

Agenda G-14
March 1975
Practice and Procedure

REPORT OF THE COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN, AND
MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

CRIMINAL RULES

The proposed amendments to the Federal Rules of Criminal Procedure which were sent to Congress by the Supreme Court on April 22, 1974, are still under consideration by the Subcommittee on Criminal Justice of the House Committee on the Judiciary. Representatives of the Advisory Committee on Criminal Rules testified before that subcommittee in September 1974. The date when the amendments should take effect has been extended to August 1975.

A number of federal judges, as well as the Justice Department, the American Civil Liberties Union and others, criticized one or more of the proposed rules. Rule 11(e), dealing with plea agreements, drew most of the criticism from judges. Chairman Hungate of the House Subcommittee has again written to the chief judges of the circuits and the chief judges of the district courts soliciting comments, and has received additional suggestions. He has agreed that representatives of our committee will be given an opportunity to answer whatever criticisms and suggestions are submitted to the House Subcommittee. No doubt

there will also be a hearing before a Senate committee later in the year.

The Advisory Committee is also considering problems raised by the enactment of the Speedy Trial Act.

A new S 1, a revised version of the S 1 introduced in the last Congress, has been introduced in the present Congress. It contains many amendments to the Rules of Criminal Procedure, as well as a complete rewrite of Title 18 of the Code. The Committee on the Administration of the Criminal Law presented to this Conference several reports dealing with various portions of the former S.1 and is now considering the present S 1. The Advisory Committee on Criminal Rules will consider in the near future the proposed amendments to the Criminal Rules contained in the new S 1. Methods of cooperation between the two Committees are under discussion.

BANKRUPTCY RULES

The proposed rules under Chapter X of the Bankruptcy Act (Corporate Reorganizations) and Chapter XII (Real Property Arrangements) which were approved by this Conference in September 1974 have been sent to the Supreme Court. The Advisory Committee is now working on proposed rules under Chapter VIII (Railroad Reorganizations) and Chapter IX (Composition of Indebtedness of Certain Taxing Agencies), together with a few clarifying amendments to rules already promulgated and now in

force. They hope that all of these proposed rules will be ready for submission to the Conference in September. That will complete the task assigned to the Advisory Committee on Bankruptcy Rules some years ago.

RULES OF EVIDENCE

Federal Rules of Evidence were enacted by Congress, P.L. 93-595, approved January 2, 1975. Most of the rules promulgated by the Supreme Court were adopted, in a number of instances with committee notes which may affect the interpretation of the rule. Some technical changes were made, such as changing the word "judge" to "court". Substantial changes were made in seventeen rules, sometimes in more than one subsection. A number of rules were deleted entirely (notably the rules dealing with privilege), with explanatory notes.

Section 2 of the Act specifically authorizes the Supreme Court to prescribe amendments to the Federal Rules of Evidence, and to report them to Congress not later than May 1st, to take effect 180 days after being so reported, subject to the right of either House of Congress to disapprove any amendment or to defer the effective date. Approval by an act of Congress will be necessary to create, abolish or modify a privilege. The Advisory Committee on Rules of Evidence has been discharged with thanks by the Chief Justice.

In construing some of the new rules, reports of the House Committee, the Senate Committee and the Conference Committee may have to be considered. Accordingly, the Judicial Center, at our suggestion, has engaged Professor Cleary, who was the Reporter for the Advisory Committee, to prepare a document which we hope will be helpful to all judges and lawyers. It will contain the Evidence Rules as enacted, together with all appropriate notes by the Advisory Committee and the Congressional Committees, and some statements made on the floor. Other material will be included in an appendix. Mr. Mishke, of the Judicial Center, will cooperate with Professor Cleary, and the material will be reviewed by Judge Maris, Judge Joiner and me before it is printed, for distribution to all judges. We hope the distribution can be made not later than early June. We are also planning to make it available at low cost to all lawyers and other interested persons.

APPELLATE RULES

The Advisory Committee on Appellate Rules has just begun its work.

CIVIL RULES

The Advisory Committee on Civil Rules has not met since September, but its reporter has been in touch with the Conference Committee on Magistrates, the Panel on Multidistrict Litigation and others with respect to amendments which may become necessary or desirable in the future.

STANDING COMMITTEE

Francis N. Marshall, Esq., of San Francisco, and Professor Remington, who has been the Reporter for the Advisory Committee on Criminal Rules, have been appointed to the Standing Committee, succeeding J. Lee Rankin, Esq., and Professor James Wm. Moore, whose terms had expired.

Professor Wayne LaFave has been appointed Reporter to the Advisory Committee on Criminal Rules.

Respectfully submitted,

Roszel C. Thomsen, Chairman
Charles W. Joiner
Richard E. Kyle
Francis N. Marshall
Carl McGowan
Frank J. Remington
Bernard G. Segal
Frank W. Wilson
Charles Alan Wright