

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

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TO: Honorable Alicemarie H. Stotler, Chair, and Members of the Standing  
Committee on Rules of Practice and Procedure

FROM: Honorable James K. Logan, Chair  
Advisory Committee on Appellate Rules

DATE: December 5, 1996

The Advisory Committee on Appellate Rules has very little to report and will not be presenting any items for action by the Standing Committee. The Advisory Committee did not meet this fall because it decided to delay work on any new projects until after the close of the comment period on the "style" packet, which period ends December 31, 1996.

Since the Standing Committee's meeting last June, however, the Advisory Committee has completed two tasks.

1. **Further improvement of the proposed changes to Form 4.** Pursuant to a request from the Clerk of the United States Supreme Court, last June the Advisory Committee presented for your consideration a revised Form 4 from the appendix of forms that accompanies the appellate rules. The Supreme Court rules require parties desiring to proceed *in forma pauperis* to file an affidavit or declaration in the form prescribed by Appellate Form 4. The Clerk advised that Form 4 needs to be changed to include more detailed financial information. At almost the same time, the Congress passed legislation affecting *in forma pauperis* appeals by prisoners. The legislation requires detail on "all assets" of the prisoner and requires a certified statement of the receipts, expenditures, and balances in the prisoner's institutional account during the preceding six months. At the June meeting the Standing Committee approved in principle the recommended changes in Form 4 but further simplification of the language was suggested.

Bryan Garner redrafted the form using simpler language and the Advisory Committee conferred by telephone on final changes to the language. The form as redrafted was published in August along with proposed changes in Appellate Rules 5 and 5.1.

2. **Advisory Committee's self-evaluation.** In October Judge Wm. Terrell Hodges, Chairman of the Executive Committee of the Judicial Conference of the United States, asked each of the Judicial Conference committees to conduct a self-evaluation. Because the Executive Committee plans to review the self-evaluations at a February 1997 meeting and the Advisory Committee did not plan to meet prior to that time, I polled the members of the Advisory Committee by mail. On the basis of their responses I prepared a draft of the self-evaluation for review by the members of the Advisory Committee. With their approval, the report was submitted. In short, we recommend the committee's continued existence.

With regard to the style project, thus far we have received surprisingly few comments; they are generally favorable. The comments contain some suggestions for improvement and clarification as well as some new substantive suggestions; the latter will be placed on the Advisory Committee's docket for later consideration.

An updated version of the Advisory Committee's Table of Agenda Items is included for your information.

**Advisory Committee on the Federal Appellate Rules  
Table of Agenda Items -- Revised December 1996**

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
89-5	Amendment of FRAP 35(c).	Mr. Robert St. Vrain (CA-8)	Under study by reporter Discussion with Supreme Court Clerk to precede any further action 10/90 Additional drafts requested 12/91 Approved for submission to Standing Committee 4/92
90-1	Amend FRAP 35(b) and (c) to change "suggestion" for an en banc to a "petition" for an en banc.	Hon. Jon Newman (CA-2) Mr. St. Vrain (CA-8)	Standing Committee requested that Advisory Committee reconsider 6/92 Draft approved for submission to Standing Committee 4/93. Check all other FRAP for cross-references to "suggestions" for rehearing en banc Approved by Standing Committee for publication to bench and bar 6/93 Publication delayed pending completion of Items 91-25 and 92-4, 9/93 Published 9/95 Approved for submission to Standing Committee 4/96 Approved by Standing Committee 7/96; will be forwarded to Judicial Conference with restyled rules 8/97
91-3	Final decision by rule/expanding interlocutory appeal by rule.	Federal Courts Study Committee Judicial Improvement Act of 1990, P.L. No. 101-650; and Federal Courts Administration Act of 1992, P.L. No. 102-572	Discussion on-going 4/91 Consideration of interlocutory review of rulings on class certification. Referral from Civil Rules Committee 6/93

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
91-4	Typeface, re: rule 32.	Mr. Greacen (CA-5)	<p>Reporter asked to draft language 12/91          Approved for submission to Standing Committee 11/92</p> <p>Approved by Standing Committee for publication to bench and bar 12/92</p> <p>Advisory Committee approved new drafts for submission to Standing Committee for re-publication 5/93</p> <p>Standing Committee approved new draft for re-publication 6/93</p> <p>Published 11/93</p> <p>Advisory Committee approved new draft for submission to Standing Committee for republication 4/94</p> <p>Approved by Standing Committee for republication 6/94</p> <p>Published 9/94</p> <p>New draft approved by Advisory Committee 4/95</p> <p>Standing Committee referred back to Advisory Committee 6/96</p> <p>New draft approved by Advisory Committee 10/95</p> <p>Standing Committee approved new draft for publication 1/96</p> <p>Published 4/96</p>

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
91-9	Amendment of Rule 32(a) to require counsel to include their telephone numbers on the covers of briefs and appendices.	Local Rules Project	<p>Approved for submission to Standing Committee 12/91</p> <p>Approved by Standing Committee for publication 1/92</p> <p>Approved for resubmission to Standing Committee 4/93</p> <p>Approved by Standing Committee 6/93 but not forwarded to the Judicial Conference, republished along with other changes to Rule 32 under item 91-4</p> <p>Published 11/93</p> <p>Republished 9/94</p> <p>New draft approved by Advisory Committee 4/95</p> <p>Standing Committee referred back to Advisory Committee 6/95</p> <p>New draft approved by Advisory Committee 10/95</p> <p>Standing Committee approved new draft for publication 1/96</p> <p>Published 4/96</p>

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
91-17	Amendment of Rule 21 so that a petition for mandamus does not bear the name of the district judge and the judge is represented <u>pro forma</u> by counsel for the party opposing the relief unless the judge requests an order permitting the judge to appear.	Local Rules Project	Reporter asked to draft language 12/91 Approved for submission to Standing Committee 10/92 Standing Committee referred the proposal back to to-Advisory Committee for further consideration 12/92 New draft approved for submission to Standing Committee 4/93 Approved by Standing Committee for publication to bench and bar 6/93 Published 11/93 Advisory Committee approved new draft for submission to Standing Committee for republication 4/94 Approved by Standing Committee for republication 6/94 Published 9/94 Approved for resubmission to Standing Committee 4/95 Standing Committee approved forwarding to Judicial Conference 6/95 Approved by Judicial Conference 9/95 Became effective 12/1/96
91-17	Uniform plan for publication of opinions.	Local Rules Project & Federal Courts Study Committee	Further study recommended 12/91

5.

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
91-24	Page limits for and contents of amicus briefs.	CA-5 in response to Local Rules Project	<p>For future discussion 12/91            Approved in substance; Reporter to prepare new draft 9/93            Discussion of new draft postponed until fall meeting 4/94            Draft approved 10/94 to be submitted to Style Subcommittee            Revised draft approved for submission to Standing Committee 4/95            Published 9/95            Approved for submission to Standing Committee 4/96            Approved by Standing Committee 7/96; will be forwarded to Judicial Conference with restyled rules 8/97</p>
91-25	Amendment of Rule 35 to specify contents of suggestions for rehearing en banc.	CA-5 in response to Local Rules Project	<p>For future discussion 12/91            Approved in substance; Reporter to prepare new draft 9/93            Discussion of new draft postponed until fall meeting 4/94            Draft approved 10/94 to be submitted to Style Subcommittee            Revised draft approved for submission to Standing Committee 4/95            Published 9/95            Approved for submission to Standing Committee 4/96            Approved by Standing Committee 7/96; will be forwarded to Judicial Conference with restyled rules 8/97</p>

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
91-28	Updating Rule 27.	Advisory Committee	<p>Mr. Kopp asked to prepare memo 12/91 Held over 10/92 Subcommittee appointed 4/93 Approved in substance; subcommittee to prepare new draft 9/93 Approved for submission to Standing Committee 4/94 Approved by Standing Committee for publication 6/94 Published 9/94 Approved for resubmission to Standing Committee 4/95 Standing Committee referred back to Advisory Committee 6/95 New draft approved by Advisory Committee 10/95 Standing Committee approved new draft for publication 1/96 Published 4/96</p>
92-4	Amendment of Rule 35 to include intercircuit conflict as ground for seeking en banc.	Solicitor General Starr	<p>Subcommittee consisting of Judges Logan and Williams and Mr. Kopp to consult with Reporter Report from FJC pending 1/93 On hold pending views of Solicitor General 4/93 Approved in substance; subcommittee to prepare new draft 9/93 Discussion of new draft postponed until fall meeting 4/94 Draft approved 10/94 to be submitted to Style Subcommittee Revised draft approved for submission to Standing Committee 4/95 Published 9/95 Approved for submission to Standing Committee 4/96 Approved by Standing Committee 7/97; will be forwarded to Judicial Conference with restyled rules 8/97</p>



<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
92-5	Amendment of Rule 25 re "most expeditious form . . . except special delivery".	Advisory Committee	<p>Approved for submission to Standing Committee 4/93</p> <p>Approved by Standing Committee for publication to bench and bar 6/93</p> <p>Published 11/93</p> <p>Advisory Committee approved new draft for submission to Standing Committee for republication 4/94</p> <p>Approved by Standing Committee for republication 6/94</p> <p>Published 9/94</p> <p>Revised draft approved for resubmission to Standing Committee 4/95</p> <p>Standing Committee approved forwarding to Judicial Conference 6/95</p> <p>Approved by Judicial Conference 9/95</p> <p>Became effective 12/1/96</p>
92-11	Consideration of local rules that do not exempt government attorneys from being required to join court bar or from paying admission fees.	Attorney General Barr and Standing Committee	On hold pending views of Solicitor General 4/93
93-3	Amend Rule 41 re: 7-day period for issuance of mandate.	Advisory Committee	<p>Draft approved 10/94 to be submitted to Style Subcommittee</p> <p>Revised draft approved for submission to Standing Committee 4/95</p> <p>Published 9/95</p> <p>Approved for submission to Standing Committee 4/96</p> <p>Approved by Standing Committee 7/96; will be forwarded to Judicial Conference with restyled rules 8/97</p>

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
93-4	Amend Rule 41 re: length of time for stay of mandate.	Advisory Committee	Draft approved 10/94 to be submitted to Style Subcommittee Revised draft approved for submission to Standing Committee 4/95 Published 9/95 Approved for submission to Standing Committee 4/96 Approved by Standing Committee 7/96; will be forwarded to Judicial Conference with restyled rules 8/97
93-5	Amend Rule 26.1 to delete use of term "affiliate."	Mr. Joseph Spaniol	Draft approved 10/94 to be submitted to Style Subcommittee Revised draft approved for submission to Standing Committee 4/95 Published 9/95 Approved for submission to Standing Committee 4/96 Approved by Standing Committee 7/96; will be forwarded to Judicial Conference with restyled rules 8/97
93-6	Amend Rule 41 re: effective date of mandate.	Solicitor General Days	Draft approved 10/94 to be submitted to Style Subcommittee Revised draft approved for submission to Standing Committee 4/95 Published 9/95 Approved for submission to Standing Committee 4/96 Approved by Standing Committee 7/96; will be forwarded to Judicial Conference with restyled rules 8/97
95-1	Amend Civil Rule 23 so class members do not need to intervene to appeal.	Mr. Alan Morrison	Awaiting initial discussion
95-2	Amend Rules 3 and 24 re: denial of in forma pauperis status.	Mr. Wm. Johnson, Sr. & Mr. Kenneth Bonds	Awaiting initial discussion

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
95-3	Amend Rule 15(f) to conform to recent amendments to 4(a)(4).	Hon. Stephen Williams (CA-DC)	Awaiting initial discussion
95-4	Amend computation of time to conform to Civil Rules method.	Mr. James B. Doyle	Awaiting initial discussion
95-5	Amend Rule 31 to require submission of digitally readable copy of brief, when available.	Hon. Frank Easterbrook (CA-7)	Awaiting initial discussion
95-6	Amend Rule 3(c) & 15(5) to require appellant/petitioner to serve copies of notice of appeal.	Advisory Committee	Awaiting initial discussion
95-7	Amend Rule 4(a)(5) to make it clear that a "good cause" extension is available after expiration of original period.	Advisory Committee	Awaiting initial discussion
95-8	Does Rule 4(a)(7) repeal collateral order doctrine?	Advisory Committee	Awaiting initial discussion
95-9	Amend Rules 5 & 5.1 so that time for ordering transcript runs from entry of order granting permission to appeal.	Advisory Committee	Approved for submission to Standing Committee 4/96 Approved by Standing Committee for publication 7/96 Published 8/96
96-1	Amend Form 4 to obtain information about living expenses.	Wm. Suter, Clerk of the Supreme Court	Approved for submission to Standing Committee 4/96 Approved by Standing Committee for publication 7/96 Published 8/96
96-2	Amend Rule 4(b) so that an extension of time to file a notice of appeal can be granted in a criminal case even without excusable neglect.	Hon. R. Posner (CA-7)	Awaiting initial discussion

<u>FRAP Item</u>	<u>Proposal</u>	<u>Source</u>	<u>Current Status</u>
96-3	Add presumption against oral argument for all matters other than the substance of the appeal (in Rule 34?).	Advisory Committee	Awaiting initial discussion

