071 should be clarified, or perhaps some other system of effective review should be established.

Information Items

Status of Proposed Amendments Under Consideration

Rules 26(c)(3) and 43(a)

Proposals to amend Rules 26(c) and 43(a) were published for comment on October 15, 1993. In light of the comments received and further consideration by the Committee, it was decided to hold each proposal for further study.

The proposed Rule 26(c)(3) expressly recognizes authority to modify a discovery protective order and requires consideration, among other matters, of the extent of reliance on the order, the public and private interests affected by the order, and the burden that the order imposes on persons seeking information relevant to other litigation. It was intended to formalize and perhaps make more uniform the Committee's sense of general present practices. Public comments covered a wide spectrum. Apart from support for the proposal, some comments feared that it would allow protection to be defeated too easily. Other comments suggested that the

proposal does not go nearly far enough in allowing general public access to information that bears on important public interests or health and safety. These comments reflected deeper divisions over the philosophy of discovery. Some view discovery as a purely private tool, designed only to support informed resolution of private disputes. Others view discovery as a public instrument of public justice, designed to achieve wide dissemination of matters affecting public interests.

Differences of opinion about the actual effects of protective orders abound. On one side are those who believe that protective orders have frequently defeated public access to information that would prevent continuing injury from dangerous products and support enforcement of important rights. On the other side are those who believe that none of the anecdotal stories of wrong can be borne out. These disagreements are further confused by failures to distinguish between discovery protective orders and orders that limit or deny access to other litigating materials that include documents used in support of dispositive motions or at trial.

Discovery protective orders have become the focus of active legislative consideration. Several states have adopted statutes or court rules that in different ways reflect concern for impact on public health and safety and on more general public interests. Proposals have been advanced in virtually every state. Congress has begun to study similar proposals, and the Chair of the Advisory Committee has both testified and responded to written questions.

Facing all of these differences, the Committee concluded that further efforts must be made to gather information about the actual impact of discovery protective orders on interests outside the immediate litigation. The Federal Judicial Center has begun a study of protective orders, and has agreed to expand the study in an effort to address the questions that have been raised by the Committee, by comments on the proposed Rule 26(c)(3), and in Congress. Further consideration of Rule 26(c)(3) will await completion of this study.

Discussion of proposed Rule 26(c)(3) is set out at pages 4 to 8 of the draft minutes. Testimony at the public hearing is summarized at pages 1 to 3.

The proposed amendment to Rule 43(a) would accomplish two things. First, it would make it clear that a witness who is unable to speak may present testimony by other means such as writing, computer printing, or the like. Second, it would permit presentation of testimony by transmission from a different location on a showing of good cause. The first aspect attracted no comment and was not discussed further. The proposal for transmission from a different location was discussed at some length. The fear was expressed that the amended rule would be used too often, defeating

the advantages of live testimony in favor of mere convenience for witnesses. A suggestion that the rule might be amended to limit transmitted testimony to exceptional or compelling circumstances was discussed but not brought to a vote. A motion to recommend that minor changes be made in the Committee Note and that the amendment be transmitted to the Judicial Conference failed by even vote. The proposal remains on the Advisory Committee Agenda.

Discussion of proposed Rule 43(a) is set out at page 8 of the draft minutes.

Continuing and New Projects

Rule 23

Reconsideration of the long-standing Rule 23 draft began with discussion by a panel composed of John P. Frank, Esq., of the Arizona bar; Professor Francis E. McGovern, of the University of Alabama School of Law; and Herbert M. Wachtell, Esq., of the New York Bar. The panel discussion covered topics beginning with the process that led to adoption of current Rule 23 in 1966 and ranging through the most contemporaneous experience with mass-tort litigation.

The topics opened by the panel discussion were generalized in the ensuing Committee discussion. It was recognized that much informal reaction rejects the current Rule 23 draft as not necessary. In large part it would simply confirm present practices. In trying to regularize and articulate present practices, however, the draft is likely to create new uncertainties that will cause trouble for years.

The informal reactions to the draft suggest the lack of hard information about the actual operation of Rule 23. Each year brings several hundred to more than a thousand new class action filings. The backlog of unresolved class actions is gradually growing. It may be that despite the growing backlog, most of these actions are resolved by well-settled routines that make light of the theoretical questions suggested by more difficult cases that are reported and draw attention. It also may be that many of these actions present intransigent difficulties that lie far beyond the reach of the relatively modest changes proposed by the draft. Some class actions may be instruments of important social justice, while others epitomize the worst fears that predatory lawyers win large fees by alternatively settling unfounded class claims and selling out meritorious class claims. Very little is known in a systematic way about such issues as the frequency of races among competing counsel to be the first to file class claims; the proportion of attempted classes that are certified; the time of the initial certification determination, particularly in relation to proposed settlements; the extent of litigation over certification issues and

the character of the classes to be certified; the forms, costs, and effects of notice in various forms of class actions; opt-out experience in Rule 23(b)(3) classes, and the impact on parallel litigation; the character of class representatives and the actual role they play as clients of class attorneys; the roles played by nonrepresentative class members; the use of defendant classes; the frequency of subclass or issue-class certifications; the number of class claims that are resolved by actual trial on the merits; the frequency of class judgments that result in trivial relief for individual class members; the relationships between counsel fees and class recoveries, particularly in cases that settle; and the frequency with which the res judicata effects of class judgments are tested and perhaps limited.

In addition to these questions, some issues lie beyond the direct reach of the Rules Enabling Act process. There may be some residual uncertainty about possible due process limits on the ability to bind nationwide classes without actual notice and an opportunity to opt out. Diversity jurisdiction limits and choice-of-law problems cannot be controlled through the rulemaking process.

The first step in the effort to learn more about these unresolved issues again will be a study by the Federal Judicial Center. The Center has agreed to undertake the study, and has begun design work with a subcommittee of the Advisory Committee.

Rule 23 commands a high priority on the Committee's project list, but more work remains to be done before deciding whether to propose more sweeping changes, to adhere to the present draft, or to leave the present rule well enough as it stands.

Discussion of Rule 23 is set out at pages 11 to 21 of the draft minutes.

Rule 53: Pretrial Masters

The Committee has begun work on the use of special masters. Present Rule 53 is drafted with an eye to trial masters. Courts have come, however, to use masters in settings that do not fit comfortably within the scope of Rule 53. Two broad categories account for most of these practices. Masters are appointed to handle pretrial matters, particularly discovery, and to help formulate and enforce decrees. The Committee considered a draft pretrial master rule, tentatively labeled as Rule 16.1, and concluded that an effort should be made to draft post-trial provisions as well. The initial draft covered several issues that are likely to be common to pretrial, trial, and post-trial masters. In the end, it may prove best to draft a new and comprehensive Rule 53 that encompasses all masters. As an alternative, it may be better to adopt a number of common provisions in Rule 53 and to

incorporate them by reference in separate rules for pretrial and post-trial masters.

At least one aspect of this project will require coordination with the Evidence Rules Advisory Committee. Although it is difficult to form any clear picture, it seems likely that there is some ongoing practice of appointing a single person to serve functions that combine the traditional role of master as temporary judge with the role of expert trial witness. The overlapping functions may become particularly sensitive if the parties perceive that a witness has private access to the judge. Although it may well be that the question should be handled primarily through the Civil Rules, the best approach can be found only after drawing from the wisdom of the Evidence Rules Committee on current practices and the need to regulate whatever practices have emerged.

Discussion of pretrial masters is set out at pages 26 to 28 of the draft minutes.

Rule 68

John Shapard reported the initial results of the Federal Judicial Center study of offer-of-judgment provisions. Complete results will be available for the October Committee meeting. Substantial results also should be available for Professor Rowe's ongoing simulation study.

Initial study results did not resolve the many doubts that have attended study of Rule 68. Doubts remain at several levels. At one level, it is not clear whether any plausible changes in Rule 68 will have much effect on the time of settlement or the number of cases that settle. At the next level, the direct effects of increased incentives may do more harm than any good. One level further down, earlier or more frequent settlements also may be undesirable. In waiting for the complete study results, the Committee also intends to consider several alternative possibilities. One is to abrogate Rule 68. Others are to attempt to make it more effective by providing stronger incentives — in addition to the capped benefit-of-the-judgment attorney fee shifting of the current draft, other possibilities include restrictions on contingent fees, shifting of expert witness fees, or partial attorney fee shifting.

Discussion of Rule 68 is set out at pages 22 to 26 of the draft minutes.

Style Project

The Committee met to discuss the Civil Rules style revisions on February 21, 22, and 23. The minutes of the meeting are attached.

Discussion covered Rules 21 through 30(f).

The style topic was revisited briefly at the close of the April meeting. Rule 31 was discussed, and a bare start was made on Rule 32. These matters are summarized at pages 30 to 31 of the draft minutes. It was the clear sense of the Committee that substantial progress can be made on this project only at meetings devoted exclusively to style revision.

Patrick E. Higginbotham
Chair, Advisory Committee on Civil Rules
May 26, 1994

PROPOSED AMENDMENTS TO RULES OF CIVIL PROCEDURE*

Rule 50. Judgment as a Matter of Law in ~~Actions Tried by~~ Jury Trials; Alternative Motion for New Trial; Conditional Rulings

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(b) ~~Renewal of~~ Renewing Motion for Judgment After Trial; Alternative Motion for New Trial. ~~Whenever~~ If, for any reason, the court does not grant a motion for ~~a~~ judgment as a matter of law made at the close of all the evidence ~~is denied or for any reason is not granted~~, the court is ~~deemed~~ considered to have submitted the action to the jury subject to ~~a later determination of~~ the court's later deciding the legal questions raised by the motion. ~~Such a motion may be renewed by service and~~ The movant may renew its request for judgment as a matter of law by filing a

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* New matter is underlined; matter to be omitted is lined through.

motion not later than 10 days after entry of judgment. A — and may alternatively request a new trial or join a motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, In ruling on a renewed motion, the court may, in disposing of the renewed motion, :

(1) if a verdict was returned:

(A) allow the judgment to stand, or may reopen the judgment and either

(B) order a new trial, or

(C) direct the entry of judgment as a matter of law. —; or

(2) iIf no verdict was returned, the court may, in disposing of the renewed motion, :

(A) order a new trial, or

(B) direct the entry of judgment as a

matter of law ~~or may order a new trial~~.

(c) ~~Same: Conditional Rulings on Grant of~~ Granting Renewed Motion for Judgment as a Matter of Law; Conditional Rulings; New Trial Motion.

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(2) ~~The~~ Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law ~~has been~~ is rendered ~~may serve~~ must be filed ~~a motion for a new trial pursuant to Rule 59~~ not later than 10 days after entry of the judgment.

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COMMITTEE NOTE

The only change, other than stylistic, intended by this revision is to prescribe a uniform explicit time for filing of post-judgment motions under this rule — no later than 10 days after entry of the judgment. Previously, there was an inconsistency in the wording of Rules 50, 52, and 59 with respect to whether certain post-judgment motions had to be filed, or merely

served, during that period. This inconsistency caused special problems when motions for a new trial were joined with other post-judgment motions. These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court. The Committee believes that each of these rules should be revised to require filing before end of the 10-day period. Filing is an event that can be determined with certainty from court records. The phrase "no later than" is used — rather than "within" — to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk. It should be noted that under Rule 6(a) Saturdays, Sundays, and legal holidays are excluded in measuring the 10-day period, and that under Rule 5 the motions when filed are to contain a certificate of service on other parties.

Rule 52. Findings by the Court; Judgment on Partial Findings

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(b) **Amendment.** ~~Upon~~ On a party's motion ~~of a party made~~ filed ~~not~~ later than 10 days after entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly. The motion may ~~be made with~~ accompany a motion for a new trial ~~pursuant to~~ under Rule 59. When findings of fact are made in actions tried ~~by the court~~ without a jury, the ~~question of the~~ sufficiency of the evidence ~~to support~~ supporting the findings may ~~thereafter~~ be later questioned ~~raised~~ whether or not in the district court the party raising the question ~~has made in the district court an objection to such~~ objected to the findings, moved ~~or has made a motion~~ to amend them ~~or a motion for judgment~~, or moved for partial findings.

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COMMITTEE NOTE

The only change, other than stylistic, intended by this revision is to require that any motion to amend or add findings after a nonjury trial must be filed no later than 10 days after entry of the judgment. Previously, there was an inconsistency in the wording of Rules 50, 52, and 59 with respect to whether certain post-judgment motions had to be filed, or merely served, during that period. This inconsistency caused special problems when motions for a new trial were joined with other post-judgment motions. These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court. The Committee believes that each of these rules should be revised to require filing before end of the 10-day period. Filing is an event that can be determined with certainty from court records. The phrase "no later than" is used — rather than "within" — to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk. It should be noted that under Rule 6(a) Saturdays, Sundays, and legal holidays are excluded in measuring the 10-day period, and that under Rule 5 the motions when filed are to contain a certificate of service on other parties.

Rule 59. New Trials; Amendment of Judgments

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(b) **Time for Motion.** Any motion for a new trial ~~shall~~ must be ~~served~~ filed not later than 10 days after ~~the~~ entry of the judgment.

(c) **Time for Serving Affidavits.** When a motion for new trial is based ~~u~~pon affidavits, they ~~shall~~ must be ~~served~~ filed with the motion. The opposing party has 10 days after ~~such~~ service ~~within which~~ to ~~serve~~ file opposing affidavits, ~~which~~ but that period may be extended for ~~an additional period not exceeding~~ up to 20 days, either by the court for good cause ~~shown~~ or by the parties' ~~by~~ written stipulation. The court may permit reply affidavits.

(d) **On Court's Initiative ~~of Court~~; Notice; Specifying Grounds.** Not later than 10 days after entry of judgment the court, on ~~of~~ its own, ~~initiative~~ may

order a new trial for any reason ~~for which it might have granted a new trial on~~ that would justify granting one on a party's motion ~~of a party~~. After giving the parties notice and an opportunity to be heard ~~on the matter~~, the court may grant a timely motion for a new trial~~, timely served,~~ for a reason not stated in the motion. ~~In either case,~~ When granting a new trial on its own initiative or for a reason not stated in a motion, the court ~~shall~~ must specify ~~in the order~~ the grounds in its order ~~therefor~~.

(e) **Motion to Alter or Amend ~~a~~ Judgment.** Any motion to alter or amend ~~the~~ a judgment ~~shall~~ must be ~~served~~ filed not later than 10 days after entry of the judgment.

COMMITTEE NOTE

The only change, other than stylistic, intended by this revision is to add explicit time limits for filing motions for a new trial, motions to alter or amend a judgment, and affidavits opposing a new trial motion. Previously, there was an

inconsistency in the wording of Rules 50, 52, and 59 with respect to whether certain post-judgment motions had to be filed, or merely served, during the prescribed period. This inconsistency caused special problems when motions for a new trial were joined with other post-judgment motions. These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court. The Committee believes that each of these rules should be revised to require filing before end of the 10-day period. Filing is an event that can be determined with certainty from court records. The phrase "no later than" is used — rather than "within" — to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk. It should be noted that under Rule 5 the motions when filed are to contain a certificate of service on other parties. It also should be noted that under Rule 6(a) Saturdays, Sundays, and legal holidays are excluded in measuring the 10-day period, but that Bankruptcy Rule 9006(a) excludes intermediate Saturdays, Sundays, and legal holidays only in computing periods less than 8 days.

Rule 83. Rules by District Courts; Judge's Directives

(a) **Local Rules.**

(1) Each district court ~~by action of~~, acting by a majority of ~~the~~ its district judges ~~thereof~~, may ~~from time to time~~, after giving appropriate public notice and an opportunity ~~to~~ for comment, make

and amend rules governing its practice. A local rule must be ~~not in~~consistent with — but not duplicative of — Acts of Congress and ~~these~~ rules adopted under 28 U.S.C. §§ 2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule ~~so adopted shall~~ takes effect ~~upon~~ the date specified by the district court and ~~shall~~ remains in effect unless amended by the ~~district~~ court or abrogated by the judicial council of the circuit ~~in which the district is located~~. Copies of rules and amendments ~~so made by any district court shall~~ must, upon their promulgation, be furnished to the judicial council and the Administrative Office of the United States Courts and be ~~made~~ available to the public.

(2) A local rule imposing a requirement of

form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There is no Controlling Law. ~~In all cases not provided for by rule, the~~ A ~~district~~ judges ~~and magistrates~~ may regulate ~~their~~ practice in any manner ~~not in~~consistent with ~~these~~ federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, ~~or~~ and local rules ~~those~~ of the district ~~in which they act~~. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

COMMITTEE NOTE

SUBDIVISION (a). This rule is amended to reflect the requirement that local rules be consistent not only with the national rules but also with Acts of Congress. The amendment also states that local rules should not repeat Acts of Congress or local rules.

The amendment also requires that the numbering of local rules conform with any uniform numbering system that may be prescribed by the Judicial Conference. Lack of uniform numbering might create unnecessary traps for counsel and litigants. A uniform numbering system would make it easier for an increasingly national bar and for litigants to locate a local rule that applies to a particular procedural issue.

Paragraph (2) is new. Its aim is to protect against loss of rights in the enforcement of local rules relating to matters of form. For example, a party should not be deprived of a right to a jury trial because its attorney, unaware of — or forgetting — a local rule directing that jury demands be noted in the caption of the case, includes a jury demand only in the body of the pleading. The proscription of paragraph (2) is narrowly drawn — covering only violations attributable to nonwillful failure to comply and only those involving local rules directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney contumaciously or wilfully violates a local rule, even one involving merely a matter of form. Nor does it affect the court's power to enforce local rules that involve more than mere matters of form — for example, a local rule requiring parties to identify evidentiary matters relied upon to support or

oppose motions for summary judgment.

SUBDIVISION (b). This rule provides flexibility to the court in regulating practice when there is no controlling law. Specifically, it permits the court to regulate practice in any manner consistent with Acts of Congress, with rules adopted under 28 U.S.C. §§ 2072 and 2075, and with the district local rules.

This rule recognizes that courts rely on multiple directives to control practice. Some courts regulate practice through the published Federal Rules and the local rules of the court. Some courts also have used internal operating procedures, standing orders, and other internal directives. Although such directives continue to be authorized, they can lead to problems. Counsel or litigants may be unaware of various directives. In addition, the sheer volume of directives may impose an unreasonable barrier. For example, it may be difficult to obtain copies of the directives. Finally, counsel or litigants may be unfairly sanctioned for failing to comply with a directive. For these reasons, the amendment to this rule disapproves imposing any sanction or other disadvantage on a person for noncompliance with such an internal directive, unless the alleged violator has been furnished actual notice of the requirement in a particular case.

There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular court unless the party or attorney has actual notice of those requirements. Furnishing litigants with a copy outlining the judge's practices — or attaching instructions to a notice setting a case for conference or trial — would suffice to give actual notice, as would an order in a case specifically

adopting by reference a judge's standing order and indicating how copies can be obtained.