

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

TO THE CHAIRMAN AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:

The Standing Committee on Rules of Practice and Procedure met in Washington on July 25, 1977. All members of the Committee were present, as was the Secretary, William E. Foley. Since Attorney General Bell, who is a member of the Committee, could not be present for the entire meeting, Ronald Gainer, of the Division of Judicial Improvements of the Department of Justice, attended the meeting. Also present was Judge Walter R. Mansfield, a member of the Advisory Committee on Civil Rules and of its subcommittee on discovery, who discussed the problems faced by that Committee.

At the request of our Committee, the Office of the General Counsel of the Administrative Office had prepared and submitted to the members a historical survey of the rule-making power of the federal courts, as well as a memorandum detailing various proposals for changes in the rule-making program, including the bills introduced by Congresswoman Holtzman and the proposals made by Judge Weinstein. The Committee discussed these matters in detail but makes no specific recommendations at this time, inasmuch as the Congress has not requested the views of the Judicial Conference on the bills and there is no

indication that the present Congress intends to take any action on them.

The Committee discussed various ways in which the current rule-making procedure can be improved. It was agreed that it would be helpful to the Committee in studying such proposals to have the services of a reporter, and the Chairman was authorized to discuss with the Chief Justice the appointment of a reporter to the Standing Committee.

The Chairman was also authorized to appoint an ad hoc committee to draft operational procedures for the Standing Committee and the various Advisory Committees. The Chairman appointed Judge McGowan and Professor Remington as members of that committee.

The Committee further agreed that it will meet regularly on or about the third Monday in January and the third Monday in July, and that it will expect to receive in advance of those dates written reports from the Chairmen of the Advisory Committees on the work being undertaken, as well as any amendments to the Rules proposed, by the several committees.

The Attorney General pointed out that a bill has just passed the Senate and is pending in the House of Representatives that would expand both the civil and criminal jurisdiction of United States magistrates. He suggested that the Committee should begin to study the possibility of amending current rules, including the Magistrates' rules, to meet the requirements of

the new legislation. As a preliminary step, the Chairman has requested the Magistrates' Division of the Administrative Office to submit its views.

Appellate Rules

The Advisory Committee on Appellate Rules circulated to bench and bar in May 1977 proposed amendments to the Federal Rules of Appellate Procedure. Comments have been requested no later than November 15, 1977, and the comments will be the subject of further study by the Advisory Committee at its winter meeting.

Civil Rules

The Advisory Committee on Civil Rules met in May 1977 and will meet again in the early fall to consider the responses received to a detailed questionnaire sent to bench and bar concerning various problems raised by Rule 23. The Committee also has for consideration several other matters, including the effect of recent decisions upon some of the Supplemental Rules for Certain Admiralty and Maritime Claims.

Criminal Rules

As the Conference was advised at its last session, pursuant to Public Law 94-349, the effective date of five proposed amendments to the criminal rules, namely, Rules 6(e), 23, 24, 40.1 and 41(c)(2), was deferred to August 1, 1977. On

July 30, 1977, the President signed into law Public Law 95-78, which incorporates the amendments to subdivision (b) and (c) of Rule 23 as approved by the Supreme Court, eliminates the amendment to Rule 24 and the proposed new Rule 40.1, approved by the Supreme Court, and amends the proposed changes to subdivision (e) of Rule 6 and subdivision (c) of Rule 41. The legislation further amends section 1446 of title 28, United States Code, concerning removal proceedings. The amended portions of the rules and of section 1446, title 28, become effective on October 1, 1977. Copies of the legislation have been sent to federal judges and magistrates.

Respectfully submitted,

Roszel C. Thomsen, Chairman
Griffin Bell
A. Leo Levin
Carl McGowan
Charles W. Joiner
Frank W. Wilson
Frank J. Remington
Richard E. Kyle
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