

Federal Rules Decisions
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***110** LAWYER ADVISORY COMMITTEES TO THE U.S. COURTS OF APPEALS: REPORT AND
RECOMMENDATIONS
American Academy of Appellate Lawyers
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Introduction

In 1982, Congress required each federal Court of Appeals to "appoint an advisory committee for the study of the rules of practice ... of such court ...", [28 U.S.C. § 2077\(b\)](#). Each Court of Appeals promptly appointed a committee. In the intervening 15 years, however, no one has systematically studied the work of those committees. This report, adopted by the Academy based on work done by its Appellate Courts Liaison Committee, fills that gap.

After a brief historical background, this report summarizes the committees' activities and makes recommendations as to how the Courts of Appeal should organize and use them in the future. Attached as appendices are a circuit-by-circuit collection of information on the operations of each committee and a copy of existing circuit rules governing these committees. This information is arranged in a manner that it is hoped will promote cross-fertilization of ideas among the courts as they consider how best to carry out this important statutory mandate.

Background

National Rules. Lawyers have helped federal judges draft court rules since the creation of the Federal Rules of Civil Procedure adopted in 1937. From 1937 to 1956, the Supreme Court promulgated rules with the help of a single Advisory Committee whose members served indeterminate terms, usually ended only by resignation or death. Misgivings about the tenure and influence of the committee led to its abolition in 1956, leaving a void Congress filled with the current advisory system in 1958 legislation. [\[FN1\]](#)

Pursuant to [28 U.S.C. § 2073\(a\)\(2\)](#), the Chief Justice currently appoints separate rules committees that advise the Judicial Conference of the United States concerning the national civil, appellate, evidence, criminal, and bankruptcy rules. Members include federal and state judges, practitioners, and scholars, but usually federal judges predominate. Members serve a three-year, once-renewable term. They typically meet twice a year. A Standing Committee on Rules of Practice, Procedure and Evidence reviews the advisory committee proposals before offering them to the Judicial Conference. ***111** Changes the Judicial Conference adopts it sends the Supreme Court. That Court determines each year not later than May 1 whether to make the changes. Amendments take effect on December 1 if Congress takes no adverse action. See [28 U.S.C. §§ 2071-77](#).

When Congress established this system in 1958, it did not require the Supreme Court to appoint a committee to advise it concerning its own rules, and that Court has not had an advisory committee since 1956. More recently, the Academy requested that the Supreme Court appoint an advisory committee in light of the favorable experience with rules advisory committees in the lower courts since 1958. The Supreme Court did not grant the request but, in 1995, it for the first time published proposed rules changes and sought public comment before adopting final rules.

Local Rules. In 1982, Congress required that the federal Courts of Appeal appoint their own lawyer advisory committees. The statute, which now applies to all federal courts except the Supreme Court, reads in material part as follows:

Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under [section 2071](#) of this title shall appoint an advisory committee for the study of the rules of practice and internal operating procedures of such court and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit. The advisory committee shall make recommendations to the court concerning such rules and procedures. Members of the committee shall serve without compensation, but the Director may pay travel and transportation expenses in accordance with [section 5703](#) of title 5.

[28 U.S.C. § 2077\(b\)](#).

The Senate Report accompanying the 1982 bill explained the purpose of the committees as follows:

[They] would provide valuable assistance to the judges in developing sound rules and would provide practitioners with useful information and a better understanding concerning the court's business.

[S.Rep. No. 97-275](#) at 11, [1982 U.S. Code Cong. & Admin. News 11, 21](#).

Congress thus left each Court of Appeals free to implement this bare-bones statute in its own fashion. They have done so largely independent of each other, although the similarity in the formal rules adopted by the First, Ninth, Tenth and D.C. Circuits suggests some awareness of practices elsewhere. The 1989 minutes of the Tenth Circuit committee show that it invited Judge James R. Browning, former Chief Judge of the Ninth Circuit, to describe how the Ninth Circuit Committee contributed to the operations of that court. To date, however, no systematic attempt has been made to collect information about the structure and activities of these committees or to share that information with the committees or the judges.

Summary of Committee Activities

The committees vary widely in their composition, the frequency with which they meet, and their activities. Eight of the circuits studied have ***112** adopted local rules governing the operations of their committees. Four have not.

Some circuits give their chief judge full power to appoint the committee. Elsewhere that power rests with the court, or in some instances with associations who elect members. Generally, lawyer members are selected by either state or federal district. Some circuits expressly require that the committee include representatives of various sections of the bar. A few include a district judge. At least one court, the Ninth Circuit, includes three of its judges to promote communication between the court and the committee.

Some of the committees meet as many as three or more times a year. Others meet no more than once a year, and that meeting may be just a conference call. Some keep minutes. Others do not. Some courts pay travel expenses. Again, others do not.

All of the committees comment on changes the courts propose to make to their local rules. Some comments are nothing more than letters or telephone calls from individual committee members to the court. Other committees debate proposed changes and make formal recommendations. In the Seventh Circuit, the committee administers the Court's notice and comment procedures and then submits to the court a distillation of those comments vigorously refined by the committee's views. The Ninth Circuit committee prepares advisory committee notes to the local rules. In recent years, the committees have suggested rules concerning many subjects, including the appointment of counsel in death penalty cases, the electronic dissemination of unpublished opinions, the disclosure of panel members' names before argument, sanctions and using word counts to control brief length.

In addition, the committees have undertaken a number of other projects, including:

* Bar survey. The Seventh Circuit committee has surveyed selected practitioners to obtain comments on circuit rules, court opinions, clerk's staff responsiveness, and other matters. The Ninth Circuit committee, in a similar vein, has conducted focus groups with attorneys to determine how best to improve court procedures. The Seventh Circuit survey elicited some quite pointed anonymous comments that called attention to matters that might have otherwise escaped the court's attention, including a complaint that one judge at oral argument "openly mocks litigants, poking fun at them and then exchanging smirks with his law clerks."

* Practitioner handbooks. Several circuits or their committees publish practitioner handbooks, and the committees in the Seventh, Eighth, Ninth and Tenth Circuits make suggestions as to how their handbooks can be revised.

* Comments on changes to Federal Rules of Appellate Procedure. Several committees, particularly the Ninth Circuit committee, have debated not only changes to local rules but also proposed changes to federal rules published for notice and comment by the Judicial Conference committees. In 1995, the Ninth Circuit committee proposed changes to brief length ***113** requirements that helped shape the "word count" provisions ultimately proposed by the advisory committee.

Recommendations

The Academy recommends that, to obtain maximum public benefit from § 2077, each Court of Appeals or lawyer advisory committee should do the following:

1. Each court should adopt a formal rule concerning the membership and meetings of its lawyer advisory committee, and limit the terms of its members. A formal rule helps publicize the existence of the committee, encourages public confidence in its work, and tells the bar how the members are chosen. The courts that use their committees the most include not only appointed lawyers but also judges and ex-officio members such as the officers of the circuit bar association. Membership should rotate to guard against the appearance of favoritism.

2. Each court should adopt the federal rules model and change its local rules only once a year effective on December 1. Adopting changes only once a year makes it easier for the bar to learn of new changes and establishes an annual cycle that facilitates review by lawyer advisory committees.

3. Each proposed rule change should be submitted to an in-person meeting of the circuit's lawyer advisory committee for discussion and comment, unless the change is so insubstantial that the members agree no in-person meeting is needed. Only by joint deliberation can a committee truly do its work and function as a committee rather than a list of individuals.

4. Each committee should keep minutes and send a copy to the Administrative Office of the United States Courts. Not only do minutes aid communication with the court and absent members about the work of the committee, but central filing will allow a modicum of coordination among committees and will encourage cross-fertilization of ideas.

5. Each committee should be encouraged to undertake related projects, including bar surveys, practitioner handbooks, and comments on proposed changes to federal rules. These projects enable committees to draw on their expertise to provide the court with useful feedback concerning its operations, to educate the bar concerning court procedures, and to improve the process through which the federal rules of appellate procedure are written.

Conclusion

In adopting § 2077(b), Congress recognized that federal appellate courts function better when courts seek and heed the advice of lawyers who represent the consumers of court services. The Academy believes that, by adopting useful ideas from committees in other circuits and the recommendations listed above, federal appellate courts can improve the administration of appellate justice throughout the United States.

*114 APPENDIX I

OPERATION OF LAWYER ADVISORY COMMITTEES BY CIRCUIT

FIRST CIRCUIT:

Rule: 1st Cir. R. 47.2

Practice: The First Circuit committee has eight members: three from Massachusetts, two from Puerto Rico, one from Maine, one from Rhode Island and one from New Hampshire. They serve staggered three-year terms. The committee meets approximately once a year. Minutes are not kept.

Chair: Professor James Duggan, Franklin Pierce Law Center, 2 White Street, Concord, NH 03301, phone number 603/228-9218. The committee reports to the Chief Judge of the First Circuit, Judge Juan R. Torruella, and to Circuit Executive, Vincent Flanagan, 1606 U.S. Post Office and Courthouse, Boston, MA 02109, phone number 617/223-9613.

Accomplishments: At the court's request, the committee developed a rule governing appointment of counsel and procedures in death penalty cases. The First Circuit has now adopted that rule.

More recently, the committee has been asked to comment on emergency procedures developed by the First Circuit in habeas corpus cases.

Budget: None. The First Circuit pays travel expenses.

SECOND CIRCUIT:

Rule: No formal rule.

Practice: The committee has a dozen members. At least one member is appointed from each of the states of New York, Connecticut and Vermont. The committee meets once or twice a year at the call of the chair and also works through correspondence. When the committee proposes rule changes, it publishes them in the New York Law Journal and invites comments.

Chair: Judge Roger J. Miner, U.S. Court of Appeals for the Second Circuit, James T. Foley U.S. Courthouse, 445 Broadway, P.O. Box 858, Albany, NY 12201, phone number 518/431-0401. The committee is administered by Circuit Executive Steven Flanders, U.S. Courthouse, Room 2904, 40 Foley Square, New York, NY 10007, phone number 212/791-0982.

Accomplishments: The committee recently reviewed a change that would make all unpublished decisions available through electronic means but would continue the non-precedential status of such opinions. The court subsequently adopted this change.

***115** The Second Circuit also considers rules comments generated by various state and local bar associations that have appellate practice committees.

Budget: None.

THIRD CIRCUIT:

Rule: 3d Cir. R. 47.1; Rule 12(5) of the Rules of the Judicial Council of the Third Circuit

Practice: The Chief Judge appoints the committee, which consists of lawyers representing various sections of the Bar. The committee is composed of not more than 15 members. Two are nominated from each district and the Chief Judge appoints the rest "at large." Within each district, active circuit judges nominate one member and active district judges nominate one member. They serve staggered three-year terms. Consecutive terms are not allowed. The committee meets at the Judicial Conference and whenever a rules change is proposed. Minutes are kept by the circuit executive.

Chair: Paul A. Manion, Manion, McDonough & Lucas, 882 USX Tower, 600 Grant Street, Pittsburgh, PA 15219, phone number 412/232-0200. The vice-chair is Lee Skipper, 437 Chestnut Street, Philadelphia, PA 19106, phone number 215/928-1100. The principal contact with the court is the Third Circuit Executive, Toby D. Slawsky, Room 22409, U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106.

Accomplishments: The court forwards proposed rules changes to the committee for comment. The committee also helps plan the Third Circuit Judicial Conference, which is held every other year.

Budget: None.

FOURTH CIRCUIT:

Rule: 4th Cir. R. 47(b)

Practice: The Court's Advisory Committee on Rules and Procedure consists of five attorneys, one from each of the states constituting the Fourth Circuit.

The members are appointed by the Chief Judge of the Circuit for three-year terms. The terms are staggered, so that no more than two members' terms expire in any year. No person may serve more than two full three-year terms.

The Chief Judge of the Circuit designates one of the members to serve as chair of the Committee. The clerk serves as the Court's principal liaison with the Committee.

The Advisory Committee members' primary contact with one another is by fax, e-mail, and conference call. They do, however, actively participate in the Fourth Circuit Judicial Conference held annually in June and *116 occasionally convene in person there. No minutes are kept of their meetings.

Chair: Professor Thomas D. Rowe, Jr., Duke School of Law, Science Drive at Tower View, Box 90360, Durham, North Carolina 27708-0360, phone number 919/613- 7099. The principal contact with the court is Pat S. Connor, Clerk of the Court, U.S.

Court of Appeals for the Fourth Circuit, U.S. Courthouse, 1100 East Main Street, Richmond, Virginia 23219, phone number 804/771-2033 (Fax 804/771-8017). The Committee is invited, if so desired, to contact directly Chief Judge J. Harvie Wilkinson, III, United States Court of Appeals for the Fourth Circuit, U.S. Courthouse, 1100 East Main Street, Richmond, Virginia 23219.

Accomplishments: Upon invitation of the court, the court, the Advisory Committee submits comments on proposed new court rules and procedures and any amendments to court rules and procedures. They helped revise the local rules to include material formerly found in internal operating procedures and previously participated in the consideration of the establishment of a mediation program within the court.

Budget: None.

FIFTH CIRCUIT:

Rule: No formal rule

Practice: The Fifth Circuit committee has six members--two from each state-- selected by the Chief Judge. The committee usually includes a prosecutor, a public defender and a law school professor. The members are invited to the annual Judicial Conference at which they have a breakfast meeting with the Chief Judge and the judge who serves as the Rules Proctor.

When the Fifth Circuit proposes a rule change, it circulates the proposal to the members and allows six weeks for comments. The committee does not have formal meetings and does not use a court reporter. It is an informal group that serves only to comment on the changes the court proposes to make to the rules.

The Fifth Circuit has a separate Bar Association of the Fifth Federal Circuit which sponsors an annual seminar for lawyers and publishes a monthly report on cases pending and recently decided.

Chair: None. The breakfast meetings are convened by Chief Judge Henry A. Politz, United States Court of Appeals For the Fifth Circuit, 500 Fannin Street, Suite 5226, Shreveport, LA 71101-3074, phone number 318/676-3472.

Accomplishments: Typically, only one or two committee members respond when the court solicits written comments on proposed *117 rule changes. The court relied on studies done by a committee member when it drafted its original rule governing the length of briefs in proportional type. On occasion, members of the committee have conferred personally with the chief judge or clerk concerning rules changes. The committee has not otherwise had much impact on rules changes, except when the members' suggestions have identified technical defects in the proposals, e.g., a change that inadvertently would have altered the court's practice concerning pre-argument disclosure of panel members' names.

Budget: None. The Judicial Conference pays for the annual breakfast.

SIXTH CIRCUIT:

Rule: 6th Cir. R. 27

Practice: The Committee is presently comprised of 12 lawyers--three from each of the Sixth Circuit's states, the judge who chairs the court's rules committee, and the Clerk of Court. The Chief Judge appoints the lawyers who include large and small firm civil practitioners, an assistant U.S. attorney, two federal public defenders and a law school professor. Of the 12, three are women.

The committee has generally met two times per year: late spring to coincide with the Sixth Circuit Judicial Conference, and in the fall to coordinate with the Rules Committee of the Court. The Advisory Committee does not meet with the Rules Committee but communicates through its chairman.

Chair: Kathleen McCree Lewis, Dykema Gossett PLLC, 400 Renaissance Center, Detroit, MI 48243-1668.

Accomplishments: The Advisory Committee was ttee was responsible for compiling the Circuit's Internal Operating Procedures and generally considers new local rules and amendments proposed by the Court's Rules Committee.

The Advisory Committee was recently successful in changing the oral argument rule to allow the parties to know the identity of the judges the day before argument.

Budget: None. The court pays members' travel expenses for the meetings.

SEVENTH CIRCUIT:

Rule: 7th Cir. R. 47.

Practice: The court appoints the members, who include one district judge, one law professor, and two lawyers each from Illinois, Indiana, and Wisconsin. These members serve staggered three-year terms. Ex officio members include the president and vice-president of the 7th Circuit Bar, the Circuit Executive, the Senior Staff *118 Attorney, and the Clerk of Court for the 7th Circuit. The court appoints the chair of the committee for a two-year term.

The committee acts as a conduit between the bench and the bar. It calls its own meetings. When the Circuit considers a rules change, the committee arranges for public notice of the proposals and considers the comments received. The committee keeps minutes of its meetings which include its proposals for rules amendments.

The Committee meets once or twice a year.

Chair: John S. Skilton, Foley & Lardner, Verex Plaza, 150 East Gilman Street, Madison, WI 53701, phone number 608/258-4229.

Accomplishments: The committee regularly recommends proposed rules changes to

the court. These changes have recently addressed counsel's duty to seek certiorari in criminal cases, using word counts to measure the length of briefs, and precedential effect of unpublished orders, among other topics.

In 1995, the committee initiated an attorney survey which was sent to, among others, lawyers who attended the Seventh Circuit joint meeting and lawyers whose cases had been decided by the court within a fixed two-week period. The survey solicited recommendations for improvements to circuit rules, court opinions, clerk's staff responsiveness, circuit Practitioner's Handbook, electronic Bulletin Board System, and other services.

Budget: None.

EIGHTH CIRCUIT:

Rule: No formal rule. Rule 23 of the Judicial Misconduct and Disability rules, however, provides that the committee should make appropriate recommendations to the circuit Judicial Council concerning these rules.

Practice: The committee is composed of a member of the bar of each of the 10 districts in the circuit, as well as a magistrate judge, an assistant U.S. Attorney, a federal public defender, and a law professor. The committee meets once each year in October. Some of these meetings are held by conference call. The ex officio members of the committee include the court clerk, its circuit executive, a representative district court clerk, and the president of the Eighth Circuit Historical Society.

Chair: Douglas R. Herman, 502 First Avenue North, Fargo, ND 58102-4804, phone number 701/237-6983. The court advisor to the committee is Judge C. Arlen Beam, 435 Federal Building, 100 Centennial Mall *119 North, Lincoln, NE 68508-3875, phone number 402/437-5420.

Accomplishments: The principal function of the committee is to make recommendations to the court concerning rules and procedures.

The committee has also put together a Practitioner's Handbook for the circuit. There is a separate Eighth Circuit Historical Society.

Budget: None. If the committee meets in person, travel expenses are requested from the director of the administrative office. For the past two years, the meeting has been held by telephone conference call.

NINTH CIRCUIT:

Rule: 9th Cir. R. 47.2

Practice: The Chief Judge appoints 16 members for three-year terms. Membership includes three judges, 12 practitioners, and one law faculty member. The Chair of the Lawyer Representatives Coordinating Committee serves as an ex-officio non-

voting member. The committee meets three times a year for four to six hours at each meeting.

The committee reacts to the substance of proposed changes in the rules, suggests other approaches, edits language for clarity and checks other rules for consistency. It also submits suggested rule changes and comments. It also fosters an outreach program to improve communication between the bench and the bar.

Chair: Peter W. Davis, Crosby, Heafey, Roach & May, 1999 Harrison Street, Oakland, CA 94612-3573, phone number 510/763-2000. The committee's principal contact with the court is the Circuit Clerk, Cathy Catterson, U.S. Court of Appeals for the Ninth Judicial Circuit, 95 Seventh Street, P.O. Box 193939, San Francisco, CA 94119-3939.

Accomplishments: The committee regularly reviews and often revises each of the court's rules proposals. Changes are suggested to avoid ambiguity, avoid conflicts with other rules, or to avoid creating new problems. The vast majority of the committee suggestions have been accepted by the court. The committee prepares advisory committee notes to the local rules.

The committee prepared a practitioner's guide and has also sponsored Bench-Bar and focus group programs. It convened focus groups of experienced attorneys in San Francisco, Boise, Phoenix, Portland and Los Angeles and generated 10 or more suggestions for improvements which have been or are in the process of being implemented by the court.

***120** The committee prepared an extensive report on proposed changes to [Fed.R.App.P. 32](#) governing the format of briefs, and forwarded that report to the Advisory Committee on Appellate Practice for the Judicial Conference of the United States.

Budget: The court pays travel expenses for the attorneys who attend the meetings. Meetings are held either in San Francisco or Pasadena. Members pay for their own lunch.

TENTH CIRCUIT:

Rule: 10th Cir. R. 47.3.

Practice: The committee is composed of 10 members: one circuit judge, one district judge, one U.S. attorney, one federal public defender and one practicing member of the bar from each of the six states. Governmental members are selected by their respective associations within the circuit. The circuit judges in each state choose the bar members from that state. Members serve staggered three-year terms and attorney members may not serve successive full terms. The committee holds one regular meeting per year which coincides with the Judicial Conference and other special meetings as it determines may be necessary. The committee keeps minutes. The circuit's chief staff counsel serves as a reporter to the committee and the circuit's executive or the executive's designee serves as its secretary.

Chair: Judge Paul J. Kelly, P.O. Box 10113, Santa Fe, NM 87504, phone number 505/988-6541.

Accomplishments: The committee advises the court concerning its procedures and rules, makes suggestions concerning site selection and programs for the annual circuit judicial conference, and conducts other such studies as the court requests or as it determines are needed.

The committee recently made a recommendation that a warning letter be sent before sanctions are imposed for rule violations. The court has adopted this recommendation.

The committee has also reviewed local rules and recommended changes to the circuit's Practitioner's Guide. It also had suggested ways to set up the courtrooms to be more helpful to practitioners.

Budget: None. The committee expends minimal funds for travel and meals and those funds come from the Attorney Admission Fund.

ELEVENTH CIRCUIT:

Rule: No formal rule. The rules for conduct of and representation and participation in the Eleventh Circuit Judicial Conference, however, include the lawyer advisory *121 committee as ex officio members of the conference.

Practice: The circuit selects one representative from each district to serve for three-year terms. There is at least one annual meeting. The court also circulates proposed amendments to its rules to the committee and urges members to seek recommendations from members of the bar from each state's district.

Chair: There is no chair. The meetings are convened by the Chief Judge Joseph W. Hatchett, 110 E. Park Avenue, P.O. Box 10429, Tallahassee, Florida 32302, phone number 904/942-8840.

Accomplishments: In addition to reviewing rules changes proposed by the court, the committee has in the past worked with the court in setting up capital case resource persons in each state.

The committee also assisted the court in establishing a Committee on Attorney Discipline.

Budget: None. The court pays travel expenses when the committee meets. Non-Appropriated Funds have been used to support some of the committees, such as the Committee on Attorney Discipline.

D.C. CIRCUIT:

Rule: [D.C.Cir. R. 47.4](#)

Practice: The committee includes no less than 15 members of the bar who are se-

lected by the active judges and who are intended to represent a cross section of those appearing in the D.C. courts. It includes representatives from government agencies, law schools, public interest groups, and private practitioners. The members serve three-year staggered terms and the court appoints its chairman.

The committee now meets approximately once a year, i.e., whenever the chair, the judicial liaison and the clerk believe a meeting is needed. Minutes are not kept.

Chair: John Nannes, Skadden Arps Slate Meagher & Flom, LLP, 1440 New York Avenue, N.W., Washington, DC 20005, phone number 202/371-7400. Judicial liaison is Hon. Stephen F. Williams, U.S. Courthouse, 3rd and Constitution Avenue, N.W., Washington, DC 20001.

Accomplishments: The committee revised the local rules to conform to the numbering system in the Federal Rules of Appellate Procedure. When engaged in that project, the committee met more than once a month and had subcommittees that did additional work. The members drafted the proposed rule changes and gave the proposal to Judge Ruth Bader Ginsburg, who was the judicial liaison at that time. Judge Ginsburg in turn discussed *122 them with the court and then reacted with the court's comments. The committee then re-drafted the proposed changes as needed.

When the court receives comments on the rules, it forwards them to the committee for its consideration. The committee was the first to propose using a word count to control brief length, a concept which has now been proposed for incorporation into the federal rules. The committee has also been responsible for rules changes concerning the corporate disclosure statement, filings under seal, and drop box filing. The court has rejected committee proposals for cameras in the courtroom and citation of unpublished opinions.

The committee has also revised the circuit's Handbook of Practice and Internal Procedures.

Budget: None. Firms whose members serve on the committee provide refreshments.

Note: Because it functions somewhat differently than the other circuits, the Court of Appeals for the Federal Circuit has been omitted from this survey.

APPENDIX II

LOCAL RULES GOVERNING LAWYER ADVISORY COMMITTEES BY CIRCUIT

FIRST CIRCUIT:

Loc. R. 47.2. Advisory Committee.

(a) Membership. In accordance with 28 U.S.C. § 2077(b) an advisory committee on the rules of practice and internal operating procedures is hereby created for the

court. This committee shall consist of members of the Bar of the court as follows: Three members from the District of Massachusetts, two members from the District of Puerto Rico and one each from the Districts of Maine, New Hampshire and Rhode Island.

(b) Duties. The advisory committee shall have an advisory role concerning the rules of practice and internal operating procedures of the court. The advisory committee shall, among other things, (1) provide a forum for continuous study of the rules of practice and internal operating procedures of the court; (2) serve as a conduit between the bar and the public and the court regarding procedural matters and suggestions for changes; (3) consider and recommend rules and amendments for adoption; and (4) render reports from time to time, on its own initiative and on request, to the court.

(c) Terms of members. The members of the advisory committee shall serve three-year terms, which will be staggered commencing on October 1, 1986, so that three new members will be appointed every year in such order as the court decides. The court shall appoint one of the members of the committee to serve as chairman.

***123 THIRD CIRCUIT:**

Rule 12(5) of the Rules of the Judicial Council of the Third Circuit.

... The Chief Judge shall also appoint a Lawyer's Advisory Committee consisting of lawyers representing various sections of the bar. The committee shall be composed of not more than fifteen members who shall serve staggered three-year terms. Two members shall be nominated from each district. If he approves the nominations, the Chief Judge shall appoint the nominees to the Lawyers Advisory Committee. One member from each district shall be nominated by the active judges of the District Court. If there are active circuit judges stationed within the district, they shall nominate the other member. If there are no active circuit judges within the district, the other member from the district shall be appointed by the Chief Judge of the Circuit. One member shall be nominated by the active judges of the District Court of the Virgin Islands. The remaining members of the committee will be appointed as "at large" members by the Chief Judge. A member shall not serve more than one full three-year term consecutively, except that an appointment to serve for the remainder of an unexpired term shall not bar appointment for a consecutive full term thereafter.

Local Rule 47.1. Advisory Committee.

Any proposed change in the Third Circuit Local Appellate Rules shall be forwarded for comment to the Lawyers Advisory Committee, which constitutes the advisory committee for the study of the rules of practice as required by [28 U.S.C. § 2077\(b\)](#).

FOURTH CIRCUIT:

Rule 47(b). Advisory Committee on Rules and Procedures

The Court's Advisory Committee on Rules and Procedures shall consist of five attorneys, one from each of the states constituting the Fourth Circuit.

The members shall be appointed by the Chief Judge of the Circuit for three year terms. The terms shall be staggered, so that no more than two members' terms expire in any year. No person may serve more than two full three year terms.

The Chief Judge of the Circuit shall designate one of the members to serve as chair of the Committee. The Clerk shall serve as the court's principal liaison with the Committee.

The Committee shall study the Court's local rules and internal operating procedures, make recommendations concerning them, and advise the court concerning all proposed changes to them.

SIXTH CIRCUIT:

Rule 27. Advisory Committee on Rules

(a) Purpose. Pursuant to 28 U.S.C. § 2077(b) there is hereby created an advisory committee on rules for the United States Court of Appeals for the Sixth Circuit. It is the policy of the court that the members of the court's rules committee and its administrative staff shall cooperate with the advisory committee to the end that the advisory committee is well and fully informed upon the existing procedures and rules and practices of the court as they affect the practice of law before the court, but nothing herein shall *124 confer upon the committee any powers other than those which are advisory in nature.

(b) Membership. The advisory committee shall consist of twelve members appointed by the Chief Judge of the circuit. Three members shall be appointed from each state in the circuit. At least one member shall be appointed from each district in the circuit.

Members shall be selected by the Chief Judge in such a manner as shall in his judgment assure broad representation of all aspects of litigation practiced before the Sixth Circuit and the individual members shall, in the discretion of the Chief Judge, be selected from among those attorneys who are currently active practitioners before the Sixth Circuit, except that the Chief Judge may in his discretion in lieu thereof appoint a representative from an accredited law school in the circuit and a public member who is not a lawyer.

(c) Terms of office. Except as hereinafter set forth, terms of appointment to the committee shall be for a period of three years except that the initial appointment shall be made by the Chief Judge in staggered terms of one, two, and three years in such a manner as shall best achieve continuity of the committee. No person shall be appointed to serve more than two successive three-year terms on the committee. Initial or interim appointments of less than two years shall commence and end on October 1.

(d) Meetings.

(1) The committee shall meet annually, at the time of and concurrent with the Judicial Conference in any year in which such a conference is convened. In years in which no conference is held, the annual meeting shall be called by the chairperson. In addition, the committee may meet at such other times as the Chief Judge may direct.

(2) When possible, the meeting of the advisory committee shall be coordinated with the meeting of the Sixth Circuit Rules Committee itself.

Any recommendations for changes in the rules and procedures of the Sixth Circuit may be made by resolution of the advisory committee and transmitted to the Chief Judge with copy thereof to be transmitted to the chairman of the Sixth Circuit Rules Committee. Conversely, except where the committee expressly deems it impracticable because of time or other circumstances, any proposals for change in the existing rules of the Sixth Circuit by the rules committee shall first be transmitted for comment to the advisory committee.

(3) Members shall serve without compensation, but travel and transportation expenses may be paid as authorized by the Director of the Administrative Office of the United States Courts in accordance with 5 U.S.C. § 5703.

[Effective June 1, 1984; amended January 2, 1990; May 4, 1994.]

SEVENTH CIRCUIT:

Circuit Rule 47. Advisory Committee.

The court shall appoint an Advisory Committee to provide a forum for continuing study of the procedures of the court and to serve as a conduit between members of the bar who have suggestions for change and the *125 court, which retains ultimate responsibility for effectuating change. The committee shall consist of one district judge, one law school professor, and two attorneys from each state of the circuit, Illinois, Indiana, and Wisconsin, and, as ex officio members, the President and First Vice-President of the Seventh Circuit Bar Association, the Circuit Executive, the Senior Staff Attorney, and the Clerk of this court. The district judges, attorneys, and law school professors on the committee shall serve three-year terms with the appointments being staggered.

The court shall appoint a chairman from the membership of the committee to serve for a two-year term. The advisory committee shall promulgate its own rules, and call its own meetings. The advisory committee shall arrange for notice of proposed rule changes and shall consider comments received. From time to time, as it deems necessary or advisable, it shall make recommendations to the circuit council or to the court. Suggestions for consideration by the advisory committee may be filed with the clerk of this court.

(As amended Feb. 1, 1992).

NINTH CIRCUIT:

Circuit Rule 47-2. Advisory Committee on Rules.

(a) Function. Pursuant to 28 U.S.C. § 2077(b), the chief Judge shall appoint an advisory committee on Ninth Circuit Court of Appeals rules and internal operating procedures. The committee shall generally provide a forum for ongoing study of the court's rules and internal operating procedures, including:

(1) proposing rule changes and commenting on changes proposed by the court,

(2) considering public comments, including comments from the bar, and

(3) providing reports and evaluations, either on the committee's own initiative or at the request of the court.

(b) Membership. The Chief Judge shall appoint three judges, twelve practitioners and one member of a law faculty to serve on the committee for three years. The attorney members shall be selected in a manner that seeks both representation of the various geographic areas in the circuit and the distinct types of litigation considered by the court. The Chair of the Lawyer Representatives Coordinating Committee shall be an ex officio (non-voting) member of the committee.

(c) Meetings. The committee shall meet at least once a year and shall have additional meetings as the committee deems appropriate. (new rule 1/96).

TENTH CIRCUIT:

10th Cir. R. 47.3. Advisory Committee.

47.3.1. Membership. Pursuant to 28 U.S.C. § 2077(b) there shall be an advisory committee on procedures for the court of appeals. This committee shall consist of ten members: one circuit judge, one district judge, one United States attorney or assistant United States attorney, one federal public defender or assistant federal public defender, and one actively practicing member of the bar of this court from each of the six states in the *126 circuit. The committee may appoint ad hoc committees consisting of nonmembers of the advisory committee.

47.3.2. Selection of members and organization. The circuit judge member shall be the chief judge of the circuit or the chief judge's designee. The district judge member and representatives of the United States attorneys' offices and federal public defenders' offices shall be selected by their respective associations within the circuit or in such other manner as the members of the group shall agree. The members of the bar shall be selected by agreement of the circuit judges resident in the particular state from which the member is to be selected from a list containing three or more names submitted to the circuit judges by the federal district judges resident in that state; all such candidates must have active substantial federal practices. The circuit judge shall serve as chair. As designated by the chief judge, one-third of the initial membership shall serve one-year terms,

one-third two-year terms, and one-third three-year terms, with all subsequent selections serving three-year terms. Terms shall commence on April 1. No member, except the chief judge of the circuit, or the chief judge's designee, may serve successive terms; however, a person selected to fill an unexpired term may also serve a successive term. The chief staff counsel shall serve as reporter to the committee and the circuit executive, or designee, shall serve as secretary.

47.3.3 Meetings. The advisory committee shall have one regular meeting each year at the time of the judicial conference and such special meetings as it shall determine from time to time. The advisory committee may also conduct business by mail, telephone, or other means.

47.3.4 Duties. The advisory committee shall have an advisory rule concerning the operative procedures of the court. The committee shall, among other things, (1) provide a forum for continuous study of the operating procedures and published rules of the court; (2) serve as a conduit between the bar, the public and the court regarding procedural matters and suggestions for changes; (3) consider and recommend rules and amendments for adoption by the court; (4) make suggestions for programs at the annual circuit judicial conference; and (5) make such other studies and render such other reports and recommendations from time to time as the court requests or as it shall determine on its own initiative.

D.C. CIRCUIT

Circuit [Rule 47.4](#). Advisory Committee on Procedures.

(a) Establishment of Committee; Membership. In accordance with [28 U.S.C. § 2077\(b\)](#), there shall be an Advisory Committee on Procedures which shall consist of not less than 15 members of the bar of this court who shall be selected by the judges of the court in regular active service in such a way as to represent a broad cross section of those appearing in the federal courts of the District of Columbia, including representatives from government agencies, law schools, public interest groups, and private practitioners.

(b) Committee Functions. The committee shall, among other things:

(1) Provide a forum for study of the internal operating procedures and rules of this court.

***127** (2) Serve as a conduit from the bar and the public to the court regarding procedural matters and suggestions for changes.

(3) Draft, consider, and recommend, for the court's adoption, rules and internal operating procedures, and amendments thereto.

(4) Render reports from time to time, on its own initiative and on request, to the court and to the Judicial Conference of the District of Columbia Circuit on the activities and recommendations of the committee.

(c) Terms of Members. The members of the committee shall serve 3-year terms that will be staggered in such a way as to enable the court to appoint or reappoint one-third of the committee each year. The court shall appoint one of the members to chair the committee.

APPENDIX III

AMERICAN ACADEMY OF APPELLATE LAWYERS
APPELLATE COURTS LIAISON COMMITTEE

Luther T. Munford, Jackson, Mississippi Committee Chair, 1996-97

Arthur J. England, Jr., Miami, Florida Committee Chair, 1995-96

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[FN1]. See Act of July 11, 1958, Pub.L. No. 93-12, 72 Stat. 356; T. Baker and F. Easterbrook, A Self Study of Federal Judicial Rulemaking/A Report From the Subcommittee on Long Range Planning to the Committee on Rules of Practice, Procedure and Evidence of the Judicial Conference of the United States, 168 F.R.D. 680, 683-87 (1996). See also T. Baker, An [Introduction to Federal Court Rulemaking Procedure](#), 22 *Tex. Tech. L.Rev.* 323 (1991); P. McCabe, [Renewal of the Federal Rulemaking Process](#), 44 *Am. U.L.Rev.* 1655 (1995).

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