

# EXHIBIT A

MINUTES

CIVIL RULES ADVISORY COMMITTEE

APRIL 25, 2017

1 The Civil Rules Advisory Committee met at the Ella Hotel in  
2 Austin, Texas on April 25, 2017. (The meeting was scheduled to  
3 carry over to April 26, but all business was concluded by the end  
4 of the day on April 25.) Participants included Judge John D. Bates,  
5 Committee Chair, and Committee members John M. Barkett, Esq.;  
6 Elizabeth Cabraser, Esq. (by telephone); Judge Robert Michael Dow,  
7 Jr.; Judge Joan N. Ericksen; Parker C. Folsie, Esq.; Professor  
8 Robert H. Klonoff; Judge Sara Lioi; Judge Scott M. Matheson, Jr.;  
9 Judge Brian Morris; Justice David E. Nahmias; Judge Solomon Oliver,  
10 Jr.; Hon. Chad Readler; Virginia A. Seitz, Esq.; and Judge Craig B.  
11 Shaffer. Professor Edward H. Cooper participated as Reporter, and  
12 Professor Richard L. Marcus participated as Associate Reporter.  
13 Judge David G. Campbell, Chair; Peter D. Keisler, Esq.; and  
14 Professor Daniel R. Coquillet, Reporter (by telephone),  
15 represented the Standing Committee. Judge A. Benjamin Goldgar  
16 participated as liaison from the Bankruptcy Rules Committee. Laura  
17 A. Briggs, Esq., the court-clerk representative, also participated.  
18 The Department of Justice was further represented by Joshua  
19 Gardner, Esq.. Rebecca A. Womeldorf, Esq., Lauren Gailey, Esq.,  
20 Julie Wilson, Esq., and Shelly Cox represented the Administrative  
21 Office. Dr. Emery G. Lee, and Dr. Tim Reagan, attended for the  
22 Federal Judicial Center. Observers included Alex Dahl, Esq. (Lawyers  
23 for Civil Justice); Professor Jordan Singer; Brittany Kauffman,  
24 Esq. (IAALS); William T. Hangle, Esq. (ABA Litigation Section  
25 liaison); Frank Sylvestri (American College of Trial Lawyers);  
26 Robert Levy, Esq.; Henry Kelston, Esq.; Ariana Tadler, Esq.; John  
27 Vail, Esq.; Susan H. Steinman, Esq.; and Brittany Schultz, Esq.

28 Judge Bates welcomed the Committee and observers to the  
29 meeting. He noted that this is the last meeting for three members  
30 whose second terms have expired - Elizabeth Cabraser, Robert  
31 Klonoff, and Solomon Oliver. They have served the Committee well,  
32 in the tradition of exemplary service. They will be missed. Judge  
33 Bates also welcomed Acting Assistant Attorney General Readler to  
34 his first meeting with the Committee.

35 Judge Bates noted that the draft Minutes for the January  
36 Standing Committee meeting are included in the agenda materials.  
37 The Standing Committee discussed the means of coordinating the work  
38 of separate advisory committees when they address parallel issues.  
39 Coordination can work well. The rules proposals published last  
40 summer provide good examples. The Appellate Rules Committee worked  
41 informally with the Civil Rules Committee in crafting the  
42 provisions of proposed Civil Rule 23(e)(5) that address the roles  
43 of the district court and the court of appeals when a request for  
44 district-court approval to pay consideration to an objector is made  
45 while an appeal is pending. A Subcommittee formed by the Appellate  
46 and Civil Rules Committees and chaired by Judge Matheson worked to

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47 coordinate revisions of Appellate Rule 8 in tandem with the  
48 proposals to amend Civil Rules 62 and 65.1. Four advisory  
49 committees have coordinated through their reporters, the Style  
50 Consultants, and the Administrative Office as they have worked on  
51 common issues on filing and service through the courts' CM/ECF  
52 systems. The e-filing and e-service proposals will require  
53 continued coordination as the advisory committees hold their spring  
54 meetings.

55 *November 2016 Minutes*

56 The draft Minutes of the November 2016 Committee meeting were  
57 approved without dissent, subject to correction of typographical  
58 and similar errors.

59 *Legislative Report*

60 Julie Wilson presented the Legislative Report. She began by  
61 directing attention to the summaries of pending bills that appear  
62 in the agenda materials. There has been a flurry of activity in  
63 February and March on several bills. Two, H.R. 985 and the Lawsuit  
64 Abuse Reduction Act, have passed the House and have been sent to  
65 the Senate.

66 H.R. 985 is the Fairness in Class Action Litigation and  
67 Furthering Asbestos Claim Transparency Act of 2017. The bill  
68 includes many provisions that affect class actions. Without  
69 directly amending Rule 23, it would change class-action practice in  
70 many ways, and the appeal provisions effectively amend Rule 23. It  
71 also speaks directly to practice in Multidistrict Litigation cases,  
72 and changes diversity jurisdiction requirements for cases removed  
73 from state courts. Judge Bates and Judge Campbell submitted a  
74 letter to leaders of the House and Senate Judiciary Committees  
75 describing the importance of relying on the Rules Enabling Act to  
76 address matters of procedure. The Administrative Office also  
77 submitted a letter. Other Judicial Conference Committees are  
78 interested in this legislation. The Federal-State Jurisdiction  
79 Committee is charged with preparing a possible Judicial Conference  
80 position on the legislation. It has not yet been decided whether  
81 any position should be taken. Nothing has happened in the Senate.

82 Judge Bates noted that H.R. 985 has substantive provisions. It  
83 also raises a "procedural" question about the role of the Rules  
84 Enabling Act process in considering questions of the sort addressed  
85 by the bill.

86 Judge Campbell stated that H.R. 985 went through the House  
87 quickly. It has been in the Senate since early February. There is  
88 no word on when the Senate may address it. It would significantly  
89 alter class-action practices, even without directly amending Rule

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90 23. And some of the provisions that address Multidistrict  
91 Litigation would be unworkable in practice. These procedural issues  
92 should be addressed through the Rules Enabling Act process. He also  
93 noted the changes in diversity litigation that would direct courts  
94 in removal cases to sever diversity-destroying defendants and  
95 remand to state courts as to them, retaining each diverse pair of  
96 plaintiff and defendant.

97 The Lawsuit Abuse Reduction Act of 2017, H.R. 720 and S. 237,  
98 is a bill familiar from several past sessions of Congress. It  
99 passed the House in early March. It remains pending in the Senate.

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2031 on the Criminal Rule may well suffice for the Civil Rule; there is  
2032 little reason to suppose there are differences in the circumstances  
2033 of criminal prosecutions and civil actions that justify different  
2034 rules on this narrow question. That seems particularly so in light  
2035 of the view that the amendment makes no change in meaning.

2036 If the Criminal and Appellate Rules Committees pursue  
2037 amendment, the Rule 7.1(b)(2) question will be submitted to this  
2038 Committee for consideration and voting by e-mail ballot.

2039 **NEXT MEETING**

2040 The next Committee meeting will be held in Washington, D.C.,  
2041 on November 7, 2017.

2042 Respectfully submitted,

2043 Edward H. Cooper  
Reporter