

Principles of Rulemaking

(1) Accessibility

To make the judicial system more accessible to unrepresented individuals who often find our rules and processes confusing and daunting, the committee will consider the impact of a proposed rule on the unrepresented party and whether there is a simpler process or clearer language that can be recommended.

(2) Advisory Notes

Wherever possible, advisory notes that explain the intent of the rule should be eliminated in favor of clear rule language. Advisory notes may be used to provide historical context, to provide an example that explains the application of the rule, or to explain the intent of the rule to the extent that the rule may not be further clarified without sacrificing its nuance or purpose. The advisory notes should be accurate based on existing case law.

(3) Certainty

The rules should provide a predictable process.

(4) Clarity

The rules should be written using plain language principles, adopting the federal style amendments when appropriate.

(5) Comprehensiveness

The rules should provide complete answers to questions about procedures.

(6) Consistency

The rules should be internally consistent. There is value to state rules that conform to the federal rules. Lawyers practicing in both courts benefit from a uniform procedure. The state courts can rely on a large body of federal caselaw. The state rules should establish procedures different from the federal rule only when there is a sound reason for doing so.

(7) Improvement

An amendment should solve an identifiable problem.

(8) Input

Before the 45-day comment period, the committee should try to obtain comments and suggestions from lawyers and judges who might be particularly affected by an amendment. The committee will consider all comments.

(9) Priority

The committee will assign a priority to each request to amend the rules. Requests from the Legislature, Supreme Court and Board of District Court Judges will take priority over other priorities. Within a priority, the committee will consider the requests in the order in which they are made, unless combining requests will better address the matter.

(10) Simplicity

The process established by the rule should reach its outcome as simply as possible while allowing every party an equitable opportunity to investigate and present its case. Exceptions and options should be limited and clearly stated.

(11) Stability

The rules should not be amended unless there is sufficient need.

Revised December 19, 2018