

**SUMMARY OF THE  
REPORT OF THE JUDICIAL CONFERENCE COMMITTEE  
ON RULES OF PRACTICE AND PROCEDURE**

The Committee on Rules of Practice and Procedure recommends that the Judicial Conference take the following action:

	Page
Approve technical amendments to the Federal Rules of Civil and Criminal Procedure, and the Rules of Evidence and transmit them to the Supreme Court with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law. ....	3

The remainder of the report is for information and the record.

**REPORT OF THE JUDICIAL CONFERENCE COMMITTEE  
ON RULES OF PRACTICE AND PROCEDURE**

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN; AND MEMBERS  
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Your Committee on Rules of Practice and Procedure met in Washington, D.C., on February 4, 1988. All members of the Committee attended the meeting except Judge Charles E. Wiggins and Gael Mahony, Esq., who were unavoidably absent. In addition, the chairmen of all of the advisory committees and the reporters of the appellate, civil and bankruptcy advisory committees were present. Also present were the Reporter to the Committee, Dean Daniel R. Coquillette of Boston College Law School; the Secretary of the Committee, James E. Macklin, Jr., Esq., Deputy Director of the Administrative Office; David N. Adair, Jr., Esq., Assistant General Counsel of the Administrative Office; Mr. William B. Eldridge, Director, Research Division, Federal Judicial Center; and Patricia S. Channon, Esq., Bankruptcy Division, Administrative Office. Mr. Joseph F. Spaniol, Jr., Clerk of the United States Supreme Court and formerly Secretary to the Committee, was present. Also attending the meeting were Thomas W. Hutchinson, Esq., Counsel, and Raymond V. Smietanka, Esq., Minority Associate Counsel, House Judiciary Subcommittee on Criminal Justice, and Stef Cassella, Esq., Counsel, Senate Judiciary Committee.

Since this was the first meeting of your newly constituted committee, its purpose was primarily organizational: to familiarize the new members of the Committee with its operations and to review the pending work of the Committee. Each of the chairmen of the various advisory committees reported on the status of work in their committees. The procedures for the conduct of business in the Standing Committee and the advisory committees were described and discussed with the end of considering any changes to those procedures in light of the pending rules enabling legislation. This legislation, which has been previously introduced in several forms and to which the Conference has expressed no objection, was passed by the House on June 22, 1987, as Title II of H.R. 2182, 100th Cong., 1st Sess., the Criminal Law and Procedure Minor Substantive and Technical Amendments Act of 1987. The bill is currently pending action in the Senate Judiciary Committee.

I. Local Rules Project

The Reporter to your Standing Committee, Dean Daniel R. Coquillette, reported on the status of the local rules project authorized by the Conference in September 1984. Dean Coquillette reported on the conference on local district court rules held at Boston College Law School on November 12 and 13, 1987. At that meeting, a small number of interested and knowledgeable judges, practitioners, and academicians met to examine and discuss the work of the project. Dean Coquillette reported that the

conference was very useful in assisting the project in the completion of its report to the Standing Committee scheduled for the July meeting. One of the tasks of the local rules project is to develop a uniform numbering system for local district court civil rules. That numbering system is nearly complete and your committee authorized Dean Coquilletto to test the numbering system in selected districts prior to including the system in the July report to the Standing Committee. The report will also include an identification of local rules that seem to indicate necessary changes in the national rules, identification of local rules that repeat statutes and national rules, local rules that are in direct conflict with the national rules, and a set of model local rules that will be available for consideration by interested district courts.


## II. Technical Amendments

On August 1, 1987, amendments to the Civil, Criminal, and Bankruptcy Rules, submitted by the Supreme Court in March, took effect in the absence of congressional action. On October 1, 1987, gender-neutralizing amendments to the Federal Rules of Evidence, which the Supreme Court also submitted to Congress in March, took effect failing congressional action. The Office of the Law Revision Counsel, U.S. House of Representatives, has identified a number of technical errors in some of these amendments. Your committee has reviewed these errors and has approved appropriate amendments to correct them. The amendments are set out in the Appendix and are accompanied by Advisory

Committee notes explaining that they are purely technical in nature.

Your Committee recommends that these proposed amendments be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

Respectfully submitted,

  
Joseph W. Weis, Jr., Chairman  
Amalya L. Kearse  
Charles E. Wiggins  
Pierce Lively  
Robert E. Keeton  
Sam C. Pointer, Jr.  
Sarah Evans Barker  
Edwin J. Peterson  
Wayne R. LaFave  
Gael Mahony  
W. Reece Bader  
Charles Alan Wright

**AMENDMENTS TO THE  
FEDERAL RULES OF CIVIL PROCEDURE\***

**Rule 17. Parties Plaintiff and Defendant; Capacity**

1           (a) REAL PARTY IN INTEREST. Every action shall be  
2 prosecuted in the name of the real party in interest. An executor,  
3 administrator, guardian, bailee, trustee of an express trust, a party  
4 with whom or in whose name a contract has been made for the  
5 benefit of another, or a party authorized by statute may sue in that  
6 person's own name without joining ~~with him~~ the party for whose  
7 benefit the action is brought; and when a statute of the United  
8 States so provides, an action for the use or benefit of another shall  
9 be brought in the name of the United States. No action shall be  
10 dismissed on the ground that it is not prosecuted in the name of the  
11 real party in interest until a reasonable time has been allowed after  
12 objection for ratification of commencement of the action by, or  
13 joinder or substitution of, the real party in interest; and such  
14 ratification, joinder, or substitution shall have the same effect as if  
15 the action had been commenced in the name of the real party in  
16 interest.

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**COMMITTEE NOTE**

The amendment is technical. No substantive change is intended.

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\*New matter is underscored; matter to be omitted is lined through.

**Rule 71A. Condemnation of Property**

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1           (e) APPEARANCE OR ANSWER. If a defendant has no  
2 objection or defense to the taking of the defendant's property, the  
3 defendant may serve a notice of appearance designating the  
4 property in which the defendant claims to be interested.  
5 Thereafter, the defendant shall receive notice of all proceedings  
6 affecting it. If a defendant has any objection or defense to the  
7 taking of the property, the defendant shall serve an answer within 20  
8 days after the service of notice upon the defendant. The answer  
9 shall identify the property in which the defendant claims to have an  
10 interest, state the nature and extent of the interest claimed, and  
11 state all the defendant's objections and defenses to the taking of the  
12 property. A defendant waives all defenses and objections not so  
13 presented, but at the trial of the issue of just compensation, whether  
14 or not the defendant has previously appeared or answered, the  
15 defendant may present evidence as to the amount of the  
16 compensation to be paid for the property, and the defendant may  
17 share in the distribution of the award. No other pleading or motion  
18 asserting any additional defense or objection shall be allowed.

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**COMMITTEE NOTE**

The amendment is technical. No substantive change is intended.

**RULES OF CRIMINAL PROCEDURE FOR THE  
UNITED STATES DISTRICT COURTS\***

**Rule 30. Instructions**

1           At the close of the evidence or at such earlier time during the  
2 trial as the court reasonably directs, any party may file written  
3 requests that the court instruct the jury on the law as set forth in  
4 the requests. At the same time copies of such requests shall be  
5 furnished to all parties. The court shall inform counsel of its  
6 proposed action upon the requests prior to their arguments to the  
7 jury. The court may instruct the jury before or after the arguments  
8 are completed or at both times. No party may assign as error any  
9 portion of the charge or omission therefrom unless that party  
10 objects thereto before the jury retires to consider its verdict,  
11 stating distinctly the matter to which that party objects and the  
12 grounds of the objection. Opportunity shall be given to make the  
13 objection out of the hearing of the jury and, on request of any party,  
14 out of the presence of the jury.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**Rule 56. Courts and Clerks**

1           The district court shall be deemed always open for the purpose  
2 of filing any proper paper, of issuing and returning process and of  
3 making motions and orders. The clerk's office with the clerk or a

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\*New matter is underlined.



4 deputy in attendance shall be open during business hours on all days  
5 except Saturdays, Sundays, and legal holidays, but a court may  
6 provide by local rule or order that its clerk's office shall be open for  
7 specified hours on Saturdays or particular legal holidays other than  
8 New Year's Day, Birthday of Martin Luther King, Jr., Washington's  
9 Birthday, Memorial Day, Independence Day, Labor Day, Columbus  
10 Day, Veterans Day, Thanksgiving Day, and Christmas Day.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**AMENDMENTS TO THE  
FEDERAL RULES OF EVIDENCE\***

**Rule 101. Scope**

1        These rules govern proceedings in the courts of the United  
2 States and before United States bankruptcy judges and United States  
3 magistrates, to the extent and with the exceptions stated in Rrule  
4 1101.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**Rule 602. Lack of Personal Knowledge**

1        A witness may not testify to a matter unless evidence is  
2 introduced sufficient to support a finding that the witness has  
3 personal knowledge of the matter. Evidence to prove personal  
4 knowledge may, but need not, consist of the witness' own  
5 testimony. This rule is subject to the provisions of Rrule 703,  
6 relating to opinion testimony by expert witnesses.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**Rule 608. Evidence of Character and  
Conduct of Witness**

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1        (b) Specific instances of conduct.—Specific instances of the  
2 conduct of a witness, for the purpose of attacking or supporting the

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\*New matter is underscored; matter to be omitted is lined through.

3 witness' credibility, other than conviction of crime as provided in  
4 Rrule 609, may not be proved by extrinsic evidence. They may,  
5 however, in the discretion of the court, if probative of truthfulness  
6 or untruthfulness, be inquired into on cross-examination of the  
7 witness (1) concerning the witness' character for truthfulness or  
8 untruthfulness, or (2) concerning the character for truthfulness or  
9 untruthfulness of another witness as to which character the witness  
10 being cross-examined has testified.

11 The giving of testimony, whether by an accused or by any other  
12 witness, does not operate as a waiver of the accused's or the witness'  
13 privilege against self-incrimination when examined with respect to  
14 matters which relate only to credibility.

#### COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

#### **Rule 613. Prior Statements of Witnesses**

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1 (b) **Extrinsic evidence of prior inconsistent statement of**  
2 **witness.**—Extrinsic evidence of a prior inconsistent statement by a  
3 witness is not admissible unless the witness is afforded an  
4 opportunity to explain or deny the same and the opposite party is  
5 afforded an opportunity to interrogate the witness thereon, or the  
6 interests of justice otherwise require. This provision does not apply  
7 to admissions of a party-opponent as defined in Rrule 801(d)(2).

## COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**Rule 615. Exclusion of Witnesses**

1       At the request of a party the court shall order witnesses  
2 excluded so that they cannot hear the testimony of other witnesses,  
3 and it may make the order of its own motion. This rule does not  
4 authorize exclusion of (1) a party who is a natural person, or (2) an  
5 officer or employee of a party which is not a natural person  
6 designated as its representative by its attorney, or (3) a person  
7 whose presence is shown by a party to be essential to the  
8 presentation of the party's cause.

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## COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**Rule 902. Self-Authentication**

1       Extrinsic evidence of authenticity as a condition precedent to  
2 admissibility is not required with respect to the following:

\* \* \* \* \*

3       (3) **Foreign public documents.**—A document purporting to be  
4 executed or attested in an official capacity by a person authorized  
5 by the laws of a foreign country to make the execution or  
6 attestation, and accompanied by a final certification as to the  
7 genuineness of the signature and official position (A) of the  
8 executing or attesting person, or (B) of any foreign official whose  
9 certificate of genuineness of signature and official position relates  
10 to the execution or attestation or is in a chain of certificates of

11 genuineness of signature and official position relating to the  
12 execution or attestation. A final certification may be made by a  
13 secretary of an embassy or legation, consul general, consul, vice  
14 consul, or consular agent of the United States, or a diplomatic or  
15 consular official of the foreign country assigned or accredited to the  
16 United States. If reasonable opportunity has been given to all  
17 parties to investigate the authenticity and accuracy of official  
18 documents, the court may, for good cause shown, order that they be  
19 treated as presumptively authentic without final certification or  
20 permit them to be evidenced by an attested summary with or  
21 without final certification.

#### COMMITTEE NOTE

These two sentences were inadvertently eliminated from the 1987 amendments. The amendment is technical. No substantive change is intended

#### **Rule 1101. Applicability of Rules**

1 (a) **Courts and magistrates.**—These Rrules apply to the United  
2 States district courts, the District Court of Guam, the District  
3 Court of the Virgin Islands, the District Court for the Northern  
4 Mariana Islands, the United States Courts of Appeals, the United  
5 States Claims Court, and to United States bankruptcy judges and  
6 United States magistrates, in the actions, cases, and proceedings and  
7 to the extent hereinafter set forth. The terms "judge" and "court" in  
8 these rules include United States bankruptcy judges and United  
9 States magistrates.

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10 (e) **Rules applicable in part.**—In the following proceedings  
11 these rules apply to the extent that matters of evidence are not  
12 provided for in the statutes which govern procedure therein or in  
13 other rules prescribed by the Supreme Court pursuant to statutory  
14 authority: the trial of minor and petty offenses by United States  
15 magistrates; review of agency actions when the facts are subject to  
16 trial de novo under section 706(2)(F) of title 5, United States Code;  
17 review of orders of the Secretary of Agriculture under section 2 of  
18 the Act entitled "An Act to authorize association of producers of  
19 agricultural products" approved February 18, 1922 (7 U.S.C. 292),  
20 and under sections 6 and 7(c) of the Perishable Agricultural  
21 Commodities Act, 1930 (7 U.S.C. 499f, 499g(c)); naturalization and  
22 revocation of naturalization under sections 310-318 of the  
23 Immigration and Nationality Act (8 U.S.C. 1421-1429); prize  
24 proceedings in admiralty under sections 7651-7681 of title 10,  
25 United States Code; review of orders of the Secretary of the Interior  
26 under section 2 of the Act entitled "An Act authorizing associations  
27 of producers of aquatic products" approved June 25, 1934 (15 U.S.C.  
28 522); review of orders of petroleum control boards under section 5 of  
29 the Act entitled "An Act to regulate interstate and foreign  
30 commerce in petroleum and its products by prohibiting the shipment  
31 in such commerce of petroleum and its products produced in viola-  
32 tion of State law, and for other purposes", approved February 22,  
33 1935 (15 U.S.C. 715d); actions for fines, penalties, or forfeitures  
34 under part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581-

35 1624), or under the Anti-Smuggling Act (19 U.S.C. 1701-1711);  
36 criminal libel for condemnation, exclusion of imports, or other  
37 proceedings under the Federal Food, Drug, and Cosmetic Act (21  
38 U.S.C. 301-392); disputes between seamen under sections 4079, 4080,  
39 and 4081 of the Revised Statutes (22 U.S.C. 256-258); habeas corpus  
40 under sections 2241-2254 of title 28, United States Code; motions to  
41 vacate, set aside or correct sentence under section 2255 of title 28,  
42 United States Code; actions for penalties for refusal to transport  
43 destitute seamen under section 4578 of the Revised Statutes (46  
44 U.S.C. 679); actions against the United States under the Act entitled  
45 "An Act authorizing suits against the United States in admiralty for  
46 damage caused by and salvage service rendered to public vessels  
47 belonging to the United States, and for other purposes", approved  
48 March 3, 1925 (46 U.S.C. 781-790), as implemented by section 7730  
49 of title 10, United States Code.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.