

MINUTES OF THE FEBRUARY 1963 MEETING OF THE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The meeting of the Committee on Rules of Practice and Procedure convened in the Supreme Court Building on February 25, 1963, at 10:15 a. m. The following members, constituting the full membership of the Committee, were present:

Albert B. Maris, Chairman
George H. Boldt
Charles E. Clark
Peyton Ford
Mason Ladd
James Wm. Moore
J. Lee Rankin
Bernard G. Segal
J. Skelly Wright

Others attending were Will Shafroth, Joseph F. Spaniol, Jr., and Constance R. Green of the Administrative Office, and Ada E. Beckman, Law Clerk to Judge Maris.

The Chairman announced with regret the resignation of Aubrey Gasque, former Assistant Director of the Administrative Office, as Secretary of the Committee, and read the following letters consisting of Mr. Gasque's letter of resignation and the Chairman's response:

January 17, 1963

Honorable Albert B. Maris

Chairman,

Comm

Dear Judge Maris:

Now that the proposed amendments to the Federal Rules of Criminal Procedure have been published, and the meetings of the Advisory Committee on Admiralty and the Special Committee on Evidence have been held, it is a convenient time for me to present my resignation as Executive Secretary of the standing Committee on Rules of Practice and Procedure and the Advisory Committees.

As you know, it will not be possible for me to function in any practical sense as Secretary to the Committees because of the heavy duties of my new position in the Senate. Moreover, there might even be some question of a conflict of interest as between the work and responsibilities of the two branches of Government.

My work with you, as Chairman, and my work with the members of the Standing and Advisory Committees on Rules of Practice and Procedure, has been a wonderful experience and the source of great enjoyment and satisfaction to me personally. Please be assured that I hold myself ready, at all times, to be of appropriate help and assistance to the work as it advances.

With warm personal regards, and best wishes, I am,

Sincerely,

[s] Aubrey Gasque

Aubrey Gasque
Executive Secretary

January 18, 1963

Aubrey Gasque, Esq.
3931 Legation Street, N. W.
Washington 15, D. C.

Dear Aubrey:

I have your letter of January 17th presenting your resignation as executive secretary of this committee and its advisory committees. I fully appreciate the reasons which prompt you to take this action. For your resignation as an assistant director of the Administrative Office, which provides our supporting staff, has rendered it impracticable for you to function as our executive, while the performance of your duties for the Committee on the Judiciary of the United States Senate may well give rise to a conflict of interest which would disable you from continuing as secretary of our committees in any event.

From the inception of the present rules program until your recent resignation our committees and their reporters have had the continuous benefit of your loyal, devoted, and whole hearted support as the director of our staff and counsellor and friend of our reporters. The time, energy and high degree of imagination and ability which you have put into your part of the rules program has played a major role in enabling us to accomplish what we have been able to do so far and to build a solid foundation for the work that remains to be done. As we go forward with that work we will miss you very much from the team.

I shall, of course, inform our committee at its forthcoming meeting of your resignation. The committee will, I am sure, recognize the necessity for it, but with the same deep regret and sense of loss which I feel at the severance of our official relations. Our only consolation is that as a member of the staff of the Senate Committee on the Judiciary you will be able to retain your deep interest in the rules program and will be in an excellent position to interpret it sympathetically to those members of the Senate who may be concerned with it in the future.

With all good wishes for your future success, I am

Sincerely your friend

[s] Albert B. Maris

Albert B. Maris
Chairman

Professor Moore moved the adoption of the following resolution formally expressing the gratitude of the Committee to Mr. Gasque for his excellent service as Secretary of the Committee:

RESOLUTION

Whereas Aubrey Gasque, Esquire, has served this committee as Executive Secretary from its inception until his recent resignation to accept an appointment with the Committee on the Judiciary of the United States Senate, and

Whereas his service has been marked by the highest degree of loyalty and devotion, together with boundless energy and enthusiasm combined with a fertile imagination, technical knowledge and excellent judgment, and

Whereas his service has had a large part in enabling this committee and its advisory committees to accomplish what has already been done for the Judicial Conference and the Supreme Court in the study and improvement of the rules of practice and procedure and to lay down the lines for the work that lies ahead,

Now Therefore Be It Resolved that the standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States hereby expresses to Aubrey Gasque, Esquire, its gratitude for the excellent service which he rendered for and with the committee as its secretary in the improvement of federal judicial procedure, its regret that this association must now terminate and its best wishes for success and satisfaction in his future activities.

This resolution was unanimously adopted by the Committee.

The Committee next considered the election of a successor to serve as Secretary to the standing Committee and ex officio, as Secretary to the Advisory Committees. Judge Clark moved that Will Shafroth

Deputy Director of the Administrative Office, be appointed in that capacity, and the motion was unanimously carried.

Uniform Rules of Evidence

The Committee considered the final report of the Special Committee on Evidence recommending that it is feasible and desirable to formulate uniform rules of evidence for the district courts, and that the standing Committee recommend to the Judicial Conference that the Chief Justice be requested to appoint an advisory committee which would work on the drafting of these rules.

Judge Wright expressed some misgivings about the advisability of drawing an extensive set of rules on evidence when Rule 43(a) seems to have worked well. After some discussion, the Committee voted unanimously to approve the report of the Special Committee on Evidence.

There was some discussion of the composition of an advisory committee on Evidence, and the committee felt that a committee of approximately 15 members broadly representative of all segments of the profession, with special emphasis on trial lawyers and trial judges should be recommended to the Chief Justice when Judge Maris confers with him concerning the membership of the committee. The standing Committee also agreed that the appointment of an advisory committee and reporter should be deferred until the Supreme Court has indicated informally its approval of proceeding with the project.

Progress Reports of Advisory Committees

Judge Maris stated that he had attended all meetings of the advisory committees which have been held this Fall and Winter.

He reported that the Advisory Committee on Criminal Rules met in October and gave tentative approval to a number of amendments to the Rules of Criminal Procedure. These proposed amendments have been widely circulated to the Bench and Bar of the country, and comments and suggestions have been requested to be received not later than December 31, 1963. Meanwhile, the Advisory Committee is proceeding with its study of the remaining Rules of Criminal Procedure not involved in the published amendments and hopes to have its recommendations with respect to those rules formulated within the coming year.

With respect to the project of unification of the Civil and Admiralty Rules of Practice, Judge Maris stated that the three reporters of the Civil and Admiralty Committees have worked closely together with excellent effect in narrowing the differences between the two practices. The Committees are looking forward to the probability of being able to agree at meetings to be held next Fall upon the amendments of the Civil Rules which are necessary to complete unification.

The Advisory Committee on Admiralty Rules is also working on a set of Supplemental Rules dealing with special proceedings in admiralty cases which will not be covered by the unified rules.

The Advisory Committee on Appellate Rules is preparing a draft of rules for appellate procedure beginning with the filing of the notice of appeal. The rules of procedure for the Tax Court have been put "on the shelf" for the time being, pending the completion of the work on the main body of appellate rules.

The Bankruptcy Committee is working on amendments to the General Orders and Official Forms, but is not yet ready to circulate these proposals to the Bench and Bar. Judge Maris stated that we are hoping to get full rule-making power in bankruptcy procedure during this session of Congress.

The Civil Rules Committee is working on the rules dealing with joinder of claims and joinder of parties, and is continuing, with the aid of the Project for Effective Justice, its empirical and analytical study of discovery in the Federal courts. Judge Maris stated that the Project is hoping to have evaluated results of its empirical study ready next Fall, and that the analytical part of the study is proceeding concurrently with the field research.

Budgetary Situation.

Judge Maris stated that in view of the budgetary situation in the present fiscal year, he would like authorization from the Committee to

provide, within the limits of appropriated funds and for the present fiscal year only, the opportunity for the reporters to work for additional compensated days in this fiscal year. The Committee approved this request and authorized Judge Maris to work out the details with the Administrative Office.

Other Business

The Committee discussed the question of fixing an effective date for the amendments of the Civil Rules approved by the Supreme Court in its Order of January 21, 1963. Since the amendments as transmitted to Congress did not specify what the effective date will be, the Committee felt that the Court should enter an Order fixing the effective date and transmit the Order to Congress for the information of the Congress. Mr. Rankin felt that the effective date should be at least 90 days from the date of the new Order, and Judge Maris agreed to discuss this problem with the Chief Justice.

Judge Maris stated that, as a matter of procedure, he felt it was not necessary to provide an effective date in a rule amendment, but that the effective date could be stated as a second paragraph to the Order of the Supreme Court adopting each set of amendments. The Committee agreed that this might be a good procedure to follow for future rule amendments.

The meeting was adjourned at 12:45 subject to the call of the Chairman. At Judge Boldt's suggestion, a group picture was taken of the Committee which will be available to the Committee members from the Administrative Office.
