LITTLE, BROWN AND COMPANY

1995

Federal Rules of Civil Procedure

WITH SELECTED STATUTES AND CASES

Stephen C. Yeazell
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FEDERAL RULES OF CIVIL PROCEDURE

with Selected Statutes and Cases — 1995

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华东政法学院
图书馆藏书

Little, Brown and Company
Boston New York Toronto London



华东政法大学图书馆
04022349

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LIBRARY OF CONGRESS CATALOG CARD NO. 95-76790

ISBN 0-316-96728-9

MV NY

Published simultaneously in Canada
by Little, Brown & Company (Canada) Limited

Printed in the United States of America

FEDERAL RULES OF CIVIL PROCEDURE

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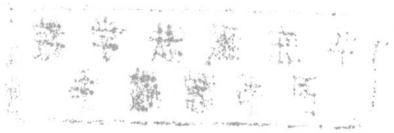
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PREFACE

The federal procedural system flows from four major sources of law: (1) the Constitution of the United States, (2) the Federal Rules (of Civil and Appellate Procedure), (3) the Judiciary Code (collected in Title 28 of the United States Code), and (4) cases applying and interpreting these three bodies of law. All four sources are represented in this volume.

One of these sources, the Federal Rules of Civil Procedure, underwent a substantial change in 1993. Those amendments, both significant and contested, changed the provisions for service of process (Rule 4), sanctions for lawyer misbehavior (Rule 11), and the discovery (Rules 26-37). Each of these changes had strong critics in the drafting process, and some were also opposed in Congress.

Whether and how these conceptual changes will find reflection in practice remains to be seen. Several uncertainties cloud the picture. First, the Judicial Improvements Act of 1990 (28 U.S.C. §471 et seq.) authorizes federal districts to adopt case management plans that may depart from the requirements of the Rules. As a consequence some districts will be following local procedures, authorized by the Act, that depart from some of the Federal Rules. Second, the new version of Rule 26 specifically permits district courts to depart from the discovery regime set forth in the amended Rules. A substantial number of districts, including most of the largest urban districts, have exercised this option. Third, some of the amendments represent a national adoption of experiments that are already underway in several districts; in these districts the change will be indiscernible. Finally, some changes (for example, those in Rule 11) increase the discretion of the district judge; to that extent it is difficult to say how judges will implement the new Rules.

This volume is intended to serve as a rules pamphlet for any civil procedure course. The statutes and rules reflect amendments through January 31, 1995. I am grateful to Kathay Feng for help in preparing this supplement.

Stephen C. Yeazell

May 1995

NOTE ON THE FEDERAL RULES OF CIVIL PROCEDURE

The Federal Rules of Civil Procedure govern the conduct of civil trials in federal courts. Their authority comes from Congress, but, unlike the Judiciary Code (Title 28 of the United States Code, found at page 263 of this supplement), the Rules are not a product of direct congressional legislation. Instead Congress has enacted 28 U.S.C. §2072 (the Rules Enabling Act), which authorizes the Supreme Court to promulgate rules of procedure.

Although the Rules Enabling Act gives the Supreme Court power to promulgate the Rules, the Justices do not in practice do the actual drafting. That process instead occurs in committees of the Judicial Conference, a supervisory and administrative arm of the federal courts. In 1988 a set of amendments to 28 U.S.C. §§2072-2074 formalized this committee process. Under these provisions the Judicial Conference appoints a standing committee on rules of practice, procedure, and evidence. This standing committee screens all recommendations for consistency. The Judicial Conference may also appoint committees with a more defined jurisdiction—for example, civil rules, rules of evidence, bankruptcy rules. Judges, practitioners, and scholars are appointed to these advisory committees. Each advisory committee considers proposals for amendments to the Rules, circulates drafts of proposed amendments to members of the bench and bar, revises in light of their comments, and then transmits the revised proposals to the Committee on Practice and Procedure, which reports to the Judicial Conference, which in turn recommends changes to the Supreme Court.

The Court, if it concurs with the proposals, officially promulgates the revised Rules by May 1, to take effect on December 1 of the same year if Congress does not act in the meantime. The Court has rarely rejected outright a Rules amendment recommended by the Judicial Conference (although several justices have on occasion dissented from the promulgation of various sets of amendments).

Like the Supreme Court, Congress has usually acceded to the recommendations of the Judicial Conference. As with the Court, however, there have been exceptions. In the instance of the most recent (1993) amendments, Congress came very close to exercising its power of disapproval in connection with the discovery rules; a bill that would have blocked the implementation of those proposals passed the House of Representatives and died in the Senate only when that body adjourned without having acted on it.

The original Rules were promulgated in 1938. Since then there have been significant revisions in 1948, 1961, 1963, 1966, 1970, 1983, 1985, 1987, 1991,

and 1993 (with technical amendments in 1971, 1975, and 1988). The most important changes in the past 30 years have been:

the 1966 amendments, which revised the rules for joinder of claims and parties;
the 1970 amendments, which revamped discovery procedures;
the 1983 amendments, which strengthened judicial control over the pretrial process and stiffened sanctions provisions;
the 1993 amendments, which changed the conception of service of process and discovery and revised the sanctions provisions of Rule 11.

This supplement reprints portions of the advisory committee's notes for significant amendments after the Rule in question. Though they do not have the force of law, these notes often serve the same function for the Rules that legislative history does for statutes.

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