

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

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**DATE:** November 30, 2000

**TO:** Judge Anthony J. Scirica, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Judge Will Garwood, Chair  
Advisory Committee on Appellate Rules

The Advisory Committee on Appellate Rules did not meet this fall. Several proposed amendments to the Federal Rules of Appellate Procedure were published for comment in August, and the items on our study agenda unrelated to the proposed amendments were not sufficient in number or urgency to justify a fall meeting.

The Advisory Committee will meet again on April 11 and 12 in New Orleans. At that meeting, we will review comments on the proposed amendments that were published in August and turn to several unrelated items. Those items are listed on study agenda, which is attached.

**Advisory Committee on Appellate Rules  
Table of Agenda Items — Revised December 2000**

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
95-03	Amend FRAP 15(D) to conform to new FRAP 4(a)(4)(B)(i).	Hon. Stephen F. Williams (CADC)	Awaiting initial discussion Retained in part on agenda with medium priority 09/97 Draft approved 10/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
95-04	Amend computation of time to conform to Civil Rules method. (Related to Nos. 97-01 and 98-12.)	James B. Doyle, Esq.	Awaiting initial discussion Retained on agenda with medium priority 09/97 Discussed and retained on agenda 04/98 Draft approved 10/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
95-07	Amend FRAP 4(a)(5) to make it clear that a "good cause" extension is available after expiration of original period.	Luther T. Munford, Esq.	Awaiting initial discussion Retained on agenda with low priority 09/97 Draft approved 10/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
97-01	Amend FRAP 26(a) so that time computation is consistent with FRCP 6(a). (Related to Nos. 95-04 and 98-12.)	Advisory Committee & Los Angeles County Bar Ass'n	Awaiting initial discussion Retained on agenda with medium priority 09/97 Discussed and retained on agenda 04/98 Draft approved 10/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
97-05	Amend FRAP 24(a)(2) in light of Prison Litigation Reform Act.	Advisory Committee	Awaiting initial discussion Retained on agenda with high priority 09/97 Draft approved 04/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
97-07	Amend FRAP 28(j) to allow brief explanation.	Jack Goodman, Esq.	Awaiting initial discussion Retained on agenda with low priority 09/97 Draft approved 04/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
97-09	Amend FRAP 32 — cover color for petition for rehearing/rehearing en banc, response to either, and supplemental brief.	Paul Alan Levy, Esq. Public Citizen Litigation Group	Awaiting initial discussion Retained on agenda with low priority 09/97 Draft approved 04/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
97-12	Amend FRAP 44 to apply to constitutional challenges to state laws.	Advisory Committee	Awaiting initial discussion Retained on agenda with low priority 09/97 Draft approved 04/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
97-14	Amend FRAP 46(b)(1)(B) to replace the general “conduct unbecoming” standard with a more specific standard or, alternatively, supplement FRAP 46(b)(1)(B) by recommending a model local rule governing attorney conduct.	Standing Committee	Awaiting initial discussion Retained on agenda with low priority 09/97 Discussed and retained on agenda 04/98 Discussed and retained on agenda 10/99 Discussed and retained on agenda 04/00
97-18	Amend or delete FRAP 1(b)’s assertion that the “rules do not extend or limit the jurisdiction of the courts of appeals.”	Hon. Frank H. Easterbrook (CA7)	Awaiting initial discussion Retained on agenda with high priority 09/97 Draft approved 10/98 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
97-21	Amend FRAP 31(b) to clarify that briefs must be served on unrepresented parties, as well as on “counsel for each separately represented party.”	Advisory Committee	Awaiting initial discussion Draft approved 09/97 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00

97-30 Amend FRAP 32(a)(7)(C) to require use of a standard certificate of compliance with type-volume limitation.

Luther T. Munford, Esq.

Awaiting initial discussion  
Retained on agenda with high priority 09/97  
Draft approved 04/98 for submission to Standing Committee in 01/00  
Approved for publication by Standing Committee 01/00  
Published for comment 08/00

97-31 Amend FRAP 47(a)(1) to require that all new and amended local rules take effect on December 1. (Related to No. 98-01.)

Luther T. Munford, Esq.

Awaiting initial discussion  
Retained on agenda with medium priority 09/97  
Draft approved 04/98 for submission to Standing Committee in 01/00  
04/98 draft withdrawn; discussed further and retained on agenda 10/99; will await action by other Advisory Committees on similar proposals

97-41 Amend FRAP 4 to specify time for appeal of order granting or denying writ of coram nobis.

Solicitor General Waxman

Awaiting initial discussion  
Draft approved 04/98 for submission to Standing Committee in 01/00  
Approved for publication by Standing Committee 01/00  
Published for comment 08/00

98-01 Amend FRAP 47(a) to provide that local rules do not become effective until filed with the Administrative Office. (Related to No. 97-31.)

Standing Committee

Awaiting initial discussion  
Draft approved 04/98 for submission to Standing Committee in 01/00  
04/98 draft withdrawn; discussed further and retained on agenda 10/99; will await action by other Advisory Committees on similar proposals

98-02 Amend FRAP 4 to clarify the application of FRAP 4(a)(7) to orders granting or denying the motions for post-judgment relief listed in FRAP 4(a)(4)(A).

Hon. Will Garwood (CA5)  
Luther T. Munford, Esq.

Awaiting initial discussion  
Discussed and retained on agenda 04/98  
Draft approved 10/98 for submission to Standing Committee in 01/00  
10/98 draft withdrawn; discussed further and retained on agenda 04/99  
Revised draft approved 10/99 for submission to Standing Committee in 01/00  
Standing Committee deferred action 01/00  
Further revised draft approved 04/00 for submission to Standing Committee in 06/00  
Approved for publication by Standing Committee 06/00  
Published for comment 08/00

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
98-06	Amend FRAP 4(b)(5) to clarify whether and to extent the filing of a FRCP 35(c) motion for correction of sentence tolls the time to file appeal.	Hon. Will Garwood (CA5)	Awaiting initial discussion Discussed and retained on agenda 10/98; awaiting specific proposal from Department of Justice Discussed and retained on agenda 04/99; awaiting draft amendment and Committee Note Draft approved 10/99 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
98-11	Amend FRAP 5(c) to clarify application of FRAP 32(a) to petitions for permission to appeal.	Christopher A. Goelz (CA9 Circuit Mediator)	Awaiting initial discussion Discussed and retained on agenda 04/99 Draft approved 10/99 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Revised draft approved 04/00 for submission to Standing Committee in 06/00 Approved for publication by Standing Committee 06/00 Published for comment 08/00
98-12	Amend FRAP 4(a)(4)(A)(vi), 27(a)(3)(A), 27(a)(4) & 41(b) to account for amendment to FRAP 26(a) regarding calculating time. (Related to Nos. 95-04 and 97-01.)	Advisory Committee	Awaiting initial discussion Discussed and retained on agenda 10/98 Draft approved 04/99 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
99-01	Amend FRAP 24(a)(3) to address potential conflicts with Prison Litigation Reform Act.	Hon. Will Garwood (CA5)	Awaiting initial discussion Discussed and retained on agenda 04/99 Draft approved 10/99 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00
99-02	Amend FRAP 32 to require that briefs, written motions, rehearing petitions, etc. be signed.	Hon. Will Garwood (CA5)	Awaiting initial discussion Draft approved 04/99 for submission to Standing Committee in 01/00 Revised draft approved 10/99 for submission to Standing Committee in 01/00 Approved for publication by Standing Committee 01/00 Published for comment 08/00

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
99-03	Amend unspecified rules to permit electronic filing and service.	Subcommittee on Technology	Awaiting initial discussion Discussed and retained on agenda 04/99 Draft approved 04/00 for submission to Standing Committee in 06/00 Approved for publication by Standing Committee 06/00 Published for comment 08/00
99-06	Amend FRAP 33 to incorporate notice provisions of FRBP 7041 and 9019.	Hon. L. Edward Friend II (Bankr. N.D. W. Va.)	Awaiting initial discussion Discussed and retained on agenda 04/00; awaiting proposal from Bankruptcy Rules Committee
99-07	Amend FRAP 26.1 to broaden financial disclosure obligations.	Standing Committee	Awaiting initial discussion Discussed and retained on agenda 10/99 Draft approved 04/00 for submission to Standing Committee in 06/00 Approved for publication by Standing Committee 06/00 Published for comment 08/00
99-09	Amend FRAP 22(b) to specify procedure for obtaining certificate of appealability.	Hon. Anthony J. Scirica (CA3)	Awaiting initial discussion Discussed and retained on agenda 04/00; awaiting proposal from Department of Justice
00-03	Amend FRAP 26(a)(4) & 45(a)(2) to use "official" names of legal holidays.	Jason A. Bezis	Awaiting initial discussion Discussed and retained on agenda 04/00
00-04	Add new FRAP 4.1 to explicitly authorize "indicative rulings."	Solicitor General Waxman	Awaiting initial discussion Discussed and retained on agenda 04/00; awaiting revised proposal from Department of Justice
00-05	Amend FRAP 3 to address notice of appeal filed on behalf of corporation but not signed by attorney.	Hon. Diana Gribbon Motz (CA4)	Awaiting initial discussion Discussed and retained on agenda 04/00
00-06	Amend FRAP 4(b)(4) to address failure of clerk to file notice of appeal when requested by defendant under FRCrP 32(c)(5).	Hon. Frank H. Easterbrook (CA7)	Awaiting initial discussion
00-07	Amend FRAP 4 to specify time for appeal of order granting or denying motion for attorney's fees under Hyde Amendment.	Hon. Stanwood R. Duval, Jr. (E.D. La.)	Awaiting initial discussion

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
00-08	Amend FRAP 4(a)(6)(A) to clarify whether a moving party “receives notice” of the entry of a judgment when that party learns of the judgment only through a verbal communication.	Hon. Stanwood R. Duval, Jr. (E.D. La.)	Awaiting initial discussion
00-09	Amend FRAP 22 to clarify post-AEDPA treatment of certificates of probable cause.	Stuart Buck	Awaiting initial discussion
00-10	Add rule to require neutral assignment of judges to panels.	Hon. William R. Wilson, Jr. (E.D. Ark.)	Awaiting initial discussion
00-11	Amend FRAP 35(a) to provide that disqualified judges should not be considered in assessing whether “[a] majority of the circuit judges who are in regular active service” have voted to hear or rehear a case en banc.	Hon. Edward E. Carnes (CA11)	Awaiting initial discussion
00-12	Amend FRAP 28, 31 & 32 to specify the length, timing, and cover colors of briefs in cases involving cross-appeals.	Solicitor General Waxman	Awaiting initial discussion
00-13	Amend FRAP 29 to empower court to preclude the filing of a particular private amicus brief, even if all parties have consented.	Hon. Michael Boudin (CA1)	Awaiting initial discussion