

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25, D. C.

ALBERT B. MARIS
CHAIRMAN

July 15, 1963

CHAIRMEN OF ADVISORY COMMITTEES

DEAN ACHESON
CIVIL RULES

PHILLIP FORMAN
BANKRUPTCY RULES

JOHN C. PICKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES


TO THE CHAIRMAN AND MEMBERS OF THE COMMITTEE ON RULES OF
PRACTICE AND PROCEDURE

As you know, the Advisory Committee on Admiralty Rules has resolved that unification of the civil and admiralty practices, with certain special rules for distinctively maritime matters, is both feasible and desirable. The plan to implement this resolution has been approved in principle by you and by the Judicial Conference, and the Supreme Court has informally indicated its approval of the principle. The plan has similarly been approved by the responsible committee of the Maritime Law Association of the United States, with whom the Advisory Committee has worked closely. Finally, the plan has been reviewed by the Advisory Committee on Civil Rules with generally favorable results, although a few points of difference have been defined.

The Advisory Committee on Admiralty Rules will meet again in September. At that time, it is hoped, we can take definitive action recommending to you a set of amendments to the Federal Rules of Civil Procedure necessary to effectuate the plan of unification, together with a set of Supplemental Rules governing the distinctively maritime remedies (attachment and garnishment, proceedings in rem, and proceedings for limitation of liability). It is reasonable to hope that at its meeting in October the Advisory Committee on Civil Rules will take definitive action on the proposal. You would then be in position to submit the proposal to the bench and bar generally for criticism.

The proposal will be based on the Civil Rules as of July 1, 1963, including the amendments that became effective on that date.

Respectfully submitted,



Brainerd Currie

Reporter

Advisory Committee on Admiralty Rules

STATEMENT OF THE PROGRESS OF THE WORK OF
THE ADVISORY COMMITTEE ON APPELLATE RULES

June, 1963

To the Chairman and Members of the Standing Committee on
Practice and Procedure of the Judicial Conference of the
United States:

We herewith submit a progress report concerning the present status of our work. Our last such report was submitted a year ago.

We have had two meetings during this past year, the second a three-day meeting May 20-23, 1963. We have scheduled a meeting for August 26th and 27th.

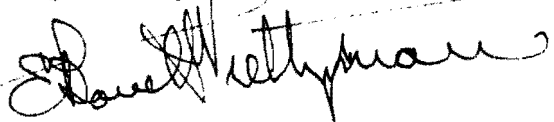
We now have in various stages of development a complete set of proposed rules, beginning with the filing of a notice of appeal. Some of these rules have been approved in final form; some have been approved in first draft; some have been outlined in principle and the principle later reviewed, and in some the principle has merely been determined. We have so arranged our schedule of work that we hope to have by the end of our August meeting a set of appellate rules which will be in such shape as that they can be forwarded to you for your review and circulation to the bar and bench for comment.

This Committee has tried to be careful in those phases of its work which touch upon the work of other Committees and has requested comments in respect to the appellate phases of these other subjects, i.e., admiralty, bankruptcy, etc. As you were advised in our last report, we had attempted to draft a separate rule for review of decisions of the Tax Court. Later developments, however, brought us to the conclusion that this rule should be integrated into the general rules for appellate procedure.

We have been mindful of the request made by your Committee that integrated portions of proposed appellate rules be forwarded to you when and as available, but the rules have not been developed in integrated parts and so we have not been able to follow this program.

In brief, we hope to have before your Committee by November a draft of a complete set of proposed appellate rules.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "E. Barrett Prettyman", written over a horizontal line.

E. Barrett Prettyman, Chairman

July 3rd, 1963

MEMORANDUM

TO: The Honorable Albert B. Maris, Chairman, and the
Members of the Committee on Rules of Practice and
Procedure of the Judicial Conference of the United
States

FROM: Frank R. Kennedy, Reporter for the Advisory Committee
on Bankruptcy Rules

SUBJECT: Progress Report of the Advisory Committee on Bankruptcy
Rules

The Advisory Committee on Bankruptcy Rules is continuing its study of the General Orders and Official Forms in Bankruptcy.

The Committee held two meetings during the fiscal year which ended on June 30, 1963, the first for 3 1/2 days in November and the second for 2 1/2 days in June. At no session of the Committee was more than one member absent, and for a good part of the first meeting all members were present. In addition, Judge Maris and Professor Moore attended most of the sessions of both meetings held during the year. Edwin Covey, who was Chief of the Bankruptcy Division of the Administrative Office of United States Courts until his retirement during the year, attended the first meeting as an advisor to the Committee and the second as a newly appointed member.

In addition, a subcommittee, constituted at the first of these two meetings and consisting of Judge Gignoux and Charles Seligson in addition to the Chairman of the Advisory Committee and the Reporter, met twice for two days each to review matters of form and style of drafts for general orders and official forms previously approved in substance by the Committee.

About ten general orders and thirty official forms appear to be close to final versions after extended consideration by the Advisory Committee. In nearly all cases the revisions are substantial. The process of reaching finality in the drafts of both the general orders and the official forms has proved quite time-consuming. Submission of issues to committee vote by mailed ballots has been utilized where feasible and will continue so to be used, but it has frequently been found necessary during meetings to reconsider matters once supposedly settled by mailed ballots.

The general orders and official forms are promulgated by the Supreme Court pursuant to section 30 of the Bankruptcy Act rather than under the Judicial Code. In carrying out the responsibility assigned it by this section, the Supreme Court has prescribed over sixty forms, many of them quite detailed. Undoubtedly one reason for their specificity is that they were prepared in

contemplation of use by laymen. Unlike the forms accompanying the Civil and Criminal Rules, the Official Forms in Bankruptcy are not merely illustrative; rather, as General Order 38 says, they "shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case."

The Advisory Committee expects to reduce the number of the forms and the detail of those retained. It is considering the feasibility of recommending that some of the forms be issued by or with the approval of the Judicial Conference as illustrations rather than as official forms prescribed by the Supreme Court. Nevertheless, the Committee has necessarily been concerned with a great many particulars of bankruptcy practice in working toward its objective in revising the general orders and forms, many of which have come through without substantial change since 1867.

The Advisory Committee has tentatively set November 20-22, 1963, as the dates for its next meeting, with April of 1964 as the most likely time for a second meeting during the present fiscal year. It is hoped that finishing touches can be put on the ten general orders and thirty official forms earlier referred to and that substantial progress can be made on the considerable number of proposals affecting other orders and forms. The agenda will also include several proposals for new general orders and official

forms. Some of these proposals arise out of recent changes in the Bankruptcy Act, including the Omnibus Act of 1962 and two amendments already enacted in 1963. The Committee does not regard any changes sufficiently pressing, however, to warrant submission of its proposals for consideration by the bench and bar prior to the completion of its study of all the general orders and official forms and the proposals it has received.

Mention should perhaps again be made of the possible enactment by Congress of the proposed amendment of 28 U.S.C. to confer rule-making power on the Supreme Court for proceedings under the Bankruptcy Act comparable to that conferred by sections 2072 and 2073 respecting general civil and admiralty practice. Section 30 of the Bankruptcy Act would be repealed at the same time. The proposal, embodied in H. 2859, passed the House by voice vote on April 22, 1963. If enacted, this measure would substantially revise the frame of reference for the Advisory Committee by freeing it from the obligation to keep all bankruptcy rules and forms it proposes consistent with the Bankruptcy Act. While some of the general orders and official forms would not be significantly affected by enactment of the proposed legislation, some would surely be recast in their entirety. The

Committee is not waiting for Congress to act on this proposal, however. It has much yet to do within existing limitations to bring the general orders and official forms in bankruptcy up to date and to carry out its responsibility to recommend changes in the interest of promoting simplicity of procedure, fairness in administration, just determination of litigation, and elimination of unjustifiable expense and delay.

July 18, 1963

To the Chairman and Members of the Standing Committee on Rules
of Practice and Procedure of the Judicial Conference of the United States:

STATEMENT ON BEHALF OF THE ADVISORY COMMITTEE
ON CIVIL RULES

Since July 18, 1962, the date of the last report to the standing Committee, the following has been accomplished or projected.

1. Amendments of the Civil Rules effective July 1, 1963.

In its report of July 18, 1962, the Civil Committee recommended adoption of a set of amendments as revised and supplemented following public circulation of a "Preliminary Draft" in October 1961. At a meeting in San Francisco on August 13-14, 1962, the standing Committee approved the amendments subject to certain changes. Having been recommended by the standing Committee to the Judicial Conference, and by the Conference to the Court, the amendments were adopted by the Court by Order of January 21, 1963, and transmitted to Congress on that day. They became effective on July 1, 1963, affecting twenty-three Rules and various Official Forms.

2. Projected amendments of the Civil Rules bearing on joinder of parties and claims and on other matters. As previously reported, the Civil Committee undertook consideration of joinder of parties (and related joinder of claims) at its meeting on May 28-29, 1962. Revised and amplified drafts were thereafter prepared, considered in intra-Committee correspondence, and discussed at a Committee meeting on February 21-23, 1963. The amendments have now undergone further revision and will be resubmitted to the Committee at its next meeting scheduled for October 31-November 2, 1963. The Committee will also consider a number of draft amendments on miscellaneous topics developed during the same period.

3. Discovery. After preparatory work which occupied most of the past year, various phases of the field investigation of discovery are now under way or in advanced planning stages. The inquiry will include: (i) Questionnaire interview with lawyers on both sides of about 500 cases. A draft questionnaire was presented to the Civil Committee at its February meeting and in revised form it constitutes the basis for the

interviews. (ii) Mail questionnaire to a larger number of attorneys. (iii) "Unstructured" interviews with specially selected members of the bench and bar to obtain their informal impressions about discovery. (iv) Special study comparing State with Federal cases in a State that has very little discovery (Massachusetts).

The Columbia Project for Effective Justice which, in consultation with the Reporter and Associate Reporter, is conducting the field investigation, plans to present preliminary data and observations at the forthcoming October meeting, and to make a final report in Spring 1964 in time to be considered by the Committee before the end of the 1964 fiscal year.

Proceeding concurrently with the field work is a traditional analysis by the Associate Reporter of the Civil Rules, local rules, State statutes and rules, court decisions, and secondary writings on discovery. It is proposed that the initial presentation at the October meeting relate to possible Rules changes that can be wholly or largely appraised without regard to the field investigation. A second presentation will be necessary at a Spring 1964 meeting to take account of the work of the Columbia Project.

4. Unification of Admiralty and Civil Rules. The Reporters for the Admiralty and Civil Committees have worked cooperatively on the changes in the Civil Rules which will be needed to effect unification. Part of the February meeting of the Civil Committee was given over to a consideration of the views of the Admiralty Committee as presented by its Reporter. It is hoped that the remaining problems will be settled to mutual satisfaction at the next meetings of the respective Committees.

5. American Law Institute's Study of Jurisdiction. Recognizing that the Study of the Division of Jurisdiction between State and Federal Courts, undertaken by the ALI at the suggestion of the Chief Justice, is related at various points to the work of the Civil Committee and the Judicial Conference, the Reporters for the Study and the Committee recently met with Judge Maris and had a useful preliminary discussion of methods of procedure.

Benjamin Kaplan
Reporter

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Report on Work of Advisory Committee on Criminal Rules

The Advisory Committee on Criminal Rules is presently engaged in receiving and analyzing comments on the Preliminary Draft which was circulated in December, 1962. We are planning to meet in October, 1963, to give preliminary consideration to a redraft of the matters covered in the Preliminary Draft. A final draft will be prepared after all comments are in. It is hoped that this draft can be acted on by the Advisory Committee in January, 1964, and presented to the standing Committee in February, 1964.

The Advisory Committee is also working on proposed amendments in addition to those contained in the Preliminary Draft. It is hoped that these additional proposals can be ready for circulation to the bench and bar for comment after the meeting in January, 1964.

June 3, 1963

Edward L. Barrett, Jr.
Reporter

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES
OF ITS STUDY OF THE PROVISIONS OF RULE 5(a)

The Advisory Committee on Criminal Rules has spent a considerable amount of time studying and discussing the problems raised by the provisions of Rule 5(a) which requires that a person arrested be brought before a commissioner "without unnecessary delay."

The present status of the deliberations of the Committee on these problems is as follows:

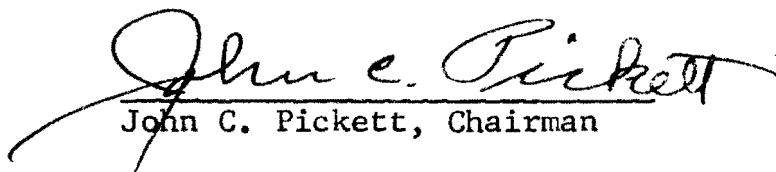
(1) The Committee is agreed that there should be no change in the doctrine enunciated by the Supreme Court in such cases as McNabb v. United States, 318 U.S. 332 (1943) and Mallory v. United States, 354 U.S. 449 (1957) under which confessions obtained during a period of delay longer than that permitted by Rule 5(a) are excluded from evidence.

(2) The Committee has so far been unable to articulate any better standard than "without unnecessary delay" which will fit the wide variety of situations and circumstances which exist in the various federal districts.

(3) The Committee recognizes that special problems may exist in the District of Columbia because of the fact that the police in the District have general law enforcement jurisdiction. However, the Committee has felt that special rules for the District should not be incorporated in the Rules of Criminal Procedure. The Committee, therefore, has not given special attention to the problems which are peculiar to the District.

However, the Committee does recommend to the Judicial Conference that it oppose S. 1012 and similar bills which merely seek to abrogate the McNabb-Mallory rule in the District of Columbia. Such proposals avoid, but do not solve, the fundamental problems of what procedures are appropriate to govern the police in the District. Instead, their thrust appears to be to permit the police to avoid the present procedure in the course of securing confessions subject only to the controls imposed where the violations are so grave as to result in determinations that confessions are involuntary.

Respectfully submitted:


John C. Pickett, Chairman

July 2, 1963