

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

The Committee on Rules of Practice and Procedure recommends that the Judicial Conference:

1. Resolve that on April 1, 1998, and at each 3-year interval ending on April 1 thereafter, the Official Bankruptcy Forms be amended, automatically and without further action by the Judicial Conference, to conform to any adjustment of dollar amounts made under § 104(b) of the Bankruptcy Code..... pp. 3-4
2. a. Adopt a numbering system for local rules of court that corresponds with the relevant Federal Rules of Practice and Procedure; and
b. Set April 15, 1997 as the effective date of compliance with the uniform numbering system so that courts will have sufficient time to make necessary changes to their local rules.....pp. 6-7

The remainder of the report is submitted for the record, and includes the following items for the information of the Conference:

- ▶ Rules governing attorney conduct.....p. 7
- ▶ Pending legislation eliminating unanimity requirement for jury verdicts..... pp. 8-9
- ▶ Chart showing status of rules amendments.....p. 9

NOTICE

NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

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

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

Your Committee on Rules of Practice and Procedure met on January 10-12, 1996.

Ian H. Gershengorn attended on behalf of Deputy Attorney General Jamie S. Gorelick, who was unable to attend because of inclement weather. All other members attended the meeting.

Representing the advisory committees were: Judge James K. Logan, chair, and Professor Carol Ann Mooney, reporter, of the Advisory Committee on Appellate Rules; Judge Paul Mannes, chair, and Professor Alan N. Resnick, reporter, of the Advisory Committee on Bankruptcy Rules; Judge Patrick E. Higginbotham, chair, and Professor Edward H. Cooper, reporter, of the Advisory Committee on Civil Rules; Judge D. Lowell Jensen, chair, and Professor David A. Schlueter, reporter, Advisory Committee on Criminal Rules; and Professor Margaret A. Berger, reporter, of the Advisory Committee on Evidence Rules.

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Participating in the meeting were Peter G. McCabe, Secretary to the Committee; Professor Daniel R. Coquillette, reporter to the Committee; John K. Rabiej, Chief, and Mark D. Shapiro, attorney, of the Administrative Office's Rules Committee Support Office; Patricia S. Channon of the Bankruptcy Judges Division; Joe S. Cecil of the Federal Judicial Center; Professor Mary P. Squiers, Director of the Local Rules Project; Bryan A. Garner and Joseph F. Spaniol, consultants to the Committee.

AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE

Rules Approved For Publication and Comment

The Advisory Committee on Appellate Rules completed its style revision of the entire set of Appellate Rules using uniform drafting guidelines and submitted it to your committee with the recommendation that it be published for public comment.

The revision of the Appellate Rules is part of a comprehensive effort to clarify and simplify the language of the procedural rules. The changes are designed to be non-substantive. But, in the course of reviewing the rules, existing ambiguities and inconsistencies surfaced, and the committee decided that a few substantive revisions were necessary. These limited changes have been specifically identified in the Committee Notes to the rules.

Meanwhile, the advisory committee has been considering proposed amendments to particular rules in the regular course of the rulemaking process. It is reviewing comments submitted on proposed amendments to Appellate Rules 26.1, 29, 35, and 41, which were published for comment in September 1995. The advisory committee will

meet in April 1996 to reexamine the proposed amendments in light of the public comment. If approved by the advisory committee and later by your committee they would be submitted, with or without revision, to the Conference in September 1996 with the recommendation that they be forwarded to the Supreme Court for adoption.

In addition, the advisory committee submitted proposed amendments to Appellate Rules 27, 28, and 32 to be published for public comment. These three rules were published earlier last year and were revised in light of significant comment. The proposed amendments, which make substantive revisions, were incorporated into the rules being revised under uniform drafting guidelines. Accompanying Committee Notes explain the substantive changes.

Your committee voted to circulate the proposed revision of Appellate Rules 1-48 using uniform drafting guidelines, and the substantive changes to Rules 27, 28, and 32 to the bench and bar for comment.

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

In addition to reviewing comments submitted on proposed amendments to eleven Bankruptcy Rules and four proposed new Bankruptcy Rules published for public comment in September 1995, the advisory committee is in various stages of consideration of other proposed amendments.

Standing Adjustments to Certain Official Bankruptcy Forms to Comply with Section 104(b) of the Bankruptcy Code

Section 104(b) of the Bankruptcy Code, as amended in 1994, requires the Judicial Conference to adjust — in accordance with changes in the Consumer Price Index — specified dollar amounts in certain provisions of the Code every three years beginning April 1, 1998. The Committee on the Administration of the Bankruptcy System is recommending to the Conference a mechanism to compute and publish the pertinent adjustments to these dollar amounts.

Some of the dollar amounts that will be adjusted under § 104 of the Code are referenced in the Official Bankruptcy Forms. Unlike amendments to the Federal Rules of Bankruptcy Procedure, amendments to the Official Forms are promulgated directly by the Judicial Conference under Bankruptcy Rule 9009. Revision of the Official Forms to reflect future adjustments under § 104 of the Code is purely a ministerial act. To avoid any possibility of undue confusion and delay in revising the pertinent Official Forms to reflect adjustments in dollar amounts set by the Code, an automatic change in the Forms simultaneous with the adjustment is necessary.

Recommendation: That the Judicial Conference resolve that on April 1, 1998, and at each 3-year interval ending on April 1 thereafter, the Official Bankruptcy Forms be amended, automatically and without further action by the Judicial Conference, to conform to any adjustment of dollar amounts made under §104(b) of the Bankruptcy Code.

AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

The Advisory Committee on Civil Rules is holding hearings and reviewing comments submitted on proposed amendments to Civil Rules 9(h), 26(c), 47, and 48 published for public comment in September 1995.

The advisory committee presented no items for your committee's action. The advisory committee is considering amendments to several rules, including proposed amendments to Civil Rule 23 (class actions). The chair of the advisory committee explained in detail some of the committee's tentative proposed changes to Rule 23.

AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

The Advisory Committee on Criminal Rules presented no items for your committee's action. It is holding hearings and considering comments on proposed amendments to Criminal Rule 24 published for public comment in September 1995.

The advisory committee is also reviewing a study conducted of all local criminal rules and determining which, if any, might be adopted as a national rule.

AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE

In May 1995 the Advisory Committee on Evidence Rules completed its initial assessment of all the Evidence Rules. Supplementing its 1994 decisions not to amend 25 rules, the advisory committee reached tentative decisions not to amend 24 additional rules. The committee's philosophy has been that an amendment to a rule should not be

undertaken absent a showing that it is not working well in practice or that it embodies a policy decision believed by the committee to be erroneous. The number of existing rules needing amendment under this test has been relatively small. The advisory committee is considering comments submitted on proposed amendments to Rules 103, 407, 801, 803, 804, 806, and new Rule 807 — consisting of existing Rules 803(24) and 804(b)(5) — which were published for public comment in September 1995. The winter 1995 meeting of the committee was canceled.

UNIFORM NUMBERING SYSTEMS FOR LOCAL RULES OF COURT

Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure took effect on December 1, 1995, requiring that all local rules of court “must conform to any uniform numbering system prescribed by the Judicial Conference.” (See Appellate Rule 47, Bankruptcy Rules 8018 and 9029, Civil Rule 83, and Criminal Rule 57.) Although courts have been encouraged to adopt renumbering systems for their local rules based on the Federal Rules of Practice and Procedure, the Judicial Conference has not formally “prescribed” a uniform numbering system.

The advantages of establishing a uniform numbering system for local court rules patterned on the national rules have long been recognized. A uniform numbering system will assist the bar in locating rules applicable to a particular subject, reduce the possibilities of traps for unwary counsel, and ease incorporation of local rules into indexing services and computer services. For example, an attorney researching a court’s

local court rules regarding summary judgments would review the court's local rule number 56.

The Judicial Conference in September 1988 approved and urged district courts to adopt a uniform numbering system for their local rules addressing civil practice, patterned on the Federal Rules of Civil Procedure. JCUS-SEP 88, p. 103. Many district courts complied with the request. The courts of appeals were requested by your committee to adopt a uniform numbering system in 1991. Almost all appellate courts renumbered their local rules to comply with the request.

Your committee has completed its study of the local rules on bankruptcy and criminal procedure. Model uniform numbering systems that track the Federal Rules of Bankruptcy and Criminal Procedure have been prepared and will be forwarded to courts to assist them in renumbering their local rules. Your committee is sensitive to the needs of those courts that have not yet renumbered their local rules for sufficient time to comply with a uniform numbering system. The following recommendation is submitted to implement the December 1, 1995 amendments to the Federal Rules of Practice and Procedure regarding the numbering of local rules.

Recommendation: That the Judicial Conference:

- a. Adopt a numbering system for local rules of court that corresponds with the relevant Federal Rules of Practice and Procedure; and
- b. Set April 15, 1997 as the effective date of compliance with the uniform numbering system so that courts will have sufficient time to make necessary changes to their local rules.

RULES GOVERNING ATTORNEY CONDUCT

Your committee sponsored a special study conference on federal rules governing attorney conduct. Attorney conduct is presently regulated by local rules based on many different models. This has led to the "balkanization" of applicable rules, and it has caused particular problems in federal multi-district litigation. National practitioners and federal agencies, including the Department of Justice, have decried the lack of uniformity and the unnecessary confusion it has created.

Inclement weather experienced all along the East Coast in early January prevented several participants from attending the conference. Nonetheless, the conference was well attended by academic experts and representatives of the Conference of State Chief Justices and major legal and bar associations. The major points of contention were identified, and various approaches on addressing the balkanization of attorney conduct rules were offered and discussed. Another conference is being planned to be held immediately before the committee's June 1996 meeting.

PENDING LEGISLATION ELIMINATING UNANIMITY REQUIREMENT FOR JURY VERDICTS

On November 27, 1995, Senator Strom Thurmond introduced S. 1426, which would amend Rule 48 of the Federal Rules of Civil Procedure and Rule 31 of the Federal Rules of Criminal Procedure to require a verdict of five-sixths of the jury. Direct amendment of the rules by legislation is inconsistent with the long-standing position of the Judicial Conference.

S. 1426 is intended to increase efficiency in courts' use of jurors by reducing the number of hung juries. The Senator plans on holding a hearing soon on the bill.

The data shows that the number of hung juries is relatively small. For example, in 1995 only 26 of the 4,236 jury trials in civil cases and 122 out of 4,248 jury trials in criminal cases ended with a hung jury. In addition, the Advisory Committee on Civil Rules is presently considering closely-connected proposed amendments to Civil Rule 48. Your committee is recommending advising the Senator that in light of the data on hung juries and the status of its ongoing work regarding juror reform, legislation directly amending the Federal Rules of Civil and Criminal Procedure would be premature.

STATUS OF PROPOSED AMENDMENTS

A chart prepared by the Administrative Office (reduced print) is attached as *Appendix A*, which shows the status of the proposed amendments to the rules.

Respectfully submitted,



Alicemarie H. Stotler

Leroy J. Contie	Frank H. Easterbrook
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Appendix A — Chart Summarizing Status of Rules Amendments

PROMULGATION OF RULES AMENDMENTS

1993		1994		1995		1996		
FALL	WINTER	SPRING	JUNE	FALL	WINTER	SPRING	DEC	
<p>Advisory Committee</p> <p>Published</p> <p>AP 4, 8, 10, 21, 25, 32, 47 & 49 BK 1016 & 9029 CV 50, 52, 59, 63 & 84 CR 5, 10, 43, 53, 57 & 59 EV 1102</p>	<p>Supreme Court</p> <p>Transmit to Congress</p> <p>AP 1, 3, 5, 5.1, 8, 13, 21, 25, 26, 1, 27, 3, 5, 15, 30, 31, 33, 35, 38, 40, 41 & 46 BK 8002 & 9006 CV NONE CR: 16, 29, 32 & 40 EV 412</p>	<p>Advisory Committee</p> <p>Approve and Transmit to Standing Committee</p> <p>AP 4, 8, 10, 21, 25, 32, 47 & 49 BK 1016 & 9029 CV 50, 52, 59, 63 & 84 CR 5, 10, 43, 49, 53, 57 & 59 EV 1102</p>	<p>Standing Committee</p> <p>Approve and Transmit to Judicial Conference</p> <p>AP 4, 8, 10, 21, 25, 32, 47 & 49 BK 1016 & 9029 CV 50, 52, 59, 63 & 84 CR 5, 10, 43, 49, 53 & 57 EV None</p>	<p>Judicial Conference</p> <p>Approve and Transmit to Supreme Court</p> <p>AP 4, 8, 10, 21, 25, 32, 47 & 49 BK 1016 & 9029 CV 50, 52, 59, 63 & 84 CR 5, 10, 43, 49, 53 & 57 EV None</p>	<p>Advisory Committee</p> <p>Request Publication</p> <p>AP 21, 25, 26, 27, 28 & 32 BK 1006, 1007, 1019, 2002 2015, 3002, 3016, 4004 5005, 7004, 8008 & 9006 CV NONE CR 16 & 32 EV NONE</p>	<p>Advisory Committee</p> <p>Approve Publication</p> <p>AP 21, 25, 26, 27, 28 & 32 BK 1006, 1007, 1019, 2002 2015, 3002, 3016, 4004 5005, 7004, 8008 & 9006 CV 50 CR 16 & 32 EV Tentative Decision not to amend 25 rules</p>	<p>Advisory Committee</p> <p>Published</p> <p>AP 21, 25, 26, 27, 28 & 32 BK 1006, 1007, 1019, 2002 2015, 3002, 3016, 4004 5005, 7004, 8008 & 9006 CV 16 & 32 EV Tentative Decision not to amend 25 rules</p>	<p>Law</p> <p>Effective</p> <p>AP 1, 3, 5, 5.1, 8, 13, 21, 25, 26, 1, 27, 28, 30, 31, 33, 35, 38, 40, 41 & 46 BK 8002 & 9006 CV NONE CR 16, 29, 32 & 40 EV 412</p>

Agenda F-19 (Appendix A) Rules March 1996

PROMULGATION OF RULES AMENDMENTS

1995		1996	
SPRING		FALL	
JULY		DEC	
Supreme Court	Advisory Committee	Standing Committee	Judicial Conference
<p>Transmit to Congress</p> <p>AP: 4, 8, 10 & 47 BK: 8018 & 9029 CV: 50, 52, 59 & 83 CR: 5, 40, 43, 49 & 57 EV: None</p>	<p>Approve and Transmit to Standing Committee</p> <p>AP: 21, 25, 26 & 27 BK: 1006, 1007, 1019, 2002 2015, 3002, 3016, 4004 5005, 7004, 8008, 9006 CV: 5(e) CR: 16 & 32 EV: Tentative Decision not to amend 25 rules</p>	<p>Approve and Transmit to Judicial Conference</p> <p>AP: 21, 25 & 26 BK: 1006, 1007, 1019, 2002 2015, 3002, 3016, 4004 5005, 7004, 8008, 9006 CV: 5(e) & 43* CR: 16 & 32 EV: Tentative Decision not to amend 25 rules</p>	<p>Approve and Transmit to Supreme Court</p> <p>AP: 21, 25 & 26 BK: 1006, 1007, 1019, 2002 2015, 3002, 3016, 4004 5005, 7004, 8008, 9006 CV: 5(e) & 43 CR: 32 EV: Tentative Decision not to amend 25 rules</p>
	<p>Request Publication</p> <p>AP: 26.1, 28, 29, 32, 35 & 41 BK: 1019, 1020, 2002, 2007.1, 3014, 3017, 3017.1, 3018, 3021, 8001, 8002, 8020, 9011, 9015 & 9035 CV: 9, 26 & 47 CR: 24 EV: 103, 407, 801, 803, 804, 806 & 807 Tentative Decision not to amend 24 rules</p>	<p>Approve Publication</p> <p>AP: 26.1, 29, 35 & 41 BK: 1019, 1020, 2002, 2007.1, 3014, 3017, 3017.1, 3018, 3021, 8001, 8002, 8020, 9011, 9015 & 9035 CV: 9, 26, 47 & 48* CR: 24 EV: 103, 407, 801, 803, 804, 806 & 807 Tentative Decision not to amend 24 rules</p>	<p>Publish</p> <p>AP: 26.1, 29, 35 & 41 BK: 1019, 1020, 2002, 2007.1, 3014, 3017, 3017.1, 3018, 3021, 8001, 8002, 8020, 9011, 9015 & 9035 CV: 9, 26, 47 & 48 CR: 24 EV: 103, 407, 801, 803, 804, 806 & 807 Tentative Decision not to amend 24 rules</p>
			<p>Effective</p> <p>AP: 4, 8, 10 & 47 BK: 8018 & 9029 CV: 50, 52, 59 & 83 CR: 5, 40, 43, 49 & 57 EV: None</p>

*Previously Approved

PROMULGATION OF RULES AMENDMENTS

January 29, 1996

