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THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

**REPORT OF COMMITTEE ON SUPREME COURT  
ADMIRALTY RULES**

In December, 1959, the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States (headed by Judge Maris) requested its Advisory Committee on Admiralty Rules (headed by Judge Walter E. Pope) to conduct a preliminary study as to the advisability of integrating civil and admiralty rules.

In August, 1960, the Reporter to the Advisory Committee on Admiralty Rules submitted to it preliminary surveys concerning the feasibility and desirability of such unification. Thereupon Judge Pope wrote William G. Symmers, Esq., then Chairman of this Association's Committee on Admiralty Rules, requesting comment, advice and assistance. Mr. Symmers replied, in essence, that proponents of such integration should bear the burden of demonstrating its need. Judge Pope in reply cited the feeling of "most" judges that it was desirable.

Six years earlier, in 1953, a Committee of this Association had given extended consideration to the Admiralty Rules. Its report (Doc. #375), which was approved by the Association, proposed revision of two existing Admiralty Rules; elimination of 17; and adoption either *in haec verba* or with conforming amendments of over 60 of the Rules of Civil Procedure.

It was against this background that this Committee commenced its work. In the light of the Association's approval of Doc. #375, it was obvious that mere approval of the status quo was futile. Your Committee therefore agreed that its task was to determine what features of admiralty practice were truly essential, and to consider concrete proposals for unification in the light of that determination.

After careful consideration, your Committee reached the conclusion that the essential features of admiralty practice included the following:

In rem proceedings  
Foreign attachment  
Possessory and petitory suits  
Venue  
Depositions de bene esse  
Non-jury trials  
Admiralty concept of real party in interest  
Limitation of liability  
Admiralty concept of impleader  
Separation of issue of amount of damages from merits  
Anticipatory libels

Judge Pope had offered to make available to the Committee, for its comments, all proposals for unification. In May, 1961, the first rough draft of a set of unified rules was prepared for the Advisory Committee, and circulated to your Committee. After careful consideration, your Committee prepared and filed with the Advisory Committee, a detailed critique of this draft, some 52 pages long. It followed this up with a supplemental memorandum of 38 pages dealing with specific provisions of proposed rules; and with the feasibility of unification. It expressed its overwhelming opposition to unification.

The first draft of a set of unified rules permitted plaintiff to invoke *both* the civil jurisdiction based on diversity and the admiralty jurisdiction. Your Committee filed with the Advisory Committee a memorandum opposing it as completely unworkable.

Thereafter a second draft of a set of unified rules was prepared by the Reporter, submitted to the Advisory Committee, and circulated to your Committee. Time did not permit consideration of this proposal by the full Committee prior to the next scheduled meeting of the Advisory Committee; but a sub-committee filed with the Advisory Committee in June, 1962, an 18-page memorandum pointing out practical aspects in which the second proposal fell short of remedying the defects of the first.

As your Committee has subsequently learned, the Advisory Committee devoted nearly a year to the study of the *feasibility* of unification. Its conclusion was affirmative. It then devoted most of another year to considering whether unification was *desirable*. Again its conclusion was affirmative; and in 1962 it so reported to the Standing Committee, which approved its conclusions, and recommended them to the Judicial Conference.

At the meeting of the Judicial Conference at San Francisco in September, 1962, the Judicial Conference formally approved the recommendation of the Standing Committee.

The House of Delegates of the American Bar Association, in 1962, adopted a resolution favoring unification of Civil and Admiralty Rules, so far as practicable.

Confronted with these determinations, your Committee had to decide what its future course should be. At its meeting on November 1, 1962, after careful and lengthy discussion, your Committee unanimously decided that it could best serve the interests of this Association and of admiralty practice as a whole, not by standing solely on its previous position of general opposition to unification as such, but by careful and detailed discussion of every proposal for unification in the light of the essential requirements of admiralty practice, and by endeavoring by all possible means to amend and modify every proposal to meet those requirements.

In November, 1962, the Reporter proposed to the Advisory Committee a solution to the problem posed by the first draft. It permitted plaintiff, as now, to invoke either the admiralty or the civil jurisdiction, but not both. In December, 1962, a sub-committee met with the Reporter at an all-day session, and discussed the whole unification proposal as modified. It made a report to the full Committee; and in January, 1963, your Committee, by a vote of 14 to 3, with 3 abstentions, submitted to the Advisory Committee a memorandum approving in principle the Reporter's modified proposal for unification. In its memorandum, however, your Committee pointed out certain respects in which it felt that the modified proposal for unification still required amendment in order to fully meet the procedural requirements for vindication of maritime rights.

In May and in August, 1963, further amendments to the unification proposal were submitted to the Advisory Committee. Your Committee studied them, and in September, 1963, submitted to the Advisory Committee a 17-page memorandum again commenting on the amended proposals, and suggesting the need for further amendment in certain respects.

Thereafter, in January, 1964, a sub-committee again met with the Reporter at an all-day session, and discussed such further possible amendments at length.

In addition to voluminous correspondence concerning detailed proposals with the Reporter to the Advisory Committee on Admiralty Rules, the Reporter to the Advisory Committee on Civil Rules, and others, and protracted conferences with many of them, your Committee has filed six lengthy memoranda with the Advisory Committee. As a result, the original unification proposal as it now stands has been substantially modified in important respects, and is now much better adapted to protect important maritime rights.

Your Committee remains of the opinion that a separate set of Rules of Practice in Admiralty for the Courts of the United States is preferable to unification of the Civil and the Admiralty Rules. It agrees, of course, that certain changes in the existing Admiralty Rules are necessary and desirable. It continues to feel as it originally argued to the Advisory Committee, that these can best be accomplished by incorporating by reference, without repetition of language, such of the Civil Rules as are adapted to enforcement of substantial maritime rights, as was recommended in Document #375.

Your Committee's reasons for preferring a separate set of Admiralty Rules include the following:

1. Unification as now proposed will abolish certain unique features of admiralty practice now covered by admiralty rules, which we believe desirable, including personal arrest, verified pleadings, narrative form of pleadings, the broad form of impleader, and possibly interlocutory decrees and interlocutory appeals.

2. It will abolish certain unique features of admiralty practice not presently covered by specific admiralty rules, including the allowance of anticipatory libels, the discretion of the court as to interest and costs, the admiralty concept of the real party in interest, and what remains of the doctrine of trial *de novo*.

3. It will seriously interfere with the traditional plasticity of admiralty practice, which has permitted the courts to shape their practice to new needs as they arose; and will increase the difficulty of amending the rules governing admiralty practice when experience demonstrates the need for amendment.

4. The requirements as to compulsory counterclaims will unduly complicate the issues and lengthen trials.

A majority of your Committee are convinced, however, that unification in some form is inevitable. Their conviction is based, among other things, on the unanimous action of the Advisory Committee on Admiralty Rules (whose thirteen members include eight active and five associate members of this Association) in reporting that unification is both feasible and desirable; the action of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States in approving that report and recommending such unification; the action of the Judicial Conference of the United States in approving that recommendation; and the reported approval of unification by various influential segments of the bar. The concrete proposal for unification embodied in the "Preliminary Draft of Proposed Amendments to Rules of Civil Procedure for the United States District Courts" (March, 1964) must therefore be considered.

Your Committee is not wholly satisfied with the "Preliminary Draft" in its present form. Your Committee believes, however, that in it there have been preserved most of the essential features of admiralty practice; and that by modification and amendment the remaining essential features of that practice can be preserved within its framework.

Your Committee believes, therefore, that the "Preliminary Draft" should not be wholly disapproved; but that, rather, all efforts should be directed to seeing that it is so amended and modified as to preserve those remaining features of admiralty practice which your Committee believes essential.

Your Committee, therefore, recommends that the Association adopt the following resolution:

RESOLVED: (1) That the Maritime Law Association of the United States would prefer continuance of a separate set of Admiralty Rules. It recognizes the need for changes in the existing Admiralty Rules. It favors accomplishing this by incorporating by reference such of the Rules of Civil Procedure as are adapted to the enforcement of substantial maritime rights, along the lines recommended in Document #375.

(2) The reasons for its preference for a separate set of Admiralty Rules may be summarized as follows:

1. Unification as now proposed will abolish certain unique features of admiralty practice now covered by admiralty rules, which we believe desirable, including personal arrest, verified pleadings, narrative form of pleadings, the broad form of impleaded, and possibly interlocutory decrees and interlocutory appeals.

2. It will abolish certain unique features of admiralty practice not presently covered by specific admiralty rules, including the allowance of anticipatory libels, the discretion of the court as to interest and costs, the admiralty concept of the real party in interest, and what remains of the doctrine of trial *de novo*.

3. It will seriously interfere with the traditional plasticity of admiralty practice, which has permitted the courts to shape their practice to new needs as they arose; and will increase the difficulty of amending the rules governing admiralty practice when experience demonstrates the need for amendment.

4. The requirements as to compulsory counter-claims will unduly complicate the issues and lengthen trials.

(3) If, despite the Association's preference for a separate set of Admiralty Rules, the Supreme Court determines to promulgate a set of unified rules, the Association urges that the "Preliminary Draft of Proposed Amendments to Rules of Civil Procedure for the United States District Courts" (March, 1964) be modified or amended in the following respects:

1. The substance of all of present Admiralty Rule 56 (*impleader*) be preserved in its applicability to actions which would now be suits in admiralty.

2. The proposed Rule 17(a) (*real party in interest*) be broadened so as to permit suits by as broad a category of persons as is permitted by the present admiralty practice; and specifically, but not limited to:

a. Suits by vessel owners or masters as bailees of cargo; and

b. Suits by assureds who have been paid by their underwriters for the benefit of their underwriters.

3. A provision be inserted preserving the district court's *discretion in allowing interest and costs* in actions which would now be suits in admiralty.

4. Provision be made for the filing of *anticipatory complaints* in actions which would now be suits in admiralty.

5. The proposed Rule 53(b) be broadened so as not to restrict *references to masters on damages* to "difficult" computations in actions which would now be suits in admiralty.

6. A provision be added requiring that in all instances in which attachment is sought, whether *in rem*, or by foreign attachment, or by state court procedures, the complaint shall propound in distinct paragraphs the various allegations of fact upon which plaintiff relies in support of his suit; and the answer shall be full and explicit and distinct to each separate paragraph and separate allegation of the complaint.

7. A prefatory note to, or an official commentary on, the unified rules be added, making it clear that in cases in which the admiralty jurisdiction is invoked, the uncodified admiralty practice shall remain applicable in instances where the unified rules are silent on a particular point.

Your Committee further recommends that, if unified rules are adopted, a Committee be appointed to receive and consider reports on the workings of the unified rules in practice, to report thereon to this Association, and if so instructed by the Association, to recommend to the Advisory Committee on Admiralty Rules, the Standing Committee on Rules of Practice and Procedure of the Judicial Conference, and the Judicial Conference of the United States, such amendments to the Rules as seem desirable.

Pending adoption, amendment, modification or rejection of the "Preliminary Draft", your Committee recommends that it be continued.

Respectfully submitted,

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ex officio  
JOHN W. R. ZISGEN, Chairman

EDWARD B. HAYES, Esq. and DAN H. HINDS, Esq., members of the Committee do not concur entirely in this report.

NOTE: At a meeting of the Executive Committee held on October 2, 1964 a motion was duly made, at the request of the Chairman of the Committee of Supreme Court Admiralty Rules, seconded and unanimously passed to waive that portion of the Association's by-law No. 15 (see Doc. 472) requiring a committee report, not unanimous, to be submitted to the Secretary at least forty days prior to the date of the meeting at which it is to be considered and providing that no minority report shall be considered unless submitted to the Secretary at least thirty days prior to the date of the meeting at which it is to be considered.

JAMES J. HIGGINS,  
Secretary.