

Backgrounder: The Rulemaking Process for the Federal Rules of Civil Procedure

Congress has delegated to the federal judiciary the authority to prescribe the rules of practice, procedure, and evidence for the federal courts, subject to the ultimate legislative right of the Congress to reject, modify, or defer any of the rules.¹

The principal policy-making body of the federal judiciary is the Judicial Conference of the United States. The Judicial Conference is authorized to recommend amendments and additions to the rules to promote: simplicity in procedure; fairness in administration; the just determination of litigation; and the elimination of unjustifiable expense and delay.

The Judicial Conference's responsibilities as to rules are coordinated by its Committee on Rules of Practice and Procedure, commonly referred to as the "Standing Committee." The Standing Committee and its five advisory rules committees, including the Advisory Committee on Civil Rules, "carry on a continuous study of the operation and effect" of the federal rules as directed by the Rules Enabling Act.²

The Advisory Committee on Civil Rules evaluates proposals for rules amendments. Once it votes initially to recommend an amendment to the F.R.C.P., it must obtain the approval of the Standing Committee to publish the proposed amendment for public comment.

The public comment period is open for 6 months, during which the advisory committee receives written comments and holds public hearings on the proposed amendments. At the conclusion of the public comment period, the advisory committee takes a fresh look at the proposed rule changes in light of the written comments and testimony. Once the advisory committee decides to proceed in final form, it submits the proposed amendment to the Standing Committee for approval.

The Standing Committee independently reviews the findings of the advisory committee, and may accept, reject, or modify them. If the Standing Committee approves a proposed rule change, it will transmit it to the Judicial Conference with a recommendation for approval, accompanied by the advisory committee's reports and the Standing Committee's own report explaining any modifications it made.³

The Judicial Conference normally considers proposed amendments to the rules at its September session each year. If approved by the Conference, the amendments are transmitted promptly to the Supreme Court. The Supreme Court considers the proposals and, if it concurs, officially promulgates the revised rules by order before May 1, to take effect no earlier than December 1 of the same year unless Congress enacts legislation to reject, modify, or defer the pending rules.⁴

¹ The authority and procedures for promulgating rules are set forth in the Rules Enabling Act. 28 U.S.C. §§ 2071-2077.

² The Standing Committee and the advisory committees are composed of federal judges, practicing lawyers, law professors, state chief justices, and representatives of the Department of Justice. The five advisory committees concern Appellate, Bankruptcy, Civil, Criminal, and Evidence rules.

³ If the Standing Committee makes a modification that constitutes a substantial change from the recommendation of the advisory committee, the proposal will normally be returned to the advisory committee with appropriate instructions.

⁴ 28 U.S.C. §§ 2074, 2075.