

CIVIL RULES ADVISORY COMMITTEE
Meeting of November 19-20, 1987
Minutes

Judge Weis presided. In attendance were members Grady, Holbrook, Linder, Miller, Pfaelzer, Phillips, Rosenberg, Skinner and Zimmerman. The Administrative Office, the Federal Judicial Center, and the House Judiciary Committee were also represented. Mr. Hoffman of the NAPPS observed, and addressed the Committee on Rule 4.

The Committee conducted a lengthy discussion of Rule 15(c) and concluded by expressing a preference for a "surgical strike" at the problem of the Schiavone case. Neither of the drafts presented won accolades.

The Committee heard a generally positive report from GAO regarding Rule 16.

The revised draft of Rule 28 was considered. It was agreed that a statement of the principle of Aerospatiale should be relocated in Rule 26(a), where it would apply to all forms of discovery. With that change, and one other, the revised Rule 28 was approved. Drafts of Rules 26(a) and 28 reflecting these changes are attached to these minutes.

The revised draft of Rule 44 was approved.

Rule 35 was discussed. The Reporter disclosed that there was some opposition to the inclusion of clinical psychologists. It was suggested that a similar change may have been made to Title 18 or to the Criminal Rules. The Reporter was directed to seek comment from additional sources.

Rule 45 was discussed. Several changes were made, and the rule very tentatively approved. A draft revised to reflect the changes is attached to these minutes.

The revision of Evidence Rule 609 was approved in the form proposed by the Advisory Committee on Criminal Rules.

Rule 77 was discussed. It was agreed that the older practice of re-entering a judgment has its cumbersome aspects, and that an absolute time limit of one year should be imposed on any extension of time to appeal. It was decided to re-draft the rule accordingly, and to seek approval of the Appellate Rules Committee of a corresponding change in FRAP 4.

Rule 47 was discussed. It was decided to retain the last sentence of the rule, but to make it optional to the court. With this change, the revision was approved. A corresponding draft of the rule is attached to these minutes.

Rule 63 was discussed and approved in the form presented in the November draft.

The new chapter headings were approved in the form presented in the November draft.

Rule 69 was discussed. It was decided to ask the Justice Department for further explanation of the need for this revision.

Rule 72 was discussed and approved in the form presented in the November draft.

The abrogation of Rule 84 was discussed and approved.

The revisions of Admiralty Rules C and E were discussed and approved in the form presented in the November draft.

Rule 4 was discussed, and a number of changes made in the draft. It was decided to recommend nationwide service of process in federal question cases, but to make no provision for pendent personal jurisdiction. Substantial changes were suggested for the mail service provisions. Widespread dissatisfaction was expressed for the proposed provisions regarding service on the government, but it was tentatively agreed to continue support for the position of the Justice Department, subject to further efforts by the Reporter and the Chair to develop a more suitable alternative that would be agreeable to Justice. A draft of Rule 4 as it would seem to be agreeable to the Committee at the present time is attached to these minutes.

The Committee expressed its gratitude for the services of members Skinner, Rosenberg, and Weis, who discontinue their service after this meeting. Judge Grady will be the new chair; Judges Stephens and Ralph Winter will be joining the committee.

Respectfully submitted,

Paul D. Carrington
Reporter

N.B. Pages attached to these minutes are numbered to correspond to the November Draft. Committee members may wish to insert these in place of the superseded materials.