AGENDA G-7
Rules of Practice and
and Procedure
September 1982

SUMMARY

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

This report contains the following recommendations for the consideration of the Conference:

1. Bankruptcy Rules

A. That the Conference approve the proposed new Bankruptcy Rules, set out in Appendix A, 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.

B. That the Conference authorize the Standing Committee to submit directly to the Supreme Court any technical amendments to the Bankruptcy Rules that may be required by legislation ensuing from the decision in the Northern Pipeline Case.

C. That the Conference, pursuant to proposed Bankruptcy Rule 9009, approve the "Official Forms" set out in Appendix A to become effective when the new rules are finally adopted.

2. Criminal Rules

That the Conference approve the proposed new rules and amendments to the existing Federal Rules of Criminal Procedure, set out in Appendix B, 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. Civil Rules

That the Conference approve the new rules and forms and amendments to the existing Federal Rules of Civil Procedure, set out in Appendix C, 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.

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 June 21-22, 1982 and in Bar Harbor, Maine on August 19-20, 1982. All Committee members attended the June meeting and all members except Judge Amalya Kearse attended the August meeting. The Secretary of the Committee, Mr. Spaniol, attended both meetings.

I. Rules of Bankruptcy Procedure

The Advisory Committee on Bankruptcy Rules has submitted to your Committee a proposed new set of bankruptcy rules to govern procedure in bankruptcy cases under the new Bankruptcy Code, Title 11, United States Code. The proposed bankruptcy rules are set out in Appendix A and are accompanied by Advisory Committee Notes, a Preface and a report from the Advisory Committee Chairman setting forth the efforts expended in devising new bankruptcy rules and setting forth the public participation in the Committee's work.

In a departure from previous practice Bankruptcy Rule 9009 provides that "Official Forms" are to be prescribed by the Judicial Conference. This procedure will facilitate future forms revision without burdening the

Supreme Court and without the normal delay attendant upon rules changes. The "Official Forms" which are recommended for Conference approval under Rule 9009 would become effective when the new bankruptcy rules are adopted.

In approving the proposed bankruptcy rules, and recommending them to the Judicial Conference, your Committee is aware of the decision of the Supreme Court in Northern Pipeline Construction Co. v. Marathon Pipeline Co., dated June 28, 1982. That decision held 28 U.S.C. § 1471, as amended by the Bankruptcy Reform Act of 1978 (P.L. 95-598) unconstitutional because it gave jurisdiction to Article I courts which can only be granted to Article III courts. The Court stayed the effect of its decision until October 4, 1982 to afford Congress the opportunity to enact legislation which would be in accordance with the Court's holding.

Your Committee in consultation with the Advisory Committee on Bankruptcy Rules does not believe the rules are, or will be, seriously affected by the decision or any ensuing legislation. The rules do not expand or reduce the jurisdiction of the bankruptcy courts. It may be necessary, however, to suggest certain technical changes depending on what results from Congressional action. The Committee is of the opinion that any required changes to the rules would be sufficiently inconsequential that they could be made even while the rules were awaiting promulgation by the Supreme Court. It is felt that any other procedure would delay the effective date of the rules for a full year which would not be in the interest of the bench and bar concerned with this area of practice.

Accordingly, it is recommended that the new bankruptcy rules be approved by the Conference and transmitted to the Supreme Court for its consideration with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law. It is further recommended that your Committee be authorized to transmit to the Supreme Court any technical amendments to the rules that may be required by legislation enacted by Congress in response to the Northern Pipeline decision. Finally your Committee recommends that the Conference approve the Official Forms to go into effect simultaneously with the bankruptcy rules, and that the forms also be transmitted to the Supreme Court for its information.

E. Federal Rules of Criminal Procedure

The Advisory Committee on the Federal Rules of Criminal Procedure has submitted to your Committee proposed amendments to Rules 6(e) and (g), 11(a) and (h), 12.2(b), (c) and (d), 16(a), 23(b), 32(a), (c) and (d), 35(b), and 55; proposed new Rules 12(i) and 12.2(e); and the abrogation of Rule 58, Federal Rules of Criminal Procedure. The amendments and new rules proposed by the Advisory Committee are set out in Appendix B and are accompanied by Advisory Committee Notes explaining their purpose and intent. A summary of the work of the Advisory Committee in formulating these proposed amendments is set out in a report from the Committee Chairman.

Your Committee recommends that these proposed amendments and new rules 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.

III. Federal Rules of Civil Procedure

The Advisory Committee on the Federal Rules of Civil Procedure has submitted to your Committee proposed amendments to Rules 6(b), 7(b), 11, 16, 26(a) and (b), 52(a), (b) and (c) and 67 of the Federal Rules of Civil Procedure; new Rules 26(g), 53(f) and 72 through 76; and new Official Forms 33 and 34. These proposed new rules and forms and the amendments to existing rules are set out in Appendix C and are accompanied by Advisory Committee notes explaining their purpose and intent. A separate report from the Chairman of the Advisory Committee summarizes the Committee's work.

These proposals are designed to reduce discovery abuse and the abuse of process, to reform the procedures for the conduct of pretrial conferences and for the scheduling and management of litigation by district judges, and to conform the rules to the jurisdictional provisions of the Federal Magistrates Act of 1979.

Your Committee recommends that these proposed amendments, new rules and forms 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.

IV. Federal Rules of Appellate Procedure

The Chief Justice has appointed Judge Pierce Lively of the Sixth Circuit to succeed Judge Robert A. Ainsworth, Jr., who died last December, as Chairman of the Advisory Committee on Appellate Rules. Judge Lively has recently met with the reporter to the Committee to schedule the future work of the Committee.

V. Statement of Operating Procedures

Your Committee has approved a Statement of Operating Procedures, prepared under the direction of the Committee's secretary, Mr. Spaniol. For the information of the Conference the statement is set out in Appendix D. The Committee has requested Mr. Spaniol to arrange for its publication in the American Bar Association Journal.

Respectfully submitted,

Judge Edward T. Gignoux, Chairman
Judge Carl McGowan
Judge Amalya L. Kearse
Judge James S. Holden
Professor Wade H. McCree
Professor Frank J. Remington
Edward H. Hickey, Esquire
Francis N. Marshall, Esquire

August 27, 1982

NEW
BANKRUPTCY RULES
AND
OFFICIAL FORMS

COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE

OF THE

JUDICIAL CONFERENCE OF THE
UNITED STATES

AUGUST 1982

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COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

August 9, 1982

Honorable Edward T. Gignoux
Chairman, Committee on Rules of Practice
and Procedure of the Judicial Conference
of the United States
Washington, D.C. 20544

My Dear Judge Gignoux:

On behalf of the Advisory Committee on Bankruptcy Rules, I am pleased to transmit the rules and forms for practice under the Bankruptcy Reform Act of 1978. I am proud of the Committee's work. The challenge that it faced can be measured by the breadth of changes in the substantive law introduced by the new Bankruptcy Code.

The first task assumed and completed by the Advisory Committee was to fill certain gaps between the Code and the existing rules which are to be applied until superseded by the new rules. We drafted a small set of interim rules and forms for use between October 1, 1979, the effective date of the Code, and the promulgation of permanent rules. These interim rules were transmitted to the United States District Courts and Bankruptcy Courts and, for the most part, were adopted as local rules. After completing this project in August, 1979, the Advisory Committee began work on a comprehensive set of new rules.

Similar to the former rules, the rules are divided into parts that correspond to different aspects of bankruptcy procedure. The new rules, however, are not divided into chapters. The old rules are divided into chapters, each governing a different type of debtor relief case. The new rules are drafted to apply to all cases under the Code with variations specifically set forth when necessary.

Part I contains rules relating to the commencement of cases under the Code, to voluntary and involuntary petitions, and to the order for relief following an involuntary petition.

Part II concerns various administrative matters, including appointment and qualification of trustees, employment of professionals by trustees, creditors' meetings, voting, and examination of debtors.

Part III details the form and time for filing claims. It also includes procedures for adopting plans of reorganization under chapter 11 and plans of arrangement under chapter 13 of the Code.

Part IV deals with the debtor's duties and benefits, such as claiming exemptions permitted under the Code and obtaining a discharge from debts.

Part V is general and governs matters unique to the bankruptcy court and its personnel. It contains provisions for filing papers, record keeping, and disqualification of judges.

Part VI contains rules governing various aspects of the collection and disbursement of moneys into and from the estate.

Part VII, entitled "Adversary Proceedings," explicitly adopts most of the Federal Rules of Civil Procedure for litigated matters of a truly adversarial nature, i.e., actions between estates and third parties.

Part VIII covers appeals from bankruptcy courts.

Part IX contains general provisions, including definitions, and specifies the Federal Rules of Civil Procedure applicable to disputed matters commenced other than by complaint under Part VII.

Part X concerns the procedure in the eighteen pilot districts in which a United States trustee has been appointed. (This experimental program will end on April 1, 1984, unless Congress enacts further legislation.)

Official Forms will again go out with the rules, but the Advisory Committee proposes to relieve the Supreme Court of the responsibility for promulgating forms. Instead, we recommend promulgation by the Judicial Conference of the United States. The Advisory Committee has drafted these forms as the representative of the conference.

To draft a complete set of rules to implement the Bankruptcy Reform Act of 1978 has been a monumental task, yet we have managed to complete this assignment in the remarkably short period

of three and a half years. The Committee has held eighteen meetings, each lasting two days. Additionally, several members have met in nine subcommittee meetings of two to three days. Attendance at these meetings has been commendable: with rare exceptions, each member has attended every meeting. In its deliberations, the Committee considered each rule line by line, word for word, as the rule proceeded through several drafts.

The preliminary draft was made available for public comment from March 1, 1982 to August 1, 1982. For those individuals and organizations desiring to make oral comments, public hearings were conducted by our Committee in San Francisco, California on May 13-14, 1982, New York City on June 7-8, 1982, and Chicago, Illinois on June 24-25, 1982.

During the public comment period, we received 99 written comments, and the oral observation of 31 witnesses. In addition to comments from lawyers and individuals we received the suggestions of 11 bar associations, including the American Bar Association, eight governmental agencies, 19 bankruptcy judges, four professional conferences, and five law school professors.

The rules were drafted to accommodate any future amendments by Congress to the jurisdiction of the bankruptcy courts necessitated by Northern Pipeline Construction Co. v. Marathon Pipeline Co., ___ U.S.___ (50 U.S.L.W. 4892, June 28, 1982).

Members of the Committee were outstanding. Our bankruptcy judges gave insight and suggestions based on their many years of diverse experience in various parts of the country. I publicly note the perceptive contributions of retired New York City bankruptcy judge, author, and lecturer Asa S. Herzog, known affectionately and deservedly as "Mr. Bankruptcy"; Clive W. Bare of Knoxville, Tennessee, a figure of national esteem who has served the federal government for 43 years, 24 years as a judge; Beryl E. McGuire of Buffalo, New York, who provided insightful views gained from an older metropolitan area; and Alexander L. Paskay of Tampa, Florida, who made vigorous contributions informed by his valuable experience in the rapidly expanding economy of the South. Herbert Katz made us the beneficiaries of his rich experience both as a trial judge in San Diego, California, and as a member of the Ninth Circuit's Appellate Panel of Bankruptcy Judges.

In addition to Professor Lawrence P. King of New York University School of Law, chief reporter to the Committee, academe was well represented by Professor Robert W. Foster,

former dean of the University of South Carolina Law School, and by Professor Walter J. Taggart of Villanova Law School, our co-reporter, who had served many years as a special law clerk to the reorganization judge in the prodigious Penn Central bankruptcy proceedings and who was a faithful and exemplary research resource to the committee.

The practicing bar was ably represented by outstanding lawyers: Norman Nachman, one of America's most highly regarded bankruptcy specialists, of Nachman, Munitz & Sweig, Chicago; Joseph Patchan of Baker & Hostetler, Cleveland, who combined a practitioner's valuable perspective with past bankruptcy judge experience; and Charles Horsky of Covington & Burling, Washington, D.C., one of this nation's most distinguished trial and appellate lawyers and current president of the National Bankruptcy Conference. Through much of his service with our committee, Richard L. Levine, of Hill & Barlow, Boston, was the first executive director of the Department of Justice's United States Trustee program. He constantly briefed us on the particulars of the experimental program.

Morey L. Sear of New Orleans not only shared his impressive experience as a district judge and a former United States magistrate, but also coordinated the Committee's work with the Federal Rules of Civil Procedure. In addition, I am grateful for his profound talent and generosity in assuming numerous administrative responsibilities on my behalf. John T. Copenhaver of Charleston, West Virginia, gave us the benefit of his present role as a district judge and his previous service as a bankruptcy judge.

Although the work is the cumulative product of the entire committee, I publicly acknowledge the monumental contribution of our chief reporter, Professor Lawrence P. King. I publicly pay tribute to his scholarship; to his unlimited capacity for meticulous research; to his unfailing energy; to his rare capacity of viewing a problem from the perspective of academic, author, editor and practitioner; and his unfailing good humor.

I thank you Judge Gignoux, for wise counsel and generous assistance.

Finally, the work of the committee could not have been performed effectively and our self-imposed deadlines could not have been met without the indispensable cooperation and services provided by Joseph F. Spaniol, Jr., Deputy Director of the Administrative Office of the United States Courts, who serves as

the Secretary of the standing committee. His faithful attendance at our meetings is much appreciated, as is his thoughtfulness in providing a capable and conscientious staff, headed by Ms. Barbara Nordberg, to attend to our needs.

Respectfully submitted,

Ruggero J. Aldisert,
United States Circuit Judge
Pittsburgh, Pennsylvania
Chairman, Advisory Committee
on Bankruptcy Rules

PREFACE

The Advisory Committee on Bankruptcy Rules was newly constituted as of January 1, 1979 in response to the enactment of Public Law 95-598, generally effective October 1, 1979, unofficially called the Bankruptcy Reform Act of 1978. It repealed the former Bankruptcy Act of 1898 and replaced that Act with a codified bankruptcy law in title 11 U.S.C. (the "Code").

Section 405(d) of Public Law 95-598 provides that the existing bankruptcy rules not inconsistent with the Bankruptcy Code remain in effect until repealed or superseded by new rules promulgated pursuant to 28 U.S.C. § 2075, as amended. Section 247 of Public Law 95-598 amends 28 U.S.C. § 2075 to require that rules promulgated thereunder be consistent with the Code. The rules are consistent with the Code and do not change any procedural provisions contained therein. The rules are also designed to adapt to amendments to the Code by Congress necessitated by Northern Pipeline Construction Co. v. Marathon Pipeline Co., ___ U.S. ___ (50 U.S.L.W. 4892, June 28, 1982).

The scope of the rules and forms is set forth in Rule 1001. The format is similar to that of the prior rules promulgated by the Supreme Court on varying dates between 1973 and 1976. They are divided into ten parts with titles indicating the subject matter of the rules grouped in each part. The proposed rules, however, are not divided into chapters related to the different types of debtor relief chapters in the Code. These rules apply in all chapter cases except as a particular rule otherwise provides.

Part X of these rules pertains only to the pilot districts in which a United States trustee is serving. Pursuant to § 408(c) of Public Law 95-598, the pilot program established by chapter 39 of 28 U.S.C. terminates as of April 1, 1984 unless further legislation is enacted by Congress. If this legislation is not enacted, Part X can be repealed without affecting the other rules.

SIGNIFICANT PROVISIONS OF THE PROPOSED RULES

In many respects the rules contain provisions similar to those in the former rules. Necessarily there are differences occasioned by changes made by the Code and there are provisions for the new matters. Some rules contain provisions different from those in the former rules because of changes occurring in the practice in the bankruptcy courts. Some of the significant provisions follow:

(1) Rule 1007(d) requires a debtor in a chapter 9 or 11 case to file a list of its 20 largest unsecured creditors with the petition. This will assist the court in expediting appointment of a creditors' committee as required by § 1102 of the Code.

(2) Rule 2003(b)(1) provides that the clerk of the bankruptcy court is to preside at the meeting of creditors unless the court designates another person or one is elected by creditors. Section 341(c) of the Code changes former practice and does not permit the judge to preside at the meeting.

(3) Rule 2003(b)(3) requires that a creditor desiring to vote at the meeting of creditors have either a proof of claim or some writing evidencing a right to vote. The rule provides the procedure for the holder of an allowable claim to vote and is designed to eliminate disputes at meetings by requiring some evidence of creditor status.

(4) Rule 2006, which regulates solicitation of proxies, applies only in chapter 7 cases because creditors may vote for a trustee or committee only in those cases.

(5) Rule 2007 provides a procedure for the appointment of a pre-petition committee as the statutory committee in a chapter 11 case.

(6) Rule 2013 which regulates the appointment of trustees and examiners was first included in the Suggested Interim Rules.

(7) Rule 2018(b) provides a new procedure and permits a state's Attorney General to appear subject to court approval on behalf of consumer creditors.

(8) Rule 3001 pertains to the form of the proof of claim; Rule 3002 pertains to all matters regarding its filing.

The time for filing claims in chapter 7 and 13 cases is reduced to 90 days after the first date set for the meeting of creditors. The Advisory Committee believes that six months is unnecessarily long.

(9) Rule 3003 provides the procedure and time for filing claims under § 1111(a) of the Code.

(10) Rule 3014 fixes the time within which a secured creditor may elect to hold a nonrecourse claim pursuant to § 1111(b). The

election may be made prior to the conclusion of the hearing on the disclosure statement or within a later time as the court may fix.

(11) Rule 3017 fixes the procedure for the hearing on the disclosure statement. Prior to the hearing the statement will be transmitted to the debtor, trustee, appointed committee, SEC and any party in interest requesting a copy. After its approval, the statement is transmitted to all parties whose votes are being solicited. Rule 3017(d).

(12) Rule 3020 requires that the consideration to be distributed upon confirmation of a chapter 11 plan be deposited with the trustee or debtor in possession. The Code is silent with respect to any pre-confirmation deposit.

(13) Rule 4001(a) provides that relief from the automatic stay pursuant to § 362 shall be initiated by motion.

Rule 4001(b) continues the well accepted proposal in the Suggested Interim Rules that there be a deadline imposed on the court to conclude the final hearing on a motion for relief from the automatic stay.

(14) Rule 4003(d) prescribes that the procedure avoiding a lien under § 522(f) of the Code is by motion, thus eliminating resort to the existing more formal adversary proceeding practice.

(15) Rules 4004(a) and 4007(c) provide a uniform deadline for filing complaints objecting to discharge and to determine the nondischargeability of certain debts. Former practice permitted each judge to fix a date but the Advisory Committee believes that a uniform standard is preferable.

(16) Rule 5002 governs prohibited appointments and now includes examiners within its scope. The rule is adapted from former Rule 505(a).

(17) Rule 6004(c) permits a more expeditious procedure for the sale of estate property having little value. A general notice of intention to sell will suffice and absent timely objection, the sale may take place.

(18) Pursuant to § 554 of the Code, property of the estate may be abandoned. Rule 6007 provides the procedure for abandonment.

SPECIAL CONSIDERATIONS

A. Special Masters

While Parts VII and IX together incorporate many of the Federal Rules of Civil Procedure, the proposed rules do not make Rule 53 applicable in cases under the Code. Former Bankruptcy Rule 513 provided:

> If a reference is made in a bankruptcy case by a judge to a special master, the Federal Rules of Civil Procedure applicable to masters apply.

The word "judge" meant the United States district judge, not the bankruptcy judge. See § 1(20) of the Act; former Bankruptcy Rule 901. Accordingly, former Rule 513 generally applied only when a Chapter X case was retained by the district judge although it probably would apply when a district judge removed any case from the bankruptcy court to the district court. See former Rule 102(b).

There does not appear to be any need for the appointment of special masters in bankruptcy cases by bankruptcy judges. The Advisory Committee, therefore, has decided that former Rule 513 not be continued in the rules and that Rule 53 F.R.Civ.P. not be made applicable. See Rule 9031.

B. Adversary Proceedings - Part VII

The concept of adversary proceedings is continued in Part VII of the proposed rules with some changes.

Initially, former Rule 704 permitted that service by registered mail could displace personal service. In 1976, the rule was amended to permit service by first class mail because process could be avoided by nonacceptance of registered mail. The Advisory Committee decided to retain this manner of service in Rule 7004 and in addition permit service as provided in Rule 4 F.R.Civ.P.

C. Appeals - Part VIII

Because of the statutory changes made in the appellate process, the Part VIII Rules contain provisions not found in the former rules. For example, the procedure for appeals as of right and motions for leave to appeal is specified in Rule 8001(a) and 8003. The effect of taking a direct appeal by agreement to the United States Court of Appeals on a previously filed notice of appeal is set forth in Rule 8001(d).

D. General Provisions - Part IX

The rules in Part IX cover matters which are general in nature and apply in contested matters, adversary proceedings and other aspects of cases under the Code.

Rule 9003 prohibits ex parte contact with the judge unless otherwise permitted by law. This proscription was included in the Suggested Interim Rules.

Rule 9015 contains jury trial provisions and is adapted from Rules 38 and 39 F.R.Civ.P. There is a greater possibility for jury trials under the Code than under the Act. See 28 U.S.C. § 1480(a).

Rule 9027 implements 28 U.S.C. § 1478(a) which is new and permits removal of a claim or cause of action to the bankruptcy court. The rule conforms substantially to 28 U.S.C. §§ 1446-1450 and Rule 81(a) F.R.Civ.P. in providing the procedure for removal.

As under the former rules, local rules may be adopted which are not inconsistent with the Code or the rules promulgated by the Supreme Court. Rule 9029 delegates this authority to the bankruptcy courts.

OFFICIAL FORMS

Rule 9009 provides that official forms will be prescribed by the Judicial Conference of the United States. In essence, it is contemplated that the official forms, such as those prepared by the Advisory Committee and appended to these rules, will be prescribed by the Judicial Conference. The Advisory Committee on Bankruptcy Rules will be the representative of the Judicial Conference in the drafting of the forms.

ADVISORY COMMITTEE ON
BANKRUPTCY RULES

Ruggero J. Aldisert, Chairman
United States Circuit Judge

Clive W. Bare
Bankruptcy Judge

John T. Copenhaver,Jr.
District Judge

Professor Robert W. Foster

Asa S. Herzog (Ret.)
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Herbert Katz
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Norman H. Nachman, Esquire

Alexander L. Paskay
Bankruptcy Judge

Joseph Patchan, Esquire

Morey L. Sear
District Judge

Professor Lawrence P. King, Reporter

Professor Walter J. Taggart, Reporter

TO: THE COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE

On behalf of the Advisory Committee on Criminal Rules, I transmit herewith various proposals to amend the Federal Rules of Criminal Procedure which, except where otherwise specifically noted, were circulated to the bench and bar in October, 1981, and were the subject of open hearings in Washington, D.C., Chicago, Illinois, and San Francisco, California, during February, 1982. Transcripts of the public hearings have been made available to all members of our Committee, and all written comments from interested persons have been similarly reviewed by the Committee.

We have concluded at our Committee meeting on June 17-18, 1982 to reject parts of certain proposals previously circulated, and in several instances we have deferred action until our next meeting pending further study of these matters.

RULE 6 — THE GRAND JURY

Rule 6(e)(2) - We have concluded to delete the underlined portion suggested in the draft circulated to the bench and bar as we feel that it is unnecessary.

Rule 6(e)(3)(A)(i) - We decided to delete the underlined words of the proposal which read "to enforce federal criminal law". On May 3, 1982, the Supreme Court granted certiorari in United States v. Sells Engineering, Inc., and the issue in that case may decide the question presented by the proposed rule change. If the issue is not decided by the Sells case, this question, will be further considered by the Committee. Stated otherwise, it has been temporarily deferred as to the deleted words.

Rule 6(e)(3)(C)(ii) has been deleted as considered unnecessary. This will require the renumbering of the following two subdivisions.

Rule 6(e)(3)(C)(iv), which will be renumbered as (iii), providing for disclosure by an attorney for the government to another grand jury, has been adopted as being consistent with existing practice, although not heretofore covered by a specific rule.

Rule 6(e)(3)(D) has been adopted with the following modifications: the deletion of "or (ii)" on line 60 because (ii) was previously deleted as being unnecessary; the deletion of the words

"and is seeking disclosure for its own use" on lines 62 and 63; the change of the word "shall" to "may" on line 64.

Rule 6(e)(3)(E) was adopted with the following modifications: the word "may" on line 74 will read "shall"; the words "only if it cannot" on line 75 have been changed and, in lieu thereof, the words "unless it can" have been substituted; the words "on the need for disclosure" on line 84 have been deleted.

Rule 6(e)(5), as proposed beginning on line 86, has been revised to read as follows: "Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury. This is the complete new subdivision (5), the balance being deemed unnecessary. We have further considered the recent case of In Re Rosahn, 671 F.2d 690 (2nd Cir. 1982), and realize that constitutional questions may arise with respect to requirements of an open hearing in contempt proceedings, especially where the accused insists upon a public trial. See, Levine v. United States, 362 U.S. 610 (1960).

Rule 6(e)(6) was adopted as proposed. See lines 93-96, both inclusive.

Rule 6(g) was adopted as proposed. See lines 98-107, both inclusive.

RULE 11 - PLEAS

Rule 11(a)(2), relating to conditional pleas, was adopted with the following modification: on line 12, the words "afforded the opportunity" were deleted and, in lieu thereof, the word "allowed" was inserted.

Rule 11(h), Harmless Error, was adopted as proposed.

RULE 12 - PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTION

Rule 12(i) was adopted with one modification: the word "federal" on line 5 was deleted.

RULE 12.2 - NOTICE OF INSANITY DEFENSE OR EXPERT TESTIMONY OF DEFENDANT'S MENTAL CONDITION

Rule 12.2 was adopted with the following modifications: on line 9, delete the words "or innocence"; beginning with the words "No statement" appearing on line 22, delete the balance of that paragraph and insert in lieu thereof, the following:

> "No statement made by the defendant in the course of any examination provided for by this rule, whether the examination shall be with or without the consent of the defendant, and no testimony by the expert based upon such statement or other fruits of the statement shall be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced testimony."

The Committee adopted Rule 12.2(d) as proposed.

The Committee added a new subdivision (e) reading as follows:

> "(e) INADMISSIBILITY OF WITHDRAWN INTENTION. Evidence of an intention as to which notice was given under subdivision (a) or (b), later withdrawn, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention."

RULE 23. TRIAL BY JURY OR BY THE COURT

The Committee had previously circulated alternative proposals to the bench and bar; one an amendment to Rule 23(b) dealing with the discretionary right of the judge to permit a valid verdict to be returned by the remaining 11 jurors, if a juror became ill or otherwise unable to serve after the jury had retired to consider its verdict; the other proposed amendments to Rules 24(c) and (d), providing for the retention of one or more alternate jurors and, if a regular juror was unable or disqualified to perform his or her duties, an alternate juror could be substituted with the court instructing the entire jury to commence their deliberations anew.

By an 8 to 2 vote, the Committee decided to approve Rule 23(b) in the form proposed and circulated. Thus, proposed Rules 24(c) and (d) were abandoned.

RULE 32 - SENTENCE AND JUDGMENT

Rule 32(a)(1)(A) was approved as circulated. As to proposed Rule 32(c)(3)(A), the Committee voted to reject the proposed required disclosure of the probation officer's recommendation as to the sentence, and to reincorporate the words "exclusive of any recommendation as to sentence" which now appears in present Rule 32(c)(3)(1).

Other modifications are: in Proposed Rule 32(c)(3)(A), delete the word "entire" on line 25; delete the words "recommendations or" appearing at the end of line 28 and the first word on line 29; reinsert lines 41 through 48 which were inadvertently deleted in error; under (C) on lines 51-53, modify to read:

> "(C) Any material which may be disclosed to the defendant and his counsel shall be disclosed to the attorney for the government."

The Committee adopted subdivision (D) appearing on lines 54 through 67, and further adopted the minor change in the wording of proposed (E) which now appears in the existing rules as (D).

The Committee also adopted the proposed revisions to Rule 32(d) relating to the Plea Withdrawal, all as circulated to the bench and bar.

RULE 35 - CORRECTION OR REDUCTION OF SENTENCE

The Committee adopted the proposal to clarify Rule 35(b) to provide for authority to consider a reduced sentence following revocation of probation. This is the one proposal which was unanimously approved by the bench and bar.

RULE 41 - SEARCH AND SEIZURE

The Committee deferred action on the proposed amendment to Rule 41(a), (b) and (h) until our next meeting. The deferral does not reflect the Committee's acceptance or rejection of the proposed modifications.

RULE 43.1 - EXCLUSION OF PUBLIC TO AVOID JURY PREJUDICE

The proposed new rule quite naturally promoted the most comment from the bench, bar and media, the latter having been specifically invited to present its views. While the media's position is that of absolute opposition, as we anticipated, there were many

other questions raised as to our original proposal and we concluded that extensive modifications would have to be made which may necessitate a recirculation of any modified proposal. We, therefore, voted to defer further action until the next meeting of the Committee.

MINOR AMENDMENTS - NOT CIRCULATED

(1) Rule 16(a)(3), relating to Grand Jury Transcripts, was approved for modification due to the recent promulgation of Rule 26.2 and the proposed adoption of Rule 12(i). It will read as follows:

> "(3) Grand Jury Transcripts. Except as provided in Rules 6, 12(i) and 26.2, and subdivision (a)(1)(A) of this rule, these rules do not relate to discovery or inspection of recorded proceedings of a grand jury."

Of course, if Rule 12(i) - as proposed - does not finally meet with approval, this will require the deletion of any reference to Rule 12(i), but will still require a modification to include the reference to Rule 26.2.

(2) Rule 55 was adopted to read as follows:

> "Rule 55. Records. The clerk of the district court and each United States magistrate shall keep records in criminal proceedings in such form as the Director of the Administrative Office of the United States Courts may prescribe. The clerk shall enter in the records each order or judgment of the court and the date such entry is made."

This proposed Rule 55 was previously submitted, in slightly different form, to the Standing Committee and we were asked to reconsider the matter. We believe the present proposal meets the previous possible objections. We were directed not to include Rule 55 in our distribution to the bench and bar.

(3) Rule 58. Forms.

After some discussion, the Committee voted to abrogate this Rule 58 in its entirety, including all forms. A proposed revision was submitted, but the Committee felt that the present forms, last revised in 1949, were too obsolete.

NEW PROPOSALS DEFERRED OR OTHERWISE REFERRED TO ANOTHER COMMITTEE

(1) A proposal to amend Rule 49, the filing of a Dangerous Offender Notice, was deferred to our next meeting. This problem was presented in the case of United States v. Gaylor, No. 80-5016, decided by the Fourth Circuit in 1981, in an unpublished opinion. It will be considered at our next meeting and, in our opinion, need not be circulated to the bench and bar.

(2) A proposal to clarify what standard should be applied following probation revocation and whether bail pending appeal should be granted is, in the opinion of the Committee, a matter for the Committee on Appellate Rules, and the Secretary, Joseph F. Spaniol, Jr., is respectfully requested to take such action as may be necessary.

(3) The Judicial Conference of the Ninth Circuit has adopted resolutions seeking the amendment of Rule 30 with respect to (1) the time when the court should charge the jury, either before or after the final arguments of counsel, (2) the mandatory furnishing of instructions to counsel before the final arguments of counsel, and (3) the mandatory furnishing of a copy of the charge to the jury upon retiring.

The Committee voted to defer action on this proposal until our next meeting.

(4) The Department of Justice has proposed further amendments to Rule 6(e)(3)(A)(ii) and a new addition to Rule 6(e)(3)(C). The Committee voted to defer action on these proposals until our next meeting.

This completes our report as to actions taken at our meeting on June 17-18, 1982. The Chairman or Reporter will be pleased to respond to further inquiries from the Committee on Rules of Practice and Procedure.

Respectfully submitted,

WALTER E. HOFFMAN, Chairman,
Advisory Committee on
Criminal Rules

July 21, 1982

APPENDIX C

March 9, 1982

TO: Judge Edward T. Gignoux, Chairman, and
Members of the Standing Committee on
Rules of Practice and Procedure

FROM: Walter R. Mansfield, Chairman,
Advisory Committee on Civil Rules

I have the honor of submitting herewith our Committee's final draft of proposed amendments of Rules 6, 7, 11, 16, 26, 52, 53, 67 and 72-76 of the Federal Rules of Civil Procedure and their Advisory Notes.

As indicated in our June 20, 1981, submission of an earlier draft of these amendments for public comment, the purposes of these proposals are as follows:

(1) The amendments of Rules 7 and 11 are designed to minimize abuse in the signing of pleadings, motions and other papers through a more precise definition of the standards to be met by the signing party or attorney and a requirement that sanctions be imposed for violation of these standards.

(2) Rule 16, which deals with pre-trial conferences and orders, has been revised to insure closer and more effective judicial scheduling, management and control of litigation as a means of avoiding unnecessary delay and expense.

(3) The amendments of Rule 26 are aimed at protecting against excessive discovery and evasion of reasonable discovery demands. As amended Rule 26(b) would require the court, when certain conditions exist, to limit the frequency and extent of use of discovery methods. Rule 26(g) would impose upon each party or attorney the duty, before proceeding with respect to any discovery matter, to make a reasonable inquiry and to certify that certain standards have been met. A violation of this duty would result in the imposition of sanctions.

(4) The Rule 52(a) proposal makes clear that a trial judge may make oral recorded findings and conclusions in nonjury trials.

(5) The Rule 67 amendment would facilitate deposits of money in court by broadening parties' power to do so and requiring that deposited funds be invested in interest bearing accounts or instruments.

(6) The amendments of Rules 6, 53 and 72-76 seek to provide procedures that will conform to and implement the 1979 amendments to the Federal Magistrates Act.

As a result of wide circulation of the earlier draft in June 1981 to the bench, bar and public and the holding of public hearings in Washington in October 1981 and in Los Angeles in November 1981, our Committee received numerous oral and written comments and suggestions from judges, lawyers, professors of law, bar associations, committees and others with respect to the amendments. A substantial majority favored the proposals, with certain reservations and qualifications. After a careful review and analysis our Committee recommends their adoption as modified by the following changes contained in the attached redraft:

(1) Rules 7 and 11:

Instead of repeating the proposed certification standards and sanctions provisions in both rules, as was done in the original draft, the attached draft sets them forth once in Rule 11, which is incorporated by reference in Rule 7. The heading of Rule 11 has been amplified to refer to "Motions and Other Papers" and Rule 7(b)(3) revised to require that "All motions shall be signed in accordance with Rule 11." The Advisory Committee Note to Rule 11 has likewise been revised to make clear that the rule applies to motions and other papers. This revision eliminates unnecessary duplicative verbiage found in the originally-submitted rules and accompanying notes.

The certification language of Rule 11 has been changed slightly from the original June 1981 proposal by eliminating the word "primarily" (as used in the original draft, p. 6, lines 16-18) so that a pleader or movant would now certify that the paper is "not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the litigation." The purpose of the revision is to eliminate any ambiguity arising out of the use of the word "primarily."

In addition, the draft has been revised to provide that an unsigned pleading, motion or other paper, instead of automatically being deemed ineffective as originally proposed, will be stricken unless signed promptly after the omission is called to the attention of the pleader or movant. The aim is to avoid unnecessary harshness in the case of a party who may have inadvertently failed to sign. Our Advisory Committee Note has also been amplified to make clear, in response to some comments, that the rule does not require a party or attorney to disclose privileged communications or work product.

In all other material respects the proposed amendments of Rules 7 and 11 remained unchanged. Although some persons opposed the proposals as unnecessary, as productive of abuse or of wasteful satellite litigation, as

likely to be treated as mere formalities, and as invading the province of the attorney-client privilege, the majority was of the view, either expressly or impliedly, that more precise standards, including a duty of reasonable inquiry, would reduce frivolous claims, defenses or motions by leading litigants to stop, think and investigate more carefully before serving and filing papers. Mandating sanctions, such as expenses, upon the violator is viewed as a healthy deterrent against costly meritless maneuvers and worth the risk of satellite litigation.

(2) Rule 16:

As originally submitted this rule gave the erroneous impression to a few that a pre-trial conference for the purpose of formulating a scheduling order was mandated, even though the accompanying note stated that the judge could for that purpose communicate with the parties by telephone, mail or other means. In order to remove any misapprehension Rule 16(b) of the proposed draft has been changed to state that the court shall issue a scheduling order after consulting with the parties by a "scheduling conference, telephone, mail, or other suitable means."

As originally submitted, Rule 16(b) provided that only a "judge" (as distinguished from the "court," which could include a magistrate) may issue a scheduling order in each case. Based on empirical studies our Committee is satisfied that early intervention and management by a judge is important to the prompt and efficient movement and disposition of litigation on his calendar, since only an Article III judge possesses the crucial powers necessary to insure that a case will proceed rapidly toward settlement or trial, including the power, with knowledge of his trial calendar, to fix deadlines for motions, completion of discovery and trial, as well as the power to dismiss meritless claims, grant summary judgment, assess expenses or other sanctions for violation of his orders and make advance rulings on the admissibility of evidence. However, our Committee also recognizes that in some districts it may be impractical or difficult for the judge personally to handle the scheduling of every case on his calendar. Accordingly, Rule 16(b) has been revised to provide that "the judge, or a magistrate only when specifically authorized by district court rule," shall enter the scheduling order.

The requirement of the original draft of Rule 16(b) that a scheduling order issue within 90 days after filing of the complaint has been extended to 120 days in recognition that in some cases answers may be delayed, making it difficult or impractical to issue a scheduling order within the 90-day period.

Except for the foregoing and a few less important changes, the draft of proposed Rule 16 as submitted to the public remains substantially the same. The overwhelming majority of those commenting on the proposal either expressly favored the new rule as helpful in providing for essential

judicial management of litigation as a means of reducing expense and delay or indicated that they would favor the substance of the proposal if certain changes, including those adopted in the attached draft, were made.

(3) Rule 26:

In response to suggestions we have slightly revised the standards in Rule 26(b)(1)(iii), which provides for court limitation of discovery upon certain conditions, to make them as far as practicable the same as the discovery certification standards set forth in Rule 26(g)(3). Moreover, since a violation of the latter standards calls for mandatory imposition of sanctions, the amendment of Rule 26(b) has accordingly been changed to require the court, upon finding the equivalent of such a violation, to limit discovery rather than to act in its discretion.

Rule 26(g)(2), which prescribes certain discovery certification standards, has been revised to adopt some of the same standards as those provided in Rule 11 for certification of pleadings and motions, eliminating use of the word "primarily."

Rule 26(g) has also been revised to provide, in lieu of our earlier draft's provision that an unsigned request, response or objection shall be deemed ineffective, that it shall be stricken unless signed promptly after the omission of the signature is called to the party's attention. This accords with our treatment of the same matter in Rule 11.

Our Committee's Advisory Note has been amplified to make clear that the amended rule does not require a party or attorney to disclose privileged communications or work product.

Except for minor additional changes the proposed amendments to Rule 26 remain substantially the same as those sent out in June 1981. In our view they now reflect changes that are acceptable to most of the bench and bar. Our decision not to make certain requested changes was made only after careful review and appraisal of all relevant considerations.

(4) Rule 67:

In response to comments our Committee has eliminated from its June 1981 proposed amendments provisions in the last two sentences of that draft which would relieve a depositing party from liability for interest imposed by statute or rule and would leave contract interest unaffected by a deposit except for crediting interest earned on deposited money toward that liability. The Advisory Committee Note has been redrafted to reflect these changes. Our Committee is persuaded that these substantive issues should be left for judicial resolution rather than made the subject of a rule.

The attached draft retains the provision authorizing any party,

including a party claiming an interest in the funds, to deposit them with the court and, as amended, the redraft requires that deposited funds be placed in an interest-bearing account or invested in an interest-bearing instrument.

(5) Rules 6, 52, 53, 72-76:

The draft amendments of these rules sent out in June 1981 remain unchanged except for a minor amendment of Rule 74(c), dealing with a stay pending appeal from a magistrate's decision to a district judge, which has been changed to provide that the stay may be conditioned upon the filing of a bond or other appropriate security in the district court.

We believe that the attached amendments, if adopted, will serve to reduce unnecessary delay and needless expense, as well as to increase efficiency, in the administration of justice.

Respectfully submitted,

The Advisory Committee on
Federal Civil Rules

By Walter R. Mansfield
Chairman

JUDICIAL CONFERENCE OF THE UNITED STATES

Committee on Rules of Practice and Procedure

Operating Procedures

I. Introduction

For more than two decades the Judicial Conference of the United States and its various committees have conducted a program of continuous study of the general rules of practice and procedure prescribed by the Supreme Court of the United States for use in other federal courts. While several hundred persons have participated directly in this work, not every member of the bench, bar and the public is aware of the procedures which ultimately lead to the adoption of rules and their amendment. This brief article is designed to give those desiring to be informed an insight into the operation of the Judicial Conference rules program.

II. History of Rulemaking in the Federal Courts

Judicial prescription of procedural rules in the United States courts began in 1934 with the enactment of the Rules Enabling Act (28 U.S.C. 2072) empowering the Supreme Court of the United States to prescribe general rules of practice and procedure in civil actions in the United States district courts. Pursuant to this Act, the Supreme Court in 1935 appointed a distinguished Advisory Committee which drafted the original Federal Rules of Civil Procedure. After approval by the Court and submission to Congress, the new rules became effective

in September 1938. Over the ensuing years Congress similarly granted the Supreme Court authority to prescribe criminal, appellate, bankruptcy and evidence rules.

The following procedure was used in drafting and promulgating the civil rules and continued until 1958. A Supreme Court-appointed advisory committee, assisted by a reporter, would prepare and circulate drafts of new or amended rules, revise them after public comment, and transmit them directly to the Supreme Court. The Court, after review, would report them to Congress and they would go into effect after the lapse of a prescribed statutory waiting period. By the late 1950s, however, it had become evident that there should be a mechanism to study the operation of procedural rules continually and a prescribed group to recommend changes when needed. Accordingly, in 1958 Congress, on the recommendation of the Judicial Conference of the United States and with the approval of the Supreme Court, amended the organic Act of the Conference, giving the Conference this important responsibility.

III. Organization of Committees

The organizational plan for carrying out the new rules program under the aegis of the Judicial Conference was developed in 1959 by a special Conference Committee which recommended the creation of the Committee on Rules of Practice and Procedure (the Standing Committee). This Committee gives direction to the program and exercise oversight responsibility for its operation.

In turn, the actual work of study and rules revision was to be performed by advisory committees for appellate, bankruptcy, evidence, civil and criminal rules, to be appointed only as the need arises.

Members of the standing and advisory committees are selected from among federal and state judges, practicing attorneys and legal scholars and are appointed usually for terms of four years by the Chief Justice of the United States in his capacity as Chairman of the Judicial Conference. The selection process assures a broad base of talent, diverse backgrounds and representation from all sectors of the legal profession and all areas of the nation. Each advisory committee has a reporter, usually a law professor, who prepares working papers and initial drafts of rules amendments for committee study. Currently, 30 federal circuit and district judges, 24 practicing attorneys, four bankruptcy judges and three law professors serve on rules committees. Committee members receive no compensation for their services but are reimbursed for their travel expenses. The reporters receive modest compensation for the time spent on committee work. The Administrative Office of the United States Courts furnishes professional staff assistance and financial support.

IV. Committee Procedures

The rules committees are responsible for carrying on "a continuous study of the operation and effect of the general rules of practice and procedure" (28 U.S.C. 331) and recommending such

changes in and additions to the rules as may be desirable "to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay."

Initiatives for rules changes arise within the rules committees based on committee discussions or studies, or they may originate outside the committees from such diverse sources as the Justices of the Supreme Court, judges of other federal courts, members of Congress, the Department of Justice, committees of the American Bar Association, research and scholarly literature, and individual practicing attorneys. Suggestions received from any source are routinely referred to the appropriate advisory committee chairman and reporter by the standing committee secretary. Submission of ideas and suggestions for rules changes are strongly encouraged. The chairman and the reporter determine a program of study based upon suggestions and comments, as well as upon independent studies by the reporter. The reporter then prepares draft materials to be circulated to the advisory committee in advance of the meeting at which they are to be considered.

Advisory committees normally meet whenever the need arises. When the advisory committee reaches agreement on a tentative draft proposal, the draft is then widely circulated to the bench and bar for comment. Distribution of draft proposals is extensive. 8,000 persons, for instance, receive copies of proposed Civil Rules amendments and 6,000 receive copies of proposed Criminal Rules amendments. The draft proposals are also

sent to numerous private publishing firms with a request that they be included in appropriate legal publications. Traditionally, all proposed rules changes have appeared in the advance sheets to the Supreme Court Reporter, Federal Reporter, Federal Supplement and Federal Rules Decisions and have been included in the bound volumes of Federal Rules Decisions.

In the past a full year has been afforded for the receipt of public comment, but in recent years the time has been reduced to a period of several months in response to criticism of the length of time required to effect rules changes. Recently the advisory committees have conducted public hearings at which interested individuals and persons representing various organizations are invited to present their views orally. Thus every effort is made to achieve Chief Justice Earl Warren's objective, announced in May 1960,, that "every judge, practicing lawyer, and legal scholar will be afforded the opportunity to participate--to state his views--with the assurance that those views will be given consideration."

Based upon the comments received, the advisory committee may modify its draft proposals to accept changes that are merely technical or stylistic in nature. If an advisory committee makes any substantial change, it must repeat the process of circulation. Proposed rules or amendments emerging from this process and finally agreed upon are then sent to the standing committee.

The standing committee usually meets twice a year, normally about six weeks in advance of each meeting of the Judicial

Conference. The chairman and reporter of the advisory committee will attend the meeting to present the advisory committee proposals. The standing committee reviews the proposals in detail and may suggest additional technical and stylistic changes or on occasion a substantive change which appears not to be controversial. Occasionally the standing committee will return a proposal to an advisory committee for further study. To the extent that a substantive change is contemplated by the Standing Committee, public notice and opportunity for public comment will be provided by the Advisory Committee.

Those proposals approved by the standing committee are reported to the Judicial Conference, usually at its September meeting, with the recommendation that they be transmitted to the Supreme Court for its consideration. Normally, the Conference approves the rules as submitted, but it may also reject them.

In recent years, the Supreme Court has adopted the rules and transmitted them to Congress without modification. Under the Rules Enabling Acts, the Chief Justice on behalf of the Court must transmit promulgated Rules to Congress during a regular session but not later than May 1. Should Congress take no action on the rules within 90 days (180 days for Evidence Rules), they automatically take effect. Until 1972, Congress permitted all such proposals to go into effect without change, but since that time has, by the exercise of its legislative powers, made major revisions on four occasions. Recognizing this new active role of Congress in the rulemaking process, the advisory committees have adopted the practice of inviting staff members of the House and

Senate Judiciary Committees to attend their meetings so that they will be familiar with any proposed amendments by the time they reach Congress.

V. Committee Records

In view of the widespread publication and general availability of documents pertaining to rules, requests for access to committee records have not been numerous. Written comments on rules proposals and transcripts of public hearings are readily available at the Administrative Office of the United States Courts, but are not separately published. The Judicial Conference has authorized the standing committee to make any document submitted to the standing committee by an advisory committee and any recommendation submitted by the committee to the Judicial Conference available to the public as well. The Conference has also authorized the immediate release, upon request, of any action taken by the Conference on recommendations pertaining to changes in rules of practice and procedure submitted by the standing committee.

The standing committee regularly considers how the rulemaking process can be improved and how the process can be better understood in order to insure the maximum public participation. To this end, each advisory committee submits notes to each proposed rule or amendment explaining the nature and purpose of the rule or change. Until recently, however, it was difficult to ascertain the reasons why certain suggestions submitted to an advisory committee for consideration were

rejected or why alternate proposals were not adopted. The standing committee now requires each advisory committee to submit a report summarizing its reactions and responses to public suggestions and comments. This summary is included in the report containing the proposed rules changes which is sent to Congress for its consideration.

VI. Conclusion

Recently, interest in federal rulemaking has spurred increasing discussion, criticism and proposals for change. In his 1979 and 1980 annual year-end Reports on the State of the Judiciary, Chief Justice Warren Burger has suggested that, after 40 years, the time is ripe for a "fresh look" at the procedures by which federal court rules are developed. Legal scholars and members of Congress, among others, have likewise proposed various reforms in the current system.

The standing committee regularly considers how the rulemaking process can be better implemented and understood and has therefore adopted a policy promoting easy public access and participation.

The continuous study that is part of this open rulemaking process results in an up-to-date body of procedural rules generally viewed to be among the most significant accomplishments of American jurisprudence and the standing committee welcomes widespread participation in its continuous search for improvement.