Research Federal Court Rule Amendments: An Explanation of the Process and a List of Sources

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Introduction

The drafting and revision of federal court rules by the Judicial Conference of the United States is an ongoing process that has great significance for litigants and their attorneys. While Congress has granted federal courts the power to promulgate administrative or procedural rules,¹ the Judicial Conference is the body charged by the courts with this task. Thus, although Congress retains authority to make or amend rules affecting substantive rights, as well as to amend rules promulgated by the courts, it is imperative that a researcher understand the process by which federal rules are more commonly created or changed.

When court rules are made or amended by Congress, the usual legislative history materials can be examined to help understand the legislature's intent in creating or changing the rules. When the rules are amended by the Judicial Conference, however, the sources available to explain intent are more difficult to locate. This article is designed to help the researcher faced with the need to find these materials. It includes a summary of the rulemaking process used by the Judicial Conference and a description of the sources that contain proposed changes and the deliberations of the Conference that produced the changes.

The Process

The Judicial Conference has created a Standing Committee on Rules of Practice and Procedure (the "Committee on Rules") and several advisory committees (on appellate rules, bankruptcy rules, civil rules, and criminal rules)² to carry out its responsibility of drafting and revising court rules. Committee members include federal and state judges, practicing attorneys, and academicians. In addition, a reporter—usually a law professor—serves each committee.³ The Procedures for the Conduct of Business,⁴ drafted by the Committee on Rules, sets forth the processes followed by the advisory committees.

The advisory committees carry out "a continuous study of the operation and effect of the general rules of practice and procedure ..."⁵ and consider suggestions and recommendations from any source—including public comments, new statutes and court decisions affecting the rules, and legal commentary. Comments and suggestions are received by the secretary of the Committee on Rules and referred to the appropriate advisory committee. Advisory committees meet when necessary and their meetings are generally open to the public.

The process of reviewing and revising the rules generally begins in August of each year. Prior to meeting, the advisory committee's reporter prepares an initial draft of rules changes, writes "committee notes" that explain the purpose of the proposed changes, and copies or summarizes all written recommendations and suggestions received by the advisory committee. Following committee deliberations, all proposed rules and revisions are submitted for publication approval to the Committee on Rules, together with a written report (including minority or separate views) explaining the committee's action. Once approved for publication, copies of the advisory committee's proposals are printed and circulated to the bench, bar, and public as widely "as practicable." Notice of the proposed rules or rule amendments appears in the Federal Register and copies are provided to more than 60 legal publishers.⁶

Following announcement of the proposed changes, there is generally a six-month period for comments, and hearings are conducted by the advisory committee. After the comment period, the reporter summarizes all written comments

⁵ Id.
⁶ Telephone interview with staff member of Judicial Conference Rules Committee (Nov. 19, 1997).
and testimony. The advisory committee reviews the proposed changes in light of the comments and, if additional changes are made, explains these changes in another report, which again includes minority committee views as necessary. The proposed rules and amendments and any additional reports are then submitted to the Committee on Rules.

The Committee on Rules reviews the work of the advisory committees, holding meetings as necessary; these meetings are also generally open to the public. The advisory committees present their final recommendations for rules changes to the Committee on Rules, which may then accept, reject, or modify them. Substantial modifications to proposals are returned to the advisory committee with appropriate instructions for redrafting. When the advisory committee's work is approved, the Committee on Rules submits the proposed rule changes, committee notes, and accompanying reports, together with its recommendations, to the Judicial Conference.

The Judicial Conference transmits proposed changes it approves to the U.S. Supreme Court, which adopts rule changes by an Order of Court. The Court may refuse to adopt proposed rules or make changes in the text. The Chief Justice reports the proposed changes to Congress at or near the beginning of a regular session, but not later than May 1. Amendments are effective no earlier than December 1 of the year they are transmitted to Congress, if Congress takes no adverse action.

Information Resources

Information about proposed changes to federal rules, including the text of the changes, appears in the following resources. The resources are arranged in approximately the same order in which the various issuing institutions consider rule changes.

1. Executive Secretariat of the Judicial Conference, Rules Committee Support Office.
   The Support Office staff maintain the records of and offer administrative support to the Judicial Conference committees, including the Committee on Rules and the various advisory committees. They may be reached at (202) 273-1820.

   Records from Judicial Conference committees are maintained at the Administrative Office of the U.S. Courts for a minimum of five years and are available for public inspection during office hours. Ultimately the records may be transferred to a Government Records Center in accordance with records retention and disposition schedules. Copies of records are furnished to any person upon payment of a reasonable fee for the cost of reproduction. Specific materials available from the Administrative Office include:

   Judicial Conference Advisory Committee records: written suggestions received from the public; written comments received on drafts of proposed rules and advisory committee responses to those comments; public hearing transcripts and summaries of hearings prepared by the reporter; all correspondence relating to proposed changes; minutes of committee meetings; approved drafts of proposed changes; and reports to the Committee on Rules.

   Judicial Conference Committee on Rules records: minutes of committee meetings; reports to the Judicial Conference; and correspondence concerning rules changes, including correspondence with advisory committees.

   Select either “What’s New” or “For Public Review” from the home page. The text of proposed rules can be read online or downloaded as a PDF file. The proposed rules, and the accompanying advisory committee notes, are posted when the review cycle begins in mid-August and public comments are requested: materials are available on the Web site within a week or two, and remain there until the following August. If there are subsequent changes to proposed rules following the public comment period, the text on the Web site is not changed, so readers must pay attention to the date of the material on the Web site. Proposed rules that have been adopted by

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7 See Baker, supra note 3, at 331.
8 See Announcement, supra note 4.
9 United States Federal Judiciary, supra note 2.
the Judicial Conference and those rule changes
that have passed congressional inspection are
not posted to the site.10

4. **Federal Register.**
Notices of public hearings on proposed
rules are printed in the *Federal Register*. The
notices contain brief summaries of the proposed
rules or amendments and tell where and how
the public can comment. In the print version
of the *Federal Register*, consult the Table of
Contents under “Judicial Conference of the
United States” to find references to notices;
in online versions, search for “Hearings of the
Judicial Conference” with a date restriction.

5. **Reporters.**11

*Supreme Court Reporter*:.
Advance sheets include portions of the
reports of advisory committees and the text of
proposed rules and amendments. Material
appears in the advance sheets about four to
eight weeks after proposed rules and amend-
ments are released for public comment. The
bound volumes include any notices from the
secretary of the Committee on Rules that
Congress has taken no action on particular
proposed rules or that the proposed rules
have been adopted by the Supreme Court
pursuant to a particular order. Also included
with the text of the rules is the report of the
Supreme Court on the proposed changes.

*Federal Reporter* and *Federal Supplement*:.
Advance sheets for these series contain
the same materials listed above for the
*Supreme Court Reporter* advance sheets.
Materials appear in two to six weeks;
their inclusion in an issue is noted on the
cover. Bound volumes do not include
rule changes.

*Federal Rules Decisions*:
Advance sheets contain the same materials
listed above for the *Supreme Court Reporter*
advance sheets. Materials appear in two
to six weeks; their inclusion in an issue is
noted on the cover. In addition, *Federal
Rules Decisions* advance sheets and bound
volumes may include articles on topics
or current issues related to rules or court
proceedings. Bound volumes contain
the text of proposed amendments to rules
submitted to Congress by the Supreme
Court, along with the transmittal message,
 excerpts from Judicial Conference
Committee reports (and sometimes
 excerpts from minutes of advisory committee
meetings), and advisory committee notes.
Unless Congress takes action on a proposed
rule change, these rules as printed will be
adopted on the date stated in the transmittal
message. The *Federal Rules Decisions* volumes
also contain the text of proposed rules
drafted by the advisory committees and
released for public comment, related advisory
committee notes, and selected portions of
accompanying advisory committee reports to
the Judicial Conference Committee on
Rules. The two groups of rules are
distinguished by separate placement in the
volume and a notation at the top of the page
designating the latter as proposed rules.

6. **U.S. House of Representatives Web Site:***
http://law.house.gov/6.htm**.

Scroll down past the court decisions and
local court rules to find the federal court
rules. You will find links to Federal Rules
of Appellate Procedure (rules only), Federal
Rules of Civil Procedure (rules, committee
notes, and some proposed rules), and Federal
Rules of Evidence (rules and committee notes).
The site also has Supreme Court rules, some
local district and bankruptcy court rules,
military court rules, and tax court rules.

7. **Westlaw.**

Only final rules and codified rules are
available online. To find the text of current
rules, select the US-RULES database and
search by rule number or topic. For the text of
recently adopted rules, select the US-ORDERS
database, which includes court orders and
notices; you may search by order, notice, or
rule number. The US-RULES database includes
advisory committee notes. Portions of the
advisory committee notes may also appear in
the annotations to the federal statutes. To check

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10 Telephone interview with staff member at the Rules
Committee Support Office of the Judicial Conference, Executive
Secretariat’s Office (Nov. 19, 1997).
11 The reporters listed are all published by West Group.
The *Supreme Court Reports, Lawyer’s Edition*, and *United States
Reports* do not include rules materials in either their advance
sheets or bound volumes.
the currentness of the rules, consult the Westlaw Scope information. The frequency of updating rules varies, and depends on receipt of new information from the Supreme Court and its administrative offices.\textsuperscript{12}

8. LEXIS-NEXIS.

At this time, LEXIS-NEXIS does not have services that include proposed or adopted rules. Court rules are not available until they become part of the federal statutes. There are plans to create a court orders service, which would include the text of adopted rules and the accompanying orders of the Supreme Court. Codified text of the rules and selected portions of advisory committee notes can be found in the annotated federal statutes databases.\textsuperscript{13}


The microfiche congressional documents service includes the proposed rules transmitted to Congress by the Supreme Court. The proposals appear as House Judiciary Committee Documents (H520 in the abstract volumes and fiche set). Materials may include the transmittal message from the Chief Justice, the Supreme Court order adopting the amendments to the rules, the text of the amendments, excerpts from advisory committee notes, and excerpts from Judicial Conference and Advisory Committee reports.

10. Other Publications.

Many looseleaf services and practice or procedure titles include the final, adopted versions of rule changes in their supplements or text. The type of material included—rules text, court orders, advisory committee notes, etc.—varies by publication. Amendments to the federal rules are treated like statutory amendments by the various federal statute series, and will appear in the pocket parts and supplements.

\textsuperscript{12} Telephone interview with West Group reference attorney (Nov. 17, 1997).

\textsuperscript{13} Telephone interview with Julie Dubel, Legislative and Regulatory Products Manager, LEXIS-NEXIS (Nov. 19, 1997).

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