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10/02/2002 09:25 PM

To:
rules_support@ao.uscourts.gov
cc:
Subject:
Procedure Comments

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Federal Rules

Dear Sir/Madam:

I am a first year law student and I find the FRCP rather difficult to understand in organization and in language. I find this alarming. These rules are supposed to govern over every U.S. citizen yet, your average citizen would not be able to readily understand them. Thus the rules in many ways shut out the very people it was designed to serve, unless of course one is a person who can afford attorneys who are well versed in the matter.

Let me illustrate a few simple things that can be fixed:

[1]

Rule 41(a)(1). Dismissal of Actions:

"the dismissal is without prejudice except . . . a notice of dismissal operates as an adjudication upon the merits when filed . . ."

Why not write: "the dismissal is without prejudice except if the plaintiff has once dismissed in any Federal or state court an action based on or including the same claim, then a notice of dismissal of the claim shall be with prejudice."?

Can one use "with prejudice" and "without prejudice" rather than adding in the term "adjudication on the merits?"

[2]

In the same rule, the way the terms "action" and "claim" seem to be used can be a source of confusion. The common usage of action is to mean the bringing to trial one or more claims (i.e. the action is the proceeding). If you read the first sentence of Rule 41(a)(1) ". . . an action may be dismissed by the plaintiff . . ." then by the definition "action" Rule 41(a)(1) makes no statement as to if you can dismiss an individual "claim" within the action.

As you contemplate each new version of the rules, have you ever considered putting a regular citizen and/or perhaps a first year law student

on your
committee? I think their input would be valuable in making the
FRCP
understandable to all.

Respectfully Yours,

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