

**THE FEDERAL RULES OF PRACTICE AND PROCEDURE
ADMINISTRATIVE OFFICE OF THE U.S. COURTS
(October 2010)**

JAMES C. DUFF, DIRECTOR

The federal rules govern procedure, practice, and evidence in the federal courts. They set forth the procedures for the conduct of court proceedings and serve as a pattern for the procedural rules adopted by many state court systems.

Authority

The Congress has authorized the federal judiciary to prescribe the rules of practice, procedure, and evidence for the federal courts, subject to the ultimate legislative right of the Congress to reject, modify, or defer any of the rules. The authority and procedures for promulgating rules are set forth in the Rules Enabling Act. 28 U.S.C. §§ 2071-2077.

The Judicial Conference of the United States is also required by statute to "carry on a continuous study of the operation and effect of the general rules of practice and procedure." 28 U.S.C. § 331. As part of this continuing obligation, the Conference is authorized to recommend amendments and additions to the rules to promote:

- simplicity in procedure,
- fairness in administration,
- the just determination of litigation, and
- the elimination of unjustifiable expense and delay.

The Rules Committees

The Judicial Conference's responsibilities as to rules are coordinated by its Committee on Rules of Practice and Procedure, commonly referred to as the "Standing Committee." 28 U.S.C. § 2073(b). The Judicial Conference has authorized the appointment of five advisory committees to assist the Standing Committee, dealing respectively with the appellate, bankruptcy, civil, criminal, and evidence rules. 28 U.S.C. § 2073(a)(2). The Standing Committee reviews and coordinates the recommendations of the five advisory committees, and it recommends to the Judicial Conference proposed rules changes "as may be necessary to maintain consistency and otherwise promote the interests of justice." 28 U.S.C. § 2073(b).

The Standing Committee and the advisory committees are composed of federal judges, practicing lawyers, law professors, state chief justices, and representatives of the Department of Justice. Each committee has a reporter, a prominent law professor, who is responsible for coordinating the committee's agenda and drafting appropriate amendments to the rules and explanatory committee notes.

The Assistant Director for Judges Programs of the Administrative Office of the United States Courts currently serves as secretary to the Standing Committee, coordinates the operational aspects of the rules process, and maintains the records of the committees. The Rules Committee Support Office of the Administrative Office provides the day to day administrative and legal support for the secretary and the committees.

Open Meetings and Records

Meetings of the rules committees are open to the public and are widely announced. All records of the committees, including minutes of committee meetings, reports of the committees, suggestions and comments submitted by the public, statements of witnesses, transcripts of public hearings, and memoranda prepared by the reporters, are public and are maintained by the secretary. Copies of the rules and proposed amendments are available from the Rules Committee Support Office. The proposed amendments are also published on the Judiciary's website <<http://www.uscourts.gov>>.

HOW THE RULES ARE AMENDED

The pervasive and substantial impact of the rules on the practice of law in the federal courts demands exacting and meticulous care in drafting rule changes. The rulemaking process is time consuming and involves a minimum of seven stages of formal comment and review. From beginning to end, it usually takes two to three years for a suggestion to be enacted as a rule.

The process, however, may be expedited when there is an urgent need to amend the rules.

All interested individuals and organizations are provided an opportunity to comment on proposed rules amendments and to recommend alternative proposals. The comments received from this extensive and thorough public examination are studied very carefully by the committees and generally improve the amendments. The committees actively encourage the submission of comments, both positive and negative, to ensure that proposed amendments have been considered by a broad segment of the bench and bar.

STEP 1. INITIAL CONSIDERATION BY THE ADVISORY COMMITTEE

Making suggestions for changes

Proposed changes in the rules are suggested by judges, clerks of court, lawyers, professors, government agencies, or other individuals and organizations. They are considered in the first instance by appropriate advisory committees (appellate, bankruptcy, civil, criminal, or evidence). Suggestions for changes, additions, or deletions must be submitted in writing to the secretary, who acknowledges each letter and distributes it to the chair of the Standing Committee and the chair and reporter of the advisory committee.

The reporter normally analyzes the suggestions and makes appropriate recommendations to the advisory committee. The suggestions from the public and the recommendations of the reporter are placed on the advisory committee's agenda and are normally discussed at its next meeting. The advisory committees usually meet twice a year in the spring and fall, and they also conduct business by telephone and correspondence.

Consideration of suggestions

In considering a suggestion for a change in the rules, the advisory committee may take several courses of action, including:

1. Accepting the suggestion, either completely or with modifications or limitations;
2. Deferring action on the suggestion or seeking additional information regarding its operation and impact;
3. Rejecting a suggestion because it does not have merit or would be inconsistent with other rules or a statute; or
4. Rejecting a suggestion because, although it may be meritorious, it simply is not necessary or important enough to warrant the significant step of an amendment to the federal rules.

The secretary is required, to the extent feasible, to advise the person making a suggestion of the action taken on it by the advisory committee.

Drafting Rules Changes

When an advisory committee decides initially that a particular change in the rules would be appropriate, it normally asks its reporter to prepare a draft amendment to the rules and an explanatory committee note. The draft amendment and committee note are discussed and voted upon at a committee meeting.

The Standing Committee has a style subcommittee that works with the respective advisory committees in reviewing proposed amendments to ensure that the rules are written in clear and consistent language. In addition, the reporter of the Standing Committee and the reporters of the five advisory committees are encouraged to work together to promote clarity and consistency among the various sets of federal rules.

STEP 2. PUBLICATION AND PUBLIC COMMENT

Once an advisory committee votes initially to recommend an amendment to the rules, it must obtain the approval of the Standing Committee, or its chair, to publish the proposed amendment for public comment. In seeking publication, the advisory committee must explain to the Standing Committee the reasons for its proposal, including any minority or separate views.

After publication is approved, the secretary arranges for printing and distribution of the proposed amendment to the bench and bar, to publishers, and to the general public. More than 10,000 persons and organizations are on the mailing list, including

- federal judges and other federal court officers,
- United States attorneys,
- other federal government agencies and officials,
- state chief justices,
- state attorneys general,
- legal publications,
- law schools,

- bar associations, and
- interested lawyers, individuals, and organizations requesting distribution.

In order to promote public comment, the proposed amendments are sent to points of contact that have been established with 53 state bar associations.

The public is normally given 6 months to comment in writing to the secretary regarding the proposed amendment. In an emergency, a shorter time period may be authorized by the Standing Committee.

During the 6-month comment period, the advisory committee schedules one or more public hearings on the proposed amendments. Persons who wish to appear and testify at the hearings are required to contact the secretary at least 30 days before the hearings.

STEP 3. CONSIDERATION OF THE PUBLIC COMMENTS AND FINAL APPROVAL

BY THE ADVISORY COMMITTEE

At the conclusion of the public comment period, the reporter is required to prepare a summary of the written comments received from the public and the testimony presented at the hearings. The advisory committee then takes a fresh look at the proposed rule changes in light of the written comments and testimony.

If the advisory committee decides to make a substantial change in its proposal, it may provide a period for additional public notice and comment.

Once the advisory committee decides to proceed in final form, it submits the proposed amendment to the Standing Committee for approval. Each proposed amendment must be accompanied by a separate report summarizing the comments received from the public and explaining any changes made by the advisory committee following the original publication. The advisory committee's report must also include minority views of any members who wish to have their separate views recorded.

STEP 4. APPROVAL BY THE STANDING COMMITTEE

The Standing Committee considers the final recommendations of the advisory committee and may accept, reject, or modify them. If the Standing Committee approves a proposed rule change, it will transmit it to the Judicial Conference with a recommendation for approval, accompanied by the advisory committee's reports and the Standing Committee's own report explaining any modifications it made. If the Standing Committee makes a modification that constitutes a substantial change from the recommendation of the advisory committee, the proposal will normally be returned to the advisory committee with appropriate instructions.

STEP 5. JUDICIAL CONFERENCE APPROVAL

The Judicial Conference normally considers proposed amendments to the rules at its September session each year. If approved by the Conference, the amendments are transmitted promptly to the Supreme Court.

STEP 6. SUPREME COURT APPROVAL

The Supreme Court has the authority to prescribe the federal rules, subject to a statutory waiting period. 28 U.S.C. §§ 2072, 2075. The Court must transmit proposed amendments to Congress by May 1 of the year in which the amendment is to take effect. 28 U.S.C. §§ 2074, 2075.

STEP 7. CONGRESSIONAL REVIEW

The Congress has a statutory period of at least 7 months to act on any rules prescribed by the Supreme Court. If the Congress does not enact legislation to reject, modify, or defer the rules, they take effect as a matter of law on December 1. 28 U.S.C. §§ 2074, 2075.

SUMMARY OF PROCEDURES

<u>Action</u>	<u>Date</u>
STEP 1	
<ul style="list-style-type: none"> • Suggestion for a change in the rules. (Submitted in writing to the secretary.) 	At any time.

<ul style="list-style-type: none"> Referred by the secretary to the appropriate advisory committee. 	Promptly after receipt.
<ul style="list-style-type: none"> Considered by the advisory committee. 	Normally at the next committee meeting.
<ul style="list-style-type: none"> If approved, the advisory committee seeks authority from the Standing Committee to circulate to bench and bar for comment. 	Normally at the same meeting or the next committee meeting.
STEP 2	
<ul style="list-style-type: none"> Public comment period. 	6 months.
<ul style="list-style-type: none"> Public hearings. 	During the public comment period.
STEP 3	
<ul style="list-style-type: none"> Advisory committee considers the amendment afresh in light of public comments and testimony at the hearings. 	About one or two months after the close of the comment period.
<ul style="list-style-type: none"> Advisory committee approves amendment in final form and transmits it to the Standing Committee. 	About one or two months after the close of the comment period.
STEP 4	
<ul style="list-style-type: none"> Standing Committee approves amendment, with or without revisions, and recommends approval by the Judicial Conference. 	Normally at its June meeting.
STEP 5	
<ul style="list-style-type: none"> Judicial Conference approves amendment and transmits it to the Supreme Court. 	Normally at its September session.
STEP 6	
<ul style="list-style-type: none"> The Supreme Court prescribes the amendment. 	By May 1.
STEP 7	
<ul style="list-style-type: none"> Congress has statutory time period in which to enact legislation to reject, modify, or defer the amendment. 	By December 1.
<ul style="list-style-type: none"> Absent Congressional action, the amendment becomes law. 	December 1.

To suggest changes or comment on proposed changes in the rules, or for further information and materials, write to:

Peter G. McCabe, Secretary
 Committee on Rules of Practice and Procedure
 of the Judicial Conference of the United States
 Washington, D.C. 20544

JUDICIAL CONFERENCE

RULES COMMITTEE CHAIRS AND REPORTERS

- Standing Committee on Rules of Practice and Procedure
Honorable Lee H. Rosenthal, Chair
Prof. Daniel R. Coquillette, Reporter
- Advisory Committee on Appellate Rules
Honorable Jeffrey S. Sutton, Chair
Prof. Catherine T. Struve, Reporter
- Advisory Committee on Bankruptcy Rules
Honorable Eugene R. Wedoff, Chair
Prof. S. Elizabeth Gibson, Reporter
- Advisory Committee on Civil Rules
Honorable Mark R. Kravitz, Chair
Prof. Edward H. Cooper, Reporter
- Advisory Committee on Criminal Rules
Honorable Richard C. Tallman, Chair
Prof. Sara Sun Beale, Reporter
Prof. Nancy J. King, Reporter
- Advisory Committee on Evidence Rules
Honorable Sidney A. Fitzwater, Chair
Prof. Daniel J. Capra, Reporter