

Div. of Records

JFC-CT

1. The ground can be covered in either of two ways:

November 23, 1938

a. By stating the general rule on each procedural topic and covering exceptions from the general rule or special procedure by separate provisions, citing only the authority for such departures from the general rule, or

MEMORANDUM TO MR. McFARLAND

b. By stating the general rule of procedure or each topic, the states which follow it, citing in footnotes the statutes or other authority in each state for the rule, and by separate provisions to the rule in certain states and citing in footnotes the authority for such exceptions.

**Re: Research Unit,
Title Section.**

a. The first ground would be simplest and cover the manual less cumbersome.

A. The functions of the Research Unit in the Title Section should include the investigation of all applicable questions of law, substantive and procedural, arising in the Title Section, except condemnation questions.

1. Applicable procedural law is to be collected and digested automatically, but questions of substantive law, excepting insofar as they are so closely inter-related with procedural questions as not to be separable, will be investigated only when they arise and are submitted to the Unit for investigation.

F.W.B.

2. A nice discrimination will be required in some cases to distinguish between substantive law and procedural law.

3. A topical digest for the classification and filing of material on both substantive and procedural questions will be necessary sooner or later. Separate digests on substantive and on procedural law do not seem to me either desirable or practicable.

B. The proposed manual limited to procedure will necessarily cover all applicable provisions of Federal law and applicable provisions of the laws of each state on procedure.

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1. The ground can be covered in either of two ways:

a. By stating the general rule on each procedural topic and covering deviations from the general rule or unusual procedure in specific states in footnotes, citing only the authority for such departures from the general rule, or

b. By stating the general rule of procedure on each topic, the states which follow it, citing in footnotes the statutory or other authority in each state for the rule, and by separately stating exceptions to the rule in certain states and citing in footnotes the authority for such exceptions.

c. The first method would be simplest and make the manual less cumbersome, but, in the absence of references in the footnotes or elsewhere to the statutory or case law, establishing the rule in each state, would require the statement of the general rule to be accepted on faith.

d. A combination of the two methods might be used by stating the general rule and citing the state law for the conclusion that it is applicable in states where the matter may be questionable, as well as stating deviations from the rule with citations of the laws of states where such deviations are in force, or by including citations or references to laws of each state on all important general points of procedure as well as on all deviations from rules generally in force. But it is questionable whether the use of either of these two combinations is desirable.

Respectfully,

Joseph Connolly

A manual of the Federal Rules of Civil Procedure and
Filing of Material in the Administrative and Procedural
Courts will be prepared in 1960 or later. Separate
on administrative and procedural law do not seem to be
desirable or practicable.

The proposed manual limited to procedure will cover
applicable provisions of Federal Rules
applicable provisions of the laws of each state or procedure.