

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Minutes of the Meeting of January 28-29, 1982

The Committee on Rules of Practice and Procedure met at the Administrative Office of the United States Courts in Washington, D.C. on January 28th and 29th, 1982. All members of the Committee were present except Professor Bernard J. Ward who could not attend because of illness. Mr. Spaniol, secretary to the Committee, was also present.

Judge Walter R. Mansfield, Chairman of the Advisory Committee on the Rules of Civil Procedure, and Professor Arthur J. Miller, reporter to the Committee, presented the Advisory Committee recommendations for amendments to Rule 4, F. R. C. P., and reported on the status of the proposed amendments to other civil rules submitted to the bench and bar for comment in June 1981.

Judge Ruggero J. Aldisert, Chairman of the Advisory Committee on Bankruptcy Rules, and Professor Lawrence P. King, a reporter to the Committee, reported on the status of the work of drafting bankruptcy rules to be applicable under the new Bankruptcy Code.

AGENDA I - Opening Remarks

Judge Gignoux announced that Professor Ward would be unable to attend the meeting because of illness. He also stated that he had invited Professor Levin, Director of the Federal Judicial Center, to attend the meeting to report briefly on Center projects of interest to the Committee, but that Professor Levin was unable to attend because of a conflicting engagement. In its last report to the Judicial Conference the Committee had recommended various amendments to the Federal Rules of Criminal Procedure and had recommended that the Chief Justice be requested to reactivate the Advisory Committee on the Federal Rules of Evidence. Judge Gignoux reported that the Conference approved both recommendations.

Judge Gignoux also reviewed the minutes of the last meeting. During this review several new suggestions were made concerning the Committee's procedure. It was agreed that Judge Gignoux would write to the Chief Judge of each circuit suggesting that, whenever possible, pending rules amendments be placed on the agenda of the annual Judicial Conference of each Circuit for discussion and that they be submitted to a committee of the circuit council, or circuit conference, for review and comment.

It was also agreed that each Advisory Committee should be asked to review the official forms to determine whether any changes should be made and whether any forms might be consolidated or eliminated. The Advisory Committees should also consider whether the use of the forms should be mandatory or illustrative, and whether the forms should continue to be a part of the rules or whether the Judicial Conference or the Director of the Administrative Office should be authorized to make changes in the forms without the necessity of formal approval by the Supreme Court and transmission to the Congress.

AGENDA II - Rules of Civil Procedure

A. Judge Walter Mansfield and Professor Arthur Miller submitted to the Committee proposed amendments to Rule 4, F. R. C. P., on the service of process. Judge Mansfield stated that the amendments had cleared the advisory committee, but that a proposed amendment to Rule 45 on the service of a subpoena had been withdrawn since the advisory committee had concluded that there was no need for a change.

The Committee reviewed the proposal and suggested certain stylistic and technical changes which were agreed to by Judge Mansfield who was then requested to submit a clean copy for inclusion in the Committee's report to the Judicial Conference.

B. The Committee also reviewed the proposed amendments to other civil rules which were circulated for public comment in June 1981. Individual Committee members made suggestions which were noted by Professor Miller.

Judge Mansfield stated that the Committee planned to complete its review of public comments and thereafter to submit its proposals in final form at the next meeting of the Standing Committee.

AGENDA III - Bankruptcy Rules

Judge Aldisert stated that the Advisory Committee expected to complete its work on the new bankruptcy rules very soon. He expressed the hope that the new rules could be submitted to the Judicial Conference next September so that they could be approved in 1983 before the new Bankruptcy Code becomes fully effective in March 1984. The draft rules will be sent to the printer in mid-February and distributed to the bench and bar for comment by April 1st. Thereafter the Advisory Committee will conduct hearings in New York City and San Francisco and the final draft will be submitted to the Standing Committee in August.

Mr. Hickey suggested that hearings also be held in Chicago and Judge Aldisert agreed.

Parts I, II, III, IV, VI, VIII and X of the draft rules were previously sent to the Standing Committee for a preliminary review. Several suggestions were made regarding these parts and the written suggestions of Mr. Marshall were given to Professor King for his consideration.

In view of the large number of bankruptcy rules to be reviewed by the Standing Committee, Judge Aldisert, at the suggestion of Mr. Marshall, agreed to prepare a "check sheet" pointing out those rules which are most critical and those that are controversial.

The Standing Committee agreed to try to meet the schedule suggested by Judge Aldisert. The preliminary drafts of parts V and IX were distributed at the meeting. Mr. Spaniol indicated that Part VII, which was still undergoing revision, would be distributed at a later date.

AGENDA IV - Statement of Operating Procedures

Judge Gignoux stated that the draft of a statement of operating procedures, agreed to be undertaken by Mr. Spaniol, had not been completed. Work is to continue in the hope that the draft can be completed in March. Judge McGowan offered his assistance. The submission of the final statement to the Judicial Conference will be deferred until September.

AGENDA V - Study of the Local Rules of Court

Mr. Spaniol reported that the Clerk's Division of the Administrative Office had prepared a consolidated index of the local rules of the district courts and a summary showing the number of courts having the same type of rule. Copies of the index and summary were distributed at the close of the Committee meeting. The Committee requested the Administrative Office to accumulate local rules on various subjects and make them available to the reporters of the appropriate advisory committees. The Committee expressed the hope that similar local rules could be made uniform and also expressed concern about the proliferation of local rules.

AGENDA VI - Reports of Other Advisory Committees

A. Appellate Rules. The Appellate Rules Committee is without a chairman due to the death of Judge Ainsworth in December. Judge Gignoux indicated that he may write to the Chief Justice suggesting that he name a new chairman. A written report on the status of the work of the Advisory Committee, submitted by Professor Ripple, had previously been distributed.

B. Criminal Rules. Judge Gignoux reported that the proposed amendments to the criminal rules, circulated to the bench and bar in October, will be considered at public hearings to be held in Washington, Chicago and San Francisco during the month of February. The Advisory Committee will meet in June to formulate its final

recommendations. It was agreed that Mr. Marshall would represent the Standing Committee at the San Francisco hearings, Professor Remington would attend the Chicago hearings, and Judge McGowan would attend the hearings in Washington.

AGENDA VII - Committee Vacancies

Judge Gignoux pointed out that there are two vacancies on the Standing Committee and several vacancies on Advisory Committees. In addition, numerous appointments have already expired, or will expire very soon. Each member of the Committee was requested to suggest to the chairman the names of judges, law teachers, and lawyers to be recommended to the Chief Justice as potential members of the Standing Committee and the Advisory Committees. The suggestions should include the names of persons to serve on a reactivated Advisory Committee on Rules of Evidence.

Suggestions made orally at the meeting were noted by Judge Gignoux and Mr. Spaniol.

AGENDA VIII - New Business

It was agreed that the members of the Committee would review the proposed new bankruptcy rules during the comment period, exchange comments by mail prior to June 1st, and be prepared to discuss the rules at the Committee meetings to be held in June and August.

The Committee also discussed the advisability of transmitting three sets of rules and amendments (civil, criminal and bankruptcy) to the Judicial Conference at the same session. Judge Gignoux indicated that he would speak to the Chief Justice about this problem.

AGENDA IX - Report to the Judicial Conference

Mr. Spaniol was requested to draft the Committee's report to the Judicial Conference and to circulate the draft immediately to all committee members for comment and suggestions. Minutes of the meeting are to be drafted and similarly circulated.

AGENDA X - Time and Place of the Next Committee Meeting

The Committee decided to meet in Washington, D.C. on Monday and Tuesday, June 21-22, 1982. At that time the Committee will review the proposed amendments to the civil rules which the advisory committee will formally submit at that time and begin its review of the new bankruptcy rules.

The Committee also agreed to meet sometime in mid-August, probably August 19-20, to consider proposed amendments to the criminal rules and to conclude its review of the bankruptcy rules. Judge Gignoux indicated that he would look into the prospects of meeting in Bar Harbor, Maine.

Respectfully submitted,

Joseph F. Spaniol, Jr.
Secretary

February 16, 1982