

August 17, 1960

MEMORANDUM

FROM: Judge John C. Pickett, Chairman, Advisory Committee on Criminal Rules.

TO: Judge Albert B. Maris, Chairman, Committee on Rules of Practice and Procedure.

RE: Report of plans of Advisory Committee on Criminal Rules for 1960-61.

1. Organization of our Committee is now completed. Professor Barrett of the University of California Law School has been selected as our Reporter. He has arranged for an office at the University of California and has been provided with essential staff and secretarial assistance. He will commence his own major time commitment to the work of the Committee, as agreed, on September 1.

2. A measurable amount of work has been completed this summer. After considerable correspondence an agreement was secured from Senator O'Mahoney, Chairman of the Sub-Committee of the Senate Judiciary Committee on Improvements in the Federal Criminal Code, and Senator Eastland, Chairman of Senate Judiciary Committee, to "make no attempt at the present to secure legislation on the Mallory case" to enable our Committee to study and make recommendations concerning Rule 5. Professor Barrett, through his research staff, has made a complete survey and summary of the periodical literature concerning the Criminal Rules. The notes of this summary will be filed by Rule number and will give ready access to the literature and to suggestions for improvements contained therein. I met with Professor Barrett on August 12 for a preliminary discussion of the Committee's work.

3. Our proposed agenda for work will, generally, be as follows:

(a) Our pressing task will be a study and recommendation of the complicated and controversial problems arising out of Rule 5 and the Mallory case. We have, in effect, made a commitment to Senators O'Mahoney and Eastland to complete the work on the part of the general problem which is within our jurisdiction as promptly as possible.

(b) We will work along on a general, rule-by-rule examination to ascertain problem areas and, perhaps, to propose amendments where early action seems desirable and the problems are not too complex. We have already received suggestions from a variety of sources, including some referred by you, for changes in quite a few of the rules.

(c) We foresee that the second most controversial and difficult problem which will face the committee will be that of pre-trial discovery Rules 15, 16 17(b). We hope that we can postpone any extensive consideration of this problem until next year when we should have completed the major work on Rule 5.

4. We plan to have a meeting of the Criminal Rules Committee in October at which time we plan to be ready for preliminary consideration of the Rule 5-Mallory problems.

5. We have the following problems with respect to which we would particularly like the comments and advice of your Committee at this time:

(a) The Rule 6-Mallory problem is complicated by the great difference between the problems in the District of Columbia and those elsewhere in the country. These differences are essentially of two types. (1) The police in the District of Columbia are faced with problems similar to those of police in other large cities in the country. They enforce the full range of the criminal law (not just the federal crimes set out in Title 18) and they have the volume, budget and manpower limitations characteristic of city police generally. Hence they have many practical problems in the handling of arrested persons which are not characteristic of the rest of the federal system. (2) On the other hand, most of the other federal districts have the problems resulting from the necessity for marshals and commissioners having to serve wide geographic areas. As a result rules which might be devised to have arrested persons brought promptly before commissioners under District of Columbia conditions (where the concentration of volume in a small area might make it feasible to have, e.g., 24-hour service in certain offices) would not work at all in these other districts. For these reasons we would like your advice on the question whether or not it is within our jurisdiction either (1) to make special rules for the District of (2) to limit the coverage of our general rules to the Title 18 crimes and invite Congress to make special rules to cover the other District problems?

(b) We would like to know your plans for obtaining the advice and comment of lawyers and judges concerning proposed amendments to the Rules. Should the Criminal Rules Committee prepare and circulate a Preliminary Draft of Proposed Amendments prior to making final recommendations to your Committee? Or should we first make recommendations to your Committee and secure your tentative approval before circulating a tentative Draft?

Respectfully submitted:

JOHN C. TICKETT, Chairman  
Advisory Committee on Criminal  
Rules.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
SUPREME COURT BUILDING  
WASHINGTON 25. D. C.

August 27, 1960

The Honorable Albert B. Maris  
Chairman, Committee on Rules of Practice and Procedure  
Supreme Court Building  
Washington 25, D. C.

Dear Judge Maris:

Enclosed herewith is a proposed Rule respecting procedure for judicial review of decisions of the Tax Court of the United States. The proposed Rule has been prepared and is submitted by the Advisory Committee on Appellate Rules.

This Rule is authorized by special statutory authority, which is found in Section 2074 of Title 28, U. S. C., also referred to in Section 7482(c)(2) of 26 U. S. C.

The preparation of the proposed Rule was carried out by correspondence, except for an informal meeting of volunteers who served as a drafting subcommittee. Considerable material and several proposed drafts of a Rule were in existence at the time of the creation of your Advisory Committee and were available to it.

The proposed Rule deals with the portion of the appellate proceedings which take place in the Tax Court, preliminary to the institution of the proceedings in the Courts of Appeals. We delayed the latter phases for consideration when we undertake a general consideration of rules in the Courts of Appeals.

You will note that the proposed Rule is in considerable detail. The Advisory Committee decided that instead of writing a short, perhaps one-sentence, Rule which would require considerable construction, cross-referencing and perhaps result in considerable confusion, it is better to put in this one Rule all that an attorney or a litigant is required to know about seeking judicial review of a decision of the Tax Court.

The proposed Rule is self-explanatory. However, we call attention to a few features:

The procedure is cast in the form of a notice of appeal rather than as a petition for review. The former is the form used in the Civil Rules; the latter is the form used in the statutes relating to decisions of administrative agencies (example, see 15 U. S. C., paragraph 45(c); and 3 Davis, Administrative Law, Section 23.03). The notice-of-appeal procedure has been carefully followed throughout the Rule.

The time for noting an appeal has been set at 60 days (and for a second appeal by another party at 90 days). This is a shorter time than that provided by the present statute. 26 U. S. C., Section 7483. But it is our understanding that this Rule if adopted by the Supreme Court and reported to the Congress

would either supersede existing statutory provisions (except as to "substantive rights of any litigant") or revisions of existing statutes would follow in due course. The matter of such revisions would of course fall within the authority of the Committee on Revisions of the Laws. Your Advisory Committee is of opinion that a very short period of time for the filing of a notice of appeal is highly desirable. After all, this particular act, filing of the notice, is an exceedingly simple one, requiring no time in preparation or filing; and an appeal once noted is easily abandoned.

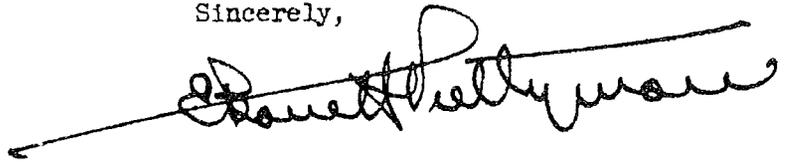
You will note that we propose to provide for the transmission of the original record. This is the simplest and least expensive method. Problems as to the printing of records or parts thereof are deferred to our general consideration of the rules of the Courts of Appeals.

You will note that the proposed Rule does not require in the notice of appeal any statement as to the nature of the controversy, or of issues or of questions presented or of facts to establish

jurisdiction or venue. It requires merely a simple notice of appeal, similar to that prescribed by the Civil Rules.

Your Advisory Committee respectfully submits the proposed Rule and requests its approval by your Committee.

Sincerely,

A handwritten signature in cursive script, which appears to read "E. Barrett Prettyman". The signature is written in dark ink and is positioned below the word "Sincerely,". A long horizontal line is drawn through the signature, extending from the left margin towards the right.

E. Barrett Prettyman

Enclosure

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
SUPREME COURT BUILDING  
WASHINGTON 25, D. C.

August 24, 1960

TO ALL MEMBERS OF THE ADVISORY COMMITTEE ON APPELLATE RULES:

Mr. Imlay and I, with the active assistance of Mr. Stewart, Clerk of this court, spent the day today preparing a revision of our proposed Rule, paying heed to your criticism and incorporating your suggestions, so far as we were able to ascertain your majority view. Enclosed is a copy of the Rule as thus revised.

Inasmuch as we must submit the Rule to the Committee on Rules of Practice and Procedure at its meeting here on August 31, and inasmuch as Judge Maris has asked that we submit copies to the members of that Committee in advance of the meeting, may I request that you transmit at your earliest convenience to Mr. Carl Imlay by phone or wire your approval, or disapproval, either in whole or in part, of the Rule. Mr. Imlay's mail address is Administrative Office of the United States Courts, Room 10, Supreme Court Building, Washington, D. C. His telegraph address is the same as his mail address. His phone is EX 3-1640, extension 382.

I call your attention to the following features of the revision:

1. Time is computed in days instead of months.
2. We reduced the time for noting an appeal from 90 days to 60 days; and from 120 days to 90 days in case of a second appeal.
3. We provided that the filing of certain motions should terminate the running of the time for noting an appeal. This was the almost unanimous view of the members of our Committee.

4. We provided for termination rather than suspension, following the provisions of Rule 73(a) of the Civil Rules.

5. We added a provision for an extension of time for noting the appeal in certain prescribed cases of excusable neglect, following the suggestion of Judge Miller. We took this provision from Section 2107 of Title 28, United States Code. It appears as an addition to paragraph (a) of our Rule.

6. You will notice the new provision in regard to the record when two appeals are filed.

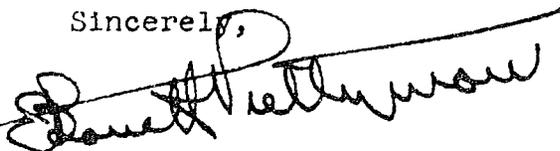
7. You will notice the provision for the record in cases where appeals are filed in two circuits.

8. We have not provided that a copy of the docket entries shall accompany the original record. This would involve preparation by the Clerk, and probably a fee. We saw no useful purpose for this document.

9. You will note that authority for the Tax Court to dismiss an appeal for cause has been stricken.

10. You will note that the phraseology of the opening provision of the Rule has been somewhat revised. This was in accordance with the suggestion of Dean O'Meara.

Sincerely,

A handwritten signature in cursive script, reading "E. Barrett Prettyman". The signature is written in dark ink and is positioned below the word "Sincerely,". A long, thin horizontal line is drawn across the signature, extending from the left margin towards the right.

E. Barrett Prettyman