

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
800 LAFAYETTE STREET
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LAFAYETTE, LOUISIANA 70501

November 23, 2005

W. EUGENE DAVIS
CIRCUIT JUDGE

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Peter G. McCabe
Secretary, Committee on Rules of
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05-CV- 007

Re: Style Revision - F.R.C.P.

Dear Peter:

I have not made a comprehensive review of the style changes to the Civil Rules but, based on my limited review, it appears to me that the Advisory Committee and the Standing Committee have done a terrific job.

As you know, I was Chair of the Advisory Committee on Criminal Rules during our style revision project which we completed in 2001. The Civil Rules Committee had a much harder job revising the Civil Rules than my Committee had with the Criminal Rules. Nevertheless I am sure the Bench and Bar have registered many of the same concerns about the wholesale style revisions to both sets of rules.

The main purpose of my letter is to confess that leading up to the decision to restyle the Criminal Rules, I agreed with those who argued that in restyling the rules we would make inadvertent, substantive changes or create ambiguities that would result in wasteful, satellite litigation. My concern about this potential problem led me to oppose the restyling of the Criminal Rules. My committee only undertook the restyling project after the Standing Committee prevailed on us to give it a try.

I am delighted to tell you that my fears about satellite litigation over the meaning of the changes to the criminal rules turned out to be almost totally unfounded. We have experienced minimal litigation over the meaning of the style changes. Judge Will Garwood, who was Chair of the Appellate Rules Committee during their style revision project, also tells me that satellite litigation over the meaning of the changes to those rules has not been a problem.

So, based on my experience with the Criminal Rules, I fully understand the concern about satellite litigation. However, I have every reason to believe that the concern about significant satellite litigation over the meaning of the changes to the

Civil Rules will turn out to be just as unfounded as it was with the Criminal Rules.

I know what hard work these style revision projects are and I express my thanks and congratulations to Judge Rosenthal, you, John Rabiej, your staff, every member of the Civil Rules Committee and the Standing Committee for a fine job.

Sincerely,



W. Eugene Davis

WED/lch