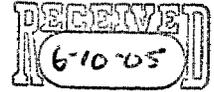


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May 31, 2005

Peter G McCabe Esq
Secretary
Committee On Rules Of Practice And Procedure
Judicial Conference Of The United States
Washington D C 20544

05-CV-002

Dear Mr. McCabe:

Your communication dated March was received and acknowledged May 17, 2005. It honors me to be a part, along with other Fellows of The American College Of Trial Lawyers, to be invited to review and submit comments on the Preliminary Draft on style revision of the Federal Rules Of Civil Procedure.

The draft, dated February, 2005, is rich with the results of your Committee's industrious work. Reviewing the entire Preliminary Draft has now been accomplished. Your Committee has produced such an excellent work product that it is a challenge to make any observations relating to this excellent Preliminary Draft.

I encountered some things about which my comments may be worth considering:

Reviewing my last analysis of the draft preceding this one brings to my attention Rule 1, including the Committee's Note on page 4. The language of Rule 1 is an aspect about which I made some remarks and the current amendment complies with my reaction to the general styling of the Rule when I studied and submitted suggestions about the amendment as "part of the general restyling of the civil rules". The amendment is well taken and satisfies the observations I made when I reviewed the last Preliminary Draft.

Passing to page 17 under (a) Service When Required, next after " * * * * record on appeal" I suggest it would be supported to include: " * * * * briefs and excerpts from the record * * * *".

Looking to page 21, would it not be desirable to put a closure about the hearings described under (c). I suggest: inserting the substance of this inclusion : " * * * * and not more than 10 days * * * *".

Would it not be justifiable to include under (b) (2), page 37 in the last line of sub-paragraph (3), immediately after " * * * * subject matter * * * * " this additional factor: " or summary judgment * * * *?"

On page 57 it strikes me that this would be a proper addition to the materials under (a) (2) " * * * * or a motion to dismiss because of failure to allege facts sufficient to constitute a prima facie case."

In the description of an officer's duties I feel it would be advisable to add to "A" (v) a statement communicating why the identity of persons present should be part of the officer's observation "Before the Deposition."

I was favorably impressed by the Committee Note.. The explanatory aspect is well put.

On page 137 (under (a) "Judgment as a matter of law" I feel it would be supported to add this: " * * * * and make a prima facie case".

Speaking to Rule 63, page 165, it occurs to me the postulated successor judge should also familiarize himself or herself with any motions such as motions for a mistrial or for a directed verdict if the successor judge takes the case after the plaintiff has rested.

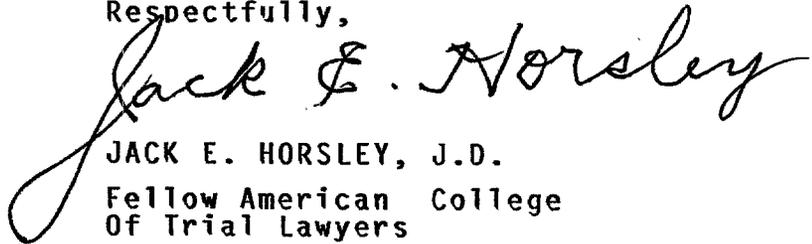
My last observation speaks to Rule 77, page 189.

Although it is implied that "Court Is Always open addresses business days, would it not be

well taken to include this in paragraph "a) immediately after " * * * * * always open " * * * on any business day * * * * *"?

Again, thank you and your Committee for inviting me to review and make suggestions about the February 2005 Preliminary Draft.

Respectfully,

A handwritten signature in cursive script that reads "Jack E. Horsley". The signature is written in black ink and is positioned above the typed name and title.

JACK E. HORSLEY, J.D.

Fellow American College
Of Trial Lawyers

JEH: bgg