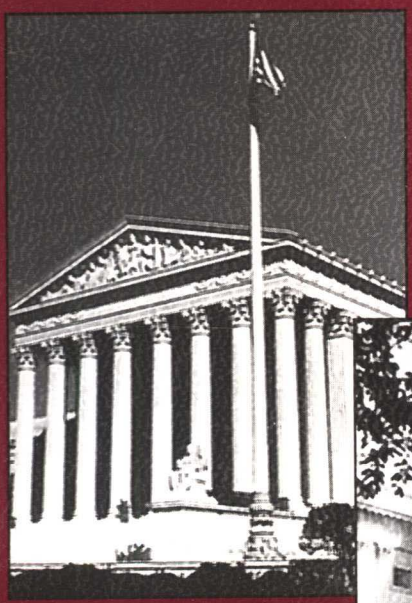
Foundation Press

FEDERAL RULES OF CIVIL PROCEDURE



1998

And Selected Other Procedural Provisions

- Civil Advisory Committee's Notes
- Federal Rules of Appellate Procedure
- Constitution and Procedural Statutes
- Federal Rules of Evidence

ISBN 1-56662-623-4

ISSN 1082-9024

Cover Photos: SUPREME COURT HISTORICAL SOCIETY and USDA Photos

TEXT IS PRINTED ON 10% POST CONSUMER RECYCLED PAPER

FEDERAL RULES OF CIVIL PROCEDURE

As Amended Through April 1, 1998
Together with:

New York, New York
FOUNDATION PRESS
1998

PREFACE

Welcome to the world of the Federal Rules of Civil Procedure. Here is a roadmap to the interior:

1. Federal Rules of Civil Procedure

This booklet begins with the Civil Rules themselves or, more exactly, with (i) the Table of Rules, which allows you to see the structure of the Federal Rules of Civil Procedure, (ii) the main corpus of Civil Rules 1–86, (iii) the Appendix of Forms, as prefaced by its own explanatory Introductory Statement, and (iv) the Supplemental Rules for Certain Admiralty and Maritime Claims.

The most important pointer on use of this portion of the booklet regards the history of amendments. After each amended Rule or Form appears a line listing by year the effective date of all amendments. Details of these amendments appear in and immediately after Federal Rule of Civil Procedure 86—there the booklet tells which particular subdivisions underwent amendment in each year, and it gives both an official citation to the amendatory order or statute and a reference to a readily available source containing any Advisory Committee's Notes. For example, you might want to know how Fed.R.Civ.P. 7(b) read when some 1980 case came down: Rule 7 closes with an indication of amendment in 1948, 1963, and 1983; referring to Rule 86 informs that 1948 and 1963 saw amendments to Rule 7(a) and that only the 1983 changes affected Rule 7(b); for 1983 in particular, the Supreme Court's amendatory order appears at 461 U.S. 1095, while the Advisory Committee's Notes appear at 97 F.R.D. 165; the latter source will tell you exactly how Rule 7(b) looked in 1980.

2. Civil Advisory Committee's Notes

This booklet in fact reprints the most significant of the Advisory Committee's Notes on amendments to the Federal Rules of Civil Procedure. These come right after the booklet's Civil Rules portion, with the primary organization of the Notes being by date of amendment. Thus, the Note on Rule 7(b) lies with the set of 1983 amendments. Each set of reprinted amendments has a separate entry in the thumb index on the booklet's back cover, permitting quick access.

The most important pointer on using this portion of the booklet regards the style of Advisory Committee's Notes. For each amendment, the Rule appears with its changes (new matter is in italics; omitted matter appears with a line through it) and then the following Note allows the Advisory Committee to explain the

changes. All this enables you to reconstruct the former Rule. Using the same example, you can see that in 1980 Rule 7(b) lacked a subdivision (3), although its essence came through Rule 7(b)(2)'s former reference to "signing." Indeed, you have reconstructed Rule 7(b) as it existed from the beginning in 1938, and you can find the Advisory Committee's Note on that original Rule 7 in the set of Early Committee's Notes.

3. Federal Rules of Appellate Procedure

This booklet's next portion contains most of the Appellate Rules and Forms. The organization is similar to the booklet's treatment of the Civil Rules.

Also, you can trace the history of amendments in the same way, using the detailed information that appears after Federal Rule of Appellate Procedure 48.

4. Constitution and Procedural Statutes

This booklet next reprints selected provisions of the United States Constitution, title 28 of the United States Code, and other procedural statutes—all preceded by this portion's own table of contents. The editing effort centered on including those provisions most effectively considered in connection with the study of civil procedure. For example, the selection of "other procedural statutes" includes a few key federal statutes that lie outside title 28 (antitrust procedural provisions and civil rights statutes) and also illustrative state statutes in a few key procedural subjects (California's long-arm statute and New York's statute of limitations and jurisdiction, service, and venue provisions).

Title 28 is of course the centerpiece, and accordingly the booklet contains many of its sections. This systematization of statutes on the federal judiciary and judicial procedure comes from the Act of June 25, 1948, ch. 646, § 1, 62 Stat. 869 ("Act to revise, codify, and enact into law title 28 of the United States Code"). After each reprinted statutory section, the booklet lists all amending statutes since the 1948 Act.

5. Federal Rules of Evidence

This booklet sets out finally the complete Rules of Evidence for United States Courts and Magistrates. Although the Evidence Rules constitute a statute, the booklet presents them in a format similar to that of the Civil and Appellate Rules.

Again, you can trace the history of amendments in the same way, using the detailed information that appears after Federal Rule of Evidence 1103.

6. General Comments

The foregoing descriptions evince an editing effort to select thoughtfully a collection of procedural provisions. Also, this preface and the closing consolidated index represent a similarly serious attempt to facilitate the collection's use. We nevertheless want to continue improving this booklet. That does not establish an easy goal, however, because users' widely varying desires are not always obvious. Accordingly, I sincerely request the users to send suggestions for improvement to me.

The booklet also reflects a dedication to keeping it up to date. The Court and Congress are surprisingly active in the procedural arena. We update the Civil Rules through the date shown on the booklet's title page. We update the various other provisions at least through the end of the preceding congressional session, which roughly corresponds to the beginning of the year that appears on the booklet's cover.

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P.S. Notwithstanding all the above, this booklet still gives you only the raw materials. To get into the immense body of legal doctrine adhering to these materials, you should consult the secondary literature. I especially recommend Charles Alan Wright's single-volume hornbook on Federal Courts and the multi-volume Federal Practice and Procedure by Professors Wright and Miller and others. To give you a sample, while also providing you with valuable background information on the Federal Rules that are the subject of the booklet, I close this preface with an excerpt from the former reference work, reprinted here with kind permission:

CHARLES A. WRIGHT, LAW OF FEDERAL COURTS
426–32, 760 (5th ed. 1994).

§ 62. The Federal Rules of Civil Procedure [1]

. . . An erratic conformity to state procedure, an anachronistic survival of the separation between law and equity, and a failure to

1. 4 Wright & Miller, Civil 2d §§ 1003–1008; Tolman, Historical Beginnings of Procedural Reform, 1936, 22 A.B.A.J. 783; Sunderland, The Grant of Rule–Making Power to the Supreme Court of the United States, 1934, 32 Mich.L.Rev. 1116; Holtzoff, Origin and Sources of the Federal Rules of Civil Procedure, 1955, 30 N.Y.U.L.Rev. 1057; Clark, Two Decades of the Federal Civil Rules, 1958, 58 Col.L.Rev. 435; Chandler, Some Major Advances in the Federal Judicial System, 1922–1947, 1963, 31 F.R.D. 307, 477–516; Clark, The Role of the Supreme Court in Federal Rule–Making, 1963, 46 J.Am.Jud.Soc. 250; Goodman, On the Fiftieth Anniversary of the Federal Rules of Civil Procedure: What Did the Drafters Intend?,

take advantage of the possibilities of judicial rulemaking were hallmarks of the system [of federal procedure prior to 1938]. The last of these points, that procedure is better regulated by the courts than by legislative bodies, was seen to be the key to the problem. It is doubtful whether, as some have contended, the legislature lacks constitutional power to regulate procedure,[2] but it is certainly clear that this power can be delegated by the legislature to the courts.[3] It cannot be doubted that legislative regulation is less satisfactory than regulation by court-made rules.[4]

The fight for court-made rules of civil procedure for the federal courts began in 1911 when the American Bar Association, at the instigation of Thomas Shelton, adopted a resolution favoring such a system. For almost 20 years a bill to give the Supreme Court power to make such rules was introduced in every Congress, but never was passed, despite the gallant efforts of Mr. Shelton. In later years, in response to a suggestion by Chief Justice Taft,[5] the bill included a provision authorizing the Court to unify law and equity. Opposition to the bill was led by Senator Walsh of Montana, and was based in large measure on the fear that grant of the rulemaking power would result in the rather simplified code practice of the western states being superseded by the involved practice that had developed in New York.[6] In 1930 Mr. Shelton died, and

1987, 21 Suffolk U.L.Rev. 351; Subrin, How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective, 1987, 135 U.Pa.L.Rev. 909; Weinstein, The Ghost of Process Past: The Fiftieth Anniversary of the Federal Rules of Civil Procedure and Erie, 1988, 54 Brooklyn L.Rev. 1; Burbank, The Transformation of American Civil Procedure: The Example of Rule 11, 1989, 137 U.Pa.L.Rev. 1925; Toran, 'Tis A Gift To Be Simple: Aesthetics and Procedural Reform, 1990, 89 Mich.L.Rev. 352.

2. Compare Wigmore, Legislative Rules for Judicial Procedure are Void Constitutionally, 1928, 23 Ill.L.Rev. 276, with Kaplan & Greene, The Legislature's Relation to Judicial Rule–Making: An Appraisal of Winberry v. Salisbury, 1951, 65 Harv. L.Rev. 234.

Indeed Professor Whitten argues that separation-of-powers principles restrict the authority of the Court to make even "purely procedural" rules under a general delegation of rulemaking power if Congress has occupied the procedural field in question. Whitten, Separation of Powers Restrictions on Judicial Rulemaking: A Case Study of Federal Rule 4, 1988, 40 Me.L.Rev. 41.

3. See Mistretta v. U.S., 1989, 109 S.Ct. 647, 662–664, 488 U.S. 361, 386–390, 102 L.Ed.2d 714, and cases there cited. The principle was recognized as early as Wayman v. Southard, 1825, 10 Wheat. 1, 43, 6 L.Ed. 253.

4. 4 Wright & Miller, Civil 2d § 1001; Clark & Wright, The Judicial Council and the Rule–Making Power: A Dissent and a Protest, 1950, 1 Syracuse L.Rev. 346; Joiner & Miller, Rules of Practice and Procedure: A Study of Judicial Rule–Making, 1957, 55 Mich.L.Rev. 623; Levin & Amsterdam, Legislative Control over Judicial Rule–Making: A Problem in Constitutional Revision, 1958, 107 U.Pa.L.Rev. 1.

5. Taft, Three Needed Steps of Progress, 1922, 8 A.B.A.J. 34, 35; Taft, Possible and Needed Reforms in the Administration of Justice in Federal Courts, 1922, 8 A.B.A.J. 601, 604, 607.

6. Walsh, Rule–Making Power on Law Side of Federal Practice, 1927, 13 A.B.A.J. 84. See Clark, Code Pleading, 2d ed. 1947, p. 35.

the American Bar Association lost interest, even to the point of abolishing its committee that had been pressing for this reform.

Senator Walsh was to have been appointed Attorney General in 1933, which would surely have ended, for the time at least, any hope of obtaining rulemaking power for the Supreme Court. He died, however, on the eve of his appointment, and the new Attorney General, Homer Cummings, assumed sponsorship of the bill authorizing the court to make procedural rules and to unite law and equity. So effective was his leadership that the bill was adopted unanimously by Congress in 1934 with very little discussion.[7]

It is a long step from a grant of rulemaking power to the adoption of effective rules. Indeed one familiar argument against rulemaking power is that it will not be exercised. For almost a year after the Enabling Act was passed the Supreme Court took no action with regard to it. The Department of Justice and the Conference of Senior Circuit Judges apparently contemplated that no more would be required than the drafting of uniform rules for actions at law to supplement the existing Equity Rules of 1912.[8]

That the reform was not so limited, that law and equity were merged under a single set of simple and effective rules, was due primarily to the efforts of William D. Mitchell, a former Attorney General of the United States, and Charles E. Clark, then Dean of the Yale Law School and later Chief Judge of the Court of Appeals for the Second Circuit. In January 1935, Dean Clark, in collaboration with James Wm. Moore, published a major article summarizing the history of federal procedure and predicting that reform would be a failure unless it included a merger of law and equity.[9] Aroused by this article, General Mitchell wrote Chief Justice Hughes, on February 9, 1935, setting forth powerfully and persuasively the need for the full reform.[10] Three months later the Chief Justice, addressing the American Law Institute, made the dramatic announcement that the rules would not be limited to common-law cases, but would unify the procedure for cases in equity and actions at law "so as to secure one form of civil action and procedure for

7. Act of June 19, 1934, c. 651, 48 Stat. 1064; 4 Wright & Miller, Civil 2d § 1003, p. 20; Burbank, The Rules Enabling Act of 1934, 1982, 130 U.Pa.L.Rev. 1015. See Cummings, Immediate Problems of the Bar, 1934, 20 A.B.A.J. 212. The Enabling Act, as subsequently revised, is now 28 U.S.C.A. §§ 2072–2074.

8. Subrin, Charles E. Clark and His Procedural Outlook: The Disciplined Champion of Undisciplined Rules, in Judge Charles E. Clark, Petruck ed. 1991, p. 115.

9. Clark & Moore, A New Federal Civil Procedure: I. The Background, 1935, 44 Yale L.J. 387.

10. Subrin, note 8 above, at pp. 128–131. The letter appears in full in Mitchell, The Federal Rules of Civil Procedure, in David Dudley Field Centenary Essays, 1949, pp. 73, 76–78.

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The old Advisory Committee was discharged in 1956. In 1958 Congress amended the act creating the Judicial Conference to include among the duties of that body advising the Supreme Court with regard to necessary changes in the various rules the Court has power to make or amend.[16] An elaborate structure was created to assist the Judicial Conference, and ultimately the Court, in this task. There have been, as needed, advisory committees of practitioners, judges, and scholars for civil procedure, criminal procedure, appellate procedure, admiralty, bankruptcy, and evidence. These report to a standing Committee on Rules of Practice and Procedure and it in turn reports to the Judicial Conference.[17] The Judicial Conference transmits such of the recommendations as it approves to the Supreme Court, for under this new plan, as under that in effect from 1934 to 1956, the Court retains ultimate responsibility for the adoption of amendments to the rules.

This new machinery led to significant amendments to the Civil Rules in 1961, 1963, 1966, 1970, 1980, and 1983. More recently there have been amendments almost every other year.

The success of the Federal Rules of Civil Procedure has been quite phenomenal. They provide for the federal courts a uniform procedure in civil actions. This in itself would be a fine accomplishment, but the rules go beyond this to create a uniform procedure that is flexible, simple, clear, and efficient. It may smack of hyperbole to say, as one commentator has, that the rules are "one of the greatest contributions to the free and unhampered administration of law and justice ever struck off by any group of men since the dawn of civilized law." [18] It is nevertheless true that the chorus of approval of the rules by judges, lawyers, and commentators had been, until very recently, unanimous, unstinted, and spontaneous.[19] In the last few years, however, there has been questioning and reexamination of the assumptions about the proper goals of procedure that are at the heart of the Civil Rules.[20] This questioning has been sparked particularly by what some think is abuse of the discovery procedures made available by the rules.

The impact of the rules has not been limited to the federal courts. The excellence of the rules is such that in more than half

16. 28 U.S.C.A. § 331, as amended by Act of July 11, 1958, 72 Stat. 356. For discussion of this amendment prior to its adoption, see Symposium, 1957, 21 F.R.D. 117.

17. The work of the new committees is described by the chairman of the Judicial Conference's Standing Committee on Rules of Practice and Procedure in Maris, Federal Procedural Rule-Making: The Program of the Judicial Conference, 1961, 37 A.B.A.J. 772. Their members are listed in 4 Wright & Miller, Civil 2d § 1007.

18. Carey, In Favor of Uniformity, 1943, 3 F.R.D. 507, 18 Temp.L.Q. 145.

19. See 4 Wright & Miller, Civil § 1008, and particularly n. 6.

20. Subrin, The New Era in American Civil Procedure, 1981, 67 A.B.A.J. 1648.

the states the rules have been adapted for state use virtually unchanged, and there is not a jurisdiction that has not revised its procedure in some way that reflects the influence of the federal rules.[22]

The Enabling Act declares that the rules are to regulate only "practice and procedure" and are not to "abridge, enlarge or modify any substantive rights." [23] Particular rules have been attacked as affecting matters of substance, but the Supreme Court, in a notable series of decisions, has upheld all such rules challenged before it.[24]

The success of the Civil Rules caused many to think that formulation of Federal Rules of Evidence would be desirable. An Advisory Committee on Rules of Evidence was created in 1965 and followed the methods of the committee that had drafted the Civil Rules in its work. Ultimately Federal Rules of Evidence became effective July 1, 1975, but their gestation period was as troubled as it was lengthy. ... [A] draft of Evidence Rules was promulgated by the Supreme Court in 1972, but they caused so much controversy that Congress passed a statute providing that they could not take effect until they were expressly approved by Act of Congress. Congress then made very substantial revisions in the rules as they had been promulgated by the Supreme Court before [enacting] them [as a statute,] to become effective in 1975.

The controversy over the Evidence Rules, and a similar furor over amendments to the Criminal Rules that the Supreme Court had approved in 1974, has led to some reappraisal of the rulemak-

22. A commentator has pointed out, however, that certain provisions in the Civil Rules respond to special problems of a federal system and of courts of constitutionally limited jurisdiction, and that those provisions ought not be blindly adopted by the states. Rowe, A Comment on the Federalism of the Federal Rules, 1979 Duke L.J. 843.

23. 28 U.S.C.A. § 2072(b). See Carrington, "Substance" and "Procedure" in the Rules Enabling Act, 1989 Duke L.J. 281.

24. Sibbach v. Wilson & Co., 1941, 61 S.Ct. 422, 312 U.S. 1, 85 L.Ed. 479 (Rule 35(a)); Mississippi Pub. Co. v. Murphree, 1946, 66 S.Ct. 242, 326 U.S. 438, 90 L.Ed. 185 (Rule 4(f)); Cold Metal Process Co. v. United Engineering & Foundry Co., 1956, 76 S.Ct. 904, 351 U.S. 445, 100 L.Ed. 1311 (amended Rule 54(b)); Hanna v. Plumer, 1965, 85 S.Ct. 1136, 380 U.S. 460, 14 L.Ed.2d 8 (Rule 4(d)(1)).

It has been argued, however, that the Court has been too permissive in upholding rules that do affect substantive rights, contrary to the Enabling Act. Ely, The Irrepressible Myth of Erie, 1974, 87 Harv.L.Rev. 693. Professor Ely's view is rejected, in the course of a thoughtful decision holding that Rule 25(a) is valid, in Boggs v. Blue Diamond Coal Co., D.C.Ky.1980, 497 F.Supp. 1105, 1118–1121, noted 1981, 11 Mem.St.U.L.Rev. 413.

It has also been argued that the Supreme Court has become increasingly fond of using the plain-meaning doctrine to interpret the Federal Rules. Moore, The Supreme Court's Role in Interpreting the Federal Rules of Civil Procedure, 1993, 44 Hastings L.J. 1039. The author argues that because of the Court's dual roles as rulemaker and rule interpreter, the determination of the proper interpretation and application of a rule should be informed by many considerations beyond the simple literal language of the rule.

ing process.[27] The critics have not been directing themselves particularly to the Civil Rules, but insofar as the criticism goes to the methods that the rulemaking committees have used over the years, they must inevitably have an impact on future amendments of the Civil Rules. Legislation in 1988 amended the Enabling Act to respond to some of the arguments of the critics,[28] but the more important changes go to rules made by district courts and courts of appeals. Rulemaking by the Supreme Court for the federal courts generally is now subjected to closer public and congressional scrutiny, but is not changed in substance.[29]

Another threat to the integrity of the Civil Rules has come from the proliferation of local rules for particular districts. Although Rule 83 authorizes local rules, it had been expected that these would be few in number and confined to purely housekeeping matters. Instead the use of local rules has been extensive and they cover a great variety of important matters.[30] This in itself is a threat to uniformity of procedure throughout the country, the local rules often provide "a series of traps" [31] for lawyers from other districts, and the casual manner in which until recently the judges in a district have decided to adopt a rule or set of rules is in striking contrast to the care with which the Civil Rules themselves are made and amended. Almost every study of experience with local rules has demonstrated how unsatisfactory it has been.[32]

27. Weinstein, Reform of Court Rule–Making Procedures, 1977 (shorter versions of this book appeared in 1977, 63 A.B.A.J. 47, and 1976, 76 Col.L.Rev. 905). See also Wright, Book Review, 1978, 9 St. Mary's L.J. 652; Clinton, Rule 9 of the Federal Habeas Corpus Rules: A Case Study on the Need for Reform of the Rules Enabling Acts, 1977, 63 Iowa L.Rev. 15; Friedenthal, The Rulemaking Power of the Supreme Court: A Contemporary Crisis, 1975, 27 Stan.L.Rev. 673; Lesnick, The Federal Rule–Making Process: Time for Re-examination, 1975, 61 A.B.A.J. 579.

28. Act of Nov. 19, 1988, Pub.L. 100–702, Title IV, 102 Stat. 4648.

29. Carrington, The New Order in Judicial Rulemaking, 1991, 75 Judicature 161; Mullenix, Hope Over Experience: Mandatory Informal Discovery and the Politics of Rulemaking, 1991, 69 N.C.L.Rev. 795.

It has been argued, however, that recent controversies suggest that rulemaking should be reformed and follow what is done in modern administrative law. Walker, A Comprehensive Reform for Federal Civil Rulemaking, 1993, 61 Geo.Wash.L.Rev. 455.

30. 12 Wright & Miller, Civil § 3154. See also Coquilette, Squiers & Subrin, The Role of Local Rules, A.B.A.J., Jan. 1989, p. 62; Subrin, Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns, 1989, 137 U.Pa.L.Rev. 1999.

31. Woodham v. American Cystoscope Co. of Pelham, C.A.5th, 1964, 335 F.2d 551, 552.

The difficulty in finding out what local rules are in effect is illustrated by Doran v. U.S., C.A.1st, 1973, 475 F.2d 742, where the United States attorney had no knowledge of a local rule in effect for 20 years. See also U.S. v. Ferretti, C.A.3d, 1980, 635 F.2d 1089, in which the judges in the district were uncertain about the continued existence of a local rule.

32. 12 Wright & Miller, Civil § 3152; Weinstein, note 27 above, at pp. 117–137; Tobias, Civil Justice Reform and the Balkanization of Federal Civil

The Supreme Court sought to provide a check when it ruled in 1960 that the power to make local rules is not to be used to introduce "basic procedural innovations," [33] but it seemed to retreat from this when it later held that local rules reducing the size of civil juries from 12 to six did not fall afoul of that restriction.[34] Many local rules have been held invalid for this reason, or because they are inconsistent with the Civil Rules, an Act of Congress, or the Constitution,[35] but patently there are many other invalid local rules on the books that have escaped scrutiny in a contested case.[36]

Rule 83 was amended in 1985 to provide that local rules can be made only after appropriate public notice and an opportunity to comment, and to give the judicial council of the circuit power to abrogate any local rule of a district. These provisions were made statutory in 1988. The statutes also require each district court and court of appeals to appoint an advisory committee to study and make recommendations about the rules of the court [37] and they give the Judicial Conference of the United States power to modify or abrogate a rule adopted by any court other than a district court or the Supreme Court.[38] These changes, if they stood alone, could improve the local rulemaking process. But the Civil Justice Reform Act of 1990 [39] has led to the adoption in many districts of procedures that vary among themselves and that are often inconsistent with the Federal Rules of Civil Procedure....

One of the most striking achievements in the federal rules from the first has been the simplified procedures they introduced

Procedure, 1992, 24 Ariz.St.L.J. 1393, 1397–1401; Roberts, The Myth of Uniformity in Federal Civil Procedure: Federal Civil Rule 83 and District Court Local Rulemaking Powers, 1985, 8 U.Puget Sound L.Rev. 537; Note, Rule 83 and the Local Federal Rules, 1967, 67 Col.L.Rev. 1251; Note, The Local Rules of Civil Procedure in the Federal District Courts—A Survey, 1966 Duke L.J. 1011.

But see Flanders, Local Rules in Federal District Courts: Usurpation, Legislation, or Information?, 1981, 14 Loy.L.A.L.Rev. 213; Flanders, In Praise of Local Rules, 1978, 62 Judicature 28.

33. Miner v. Atlass, 1960, 80 S.Ct. 1300, 1306, 363 U.S. 641, 650, 4 L.Ed.2d 1462.

34. Colgrove v. Battin, 1973, 93 S.Ct. 2448, 2456 n. 23, 413 U.S. 149, 163 n. 23, 37 L.Ed.2d 522.

35. See Frazier v. Heebe, 1987, 107 S.Ct. 2607, 482 U.S. 641, 96 L.Ed.2d 557; Carver v. Bunch, C.A.6th, 1991, 946 F.2d 451; Bailey v. Systems Innovation, Inc., C.A.3d, 1988, 852 F.2d 93; Carter v. Clark, C.A.5th, 1980, 616 F.2d 228; and cases cited 12 Wright & Miller, Civil § 3153 nn. 53–55.

36. "[A]nother failure of rule 83 flows from the fact that occasions for judicially testing local rules have been and will continue to be infrequent. Given practical realities and economic constraints, few litigants will venture into battle over issues that seem so arcane." Roberts, note 32 above, at 546–547.

37. 28 U.S.C.A. §§ 2071, 2077(b). See also 28 U.S.C.A. § 332(d)(4).

38. 28 U.S.C.A. § 2071(c)(2).

39. 28 U.S.C.A. §§ 471–482, added by Act of Dec. 1, 1990, Pub.L. No. 101–650, 104 Stat. 5089.

for taking appeals. These matters were dealt with until 1968 by Civil Rules 73 to 76 and Criminal Rules 37 to 39. In that year the Federal Rules of Appellate Procedure were adopted, applicable to all cases, and the former civil and criminal provisions were repealed. The Appellate Rules incorporate in general the portions of the Civil Rules and Criminal Rules that they replaced but they also make uniform provision for a number of other matters of appellate practice that prior to 1968 were dealt with in varying ways by the rules of the eleven courts of appeals, though the uniformity that was hoped for has been greatly compromised by the proliferation of local rules for particular circuits.

RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

TABLE OF RULES