

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

This report is submitted for the record and includes information on the following for the Judicial Conference:

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- Federal Rules of Bankruptcy Procedure .....pp. 4–6
- Federal Rules of Civil Procedure.....pp. 6–11
- Federal Rules of Criminal Procedure.....pp. 11–14
- Federal Rules of Evidence .....pp. 14–16
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**NOTICE**  
**NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT 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:**

The Committee on Rules of Practice and Procedure (Standing Committee) met on January 4, 2018. All members were present.

Representing the advisory rules committees were: Judge Michael A. Chagares, Chair, and Professor Gregory E. Maggs, Reporter, of the Advisory Committee on Appellate Rules; Judge Sandra Segal Ikuta, Chair, and Professor S. Elizabeth Gibson, Reporter, of the Advisory Committee on Bankruptcy Rules; Judge John D. Bates, Chair, Professor Edward H. Cooper, Reporter, and Professor Richard L. Marcus, Associate Reporter, of the Advisory Committee on Civil Rules; Judge Donald W. Molloy, Chair, Professor Sara Sun Beale, Reporter, and Professor Nancy J. King, Associate Reporter, of the Advisory Committee on Criminal Rules; and Judge Debra Ann Livingston, Chair, and Professor Daniel J. Capra, Reporter, of the Advisory Committee on Evidence Rules.

Also participating in the meeting were: Professor Daniel R. Coquillette, the Standing Committee's Reporter; Professor Catherine T. Struve, the Standing Committee's Associate Reporter (by telephone); Professor R. Joseph Kimble and Professor Bryan A. Garner, consultants to the Standing Committee; Rebecca A. Womeldorf, the Standing Committee's Secretary; Bridget Healy, Scott Myers, and Julie Wilson, Attorneys on the Rules Committee Staff (by telephone); Patrick Tighe, Law Clerk to the Standing Committee; and Dr. Tim Reagan and

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Dr. Emery G. Lee III, of the Federal Judicial Center (FJC). Elizabeth J. Shapiro attended on behalf of the Department of Justice.

## **FEDERAL RULES OF APPELLATE PROCEDURE**

### ***Information Items***

The Advisory Committee on Appellate Rules met on November 9, 2017, and discussed the following items.

#### Proposal to Amend Rules to Address References to “Proof of Service”

A proposed amendment to Appellate Rule 25(d) that eliminates the requirement of proof of service when a party files a paper using the court’s electronic filing system was approved by the Conference at its September 2017 session. (JCUS-SEP 17, p. 3) The advisory committee subsequently identified references to “proof of service” in Appellate Rules 5(a)(1), 21(a)(1) and (c), 26(c), 32(f), and 39(d)(1), that require corresponding amendments. The advisory committee determined after discussion that the proposed corresponding changes to remove or revise references to “proof of service” in each of these rules are properly seen as technical corrections for which publication for additional comments is unnecessary.

Upon further review of the proposed amendment to Appellate Rule 25(d) discussed above, and subsequent to its meeting on November 9, 2017, the advisory committee identified a wording change to the pending amendment that will clarify the intent of the rule change. This is a technical change for which publication for additional comments is unnecessary. To permit this change to be made prior to Supreme Court approval of the pending amendment to Rule 25(d), and to allow all Appellate Rule amendments addressing proof of service to proceed together, the advisory committee determined by e-mail vote to recommend withdrawing the proposed amendment to Rule 25(d) now pending before the Supreme Court and the Standing Committee agreed. The advisory committee intends to submit proposed amendments to Rules 5(a)(1),

21(a)(1) and (c), 25(d), 26(c), 32(f), and 39(d)(1), for approval at the Standing Committee's June 12, 2018 meeting, and ask the Judicial Conference to approve the withdrawal and new proposed amendments at its September 2018 session. The Committee agreed with all of the advisory committee's recommendations.

#### Revisiting Proposals to Amend Rule 29 to Allow Indian Tribes and Cities to File Amicus Briefs Without Leave of Court or Consent of the Parties

Rule 29(a) allows federal and state governments to file amicus briefs without leave of court or consent of the parties. At its April 2012 meeting, the advisory committee considered a suggestion to permit Indian Tribes and cities to file amicus briefs without leave of court or consent of the parties. The advisory committee determined to take no action on the suggestion, with an explanation that the advisory committee would revisit the item in five years. The advisory committee did so at its fall 2017 meeting, and determined that there remained no evidence that Indian Tribes or cities had been denied opportunity to file amicus briefs under the existing rule. Absent such evidence, and given the potential complications and ramifications of a rule change, the advisory committee decided to take no further action on the suggestion.

#### Rule 3(c)(1)(B) and the Merger Rule

Appellate Rule 3(c)(1)(B) requires a notice of appeal to "designate the judgment, order, or part thereof being appealed." In the Eighth Circuit, a notice of appeal that designates an order in addition to the final judgment excludes by implication any other order on which the final judgment rests. The advisory committee received a suggestion to revise the rule to eliminate the possible "trap for the unwary" reflected in the Eighth Circuit's interpretation of Rule 3(c)(1)(B). Following discussion at its fall 2017 meeting, the advisory committee formed a subcommittee to study this issue to determine if any action should be taken on the suggestion.

## Circuit Split on Whether Attorney’s Fees Are “Costs on Appeal” Under Rule 7

A circuit split has arisen on the question of whether attorney’s fees are “costs on appeal” for purposes of calculating the amount of a bond under Appellate Rule 7. After discussion at its fall 2017 meeting, the advisory committee formed a subcommittee to investigate this issue, and will consult with the Civil Rules Advisory Committee on any resulting rule proposal.

## **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

### *Information Items*

The Advisory Committee on Bankruptcy Rules met on September 26, 2017, and discussed the following items.

#### Rules 2002(h) and 8012

The advisory committee considered amendments to two rules: Rule 2002(h) (Notices to Creditors Whose Claims are Filed) and Rule 8012 (Corporate Disclosure Statement). Both proposals relate to other proposed amendments currently published for public comment. Because the related rules have not yet been finalized, the advisory committee plans to present the proposed amendments to Rules 2002(h) and 8012 at the Standing Committee’s June 2018 meeting.

#### Withdrawal of Proposed Amendment to Rule 8023 (Voluntary Dismissal)

In August 2016, the advisory committee published for public comment a proposed amendment to Rule 8023, which governs voluntary dismissal of an appeal. The proposed amendment added a cross-reference to Rule 9019, which requires a bankruptcy trustee to get bankruptcy court approval of a compromise or settlement. The advisory committee recommended the amendment in response to a suggestion that appellate courts might be unaware that a bankruptcy trustee’s ability to seek the dismissal of an appeal may be subject to bankruptcy court approval.

Although no comments addressing the proposed amendment were filed, the Department of Justice expressed concern at the advisory committee's spring 2017 meeting that the proposed amendment might create administration difficulties because it seemed to require the clerk or the appellate court to determine the applicability of Rule 9019 with respect to every voluntary dismissal of a bankruptcy appeal. The advisory committee considered the Department of Justice's concerns over the summer. After surveying the case law and finding no decision addressing the circumstance of a trustee voluntarily dismissing an appeal without complying with Rule 9019, the advisory committee decided an amendment to Rule 8023 was not needed and could cause confusion.

#### Approval of National Instructions Authorizing Alterations

The 2017 amendments to Rule 9009 restrict authority to make alterations to Official Bankruptcy Forms and provide as a general matter that “[t]he Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration.” The rule was amended to ensure that a form, such as the Chapter 13 Plan Form, which is intended to provide information in a particular order and format, is not altered.

Rule 9009 includes exceptions to the general prohibition against altering Official Forms. One of those exceptions allows for alterations as provided in the “national instructions for a particular Official Form.” In response to suggestions from several bankruptcy courts, the advisory committee approved national instructions for certain forms that would allow for limited modifications such as the cost-saving practice of adding local court information to the official form notice of a bankruptcy case.

#### Suggestion to Amend Rule 2013 (Public Record of Compensation Awarded to Trustees, Examiners, and Professionals)

The advisory committee received a suggestion from a bankruptcy clerk questioning the need for Rule 2013. The rule requires the bankruptcy clerk's office to compile and maintain a

public record of all fees awarded by the court to trustees, attorneys, and other professionals, and transmit the record to the U.S. trustee's office. The clerk asserts that CM/ECF has eliminated the need for the type of records Rule 2013 was designed to produce because reports about fee awards can now be generated on demand. The advisory committee is working with the FJC and will seek information from the U.S. trustee's office to evaluate the current compliance with and the need for Rule 2013.

### Exploration of Whether the Bankruptcy Rules Should be Restyled

Over the past two decades, each set of federal rules other than the Federal Rules of Bankruptcy Procedure have been comprehensively restyled. In the past, concerns have been raised that restyling of the Bankruptcy Rules should not be undertaken because of their close association with statutory text. For example, the Bankruptcy Rules continue to use the now disfavored word "shall" in order to be consistent with the Bankruptcy Code's use of that term. Nevertheless, incremental restyling has occurred, and in the process of revising Part VIII of the bankruptcy rules, which address bankruptcy appeals, and other individual rules, the new style conventions from other rule sets generally have been incorporated.

In response to suggestions from the style consultants that the time has come to comprehensively restyle the Bankruptcy Rules, the advisory committee has established a subcommittee to explore the advisability of such a project. The subcommittee anticipates that it will make at least a preliminary report to the advisory committee at its spring 2018 meeting.

## **FEDERAL RULES OF CIVIL PROCEDURE**

### ***Information Items***

The advisory committee met on November 7, 2017. Discussion focused primarily on its ongoing consideration of possible amendments to Rule 30(b)(6), a suggestion from the Administrative Conference of the United States regarding social security review cases,

suggestions urging rules for multidistrict litigation (MDL) proceedings, and a suggestion that Rule 26 be amended to require disclosure of third party litigation financing agreements.

#### Rule 30(b)(6) (Depositions of an Organization)

The advisory committee continued its consideration of Rule 30(b)(6), the rule addressing deposition notices or subpoenas directed to an organization. As previously reported, in May 2016, the Rule 30(b)(6) subcommittee solicited comment about practitioners' general experience under the rule as well as the following six potential amendment ideas:

1. Including a specific reference to Rule 30(b)(6) among the topics for discussion by the parties at the Rule 26(f) conference and between the parties and the court at the Rule 16 conference;
2. Clarifying that statements of the Rule 30(b)(6) deponent are not judicial admissions;
3. Requiring and permitting supplementation of Rule 30(b)(6) testimony;
4. Forbidding contention questions in Rule 30(b)(6) depositions;
5. Adding a provision for objections to Rule 30(b)(6) deposition notices; and
6. Addressing the application of limits on the duration and number of depositions as applied to Rule 30(b)(6) depositions.

The advisory committee posted an invitation for comment on the federal judiciary's rulemaking website and asked for submission of any comments by August 1, 2017. In addition, members of the subcommittee participated in two conferences focused on the rule in an effort to receive additional input from the bar.

The input received revealed significant disagreements as to what are the most serious problems with the rule. One set of concerns focused on perceived over-reaching in use of the rule, sometimes leading to overbroad or overly numerous topics for interrogation, or strategic use of the judicial admission possibility. A competing set of concerns focused on organizations'

preparation of their witnesses; some say organizations too often evade their responsibilities and that enforcement of the duty to prepare is too lax.

Positive comments were also received. It was reported that very often, after notice of a Rule 30(b)(6) deposition is given, the parties engage in constructive exchanges that produce improvements from the perspective of both the noticing party and the organization and that facilitate an orderly inquiry. Based on input from the bar on the six amendment ideas, the subcommittee determined that proceeding with any of them would likely produce controversy rather than improve practice. At the same time, it seemed that a rule amendment that prompts, or even requires, parties to communicate about recurrent problem areas might be the best approach for improving practice. Initially, the subcommittee focused on possible amendments to Rule 16(c) (to require the court to consider including provision for Rule 30(b)(6) depositions in a case management order) or Rule 26(f) (to direct the parties to discuss the matter during their discovery planning conference). Ultimately, however, the subcommittee returned to Rule 30(b)(6) itself, drafting language that adds the requirement that the parties communicate about Rule 30(b)(6) depositions when a party proposes to take such a deposition.

At the fall 2017 meeting, the advisory committee discussed the draft language. Members provided helpful feedback, including the following: (1) any amendment should make clear that there is a bilateral obligation to confer; (2) the organization should be expected to discuss the identity of the person to be offered as its designee as well as the matters for examination; and (3) the inclusion in the draft that the parties “attempt” to confer might be problematic. There was also discussion about whether an amendment to Rule 26(f) would in fact be helpful.

Since the meeting, the subcommittee has continued to work on a draft proposed amendment. It plans to present a proposed amendment for publication to the advisory committee at its meeting in April 2018.

## Social Security Disability Review Cases

As previously reported, the advisory committee has added to its agenda the consideration of a suggestion by the Administrative Conference of the United States (ACUS) that the Judicial Conference “develop for the Supreme Court’s consideration a uniform set of procedural rules for cases under the Social Security Act in which an individual seeks district court review of a final administrative decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g).” The suggestion was referred to the advisory committee, as it is the appropriate committee to study and to advise about rules for civil actions in the district courts.

A subcommittee was formed to consider the ACUS suggestion and to gather additional data and information from the various stakeholders. As a first step, government and claimant representatives were invited to a meeting on November 6, 2017. Participants included the Vice Chair/Executive Director of the ACUS; the General Counsel of the Social Security Administration; the Counsel to the Associate Attorney General, Department of Justice; the Deputy Director of Government Affairs of the National Organization of Social Security Claimants’ Representatives; and a representative of the American Association for Justice. The meeting began with formal statements and developed through open give-and-take discussion that substantially focused, and seemed to narrow, the issues.

At its meeting the next day, the advisory committee engaged in a lengthy discussion of the ACUS suggestion. A similarly robust discussion occurred at the January 2018 meeting of the Standing Committee. No final decision has been made regarding the ACUS suggestion; questions and concerns remain regarding the advisability of promulgating rules for specific types of cases and whether any such rules would be effective. However, the advisory committee through its subcommittee is committed to thoroughly considering the suggestion and anticipates several additional months of information gathering before deciding whether to pursue draft rules.

## MDL Proceedings

At its fall 2017 meeting, the advisory committee formed a subcommittee to consider three proposals for specific rules for MDL proceedings – actions transferred for “coordinated or consolidated pretrial proceedings” under 28 U.S.C. § 1407. Two of the proposals suggested amendments to the Civil Rules to add provisions applicable to all MDL proceedings. Several of these proposed amendments are born of a common concern: large MDL proceedings often attract claimants whose purported claims have no foundation in fact, and there is no effective means for screening them out early. Other proposed amendments address bellwether trial practice and an expansion of the opportunities for interlocutory appellate review.

A third proposal would only apply to those MDL proceedings (about 20) involving more than 900 individual cases. It proposes that after discovery has been completed and the bellwether cases selected, the remaining work would be divided among five judges “to decide whether to dispose of a case on motion, settle, or remand.” Judges from other districts could have intercourt assignments to sit with the MDL court for these purposes.

The advisory committee engaged in a preliminary discussion of these suggestions at its fall 2017 meeting. It was the consensus of the advisory committee that more information is needed, especially input from the plaintiffs’ bar and experienced MDL judges, as all of the proposals submitted thus far are from representatives of the defense bar. The subcommittee has begun information gathering. In considering whether there is an opportunity to improve MDL practice by amending current rules or adopting new rules, the subcommittee will coordinate closely with the Judicial Panel on Multidistrict Litigation.

### Third Party Litigation Financing Agreements

The advisory committee has received a suggestion to add a new Rule 26(a)(1)(A)(v) that would require automatic disclosure of

any agreement under which any person, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on, and sourced from, any proceeds of the civil action, by settlement, judgment or otherwise.

The advisory committee considered and declined to act upon similar proposals in 2014 and again in 2016. At its fall 2017 meeting, the advisory committee recognized that the issue is complicated and that any consideration must include input from both proponents and opponents of disclosure. The committee referred the issue to the MDL subcommittee, since one of the MDL proposals discussed above explicitly calls for disclosure of third party financing agreements. Additionally, such funding agreements are often used in MDL proceedings. The subcommittee will study the issue in an effort to determine whether it is something that should be pursued.

## **FEDERAL RULES OF CRIMINAL PROCEDURE**

### *Information Items*

The advisory committee met on October 24, 2017. Among the topics for discussion were the consideration of the final report of the cooperator's subcommittee, a suggestion to amend Rule 32, and the development of a manual on complex criminal litigation.

### Cooperator's Subcommittee

The main topic of discussion at the fall 2017 meeting was a report from the cooperator's subcommittee which was tasked with developing amendments to the Criminal Rules to address concerns regarding dangers to cooperating witnesses posed by access to information about cooperation in case files. The rules committees were asked to develop possible rule amendments

to implement the recommendations of the Judicial Conference Committee on Court Administration and Case Management (CACM) in its guidance issued in June 2016.

The subcommittee presented its final report detailing its comprehensive study of the issue, its development of several packages of rules proposals, and its recommendations to the full advisory committee. The report included the development of rules amendments to implement the CACM guidance, as well as four alternative approaches and related rules amendments: (1) amendments omitting the requirement in the guidance for bench conferences in every case during the plea and sentencing hearings; (2) amendments omitting the bench conferences and sealing the entirety of various documents that may refer to cooperation, rather than requiring bifurcation and the filing of sealed supplements to each document; (3) amendments omitting the bench conferences and directing that cooperation-related documents be submitted directly to the court and not filed, rather than filed under seal; and (4) amendments designed to implement the CACM guidance and to supplement it with additional rules amendments that might be deemed necessary or desirable to carry out the CACM Committee's approach and objectives. The subcommittee also reported that it had begun, but not completed, consideration of a new draft Criminal Rule 49.2 that would limit remote access to categories of documents that frequently refer to cooperation, but would allow full access to those documents at the courthouse.

The subcommittee reported that in its view the package of rules amendments developed to implement the CACM guidance would fully do so. However, the subcommittee reported that it did not recommend adoption of that rules package or any of the other alternative sets of rules amendments it developed.

After robust discussion, the advisory committee agreed with the subcommittee's recommendation that no rules amendments on this issue be pursued at this time. All members agreed that the threat of harm to cooperators is a serious problem that should be addressed, but

the advisory committee determined that rules amendments were not the best way to address the problem at this time. Various concerns were expressed, including the notion that the proposed amendments would make judicial proceedings less transparent, and that the amendments would result in sweeping changes that may not be necessary. Members were also of the view that other changes (*e.g.*, possible recommendations by the Task Force on Protecting Cooperators that changes be made by the Bureau of Prisons and to the CM/ECF system) should be implemented before embarking on rules amendments.

The advisory committee also decided to hold in abeyance any final recommendation on the subcommittee's alternative approach of limiting remote public access, reflected in its working draft of new Rule 49.2, but provided feedback to the subcommittee on its working draft.

Rule 32(e)(2) (Sentencing and Judgment—Disclosing the Report and Recommendation)

Also at the fall 2017 meeting, the advisory committee decided to add to its agenda a suggestion to amend Rule 32(e)(2) which states: “The probation officer must give the presentence report to the defendant, the defendant’s attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period.” Probation officers often receive requests from defendants for copies of their presentence reports (PSRs). There is concern that this provision might contribute to the problem of threats and harm to cooperators. These requests may be the result of pressure from other inmates to provide materials that could reveal whether there was cooperation. Rule 32(e)(2) deliberately grants the right to receive the PSR to the defendant in order to increase the chances that incorrect information would be identified and corrected. At present, however, PSRs are often served only on counsel, not on the defendant. Given this reality and the concern that providing PSRs directly to defendants might contribute to the problem of threats and harm to cooperators, the question of whether to amend Rule 32(e)(2) was referred to the cooperator’s subcommittee for consideration.

## Manual on Complex Criminal Litigation

The Rule 16.1 subcommittee has been charged with exploring the possibility of developing a manual on complex criminal litigation that would parallel the Manual on Complex Civil Litigation. With input from the subcommittee, the FJC has agreed to develop a special topics page on its website focused exclusively on complex criminal litigation. The page will initially include existing relevant materials. No decision has been made yet whether all of the materials originally prepared for judicial use will be available to the public. Going forward, the FJC will spearhead the development of a manual, including obtaining input on topics from a broader group.

## **FEDERAL RULES OF EVIDENCE**

### *Information Items*

The Advisory Committee on Evidence Rules met on October 26, 2017. In conjunction with this meeting, the advisory committee convened a group of experts to discuss topics related to forensic expert testimony, Rule 702, and *Daubert*.

### Conference on Forensic Expert Testimony, Rule 702, and *Daubert*

The conference consisted of two separate panels. The first panel included scientists, judges, academics, and practitioners, exploring whether Evidence Rules amendments could and should have a role in assuring that forensic expert testimony is valid, reliable, and not overstated in court. The second panel consisted of judges and practitioners, and discussed the problems that courts and litigants have encountered in applying *Daubert* in both civil and criminal cases. The conference provided much material for the advisory committee to evaluate.

### Possible Amendment to Rule 801(d)(1)(A)

Rule 801(d)(1)(A) currently provides that prior inconsistent statements of a testifying witness, made under oath at a formal proceeding, may be admitted for substantive purposes. The

advisory committee continued its consideration of an amendment that would expand the rule to allow for substantive admissibility of prior inconsistent statements that are audiovisually recorded. At the advisory committee's request, the FJC prepared and issued surveys to collect feedback from judges and practicing lawyers concerning the potential amendment. In addition, at the invitation of the advisory committee, several comments were submitted. At its next meeting, the advisory committee will consider this input, and decide whether or not to proceed with an amendment to Rule 801(d)(1)(A).

#### Possible Amendments to Rule 404(b)

The advisory committee's examination of Rule 404(b) was prompted by recent case law in some circuits demanding more rigor in the Rule 404(b) analysis in criminal cases. The advisory committee has resolved not to propose an amendment that would add an "active contest" requirement to Rule 404(b), concluding that such a requirement would be too rigid and should be left to the court's assessment of probative value and prejudicial effect. The advisory committee will continue to consider other possible amendments to Rule 404(b).

#### Possible Amendment to Rule 106

The advisory committee is considering whether Rule 106, the rule of completeness, should be amended to provide that a completing statement is admissible over a hearsay objection, and to provide that the rule – which currently is limited to written or recorded statements – should be expanded to cover oral statements as well.

#### Possible Amendment to Rule 609(a)(1)

The advisory committee is considering a suggestion to abrogate Rule 609(a)(1), which provides for admissibility (subject to a balancing test) of a witness's prior criminal convictions that did not involve dishonesty or a false statement. The reason for the suggestion is a reliance on principles of "restorative justice," i.e., that a person who has been convicted and released into

society should not be saddled with the opprobrium of a prior conviction, and that non-falsity convictions as a class are of very limited probative value and are highly prejudicial. The suggestion was considered with the knowledge that Rule 609(a)(1) and its applicable balancing tests are the result of a compromise following extensive congressional involvement in the drafting of Rule 609 as part of the original rulemaking process. The advisory committee will continue its consideration of Rule 609 at its spring meeting.

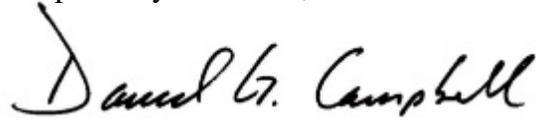
#### Rule 606(b) and the Supreme Court's Decision in *Pena-Rodriguez v. Colorado*

The advisory committee considered the possibility of amending Rule 606(b) to reflect the Supreme Court's 2017 holding in *Pena-Rodriguez v. Colorado*. In that case, the Court held that application of Rule 606(b), which bars testimony of jurors regarding deliberations, violated the defendant's Sixth Amendment right where the testimony concerned racist statements made about the defendant and one of the defendant's witnesses during deliberations. The advisory committee previously declined to pursue an amendment due to concern that any amendment to Rule 606(b) to allow for juror testimony to protect constitutional rights could be read to expand the *Pena-Rodriguez* holding. At its spring 2018 meeting, the advisory committee will revisit the issue of a possible amendment, but notes that continued review of the case law indicates that the lower courts are adhering to (and not expanding) the *Pena-Rodriguez* holding. The goal of any amendment would be to assure that Rule 606(b) would not be subject to unconstitutional application.

## JUDICIARY STRATEGIC PLANNING

The Standing Committee considered the request to comment on two questions related to the *Strategic Plan for the Federal Judiciary*, and has provided a response to Chief Judge Carl Stewart, the judiciary's planning coordinator.

Respectfully submitted,

A handwritten signature in black ink that reads "David G. Campbell". The signature is written in a cursive style with a large initial "D".

David G. Campbell, Chair

Jesse M. Furman	William K. Kelley
Daniel C. Girard	Carolyn B. Kuhl
Robert J. Giuffra Jr.	Rod J. Rosenstein
Susan P. Graber	Amy J. St. Eve
Frank M. Hull	Srikanth Srinivasan
Peter D. Keisler	Jack Zouhary