



# LAWYERS FOR CIVIL JUSTICE

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December 15, 2005

To: Peter G. McCabe, Secretary, Committee on Rules of Practice  
and Procedure  
cc: Hon. David F. Levi, Hon. Lee H. Rosenthal, John Rabiej, Director  
Rules Support Office

Re: Comments on Proposed Style Revision of the Federal Rules of Civil  
Procedure

Dear Mr. McCabe:

LCJ commends the Civil Rules Advisory Committee, the Standing Committee's Subcommittee on Style Revisions, and all those who worked so long and hard to produce the excellent Preliminary Draft Proposed Style Revision of the Federal Rules of Civil Procedure. We are pleased to submit these comments on behalf of our members, corporate and defense counsel who deal with the civil rules on a regular basis.

We refrain from making specific suggestions for revision of the proposals, because we are satisfied that the Preliminary Draft is a significant improvement over the existing rules. We believe that the draft has achieved its primary objectives: the rules are much easier to read and understand and their meaning is unchanged.

Nothing better illustrates the improvement in clarity and understanding of the Rules than the side by side comparison of the existing and restyled versions of two rules in Professor Joseph Kimble's explanatory "Guidelines" memorandum of February 21, 2005:

### Rule 8(e)(2)

When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements.

### Restyled

If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

Rule 71

Restyled

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

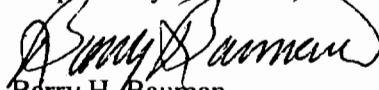
Professor Kimble observed that: “The overarching style goals were to improve consistency and clarity and to draft the rules in a plainer, modern style. The Committee believes that those goals have been met, that the improvement is readily apparent, and that judges, lawyers, and law students will find the restyled rules much easier to use.” Id. We agree!

Plain language is critical to clear understanding and our reading of the Style Revisions convinces us that lawyers and litigants will save lots of time and trouble in reading and interpreting these rules, if they are adopted. In our view, both inside and outside counsel will benefit. Increased clarity will bring about easier and faster understanding of the Rules and dealings among lawyers will be simplified and facilitated.

We understand that some practitioners and academics do not believe that the proposed Style revisions are worth the effort. We disagree. Similar claims were made about the re-styling of the Criminal and Appellate Rules, but those have been on the books for some time and appear to have worked well in practice. We believe that the improvements in clarity, consistency, and brevity of the Re-styled Civil Rules will be well received by bench, bar, and litigants and that their benefits will far outweigh the perceived costs.

Therefore, we support adoption of the Proposed Style Revision and again commend all those contributing to this important and difficult work.

Respectfully submitted,



Barry H. Bauman

Lawyers for Civil Justice Executive Director



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12/15/2005 07:10 PM

Please respond to  
<bbauman@lfcj.com>

To <rules\_comments@ao.uscourts.gov>

cc

bcc

Subject Lawyers for Civil Justice Comments on Proposed Style  
Revisions to the Federal Rules of Civil Procedure

Lawyers for Civil Justice respectfully submits the enclosed Comments on the Proposed Style Revisions of the Federal Rules of Civil Procedure in response to the invitation to comment. As a nationwide coalition of corporate and defense counsel supporting improvements in the civil justice system, our members are hands on litigators and litigation managers who deal with the civil rules on a regular basis.

We believe the action taken by the Civil Rules Advisory Committee to clarify the Rules will be enormously helpful to our members by making the rules easier to read and understand as we explain in the attachment. We commend the Committee for undertaking this task and encourage you to call upon us if we can provide you with additional information. Thank you for allowing us this opportunity to express our views.

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