

**JUDICIAL CONFERENCE OF THE UNITED STATES  
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

**Minutes of the Meeting of June 10, 1985**

The Committee on Rules of Practice and Procedure met in the Administrative Office Conference Room in Washington, D. C. on Monday, June 10, 1985. All members of the Committee were present except Judge Walter E. Hoffman who was unable to attend.

Mr. Spaniol, the Secretary to the Committee, was also present.

Judge Pierce Lively, Chairman of the Advisory Committee on Appellate Rules; Professor Kenneth Ripple, Reporter to that Committee; and Professor Stephen A. Saltzburg, Reporter to the Advisory Committee on Criminal Rules were also present.

Agenda I. and II. Opening Remarks and Introductions

Judge Gignoux announced that Professor Ripple had been appointed to be a judge of the United States Court of Appeals for the Seventh Circuit and that he would take the oath of office at the Supreme Court that afternoon. Judge Gignoux also introduced the new reporter to the Advisory Committee on Criminal Rules, Professor Stephen A. Saltzburg, and Mr. Thomas Hutchison a member of the staff of the House Judiciary Subcommittee on Criminal Justice who had been invited to attend the meeting.

Judge Gignoux also reported that the Supreme Court had approved the recommended amendments to the rules of Civil, Criminal and Bankruptcy Procedure, previously cleared by the Committee and the Judicial Conference, and that they were transmitted to the Congress by the Chief Justice on April 29th. Stylistic changes were made by the court in two criminal rules.

Judge Gignoux then reviewed the agenda briefly and suggested that the business of the Committee could be completed in one day.

#### Agenda III. Advisory Committee on Appellate Rules

Judge Lively, with the assistance of Professor Ripple, submitted various proposed amendments to the Federal Rules of Appellate Procedure, which were accompanied by Advisory Committee Notes and a written report (GAP Report) detailing the consideration given to the proposed amendments following their circulation to the bench and bar in September, 1984. After a full explanation of the proposed amendments contained in the original draft amendments as circulated to the bench and bar, and the adoption of certain stylistic changes, the Committee unanimously approved proposed new Appellate Rules 3.1, 5.1, 15.1 and the proposed amendments to Rules 19, 28(c), 30(a) and (b), 39(c), and 45(b).

The Advisory Committee was also requested to submit proposed amendments to all appellate rules to remove gender-specific

language and to include all amendments in one document for presentation to the Judicial Conference.

The Committee also requested the Chairman and Reporter of the Advisory Committee to review the provisions of Rule 38, which authorizes an award of damages and single or double costs to an appellee in the event an appeal is determined to be frivolous, to determine whether it will be appropriate to afford the appellant an opportunity to respond to any proposed award of damages or costs.

Professor Ripple then reported on the status of other proposals pending before the Committee. He indicated that his files will be made available to his successor after he takes judicial office.

Judge Gignoux pointed out that Professor Ripple was also serving as the reporter to the Standing Committee to undertake a review of the local rules of the courts of appeals and district courts. This duty will have to be assumed by a new reporter to the Standing Committee to be named by the Chief Justice.

#### Agenda IV. Advisory Committee on Civil Rules

Judge Gignoux stated that the Chairman of the Advisory Committee on the Federal Rules of Civil Procedure, Judge Frank M. Johnson, had been excused from attendance at this meeting since the Committee had no proposals to present to the Standing Committee. Judge Gignoux reported that the Advisory Committee had reviewed the comments on the proposed amendments to the civil

rules that were submitted to the bench and bar for comment in September, 1984 and decided to continue its review at the next meeting to be held in November. There was considerable discussion at this meeting of the proposal to amend Civil Rule 68 pertaining to an offer of judgment.

Judge Gignoux also stated that the House Judiciary Subcommittee on Criminal Justice had scheduled hearings on the amendments to the civil and criminal rules which were approved by the Supreme Court and transmitted to the Congress by the Chief Justice in April. Mr. Hutchison indicated that several witnesses had requested an opportunity to testify particularly on the proposed amendments to Civil Rules 52(a) and 83. Judge Gignoux was also invited to testify.

#### Agenda V. Advisory Committee on Criminal Rules

In the absence of the chairman of the Advisory Committee on the Federal Rules of Criminal Procedure, Judge Frederick B. Lacey, the Advisory Committee's reporter, Professor Stephen A. Saltzburg, presented a brief report.

Professor Saltzburg stated that at its June 6th meeting the Advisory Committee had reviewed the proposed amendment to Criminal Rule 31 and the proposed amendments to Rules 9(a) of the Section 2254 and 2255 rules for the district courts and had decided not to proceed further with these amendments at this time.

At the request of the Judicial Conference Committee on the Administration of the Jury System the Advisory Committee did reconsider authorize Committee have been submitted years ago. on its be approximate empaneling therefore d it to the Standing Committee at a later date together other proposed amendments. The Standing Committee agreed with this procedure.

Date 2/12/86

From the Office of

Deputy Director

To: Mr. David Glass  
**GOOD JOB!**  
 Per how a  
 clean copy prepared  
 I gave to Ann  
 for preparation  
 of required letter  
 of transmittal



Professor Saltzburg also indicated that the Advisory Committee desires to circulate a new proposed Criminal Rule 12.3 The Advisory Committee agreed that circulation should be withheld until action on other proposed rules amendments is taken.

Professor Saltzburg also indicated a potential need for amendments to the criminal rules as the result of the passage of the Comprehensive Crime Control Act of 1984. The Advisory Committee plans to write to the American Bar Association to obtain its views and suggestions and will also write to Judge Tjoflat, Chairman of the Probation Committee, on two issues affecting probation and sentencing. The Standing Committee

agreed that the proposal to amend Rule 12.3 should await circulation of other draft proposals.

The amendment to Rule 11 of the Federal Rules of Criminal Procedure, submitted to Congress in April, will also be considered at the hearings before the House Judiciary Subcommittee on Criminal Justice scheduled to be held on June 26th. Mr. Richard Green, a member of the Advisory Committee, will testify.

#### Agenda VI. Advisory Committee on Bankruptcy Rules

Judge Gignoux informed the Committee that the amendments to Bankruptcy Rules 5002 and 5004, approved by the Supreme Court in April, were also transmitted to the Congress by the Chief Justice. There appears to be no opposition to these rules changes and they are expected to go into effect on August 1, 1985.

Judge Gignoux also stated that the Advisory Committee on Bankruptcy Rules is continuing its work of revising the Bankruptcy Rules in the light of the Bankruptcy Amendments and Federal Judgeship Act of 1984. A report from the Advisory Committee is expected in due course.

#### Agenda VII. Gender Neutral Language

Judge Gignoux set before the Committee a letter he received from the Chief Justice, on behalf of the Supreme Court, requesting that all gender-specific language be removed from the Federal Rules of Procedure. Mr. Hutchison agreed to provide the

Standing Committee with drafts of proposed amendments to serve as a basis for Committee work. As soon as this information is received, Mr. Spaniol was instructed to circulate it to the members of the Standing Committee and to the members of the appropriate Advisory Committees.

As noted above, the Advisory Committee on the Federal Rules of Appellate Procedure was asked to remove gender-specific language from the Appellate Rules and to include these changes with the other draft amendments submitted by the Advisory Committee.

#### Agenda VIII. Local Rules

Professor Ripple had previously agreed to serve as the reporter to the Standing Committee to review the local rules of the courts of appeals and district courts and to suggest a plan of study. Judge Gignoux indicated that in view of Professor Ripple's appointment to the Court of Appeals for the Seventh Circuit, the Chief Justice will be requested to appoint a new reporter to the Standing Committee.

#### Agenda IX. Evidence Rules

Judge Gignoux pointed out that the Judicial Conference in September, 1981 (Conf. Rept., p. 104) approved a recommendation of the Standing Committee that the Chief Justice be requested to reconstitute an Advisory Committee on Rules of Evidence. Recent events, however, indicate that it may not be desirable to reconstitute such a committee at this time. Nonetheless, he

suggested that some work needs to be done in this area and the Committee agreed.

After full discussion, the Standing Committee agreed to the appointment of an Ad Hoc Committee to consist of members of the Civil and Criminal Rules Advisory Committees to review the evidence rules and make recommendations for any needed changes to the Standing Committee. An initial review would first be made by the Criminal Rules Advisory Committee with the assistance of its reporter, Professor Saltzburg, and any suggestions for rules changes would then be referred to the Civil Rules Committee for consideration. Proposed changes would thereafter be submitted to the Standing Committee.

A letter from Judge Walter E. Hoffman calling attention to an evidence problem arising in the case of Diggs V. Lyons, Superintendent, 53 U.S.L.W. 3773, was referred to the Criminal Rules Advisory Committee.

#### Agenda X. New Business

H.R. 2633, 99th Congress, a bill to revise the Rules Enabling Acts, is a successor to H.R. 4144, 98th Congress. The Judicial Conference had previously expressed its views on H.R. 4144 and Judge Gignoux testified on the bill at Congressional hearings. The new bill is similar in many respects to the old bill, but contains new provisions not previously considered by the Committee. Judge Gignoux stated that he had been asked to submit a written statement on the new bill to the House



Subcommittee on Courts, Civil Liberties, and the Administration of Justice by July 15. The Committee members offered several suggestions of matters to be included in that statement.

Agenda XI. Report to the Judicial Conference

The Chairman and Secretary were authorized to prepare the Committee's report to the Judicial Conference and to circulate it in advance to all Committee members for their approval.

Agenda XII. Time and Place of the Next Committee Meeting

The Committee tentatively agreed to meet in Washington, D. C. on Thursday and Friday, January 23-24, 1986. The Chairman was authorized to adjust these dates as future circumstances may require.

Respectfully submitted,

Joseph F. Spaniol, Jr.  
Secretary

July 18, 1985