

Agenda F-8 (Summary)
Rules of Practice
and Procedure
September 1987

**SUMMARY OF THE REPORT
OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

This report is informational only and contains no recommendations for Conference action.

**REPORT OF THE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN; AND MEMBERS OF
THE JUDICIAL CONFERENCE OF THE UNITED STATES

Your Committee on Rules of Practice and Procedure has not met since the last session of the Conference. The Committee intends to meet prior to the next session of the Conference, at which time the Committee will receive and review a report on the Local Rules Project and any recommendations for rules changes emanating from the various Advisory Committees, and will consider other matters on the agenda pertaining to the Rules program.

I. Status of Current Rules Amendments

On August 1, 1987, the amendments to the Civil, Criminal and Bankruptcy Rules submitted by the Supreme Court in March took effect, in the absence of congressional action. Included in these amendments were substantive amendments to Rule 51 of the Federal Rules of Civil Procedure and Rules 6(a) and 30 of the Federal Rules of Criminal Procedure and amendments to the Federal Rules of Bankruptcy Procedure to conform those rules to the substantive and procedural changes in the Bankruptcy Code enacted by the Bankruptcy Amendments and Federal Judgeship Act of 1984. The other amendments were gender-neutralizing amendments to the Rules of Civil Procedure and the Supplemental Rules for Certain Admiralty and Maritime Claims, to the Federal Rules of Criminal Procedure and to the Federal Rules of Bankruptcy Procedure.

The gender-neutralizing amendments to the Federal Rules of Evidence, which the Supreme Court also submitted to Congress in March, will take effect on October 1, 1987, failing congressional action. (See 28 U.S.C. § 2076.)

II. Legislation

Your committee has been advised that H.R. 1507, 100th Congress, 1st Sess., the Rules Enabling Act of 1987, was introduced by Congressman Kastenmeier on March 10, 1987. This bill is identical to H.R. 3550, which was passed by the House of Representatives last year, except that it includes a clarifying amendment to the supersession provision, which was suggested by your committee. H.R. 1507 has been referred to the Judiciary Committee.

Since the introduction of H.R. 1507, its provisions have been incorporated into two other bills. They appear in Title II of H.R. 3152, 100th Cong., 1st Sess., the Omnibus Court Reform Act of 1987, introduced by Congressman Kastenmeier on August 6, and were added as Title II of H.R. 2182, 100th Cong., 1st Sess., the Criminal Law and Procedure Minor Substantive and Technical Amendments Act of 1987. H.R. 2182, with the rules enabling provisions, was passed by the House on June 22, 1987.

III. Status of Advisory Committee Work

A. Bankruptcy Rules

The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986: (1) added a new chapter 12 to the Bankruptcy Code facilitating family farmer debt adjustment, (2) authorized the nationwide expansion on a permanent basis of the pilot United States trustee program, and (3) made certain other substantive changes in the Bankruptcy Code.

In February 1987 the Advisory Committee on Bankruptcy Rules distributed interim rules for chapter 12 cases which it urged be adopted as local rules of court. The

Committee met on May 11-12, 1987, to begin the general process of revising the Bankruptcy Rules to reflect the 1986 legislation, and it will meet next in December 1987 to consider amendments required by the change in status of the United States trustee system. The committee expects to transmit a full set of amendments to bench and bar for comment in late 1988.

In August 1987 the committee transmitted to bench and bar interim revisions of Official Forms 16 (notice of first meeting of creditors and other matters), 19-21 (proof of claim), and 28 (order for hearing on disclosure statement). The committee believes that the interim forms are simpler for lay persons to understand and should facilitate case processing in the clerks' offices. Use of these forms on a pilot basis during the next year will test the committee's assumptions. After the pilot period, it is anticipated that the proposed final forms will be sent to bench and bar for comment in late 1988 together with the proposed amendments in the rules to accommodate the 1986 legislation.

B. Civil Rules

The Advisory Committee on Civil Rules, chaired by the Honorable Joseph F. Weis, met on June 29-30, 1987, to consider various amendments to the civil rules and related matters of interest. The Committee is scheduled to meet again in November 1987. Dean Paul D. Carrington of the Duke University Law School is the Reporter of the Committee. The Committee considered proposals to amend Civil Rules 4 (service of process) and 45 (subpoenas) to reduce the role of United States Marshals in the service of process; proposed amendments to Rule 45 to afford better protection for non-party witnesses; suggested changes to Civil Rules 12 (motions on the pleadings), 50 (directed verdict and judgment N.O.V.), and 56 (summary judgment) to simplify, clarify and rationalize the various summary dispositions currently set forth in these rules; a proposed amendment to Rule 15 (amended pleadings) dealing with relation back of an amendment

to the pleadings to correct a misnomer (incorrect naming of a party); an ameliorating change to Rule 77(d) (notice of orders and judgments) concerning receipt of notice of judgment and the running of the time for appeal; and several minor items. The draft agenda materials for the November 1987 meeting of the Advisory Committee will reflect the extensive consideration of these issues.

In addition, the Committee decided to go forward with Senator Inouye's proposal to amend Rule 35 to permit mental examinations to be conducted by psychologists, as well as physicians; to express no opinion about court-annexed arbitration legislation (H.R. 2127); and to forego further formal comment on proposed amendments to the Rules Enabling Act (H.R. 1507). With regard to the latter subject, the Committee agreed that it would be useful for staff informally to bring to the attention of appropriate congressional sponsors a potential ambiguity in the supersession provision of the bill that, if corrected, would make it clear that all Congressional enactments to amend, modify, or add to the various rules could be subsequently amended in the rules process.

C. Criminal Rules

The Advisory Committee on Criminal Rules, chaired by the Honorable Leland C. Nielsen, met on May 7 and 8, 1987, and is scheduled to meet again on September 20 and 21, or November 19 and 20, 1987. Professor Stephen A. Saltzburg of the University of Virginia Law School is the Reporter to the Committee. The Committee approved a new Criminal Rule 12.3 (notice of public authority defense) and forwarded it to your Committee with an indication that the Criminal Rules Committee does not believe that immediate action is required. The Committee also approved a proposed amended Rule 609(a) (impeachment by evidence of conviction of crime) of the Federal Rules of Evidence, which was circulated to Judge Weis and Dean Carrington for review by the

Civil Rules Committee. The amendment would clarify the operation of Rule 609(a) in civil cases and as applied to Government witnesses in criminal cases.

Although the Committee had approved in 1986 a proposed amendment to Criminal Rule 24 (trial jurors) to permit district courts to utilize a "struck jury" system, in which peremptory challenges of regular jurors and alternates are exercised without identifying the alternates in advance, it decided at its May 1987 meeting not to recommend the amendment. The Committee is also contemplating changes to Criminal Rule 32 (sentence and judgment) to take account of any sentencing guidelines that are implemented under the provisions of the Comprehensive Crime Control Act of 1984. The Committee also is examining the time limits for post trial motions as set forth in Criminal Rules 29, 33, 34 and 45, and numerous minor items.

IV. Study of Local Court Rules

In September 1984, the Conference authorized your Committee to conduct a study of local court rules, which have proliferated in recent years and many of which appear to be inconsistent with the Federal rules of practice and procedure. At its January 1986 meeting, your committee authorized Dean Daniel R. Coquillette of Boston College Law School, as Reporter to the Committee, to proceed with Phase I of the study, consisting of a compilation, review, and preliminary analysis of the 5,000 local rules of the various district courts and of the statutes, judicial opinions and literature relating to local rules. Phase I has been completed, and your committee has authorized Dean Coquillette to proceed with the next phase of the study. The project is currently developing working papers dealing with a uniform numbering system for local rules, a proposed set of model local rules, the identification and analysis of rules that should be made the subject of uniform Federal rules, the identification and analysis of rules that conflict with the

letter or spirit of statutory law or the Federal Rules, and the identification of redundant local rules that merely restate existing Federal statutes and rules.

In an effort to obtain the views of leading experts on Federal rule-making, the project is planning a conference on local district court rules to be held at Boston College Law School on November 12 and 13, 1987. Your committee is inviting a small number of interested and knowledgeable judges, practitioners, and academicians to examine and discuss the working papers prepared by the project.

The Reporter anticipates submitting a preliminary report at the January 1988 meeting of your Committee.

Respectfully submitted,

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Walter E. Hoffman
Charles E. Wiggins
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Wayne R. LaFave
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