

**MINUTES OF THE FEBRUARY 1961 MEETING
OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

The third meeting of the Committee on Rules of Practice and Procedure convened in the Supreme Court Building on February 24, 1961 at 9:30 a. m. The following members of the Committee were present:

Albert B. Maris, Chairman

Charles E. Clark

Peyton Ford

James Wm. Moore

J. Lee Rankin

Bernard G. Segal

J. Skelly Wright

Two members of the Committee were absent from the entire session -- Dean Mason Ladd, who is recuperating from an illness, and Judge George H. Boldt, whose plane was grounded in Chicago because of bad weather. Mr. Segal, because of air travel delay due to bad weather, was not able to be present during the morning session.

Also present at the invitation of the Committee were the following Chairmen and Reporters of the Advisory Committees:

Walter L. Pope, Chairman, Admiralty Rules

Brainerd Currie, Reporter, Admiralty Rules

E. Barrett Prettyman, Chairman, Appellate Rules

Benjamin Kaplan, Reporter, Civil Rules

Frank R. Kennedy, Reporter, Bankruptcy Rules

Others attending were Will Shafroth, Deputy Director of the Administrative Office of the United States Courts, Aubrey Gasque, Assistant Director, and Secretary of the Rules Committees, Eugene Grimm, Attorney of the Administrative Office Staff, and Ada E. Beckman, Law Clerk to Judge Maris.

The Chairman welcomed Mr. Peyton Ford, formerly of the Advisory Committee on Civil Rules, as a member of the standing Committee.

The morning session was devoted to consideration of progress reports from the Advisory Committees and amendments to various rules proposed by them.

Chairman Pope, of the Advisory Committee on Admiralty Rules, presented a written progress report. He discussed the report, stating that after full consideration had been given to the various comments and

suggestions made by members of the bench and bar with respect to the Advisory Committee's draft of amendments to the Rules of Practice in Admiralty and Maritime Cases, which the standing Committee had circulated, the Advisory Committee had determined that no change should be made in the text of the proposed amendments but merely some amplification of the explanatory notes.

A motion was carried to approve the report with respect to the proposed amendments to the Admiralty Rules, and to forward them to the Judicial Conference with the favorable recommendation of the standing Committee.

A written progress report of the Advisory Committee on Appellate Rules was presented by Chairman Prettyman and was discussed by Judge Prettyman and the members of the standing Committee. It proposed no action by the standing Committee.

Professor Kennedy, Reporter, presented and discussed the written progress report of the Advisory Committee on Bankruptcy Rules, and outlined its report upon its draft amendments to the General Orders and Forms which had been circulated by the standing Committee. The

Reporter summarized the changes which had been made in the draft as presented at the meeting.

A motion was carried that the proposed amendments to certain General Orders and Forms in Bankruptcy, as reported by the Advisory Committee on Bankruptcy Rules, with certain corrections indicated in General Order 1, and with the addition to certain of the forms of a place and date for signing and an additional line to insert the address of the attorney, be approved and forwarded to the Judicial Conference with the favorable recommendation of the standing Committee.

Following the approval of the report, there was a discussion as to the appropriate effective date for the amendments. It was decided that the standing Committee should make an informal suggestion to the Court that the changes be made effective at such time as the Court may deem appropriate.

The matter of whether jury trials should be conducted by referees in bankruptcy was discussed, but was passed over for the present.

The Advisory Committee on Bankruptcy Rules recommended that the rule-making power of the Supreme Court in bankruptcy should conform

to the pattern prescribed for rule-making in the areas of civil procedure and admiralty, and recommended the enactment of appropriate legislation to accomplish this objective.

A motion was carried to recommend to the Judicial Conference that a more extended rule-making power, as recommended by the Advisory Committee, be sought for the Supreme Court in the bankruptcy field.

Professor Benjamin Kaplan, Reporter, presented a written report for the Advisory Committee on Civil Rules which was discussed by Professor Kaplan and the members of the standing Committee.

A motion was carried that the Committee approve the tentative recommendations of the Advisory Committee on Civil Rules for the amendment of Rules 25, 54 and 86, and Forms 2 and 19 of the Federal Rules of Civil Procedure, and authorize their transmission to the Judicial Conference with the favorable recommendation of the standing Committee subject to the final recommendation of the Advisory Committee to be made on or about March 10; the recommendation to the Judicial Conference to include any further changes which the Advisory Committee proposes, if in the opinion of the Chairman of this Committee they are incidental to the changes already proposed, and are non-controversial and appropriate.

Professor Kaplan outlined for the Committee the program undertaken by the Civil Rules Advisory Committee in the general study of the subject of discovery, which will begin about July 1st of this year. The study is intended to be both analytical and empirical. Professor Sachs of Harvard, acting as Associate Reporter, will carry on the analytical aspect of the study. The Committee will be aided in the empirical, or field investigation survey, by the Columbia Project for Effective Justice, whose work is expected to be financed by a foundation. This will be an attempt to find a real understanding, by scientific methods, of the problems of pre-trial discovery. The Chairman commented that he thought this was a comprehensive, practical approach to a very difficult problem.

There was no representative of the Advisory Committee on Criminal Rules present, but a written progress report by Reporter Barrett was received.

The progress reports received from the five Advisory Committees were ordered filed with the minutes.

The Committee then recessed for lunch.

After lunch the Committee met in executive session.

Mr. Gasque briefed the Committee on the various changes made in the membership of the six Committees and brought the Committee members up to date on the status of the Reporters and their staffs.

Pursuant to the reference by the Judicial Conference, the Committee discussed at length the matter of uniform rules of evidence.

A motion was unanimously carried that the Committee recommend to the Judicial Conference that it authorize the appointment by the Chief Justice of an Advisory Committee to consider the feasibility of adopting uniform rules of evidence for the Federal Courts and if found feasible, to formulate such rules. It was reported that Judge Boldt had previously indicated his approval of this project.

The Committee considered and approved Judge Prettyman's suggestion that the advisory committees be authorized to request instructions from the standing Committee before undertaking a new project. The Committee welcomes requests from the advisory committees for advice or directives.

The Committee discussed freely the role of the Reporters and the use of subcommittees by the Advisory Committees: In the

discussion there was general acceptance of the experience of the American Law Institute and the former rules committees as demonstrating the desirability of action by each Advisory Committee only as a unit and upon the careful and fully researched reports of its Reporter and his staff in preference to the confusion and division engendered by the necessity of action upon overlapping and conflicting recommendations of ad hoc subcommittees. It was the sense of the meeting that members of an Advisory Committee should keep themselves free to pass upon their Reporter's recommendations judiciously and without the bias created by prior membership in subcommittees committed to the partial research of limited and specially assigned topics of inquiry.

The results of the discussion were summed up in a motion made by Mr. Segal that "The Chairman notify the Chairmen of the Advisory Committees that it is the view of the Committee on Rules of Practice and Procedure that each Advisory Committee shall act as a unit, referring to the Reporter any matters of research and drafting, and that any Chairman believing that a subcommittee is desirable refer the question to the standing Committee before taking any action on the subject." The motion was seconded by Mr. Rankin and was unanimously carried.

Professor Moore expressed the view that publicity should be given to the bench and bar informing them of what the Committees have done and what they are contemplating. Mr. Segal pointed out that at the last meeting of the standing Committee, the Chairman agreed to prepare a formal article for distribution to legal periodicals and the Chairman indicated that this would be done.

The meeting was adjourned at 3:30.