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## *The District of Columbia Bar*

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Lawyer Referral and Information Service 638-1509

### MEMORANDUM

TO: Members of the Board of Governors

FROM: Lynne M. Lester  
Manager, Divisions Office

DATE: April 29, 1986

SUBJECT: Letter addressed to the Hon. Strom Thurmond and the Hon. John East of the Senate Committee on the Judiciary in support of H.R. 3550, the Rules Enabling Act of 1985.

Pursuant to Division Guideline No. 13, Section a, the enclosed proposed public statement is being sent to you by  
Court Rules and Legislation Committees, Courts,  
Lawyers and the Administration of Justice Division.

(a)(iii): "No later than 12:00 noon on the seventh (7th) day before the statement is to be submitted to the legislative or governmental body, the Division will forward (by mail or otherwise) a one-page summary of the comments (summary forms may be obtained through the Divisions Office), the full text of the comments, and the full text of the legislative or governmental proposal to the Manager for Divisions. The one-page summary will be sent to the Chairperson(s) of each Division steering committee and any other D.C. Bar committee that appear to have an interest in the subject matter of the comments. A copy of the full text and the one-page summary will be forwarded to the Executive Director of the Bar, the President and President-Elect of the Bar, the Division's Board of Governors liaison, and the chairperson of the Committee on Divisions. Copies of the full text will be provided upon request through the Divisions Office. Reproduction and postage expenses will be incurred by whomever requested the full text (i.e., Division, Bar committee or Board of Governors

### BOARD OF GOVERNORS

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account). The Manager for Divisions shall help with the distribution, if requested, and shall forward a copy of the one-page summary to each member of the Board of Governors. In addition, the Manager for Divisions shall draw up a list of all persons receiving the comment or statement, and he/she shall ascertain that appropriate distribution has been made and will assist in collecting the views of the distributees. If no request is made to the Manager for Divisions within the seven-day period by at least three (3) members of the Board of Governors, or by majority vote of any steering committee or Committee of the Bar, that the proposed amendment be placed on the agenda of the Board of Governors, the Division may submit its comments to the appropriate federal or state legislative or governmental body at the end of the seven-day period."

a(vi): The Board of Governors may request that the proposed comments be placed on the agenda of the Board of Governors for the following two reasons only:

(a) The matter is so closely and directly related to the administration of justice that a special meeting of the Bar's membership pursuant to Rule VI, Section 2, or a special referendum pursuant to Rule VII, Section 1, should be called, or (b) the matter does not relate closely and directly to the administration of justice, involves matters which are primarily political, or as to which evaluation by lawyers would not have particular relevance.

a(v): Another Division or Committee of the Bar may request that the proposed set of comments by a Division be placed on the Board's agenda only if such Division or Committee believes that it has greater or coextensive expertise in or jurisdiction over the subject matter, and only if (a) a short explanation of the basis for this belief and (b) an outline of proposed alternate comments of the Division or Committee are filed with both the Manager for Divisions and the commenting Division's Chairperson(s). The short explanation and outline of proposed alternate comments will be forwarded by the Manager for Divisions to the Board of Governors.

a(vi): Notice of the request that the statement be placed on the Board's agenda lodged with the Manager for Divisions by any Board member may initially be telephoned to the Manager for Divisions (who will then inform the commenting Division), but must be supplemented by a written objection lodged within seven days of the oral objection.

Please call me by 5:00 p.m., Tuesday, May 6, 1986  
if you wish to have this matter placed on the Board of Governors'  
agenda for Tuesday, May 13, 1986

Enclosures



## *The District of Columbia Bar*

### PROPOSED PUBLIC STATEMENT SUMMARY

Date: 4/25/86

Division: 4

Committee: Court Rules and Legislation Committees

Contact Person: Con Hitchcock; 785-3704

Type of public statement: Amicus Brief \_\_\_\_\_ Resolution \_\_\_\_\_  
Letter x \_\_\_\_\_ Testimony \_\_\_\_\_  
Report/study \_\_\_\_\_ Other \_\_\_\_\_

Comments approved by the steering committee: Yes x No \_\_\_\_\_

Recipient of public statement: Hon. Strom Thurmond; Hon. John East

Expedited consideration requested (two-day review period): Yes \_\_\_\_\_ No x

Standard seven-day review period requested: Yes \_\_\_\_\_ x \_\_\_\_\_ No \_\_\_\_\_

Subject title: Comments on H.R. 3550, the Rules Enabling Act of 1985

Summary (please type-if more space is needed please attach a separate page)

Complete text of the statement is enclosed

Division 4  
Courts, Lawyers & the Administration of Justice  
Of The District of Columbia Bar

Steering Committee:

Ellen Bass  
Co-Chair  
David J. Hayes  
Co-Chair  
John T. Boese  
Gerald Greiman  
Richard Hoffman  
Claudia Ribet  
Arthur B. Spitzer



Committees:

Arbitration  
Court Rules  
Legal Representation for the  
Needy Civil Litigants  
Legislation

May 1986

The Honorable Strom Thurmond  
Chairman  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing on behalf of Division IV of the District of Columbia Bar (the Division on Courts, Lawyers, and the Administration of Justice) to urge the Judiciary Committee to take prompt favorable action on H.R. 3550, the Rules Enabling Act of 1985.<sup>1/</sup>

This bill, which passed the House on a voice vote in December and was endorsed by many representatives of the federal judiciary and the bar, would make several important reforms in the way that Federal Rules of procedure and evidence are promulgated by the Judicial Conference of the United States, as well as the way that rules changes are considered by the various rules committees of the Judicial Conference. Specifically, the bill would:

-- require that the membership of the Judicial Conference's committees on rules of practice and evidence be fully representative of the bench and bar;

-- give the public adequate opportunity to comment on proposed rules and amendments to rules being considered by committees of the Judicial Conference;

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<sup>1/</sup>

STANDARD DISCLAIMER

The views expressed herein represent only those of Division IV: Courts, Lawyers, and the Administration of Justice of the D.C. Bar and not those of the D.C. Bar or its Board of Governors.

Divisions Infoline—331-4364

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-- require meetings of these Judicial Conference committees to be open unless a majority of the members vote to close all or part of a session;

-- clarify the limitations on the Supreme Court's rulemaking powers;

-- set forth procedures by which courts can adopt local rules, as well as procedures for reviewing those rules to assure they are consistent with each other and with federal statutes and rules, as well as Supreme Court decisions; and

-- repeal the one-House veto provision currently in the Rules Enabling Act for the Federal Rules of Evidence, while extending to seven months the period between issuance of a rule and the effective date, thus giving Congress more time to consider specific rules changes.

Our Division supports this legislation and the two major goals that underlie it. First, by making the rules committees of the Judicial Conference more representative of the bench and bar, and by opening their proceedings to greater public participation, the bill is likely to improve the quality of rules that are ultimately adopted. For example, following the 1983 amendment of Rule 4 of the Federal Rules of Civil Procedure (which covers service of process), there were numerous questions among practitioners as to how the Rule would apply in particular circumstances. Had there been an opportunity for those concerns to be addressed before the Rule was amended, some of those problems might have been anticipated and corrected. Similarly, by expanding the period of time between issuance of a rule and its effective date, the bill provides Congress with more of an opportunity to examine particular amendments to see if they are warranted or should be altered.

Second, we support the bill's efforts to improve the procedures by which local rules are adopted by particular courts and are reviewed to see if they are consistent with national law. It is now common for many lawyers to practice in more than their local district, and thus they need to learn exactly what the requirements are in those districts where they do not often practice. The situation arises in a number of metropolitan areas which straddle a state line, and the need to practice in several districts is particularly acute in our area, where lawyers may need to represent clients in federal courts in the District, Maryland and Virginia.

Unfortunately, local practices are not always spelled out in the local rules, even though they may be known to the local bar, which disadvantages non-local attorneys as well as local lawyers who do not frequently litigate in federal court. Thus, there is

a need for legislation to require that local practices be fully described to the public in written rules, that the public be given notice of, and an opportunity to comment on, any proposed rules changes, and that local courts employ an advisory committee to make recommendations about the need for amendments to local rules. In the District of Columbia, both our district court and court of appeals have such advisory committees and procedures for informing the bar of any proposed rules changes, as well as soliciting public comments. We believe that the system has generally worked well.

Along the same line, H.R. 3550 establishes a mechanism whereby the Judicial Conference would be able to invalidate any local rule which is inconsistent with national law or rules, a power which was recently given to the Judicial Council for each Circuit when Rule 83 of the Federal Rules of Civil Procedure was amended last year. While there can be considerable utility in allowing particular federal courts to experiment with reforms which improve the administration of justice, and while it is important to maintain that flexibility to experiment, there are many local rules on the books which flatly contradict the Federal Rules, a statute, or applicable Supreme Court decision, and there needs to be an effective means by which those rules can be brought into harmony with governing law.

Division IV believes that H.R. 3550 would address a number of the problems that now exist with respect to the way that rules of practice in the federal courts are adopted and amended, and we respectfully urge the Committee to schedule hearings on this bill in the near future. We would also be willing to provide more detailed testimony on this legislation at any such hearings.

Thank you for your consideration of these views.

Very truly yours,

Randell Hunt Norton

Thomas C. Papson  
Co-chairs, Rules Committee

Richard B. Nettler  
Chair, Legislation Committee