

Agenda E-20 (Summary)  
Rules  
September 1991

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

This report contains no recommendations. It is submitted for informational purposes.

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

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

Your Committee on the Rules of Practice and Procedure met in Manchester Village, Vermont on July 18-20, 1991. All members attended the meeting except Judge William O. Bertelsman, who was unable to attend. Also present were Judge Kenneth F. Ripple, Chairman, and Assistant Dean Carol Ann Mooney, Reporter, of the Appellate Rules Advisory Committee; Chief Judge Sam C. Pointer, Chairman, and Professor Paul D. Carrington, Reporter, of the Civil Rules Advisory Committee; Judge William Terrell Hodges, Chairman, and Professor David A. Schluetter, Reporter, of the Criminal Rules Advisory Committee; Judge Edward Leavy, Chairman, and Professor Alan N. Resnick, Reporter, of the Bankruptcy Rules Advisory Committee; and Judge James J. Barta, member of the Advisory Committee on Bankruptcy Rules. The Reporter to your Committee, Dean Daniel R. Coquillette, attended the meeting, along with Mary P. Squiers, Esq., Project Director of the Local Rules Project. Charles Sorenson, who is on the staff of the Department of Justice, attended as did Carl Tobias of the University of Montana. Also present were Joseph

F. Spaniol, Jr., Secretary to your Committee; Peter G. McCabe, Assistant Director for Judges Programs; Patricia S. Channon and Ann R. Gardner of the Administrative Office Staff; and Mr. Thomas Willging of the staff of the Federal Judicial Center.

I. Procedure and Plans of the Standing Committee

At this meeting, the Committee reviewed its operations, policies and procedures and authorized the Chairman to appoint members of the Committee to serve on two subcommittees, one on Style and the other on Planning. The Style Committee will hereafter review submissions from the various advisory committees and suggest stylistic changes in language. They may use as resources in aid of their work the Drafting Rules of the Commissioners on Uniform State Laws and such other material as the Style Committee may select or develop. The Planning Committee will consider such matters as the frequency and scheduling of recommendations to the Judicial Conference, long-range integration of rules, and facilitating ease of access to the rules by the entire profession.

The Committee also approved a plan for closer coordination of the drafting of rules changes among the advisory committees. This will be done by the Reporters for the Advisory Committees in cooperation with the Reporter for the Standing Committee.

II. Advisory Committee on Civil Rules

The Advisory Committee on Civil Rules submitted to the Standing Committee proposed amendments to Civil Rules 1, 11, 16, 26, 29, 30, 31, 32, 33, 34, 36, 37, 43, 54, 56, 58, and 83, and to Evidence Rules 702 and 705 with the request that the

proposed amendments be circulated to the bench and bar for comment. The Committee reviewed the proposed amendments, made some changes, and authorized circulation of the proposals as amended. The Committee also directed that a proposal to amend Civil Rule 84 to authorize the Judicial Conference to promulgate forms, as previously recommended by the Advisory Committee, be included in the submission to the bench and bar.

The Advisory Committee also recommended technical amendments to various Civil and Evidence Rules to reflect the change in the title of United States magistrate to "magistrate judge". The Committee determined that these and other technical changes in the Rules need not be circulated for comment, but will be included among any future submission to the Conference.

### III. Advisory Committee on Appellate Rules

The Advisory Committee on Appellate Rules submitted proposed amendments to Rules 3, 3.1, 4, 5.1, 10, 25, 28, 34 and 35 of the Federal Rules of Appellate Procedure and requested they be circulated for comment. The Standing Committee made some clarifying changes and authorized circulation of the proposals to the bench and bar for comment.

### IV. Advisory Committee on Criminal Rules

The Advisory Committee on Criminal Rules submitted proposed amendments to Rules 12, 16, 26.2, 26.3, 32, 32.1, 40, 41 and 46 of the Federal Rules of Criminal Procedure and to Rule 8 of the Rules Governing Proceedings in the United States District Courts Under 2255 of the Title 28, United States Code. The Standing

Committee made minor changes and authorized the circulation of the proposed amendments to the bench and bar for comment.

The Advisory Committee also recommended technical amendments to various criminal rules to reflect the change in title of United States magistrate to "magistrate judge". The Standing Committee determined that circulation of the technical amendments to the bench and bar for comment was not necessary, but will be included among any future submissions to the Conference.

V. Advisory Committee on Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1010, 1013, 1017, 2002, 2003, 2005, 3002, 3009, 3015, 3018, 3019, 3020, 5005, 6002, 6006, 6007 and 9019 and a new Rule 9036. The Standing Committee approved circulation of these proposals to the bench and bar for comment.

Respectfully submitted,



Robert E. Keeton, Chairman  
George C. Pratt  
Dolores K. Sloviter  
Charles E. Wiggins  
Sarah Evans Barker  
William O. Bertelsman  
Thomas S. Ellis, III  
Edwin J. Peterson  
Charles Alan Wright  
Thomas E. Baker  
Gael Mahony  
William R. Wilson



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

L. RALPH MECHAM  
DIRECTOR

JAMES E. MACKLIN, JR.  
DEPUTY DIRECTOR

WASHINGTON, D.C. 20544

February 28, 1991

Mr. William K. Suter  
Clerk, United States Supreme Court  
1 First Street, NE  
Washington, DC 20543

Dear Mr. Suter:

On November 19, 1990, recommendations for amendments to various rules of Federal procedure, approved by the Judicial Conference of the United States at its September 1990 meeting, were forwarded to the Supreme Court for its consideration. Included with the proposed rules changes were portions of the report of the Judicial Conference Committee on Rules of Practice and Procedure to the Judicial Conference. This report described proposed amendments to Rule 16 of the Federal Rules of Civil Procedure, but the proposed amendments to that rule were not included with the transmission to the Court. Subsequently, on December 27, 1990, the proposed amendments to Rule 16 were transmitted to the Supreme Court. By error the wrong version of Rule 16 was sent. We have also determined that the changes actually recommended were missing from the materials actually considered by the Judicial Conference. Upon learning of these errors, the chairman of the Committee on Rules of Practice and Procedure determined to recommend to his committee that the Conference be advised of the circumstances and asked to recommend that the Supreme Court disregard any proposed revisions to Rule 16 of the Federal Rules of Civil Procedure at this time. Since additional changes to Rule 16 are now under consideration by the Advisory Committee on Civil Rules, the originally-intended changes will be included with any new changes and forwarded at a later time.

In view of the foregoing, I request that you advise the justices to delay action on the language before them to amend Rule 16 of the Federal Rules of Civil Procedure. After the Judicial Conference of the United States takes action with regard to this matter at its meeting on March 12, 1991, I will further advise you. At this same Conference meeting, additional

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

Mr. William K. Suter  
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criminal, evidence and bankruptcy rule changes will be considered and, if approved, will be forwarded to the Supreme Court. It would be helpful if the additional changes we anticipate will be forthcoming could also be considered by the Court and forwarded to the Congress by May 1, 1991.

Sincerely,

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L. Ralph Mecham  
Director

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

ROBERT E. KEETON  
CHAIRMAN

March 23, 1991

JAMES E. MACKLIN, JR.  
SECRETARY

CHAIRMEN OF ADVISORY COMMITTEES  
KENNETH F. RIPPLE  
APPELLATE RULES  
SAM C. POINTER, JR.  
CIVIL RULES  
WILLIAM TERRELL HODGES  
CRIMINAL RULES  
EDWARD LEAVY  
BANKRUPTCY RULES

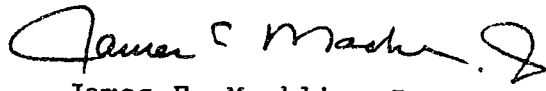
Mr. William K. Suter  
Clerk, United States  
Supreme Court  
Supreme Court Building  
Washington, D. C. 20543

Dear Mr. Suter:

Enclosed is a memorandum to the Chief Justice regarding the proposed amendments to the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Bankruptcy Rules which were recommended by the Judicial Conference at its session on March 12, 1991. In addition I have enclosed a memorandum asking the Court to disregard the proposed revision to Civil Rule 16. I would appreciate it if you would return all copies of that proposal which was transmitted by my memorandum of December 27, 1990. Also enclosed is a separate envelope for each Justice of the Court, Clerk of the Court, and the Reporter of Decisions. Will you please deliver this material to the Chief Justice?

If you have any questions, please call me.

Sincerely,



James E. Macklin, Jr.  
Secretary

Enclosures



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

ROBERT E. KEETON  
CHAIRMAN

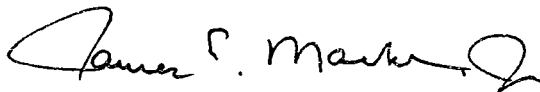
JAMES E. MACKLIN, JR.  
SECRETARY

CHAIRMEN OF ADVISORY COMMITTEES  
KENNETH F. RIPPLE  
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SAM C. POINTER, JR.  
CIVIL RULES  
WILLIAM TERRELL HODGES  
CRIMINAL RULES  
EDWARD LEAVY  
BANKRUPTCY RULES

March 25, 1991

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE  
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

As recommended in the attached addendum to the Report of the Judicial Conference Committee on the Rules of Practice and Procedure, on March 12, 1991, the Judicial Conference of the United States determined to request that the Court disregard the proposed revision of Rule 16 of the Federal Rules of Civil Procedure which was forwarded to the Court by my memorandum of December 27, 1990. In furtherance of that determination, please disregard the revision. It will be reconsidered by the Advisory Committee along with other Rule 16 proposals.



James E. Macklin, Jr.

Enclosure

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

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES:

Your committee has learned that the text and Advisory Committee's note to a proposed revision of Rule 16 that had been approved by the Advisory Committee on Civil Rules were inadvertently omitted from the materials actually submitted by the Standing Committee on Rules of Practice and Procedure to the Judicial Conference for its September 1990 meeting. Accordingly, although a brief description of the proposed change to Rule 16 was included in the Standing Committee's report to the Conference, the text and notes were not actually before the Judicial Conference when it approved the Standing Committee's report. Likewise, although a reference to a proposed amendment of Rule 16 is included in the transmittal letter from the Conference to the Supreme Court, dated November 19, 1990, the text and notes were not actually submitted to the Supreme Court. A supplemental submission with respect to Rule 16 was made by the Administrative Office to the Supreme Court on December 27, 1990, but the material so transmitted represented an earlier draft and not the revision that had been approved by the Advisory Committee and the Standing Committee.

For your information, the correct text of proposed Rule 16 that should have been transmitted along with the Advisory Committee notes is attached to this addendum.

In view of the foregoing, it is the conclusion of your committee that the Conference has not, in fact, approved any proposed revision of Rule 16 and that the Supreme Court should be asked to disregard the proposed Rule 16 amendment now pending before it. Your committee further concluded that none of the four changes to Rule 16 which the Standing Committee on Rules of Practice and Procedure had originally approved is critical. Three of the changes were included only to provide a convenient cross-reference to other portions of the Rules. The fourth is a substantive change but not of great consequence. The Advisory Committee on Civil Rules is now considering several other changes to Rule 16 and the four changes contained in the 1990 revision can conveniently be included in the version that the Advisory Committee will be submitting at a later time.

**Recommendation 5:** That the Conference recommend to the Supreme Court that it disregard any proposed revision of Rule 16 of the Federal Rules of Civil Procedure, at this time. For the sake of clarity, it is explicitly stated that this recommendation to disregard applies only to Rule 16 and not to recommendations for amendments of other rules.