

MARITIME LAW ASSOCIATION
OF THE UNITED STATES

A TESTIMONIAL DINNER COMPLIMENTARY TO
JUDGE LEARNED HAND

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FEDERAL BENCH, WILL TAKE PLACE ON
WEDNESDAY, JUNE 27, 1934, AT 7.30 P. M.

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August, 1934

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

Report of Committee on Supreme Court Admiralty Rule 49 as Applied in the Fourth Circuit

AMENDMENT OF FOURTH CIRCUIT RULES 14(b) AND 38

To the Maritime Law Association:

Your Committee was appointed by Judge Veeder in May, 1934, to make application to the Circuit Judges of the Fourth Circuit for a change in the matter of preparing transcripts of record on appeal in Admiralty causes with a view of eliminating the practice of reducing testimony to narrative form.

While Supreme Court Admiralty Rule 49 specifies that the testimony as taken shall be included in transcripts of record on appeal, Rule 38 of the Circuit Court of Appeals for the Fourth Circuit provided that:

“The contents of transcripts of record on appeal in equity and admiralty causes and on appeal in bankruptcy causes shall be governed by Rules 75, 76, and 77 of the Rules of Practice for the Courts of Equity of the United States promulgated by the Supreme Court of the United States, November 4, 1912. * * *”

Subdivision (b) of Supreme Court Equity Rule No. 75 reads as follows:

“(b) The evidence to be included in the record shall not be set forth in full, but shall be stated in simple and con-

densed form, all parts not essential to the decision of the questions presented by the appeal being omitted and the testimony of witnesses being stated only in narrative form, save that if either party desires it, and the court or judge so directs, any part of the testimony shall be reproduced in the exact words of the witness. * * *”

Your Committee prepared and filed a written application with the Circuit Court of Appeals for the Fourth Circuit wherein it was prayed that Rule 38 of said Court should be eliminated in so far as transcripts of record on appeal in Admiralty causes were concerned. Notice was given that the application would be called up for hearing and discussion before the conference of Judges of the Fourth Circuit to be held in Asheville, North Carolina, in June, 1934, and on June 8, Mr. Whip appeared and argued the matter before the conference.

On June 29, 1934, the Circuit Court of Appeals for the Fourth Circuit amended their rules as follows:

“ORDER AMENDING RULES

It is ordered by the Court:

1. That Rule 38 be, and it is hereby, amended by striking out the words ‘*and admiralty causes*’ appearing in the first paragraph thereof.

2. That Section 6 of Rule 14 be and it is hereby amended so as to read as follows:

6. The transcript of the record in cases of admiralty and maritime jurisdiction shall include the matters which, by Admiralty Rule 49 of the Supreme Court, are required to be included therein.

a. Counsel shall by stipulation eliminate from the testimony included in the transcript of record on appeal, all testimony not relevant and material to the questions presented, together with all other irrelevant and immaterial matter.

b. Except in so far as it requires condensation and narrative of the testimony Rule 38 of this Court shall be applicable to transcripts of records in Admiralty and Maritime appeals.”

[1983]

And in explanation of the working of the rules as amended, Judge Parker, Senior Circuit Judge for the Fourth Circuit, wrote your Committee as follows:

"I feel sure that the provision requiring the elimination of immaterial matter will not cause any great difficulty. In the trial court much immaterial testimony is taken by deposition, and otherwise, which has no bearing on the questions presented on appeal. Surely counsel will have no difficulty in stipulating that this testimony be omitted. If they are unable to agree that particular testimony is irrelevant or immaterial, it will of course come up even though one side may regard it as immaterial; but an honest effort on the part of counsel to eliminate immaterial matter will save much money in the way of printing expense and will relieve the court of much useless labor.

It is not intended by the rule that the trial judge pass upon the question as to what testimony shall be eliminated. That is a matter for stipulation of counsel. The certificate of the judge is for the purpose of authenticating the testimony as having been taken in the trial court. When presenting the evidence for his approval, counsel will already have eliminated therefrom such immaterial testimony as they have agreed to eliminate by stipulation."

Your Committee feels that the Circuit Court's amendments to the rules as above set forth with Judge Parker's explanation of the working of the rules as amended, is a satisfactory termination of the matter.

H. H. RUMBLE,
ROBERT W. WILLIAMS,
GEORGE W. P. WHIP, *Chairman.*

August 20, 1934.