Colorado's Answer to the Local Rules Problem

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*Colorado Supreme Court*

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A large majority of the states and federal courts have adopted a system of procedural rules designed to promote justice through the "speedy, and inexpensive determination of every action." Unfortunately, the goals of the judicial system are still being undercut by an over abundance of trivial and often contradictory local procedural rules promulgated by individual courts. State and federal courts have the authority to regulate procedures for the practice of law within their respective jurisdictions. Instead of using their authority to meet truly local needs and fill the interstices within the Federal Rules of Civil Procedure or the state rules of procedure, the courts have insisted on developing detailed codes of local practice that undermine the flexibility needed for individual cases and burden the practicing bar with unnecessary standards.

The proliferation of local rules has adversely affected the delivery of justice in almost every jurisdiction. Unnecessary and irrelevant local rules have developed until they are more burdensome than helpful to the practice of law. The hundreds of local rules that are in effect in any one district court are a sometimes bewildering and enigmatic collection of requirements designed to meet the supposed needs of the individual judge.

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3. See infra note 8 and accompanying text.

rules contribute to the burgeoning expense of litigating a claim by causing delay, wasting judicial resources, burdening multi-district law practices, and unfairly surprising clients and attorneys who find themselves in unfamiliar jurisdictions.

The problems caused by local rules have led to numerous suggestions for reform. It is widely recognized that local rules should work toward streamlining the adjudicatory process, not toward erecting barriers that skillful lawyers must circumvent at their peril. The time has come to use local rules in a manner that facilitates the just resolution of disputes instead of contributing to "trial by ambush."

This Article examines the checkered history of local rules in the state and federal courts. Part I sketches the development of local rule-making power. Part II focuses on the abuses that have resulted from a non-uniform procedural system. It concludes that the most serious consequence of that abuse — an increase in court costs and delay — has not been addressed adequately by the courts. Part III explores ways in which the local rules problem can be brought under control. Although a number of proposals are discussed, the purpose of this section is to present the approach recently undertaken by the state of Colorado as a model for other states seeking to ease the burden of local rules on the practicing bar. It is hoped that a comparison of the Colorado plan with other approaches will provide insight for those legislators and judges around the country interested in implementing local rules reform.

I. THE DEVELOPMENT OF LOCAL RULES

The problems resulting from inconsistent and unnecessary local rules


6. Professors Wright and Miller are especially critical of local rules in their treatise on civil procedure:

The flood of local rules on important and controversial subjects has come from judges in a district who have sincerely thought that the rules they were adopting would promote the just, speedy, and inexpensive determination of actions. Unfortunately many of the products of this well-intentioned effort are either invalid on their face or intrude unwisely into areas that should be dealt with on a national basis by rules made by the Supreme Court. The great goals of a simple, flexible, and uniform procedure in federal courts throughout the nation will be seriously compromised unless an effective check is put on the power to make local rules.

12 C. Wright & A. Miller, Federal Practice and Procedure § 3152, at 223 (1973) [hereinafter cited as Wright & Miller].

7. See infra text accompanying note 38.
are not of recent vintage. The concept of federalism, which anchors the political institutions of this nation, has contributed substantially to the notion that decentralized and independent rule making are a *sine qua non* of the judicial system.

The Judiciary Act of 1789 was the original legislation that charted the course for the federal judiciary and directed the federal courts to follow the substantive laws and procedural rules of the states in which they sat. The state courts, of course, operate under limitations similar to those found in the federal courts; state constitutions or statutes, however, may grant local courts authority to promulgate their own substantive or procedural rules.

Federal court reliance on state procedural rules was bolstered by the Conformity Act of June 1, 1872, which directed the federal courts to follow state procedural rules and withdrew the rarely used rule-making power of the federal courts. Nevertheless, as the federal courts became increasingly popular forums for civil litigation the great diversity of federal procedural rules began to be viewed as an impediment to simple and efficient dispute resolution. A national and uniform system of rules appeared to be the best solution. Thus, the United States

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8. The Judiciary Act of 1789 stated "[t]hat the laws of the several states, except where the constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States where they apply." Act of Sept. 24, 1789, ch. 20, § 34, 1 Stat. 73, 92 (1789), (current version at 28 U.S.C. § 1652 (1976)). Congress further directed the federal courts to follow state procedural law. Act of Sept. 29, 1789, ch. 21, § 2, 1 Stat. 93, 93 (1789); Act of March 2, 1793, ch. 22, § 7, 1 Stat. 333, 335 (1793). Congress provided in the Act of 1793, however, that the federal courts may prescribe rules for the conduct of its business consistent with other statutes. This rule-making power was probably strictly limited to procedural matters, but it does provide precedent for later expansions of the rule-making power. The rule-making power was held constitutional in Wayman v. Southard, 23 U.S. (10 Wheat.) 1 (1825) and in Cooke v. Avery, 147 U.S. 375 (1893). See generally P. Connolly, E. Holleman & M. Kuhlman, Judicial Controls and the Civil Litigative Process: Discovery 5-18 (Federal Judicial Center District Court Study Series 1978); Weinstein, supra note 5, at 64-75; Note, supra note 5, at 1253.

9. In Colorado, for example, the state constitution includes a general grant of rule-making power: "The supreme court shall make and promulgate rules governing the administration of all courts and shall make and promulgate rules governing practice and procedure in civil and criminal cases . . . ." Colo. Const. art. VI, § 21. See also People v. McKenna, 199 Colo. 452, 611 P. 2d 574 (1980); Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).


12. The impetus for a comprehensive set of federal procedural rules stemmed from the unmanageability of the existing federal rules, and an attitude among legal scholars that national, uniform rules should be developed for every area of law. See generally Clark & Moore, *A New Federal Civil Procedure*, 44 Yale L.J. 387 (1935).
Supreme Court, responding to legislation that empowered the Court to promulgate procedural rules,\(^\text{13}\) approved the Federal Rules of Civil Procedure in 1938.\(^\text{14}\)

The new federal rules were a means by which the federal courts could become more accessible to both litigants and lawyers. Local judicial idiosyncrasies, it was thought, would not influence the manner in which federal law was litigated and interpreted around the country.\(^\text{15}\) Additionally, the Supreme Court would be able to monitor the uniformity of the federal rules as cases interpreting the rules worked their way through the appellate system.

Many states recognized the superiority of a uniform procedural system. After the federal rules were adopted in 1938, state after state incorporated language identical to the federal rules in state rules of civil procedure.\(^\text{16}\) For the first time since the years immediately following the American Revolution, the various state and federal courts had roughly equivalent rules of civil procedure.\(^\text{17}\)

The uniformity envisioned by the federal rules was dependent upon Rule 83, a seemingly insignificant rule authorizing federal courts to promulgate local rules. Rule 83 provides that:

> Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts

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\(^{14}\) 308 U.S. 645-766 (1938). In 1935, Chief Justice Hughes issued an order appointing an advisory committee to study the procedural needs of the federal system and to draft a set of rules. 295 U.S. 774 (1935). The proposed rules were not actually adopted until 1938.

\(^{15}\) See supra note 6.

\(^{16}\) In Colorado, for example, the language of the federal rules was incorporated into the Colorado Rules of Civil Procedure with minor alterations. Compare Colo. R. Civ. P. 1-83 with Fed. R. Civ. P. 1-83. Another example is Mississippi, which, in 1981, adopted new rules of civil procedure patterned after the federal rules. The new rules were "designed in large part to get away from some of the old procedural 'booby traps' which common law pleaders could set to prevent unsophisticated litigants from ever having their day in court." Harbour, An Interview With Arlene Coyle on the New Mississippi Rules of Civil Procedure, The Miss. Jurist, Sept. 1981, at 6. At last count, 34 states have adopted language similar to the federal rules. See W. Barron, A. Holtzoff & C. Wright, Federal Practice and Procedure § 9 (1960 & Supp. 1975).

\(^{17}\) When the federal courts were first established, they followed similar state procedures that had been inherited from uniform rules adopted during colonial days. As state courts became better established, however, differing local and state rules were gradually adopted. Moreover, new states entering the Union were unfamiliar with the colonial system and developed rules unrelated to those employed in the original states. See Weinstein, supra note 5, at 57-60.
may regulate their practice in any manner not inconsistent with these rules.  

Since its passage, however, federal courts have used the grant of rule-making power in Rule 83 to develop a system of local rules that has been likened to a "procedural Tower of Babel." Likewise, state courts have proceeded under similar rule-making powers to develop local rules that are often even more byzantine than those of the federal system.

Rule 83 can be read to grant two distinct powers. The first sentence of the Rule can be interpreted as a grant of rule-making power, and the second sentence of the Rule as a grant of decision-making power. The rule-making power authorizes the courts to develop a system of rules and regulations that will be applied to all causes of action initiated in a particular court. Thus, for example, a federal district court in Colorado may pass a rule requiring that all prospective jurors be examined by the court based on questions submitted by the trial court.

The decision-making power authorizes the courts to develop procedures that meet the needs of a particular case before the court. These procedures are generally unique to that case. Thus, for example, in an especially complex antitrust case, a district court judge may develop discovery rules to help expedite that particular case. These special procedures would not, however, be appropriate for a routine contract dispute with limited discovery needs.

Because of the varying scope and effectiveness of Rule 83 powers, it was anticipated that the rule-making power would be used infrequently and in areas not covered by the Federal Rules. Indeed, much greater reliance was "placed on the decision-making power; escape from difficult, case-by-case adjudication [was seen as] contrary to the spirit and purposes of the Federal Rules." Unfortunately, the federal and state courts emphasized their rule-making power at the expense of their decision-making power. The result has been a bureaucracy of constantly fluctuating local rules that are only peripherally relevant to many causes of action, and not rationally consistent with each other.

18. FED. R. CIV. P. 83. The federal courts also have the authority to establish rules by statute: "The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court." 28 U.S.C. § 2071 (1976). Section 2072 authorizes the United States Supreme Court to "prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions . . . ."


20. See Note, supra note 5, at 1252-53.


22. One commentator contends that the local rules power,
The existing maze of local rules was not anticipated by the drafters of Rule 83. The rule-making power was to be "exercised with a view to the advancement of justice and the prevention of delays"23 and local rules were to "conform to the policies underlying the Rules in general — including simplicity, uniformity, and flexibility."24

The system envisioned by the framers of Rule 83 had its share of critics. A number of scholars urged judges to develop a complex system of rules that would enable lawyers to plan their case approach in advance. In particular, it was believed that detailed pretrial procedures would have a salutary effect on the administration of an increasing number of cases.25 Moreover, the critics believed that local rules should be used to fill substantial gaps left by the federal rules in areas such as discovery and pretrial procedure.26 Nevertheless, local rules soon escaped from the narrow, "gap-filling" role originally envisioned. In-

23. Note, supra note 5, at 1254. The author also concludes that:
the majority of district courts have, in promulgating rules, ignored the principles of simplicity . . . and uniformity which guided the formulation of the Federal Rules. At times, district courts have used their power under Rule 83 to negate specific requirements of the Federal Rules; more often, simply to escape from the arduous but essential task of case-by-case analysis.

Id. at 1251-52.

24. Id. at 1254. See also FED. R. CIV. P. 1. One commentator who has examined the legislative history of Rule 83 concludes that:

The district courts were granted a limited competence: they could promulgate local rules in areas where there were gaps left for that purpose because of recognized local needs, but not where the Federal Rules were not arguably adequate. Most issues arising under or not covered by the Federal Rules were to be dealt with under the decision-making power by the individual judge.

The background of Rule 83, and the views of its authors and those first charged with its evaluation, confirm that the rule-making power granted in its first sentence was meant to serve the purposes of a new system of procedure, a system in which detail was to be kept at a minimum and responsiveness to the peculiar problems of particular cases at a maximum. Superfluous rule-making was to be avoided as inimical to these purposes, as well as to the new uniformity of federal practice; the decision-making power was to be relied on heavily, as fundamental to the wise and flexible administration of justice envisioned by the draftsmen of the Federal Rules.

Note, supra note 5, at 1256, 1258.

25. Though judges have different opinions on what pretrial procedures should include, the judges and scholars who studied the issue after the federal rules were adopted almost uniformly recommended that more complex pretrial rules be embodied in local rules. See Note, Pretrial Conference: A Critical Examination of Local Rules Adopted by Federal District Courts, 64 VA. L. REV. 467, 472-74 (1978). See generally JUDICIAL CONFERENCE OF THE UNITED STATES, HANDBOOK FOR EFFECTIVE PRETRIAL PROCEDURE, 37 F.R.D. 255 (1964).

II. LOCAL RULES ABUSE AND THE JUDICIAL RESPONSE

A. The Need for Reform

The verdict of the experts on local rules is nearly unanimous — the situation has become unmanageable. Professor Wright has termed the current situation "for the most part an unmitigated disaster." Another claims that local rules have become an "albatross," not a useful tool. The Chief Judge of the Northern District of California once said of the local rules of his court: "It really [is] a consumer fraud to sell them to the lawyers." Perhaps the most unwitting condemnation of local rules was purportedly uttered by a chief judge who said, "We don't have local rules in this court. Our lawyers know what we expect of them." It is not surprising that this situation has spawned increasing calls for local rules reform from jurisdictions across the country.

Drastically increased costs and delays are two of the most serious problems confronting the legal profession. Reform of local rules in state and federal courts may reduce a number of unnecessary procedures that add significant time and expense to every lawsuit. There is little doubt that each additional unneeded local rule incrementally increases the costs to litigants, while simultaneously increasing the likelihood that counsel will be impaled unfairly on an obscure rule.

The primary reason for reforming local rules is to reduce costs. There are a number of ways in which local rules add to the expense of a lawsuit. To begin with, local rules can become a "series of traps" for counsel who are unaware of rules that often have no rational basis. Local rules are sometimes not published, or, if published, are out-of-date due to frequent unannounced revisions. Counsel may, therefore, have no fair opportunity to learn the local courts' requirements. Moreover, it is not uncommon for courts within the same jurisdiction to ignore local rules, especially if the rules reflect the consensus of judges who have since departed from the court. New judges with different philosophies may refuse to be constrained by obsolescent rules.

29. Kahn, supra note 4, at 34.
31. See Woodham v. American Cystoscope Co., 335 F.2d 551, 552 (5th Cir. 1964). See also infra note 49.
Thus, published local rules are no guarantee that a lawsuit will proceed as planned.\textsuperscript{32} Those practices of judges that conflict with duly promulgated rules are illegal if they do not meet the requirements of Rule 83.\textsuperscript{33} Practically, however, a lawyer must satisfy the demands of the trial judge rather than risk prejudicing his client’s case. It is bad strategy to anger a judge and hope to correct the injustice on appeal. Furthermore, lawyers unfamiliar with the rules of a particular jurisdiction may not be able to solve their problem by hiring local counsel who would presumably have greater knowledge of the local rules. The hazards of non-publication and unilateral suspension of the rules may also bedevil local counsel. In short, the uncertainty that confronts both the foreign and the local lawyer unfamiliar with local rules creates the potential for costs that many clients could never have anticipated.\textsuperscript{34}

Other costs arising out of local rules are more obvious. A court may have a firm rule governing the format of briefs and other trial documents. If a judge rigidly enforces the rules a lawyer may find that an entire draft must be retyped so that it conforms to proper margins, captions, or structure.\textsuperscript{35} Most trial lawyers have faced precisely this situation; having traveled to a new city to file a document, they quick-

\begin{itemize}
\item \textsuperscript{32} Local rules are amended often — indeed, with such frequency that even the particular examples discussed in this article, which were in effect in the spring of 1979, may be outdated by the time this article is published [Spring 1980]. Even if it is possible to obtain a current version of the local rules, there is no guarantee that they will be followed in all courts in that jurisdiction.\textsuperscript{Kahn, supra note 4, at 34.}

\item \textsuperscript{33} Local rules have the force of law if they are validly promulgated. Link v. Wabash R.R., 291 F.2d 542 (7th Cir. 1961), \textit{aff'd}, 370 U.S. 626 (1962). Rules that are invalidly promulgated may be disregarded. Minor v. Atlass, 363 U.S. 641 (1960); Johnson v. Manhattan Ry., 289 U.S. 479 (1933). Local rules that are inconsistent with the federal rules, or an act of Congress, or the Constitution, are also invalid. McCargo v. Hedrick, 545 F.2d 393 (4th Cir. 1976); Zarate v. Younglove, 86 F.R.D. 80 (D. Cal. 1980). Some judges unilaterally suspend local rules that they dislike; this practice, however, may violate Rule 83. See, \textit{e.g.}, \textit{In re Sutter}, 543 F.2d 1030 (2d Cir. 1976); Woods Constr. Co. v. Atlas Chem. Indus., 337 F.2d 888 (10th Cir. 1964); Wirtz v. Hooper-Holmes Bureau, Inc., 327 F.2d 939 (5th Cir. 1964).

\item In the Colorado federal district court, for example, each of the eight judges had a series of procedures peculiar to his chambers for each stage of trial. There was no published document setting forth these rules. Thus, only a lawyer with an extensive federal practice could expect to have sufficient knowledge of the court rules to be adequately prepared for trial. All other lawyers would have to learn the local rules by trial and error.

\item More serious than requiring drafts to be retyped are local rules that require local counsel to "meaningfully and substantially participate in the preparation and trial of" federal court suits. See D. Colo. R. 1(b). This rule can work to deter access of parties to the federal courts. \textit{But see} Lefton v. City of Hattiesburg, 333 F.2d 280 (5th Cir. 1964). In \textit{Lefton} an Alabama federal district court attempted to use a local rule to exclude out-of-state counsel from civil rights cases on the theory that only local counsel would be more sensitive to the social implications of such cases. \textit{See generally} Flanders, \textit{supra} note 2, at 252-55.
\end{itemize}
ly discover that their most pressing concern is to find an all-night secretarial service familiar with the local rules. The increased costs in terms of secretarial, clerk, lawyer, and travel time can be substantial.

The second major reason for local rules reform is directly related to the first: delay. Every delay in a lawsuit increases its cost. The time spent researching the procedural rules of the local courts and revising strategy to meet judicial peculiarities of a local rule can involve a significant amount of work. Even if a lawyer is familiar with the local rules, not all problems are resolved. A court with rigid rules regarding discovery or pretrial procedures will force a lawyer to waste precious time arguing motions that ask for a special exemption from the rules in a particular case. Furthermore, the wasted motions will clog already overburdened court dockets as judges spend extra time hearing pleas for exemptions from local rules.

The obvious tangible costs described above do not include the sizable intangible costs of arbitrary local rules. The entire judicial system is the loser when litigants and lawyers conclude that their cause has been torpedoed by the unjust application of an unnecessary rule. Procedural uniformity and fairness has always been a major theoretical underpinning of American jurisprudence. Trial by ambush inevitably results in a loss of confidence in the judicial system that can ill be afforded at a time when the popular perception and approval of the legal profession is so unfavorable.

The problems in cost, delay, and injustice are exacerbated by the manner in which local rules are adopted. Local rules are often the result of a secret, undemocratic process with little or no input from the bar. The product may be inconsistent with the state or federal rules of civil procedure or existing local rules. If obsolete local rules are not repealed, the lawyer cannot be sure that they will not be invoked by a judge in the future. Lawyers who transgress obsolete or illegal rules may find it awkward or difficult to challenge them on appeal.

Although challenges to local rules are occurring with increasing frequency, institutional constraints limit appeals based on local rules.

36. Many districts use local rules to limit the number of interrogatories a party may serve upon another party under Fed. R. Civ. P. 33. See, e.g., S.D. Cal. R. 230-1(25); N.D. Ill. R. 9(g)(2). This rule unnecessarily creates an inflexible restriction for all cases when it would be more appropriate for a court to control discovery on a case-by-case basis.

37. See supra text accompanying notes 21-24.

38. See Rodgers v. United States Steel Corp., 508 F.2d 152 (3d Cir.) (holding that a local rule prohibiting communication with absent class members without prior court approval was an improper exercise of rule-making power), cert. denied, 423 U.S. 832 (1975). See also Note, Recent Cases, 88 Harv. L. Rev. 1911 (1975).

39. See Conference, supra note 4, at 497 (remarks of A. Miller).

40. See Kahn, supra note 4, at 35.
One commentator has offered three reasons for the paucity of such challenges. First, most local rules violations are minor and the sanctions imposed are not severe enough to warrant an expensive or time consuming appeal. Second, many judges simply ignore the violation. Moreover, if the conduct is sufficiently severe or embarrassing to warrant a judicial sanction, the lawyer may elect not to appeal to avoid professional embarrassment. Lastly, it is difficult to win appeals challenging the arbitrary application of a local rule that has a rational purpose, even though that purpose may be unnecessary.

Finally, local rules reform must recapture that aspect of a national, uniform system of procedural rules which provides a body of judicial interpretations of the rules with precedential effect. Experience with the interpretation of the rules of civil procedure can be useful when the wording of the rule is essentially the same. Precedents are lost when local rules add a gloss that causes the rules to lose their similarity. The concept that the rules should build on each other like "one common law" cannot be maintained when local rules are allowed to proliferate.

B. Judicial Responses to Local Rules Abuses

The failure of the judicial system to respond comprehensively to the local rules problem has forced courts to ameliorate harsh applications of local rules through the appellate process. On the federal level, a number of cases have limited the effect of individual local rules, although most rules have been upheld as proper expressions of the federal district court's rule-making power.

One reaction to the heavy-handed application of local rules is found in *McCargo v. Hedrick*, where a federal district court judge dismissed a cause of action for failure to prosecute. The local rule required a complicated series of pretrial maneuvers that counsel failed to satisfactorily execute. The court found the rule so intrusive that it was struck down in its entirety.

41. *Id.* at 35.
42. *Id.* at 36.
43. *Id.*
44. *Id.*
45. *See supra* note 1 and accompanying text.
46. *See supra* note 16.
48. 545 F.2d 393 (4th Cir. 1976).
49. *Id.* See also Bernard v. Gulf Oil Co., 596 F.2d 1249 (5th Cir. 1979), aff'd, 425 U.S. 89 (1981); Identiseal Corp. v. Positive Identification Sys., Inc., 560 F.2d 298 (7th Cir. 1977); J.F. Edwards Constr. Co. v. Anderson Safeway Guard Rail Corp., 542 F.2d 1318 (7th Cir. 1976); Rodgers v. United States Steel Corp., 508 F.2d 152 (3d Cir. 1975), *cert. denied*,
The judicial response in *McCargo*, however, is an exception; generally, local rules have been accepted. The United States Supreme Court has explicitly endorsed the responsibility of local courts to use the rule-making process to alleviate systemic judicial problems. In *Colgrove v. Battin*, for example, the Supreme Court upheld the use of rule-making power for the purpose of varying the number of jurors required in a federal jury. The Court held that six-person juries could be adopted by local rule without violating the seventh amendment. No doubt, the Court, and especially Chief Justice Burger, were influenced by the development of a creative remedy for the problem of crowded dockets. Nevertheless, this use of local rule-making power to implement an important innovation in civil procedure underscores the argument that the rule-making power itself should be overhauled. Indeed, there would have been no better place for bar and citizen input in the local rule-making process than the decision to alter fundamentally the jury system in the federal courts.

Changing the number of jurors is more closely akin to the situation in *Miner v. Atlass* where a local rule authorizing oral depositions in admiralty cases was held invalid by the Supreme Court. The Supreme Court concluded that the local rule-making power should not be used to advance "basic procedural innovations" in the judicial process; such innovations should "be introduced only after mature consideration of informed opinion from all relevant quarters, with all the opportunities for comprehensive and integrated treatment which such consideration affords." Unfortunately, the *Miner* doctrine has not been frequently used to control the scope and content of local rules.

The point is clear: important substantive and procedural rules in the courts are being adopted by local rule. Similar criticism is valid in the state court system. Colorado reformed its local rules procedures because local courts were creating a number of substantive rules with

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50. See supra note 49.


55. *Id.* at 650.


57. A number of other examples could be cited. See, e.g., cases cited *supra* note 49.
no supervision or assistance from members of the bar and appellate courts. 58 Similarly, in Iowa, Mississippi, and Missouri, local rules have been reformed to combat the costs imposed by unnecessary rules and their abusive and arbitrary application. 59

III. REFORMING LOCAL RULES

Though the costs of local rules are many, they are not without some benefit. As one commentator has noted, "[w]e are not wise enough to run all courts from a central location." 60 Subject areas such as bar admission are best suited for resolution by local rules. 61 Reform of the rule-making power should have no effect on these matters of traditional local concern. Local rules also may be useful in allowing one court to experiment with a new system or procedure for court management. 62 As experience is gained, other courts may then adopt or reject the proposed reform. 63 Although this benefit of local rules appeals to the ideals of a federalist system, it ignores the reality that few courts are aware of local rules experiments. A better rule-making process would point out problems with a particular proposal in advance and thus save time and effort otherwise wasted on a poorly conceived rule. A reform worth testing could be placed in the best district and thereafter monitored by rules experts.

The flexibility and diversity expected from local rules need not be lost through reform. The goal, of course, is to preserve the admittedly beneficial aspects of local rules while eliminating the pernicious effects of ill-considered rules which now pervade the judicial system.

A. The Goals of Local Rules Reform

Before examining various proposals for local rules reform, a clear concept of the goals of reform is necessary. First, before a proposal for change is adopted, it should be readily apparent that the proposal creates a strong likelihood of favorably affecting the administration

58. See infra text accompanying notes 101-24.
60. Conference, supra note 4, at 479 (remarks of C. Joiner, Federal District Judge).
61. See infra note 72.
62. See P. Connolly, E. Holleman & M. Kuhlman, supra note 8, at 52 (local discovery rules help fill the void created by the relaxation of national discovery rules); Flanders, supra note 2, at 219 (local rules serve an informational function by providing an empirical basis for changes in procedural rules); Fox, Settlement: Helping the Lawyers to Fulfill Their Responsibility, 53 F.R.D. 129 (1971) (Rule 83 provides for the "active, imaginative administration of cases").
63. See Flanders, supra note 30, at 31.
of justice. Second, the methodology used to promulgate local rules should be as carefully crafted as the substance of the resulting rules. Proposed reforms will have to address both of these aspects of the local rules problem.

1. State and federal differences—Local rules reform is most often suggested for the federal judicial system, although the same problems must be addressed in the state judicial systems. Although there are obvious differences between the state and federal systems, reforms that have been successful at the state level may well be adaptable to the federal level. One difference between the state and federal system is the greater diversity found in the state rules of civil procedure. Many states that adopted the language of the federal rules of procedure kept a number of existing state rules. Other states significantly altered the federal language so that the transition between the old and new procedural rules would not be abrupt and disruptive.

Another significant difference between state and federal courts is the subject matter routinely handled. The limited jurisdiction of the federal courts, despite the broad statutory and constitutional additions of recent years, still has a narrowing effect on the diversity of the docket. State courts of general jurisdiction continue to handle lawsuits that span the legal spectrum. Expansive general jurisdiction means that state courts may need more flexible and more particularized rules to cope with the exigencies of their docket.

These fundamental differences should not obscure the similarities of the two systems. Lawyers are likely to have multi-district practices that require travel between various courts. Lawyers can expect to handle similar types of cases before different courts in a state, just as they can expect to try similar cases in different federal jurisdictions.

Moreover, state trial courts are likely to be as lax as their federal counterparts in publishing new local rules and repealing outdated rules. Furthermore, new judges may ignore old rules because of different judicial philosophies.

State appellate courts are also as likely to be ignorant of the plethora of local rules that shape the case they hear on appeal as federal appellate courts. Indeed, the inability of state appellate courts to supervise the promulgation of local rules is similar to the problem the United States Supreme Court has in supervising the local rules of federal district courts.

64. See generally Weinstein, supra note 5; Flanders, supra note 2.
66. See generally Colo. R. Civ. P.
67. See Harbour, supra note 16 (Mississippi).
68. See generally Bardgett, supra note 59.
69. See generally Conference, supra note 4.
Recognizing these systemic differences between state and federal courts, local rules reform may require different emphases depending on the forum. Nevertheless the systemic similarities illustrate the value of a general model of reform.

2. The fundamental content of state and federal reform—Local rules should not be adopted or amended without the active participation of the bar and the bench. Input by those who must live with the rules is critical to their success and acceptance by the legal profession. Active participation can help identify problems that require a nationwide standard. Some problems may not require a national standard or even a local rule; but other — counterproductive — rules may continue on the books simply because a court is not aware that the rules are causing problems for practitioners.

A process of implementation that is open to the public may also help insure that a proper set of rules is adopted. Open processes inevitably restrain the vigorous proponent of change, especially when a proposal is subject to debate and criticism. It might be appropriate, therefore, to consider a notice and comment period for every new proposed local rule. Additionally, an open process will allow clients of lawyers and others outside of the legal profession to help shape the rules; this is important, for they are the ones that are likely to be most seriously affected by changes in the rules.

Local rules should be readily available to the bar. It is critical that local rules be published, preferably in a central location, so that both in-state and out-of-state practitioners can educate themselves on the rules at a minimum of time and expense.

Moreover, the number of local rules adopted and the aggregate number of rules in existence may be reduced by an open process of review. It is, therefore, important to have an advisory committee of lawyers in charge of monitoring the local rules situation. As one commentator notes: "[M]embers of the bar will generally not respond unless committees of the bar associations have studied the matter . . . . [T]he effort to involve the bar is worthwhile. In addition to valuable suggestions and prevention of inadvertent mistakes . . . involving the bar . . . [means] that lawyers are more likely to accept the changes." Thus, the legal profession should be prepared to cooperate in an active endeavor to reduce unnecessary and costly local rules.

70. Local rule-making committees should be modest and not try to cover every facet of the relationship of lawyers and lawyering in the court, but to cover only those matters that give helpful direction to the lawyers in the conduct of their business, so as to facilitate the preparation and prosecution of their cases without unduly intruding on the court's time.

Conference, supra note 4, at 480-91.

71. WEINSTEIN, supra note 5, at 120, 129-30. "[T]he subject matter of local rule-making continues to expand as local judges exercise their fertile imaginations to deal with perceived problems . . . . Mere publication is probably not enough." Id. at 129.
It is also essential, in addition to reform of the method of local rules promulgation, that local rules have a valid local purpose.\(^2\) Rule 83 was meant to allow flexibility for judges in jurisdictions that have valid local needs. Few lawyers would doubt that federal docket concerns in Colorado may be different than the southern district of New York and that a local rule should reflect that difference. Similarly, a rural Colorado court of general jurisdiction has different needs than the busy Denver District Court. Any local rules reform must acknowledge the continuing needs of local jurisdictions.

**B. Proposals for Reform**

1. **Weinstein’s proposal**— Judge Jack B. Weinstein has presented a highly comprehensive analysis of judicial rule-making procedures.\(^3\) His suggestions for improvements in local rule-making are a valuable first step towards comprehensive reform. Though his primary concern is with the federal system, most of his suggestions are also applicable at the state level.

   First, Judge Weinstein proposes that no local rule be “adopted without publication of the proposal in advance and provision for a public hearing on notice.”\(^4\) Publicity, he contends, will have the effect of opening up the decision-making process to valuable input from concerned individuals and groups. To facilitate participation, the courts should actively seek the advice of others — preferably by organizing local rules advisory committees with representatives from the bench, bar, law schools, and the public.\(^5\)

   Behind Judge Weinstein’s first suggestion is the fear that important substantive decisions that profoundly affect the legal profession are being made privately by judges. On this point, Judge Weinstein approvingly quotes Professors Wright and Miller: “when the [federal] Civil Rules are amended, the process is extremely careful . . . [In contrast, on the local level] judges consult . . . with each other and make local rules on their own. It is decidedly the exception for the bar and

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\(^2\) Some procedural areas should be left to local control and others to national control. See infra notes 120-21 and accompanying text (discussing distinctions Colorado has drawn between local and statewide rules). National control may be appropriate for determining the number of jurors in a jury, how voir dire is conducted, the number of interrogatories permitted, and communication with jurors after a verdict. Local control may be appropriate for procedures to assign cases to judges or divisions, methods to withdraw records from the office of the clerk, the admission of attorneys, and the treatment of continuance motion. See Conference, supra note 4, at 485 (remaks of R. Caballero).

\(^3\) See generally Weinstein, supra note 5.


\(^5\) Id.
the law schools to be given an opportunity to comment . . . ."\textsuperscript{76}

The point, of course, is that the purposes of the Federal Rules of Civil Procedure can be frustrated by haphazard, privately designed local rules whose purpose is to implement the federal rules.\textsuperscript{77}

Second, Judge Weinstein argues that no federal local rules should be effective until they have been reported and approved by a national standing committee.\textsuperscript{78} The goal here is to provide for national control of local rule making so that uniformity is maintained and so that unnecessary rules can be vetoed before their implementation.\textsuperscript{79} Additionally, if local rules are nationally processed, the courts are more likely to be made aware of the need for a national standard.\textsuperscript{80}

Under this proposal, the mechanics of committee approval would be similar to the method now used with Rule 83: unless the rule is disapproved within a set period of time, the rule would become effective.\textsuperscript{81} Further, courts would be able to adopt a rule for up to one year to meet emergencies.\textsuperscript{82}

Third, all proposed local rules are to be published before they can become effective. In addition, public hearings must be held if the rules, as proposed, meet with opposition.\textsuperscript{83} This provision acknowledges the need for public input in proposed rule changes by interested parties.

Finally, Judge Weinstein contends that judges should strive to eliminate particular rules in their courts that vary from the practice of other judges.\textsuperscript{84} Practices within a district should be uniform unless there is a pressing need for a unique local rule.

\textsuperscript{76} Weinstein, supra note 5, at 133 (quoting Wright & Miller, supra note 6, at 220).

\textsuperscript{77} Professors Wright and Miller, see supra note 6, suggest that Rule 83 be amended so that the federal rules can get back to the "great goals of a simple, flexible, and uniform procedure in federal courts throughout the nation;" or, alternatively, that all local rules be subject to approval by a standing committee on rules of practice and procedure before they go into effect. \textit{Id.} at 223.

\textsuperscript{78} A.B.A. J., supra note 74, at 49.

\textsuperscript{79} See Weinstein, supra note 5, at 135-37.

\textsuperscript{80} Id.

\textsuperscript{81} Id.

\textsuperscript{82} Id.

\textsuperscript{83} Id.

\textsuperscript{84} Id. Judge Weinstein also has suggested that the following recommended ABA procedures for establishing guidelines be adopted:

1. The court drafts proposed guidelines.

2. The court makes the proposed guidelines public by distribution to the community and to state and local news media, news media organizations, bar organizations, law enforcement agencies, public defenders' offices, prosecutors' offices, and such other interested persons as may come to the attention of the court.

3. The court solicits written comments and suggestions as to the guidelines to be submitted by a specified date.

4. The court schedules meetings between judges and interested persons for open discussion of the proposed guidelines.

5. The court then determines guidelines to be adopted.
2. **Flanders's proposal**— Administrator Steven Flanders has done the most extensive survey of the current local rules problem. From his research in judicial administration, a number of valuable suggestions for reform have been developed. First, Flanders suggests that courts undertake a continuous and aggressive review of existing local rules. This would alleviate the problem of local rules failing to keep pace with civil rule changes and new judges failing to follow the local rules adopted by their predecessors. Second, local rules should be used primarily for "management and informational purposes." Such matters as methods of utilizing the court clerk, the content of captions, and the structure of briefs work especially well, where the local rules are uniform across the jurisdiction.

Third, Flanders argues that the bar and public should be involved in the rule-making process. For the reasons discussed above, bar and public comment can be "useful in identifying flaws in existing rules and unanticipated burdens or difficulties in proposed rules." Fourth, courts should avoid local rules that limit the scope of the rules of civil procedure. A good example is a local rule that sets a strict numerical limit on interrogatories even though Rule 33 does not specify any limits. Abuse of discovery is best handled on a case-by-case basis using the decision-making power — not by inflexible rules that ignore the needs of individual cases.

Several additional suggestions are made by Flanders. To begin with, the state and federal courts should strive to achieve uniformity with

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6. The guidelines are publicly distributed and published broadly and generally in the community, including distribution to the persons described in paragraph 2, with a notice that they will be adopted absent a written objection to be filed with the court by a specified date.

7. If there are no objections filed, the court adopts the guidelines.

8. If objections to the guidelines or any portion thereof are filed, the court shall follow a procedure by which any persons could be heard and present facts and arguments as to how or whether the guidelines should be specifically modified.

9. After such proceeding, the court adopts final guidelines, stating the reasons for the adoption of the guidelines with specific reference to any guideline which was the object of controversy at the proceeding.

10. Review. It is recommended that some method of appellate review at the behest of interested persons without reference to a given case be afforded . . . .

**WEINSTEIN, supra note 5, at 142-43.**

85. Flanders, supra note 2.

86. Id. at 274-75.

87. Kahn, supra note 4, at 34.

88. Flanders, supra note 2, at 275.

89. Id. at 287.

90. See supra text accompanying note 70.

91. Flanders, supra note 2, at 275.

92. Id.

93. See supra note 36.

94. See supra text accompanying note 21.
local rules whenever possible. 95 State-wide and circuit-wide uniform rules would be desirable. A uniform numbering system could simplify the task. 96 Moreover, national “rules advising committees” should be created to keep track of effective and beneficial local rules and to educate courts in other parts of the country about significant local rules improvements. 97 Additionally, Rule 83 should be amended to help implement the suggested reforms. 98 Mandating new procedures through the rules of civil procedure may be the best way to establish a new attitude toward local rules. Finally, local rules should not be a means by which controversial judicial policy changes are implemented. 99 Changes in the number of jurors needed on a jury, for example, would not be an appropriate subject for a local rule. 100

The two approaches to local rules reform sketched above incorporate most of the suggestions that critics of the rule-making power have raised. These proposed limitations go a long way toward achieving the goal of streamlining the judicial process by eliminating unnecessary procedural obstacles. Yet these proposals are only theoretical; to understand how these reforms might be practically implemented, it will be necessary to take a closer look at a state judicial system where actual reforms have been tried. Colorado provides such an example.

3. Colorado’s solution—The primary difference between the local rules problems in the state courts and in the federal courts is of scale, not of content. 101 The local rules problems that states face are a microcosm of the problems found in the federal system. Differences between the two judicial systems caused by the types of cases commonly litigated should not prevent lessons learned at the state level from being applied to the federal courts.

In 1982, Colorado became one of the first states to revise its local rules. The Colorado Supreme Court, which is charged with supervising and regulating the Colorado judicial system, had been bombarded with numerous complaints over the substance and application of local rules. In response, a subcommittee of the Colorado Supreme Court Civil Rules Committee was appointed to study the extent of the problem and recommend changes in the existing system. It was clear that changes were

95. Flanders, supra note 2, at 275.
96. Id.
97. Id. at 275-76.
98. Id. at 276.
99. Id.
100. See Colgrove v. Battin, 413 U.S. 149 (1973), where that practice was approved. See also supra notes 47-59 and accompanying text.
101. Many areas of the law such as antitrust, securities, and civil rights have state counterparts that are roughly equivalent to federal statutes. See, e.g., COLO. REV. STAT. §§ 6-2-101 to -117 (1973) (unfair trade practices).
necessary. Local rules were proliferating out of control, with the attendant confusion, waste, delay, and expense.¹⁰²

Colorado's demographics were partly to blame. The state has a heavily populated corridor at the eastern foot of the Rocky Mountains. The urban corridor is offset with vast areas of less densely populated rural and mountain areas. Lawyers who traveled to different parts of the state found themselves confronted with a panoply of conflicting local rules and judicial regulations. In the view of the state supreme court, local rules were unnecessarily increasing costs without providing benefits to courts and practitioners.

The Colorado Supreme Court was presented with three proposals for altering state-wide local rules practices.¹⁰³ First, it was suggested that the Colorado Rules of Civil Procedure be individually modified to incorporate details found in local rules throughout the state.¹⁰⁴ That suggestion, however, was unacceptable because it would add unmanageable detail to the existing rules of civil procedure. Furthermore, altering the language of the rules of civil procedure would cause substantial variations from the Federal Rules of Civil Procedure.¹⁰⁵ It was thought that a semblance of reasonable parallelism should be maintained between the federal and state procedural rules so that judges interpreting the rules could rely on judicial and scholarly opinions from other jurisdictions with nearly identical language. Adding local procedural details to each rule of civil procedure would undermine any of the advantages gained from the current system and take the state procedural system back to the pre-federal rules system of code pleading. In addition, it was considered preferable to compile the many local rules in one location rather than modify each existing rule.¹⁰⁶

The second approach considered by the court was to mandate uniform local rules for the lower state trial courts.¹⁰⁷ This approach has been unsuccessfully attempted several times in the past and was not seriously entertained. The earlier attempts had done nothing to prevent courts from amending the suggested uniform local rules as they desired. The uniform system had, therefore, faced revision from almost the instant of adoption. Moreover, there was no state-wide publication of the many local rules; thus, attorneys from foreign jurisdictions had no ready access to the changes.

¹⁰². This abuse of local rules was typified by Pittman v. District Court, 149 Colo. 380, 369 P.2d 85 (1962), where pretrial conference procedures designed to expedite trials were used to hold counsel in contempt of court. The Colorado Supreme Court reversed the lower court action on due process grounds.
¹⁰⁴. Id. at 2507.
¹⁰⁵. Id.
¹⁰⁶. Id.
¹⁰⁷. Id.
The last proposal for reform, which was subsequently adopted by the Colorado Supreme Court, involved state-wide preemption and standardization of existing local rules. Under this plan, the multitude of local rules were to be replaced by state-wide local rules that were uniform in all respects. The existing Rule 83 of the Colorado Rules of Civil Procedure — which was identical to its federal counterpart — was to be repealed and partially readopted in a new rule. The new rule would then be placed in its own chapter at the end of the current rules and left open for future refinement and expansion.

The so-called "practice standards" aspect of this approach was thought to be superior to the other alternatives for a number of reasons. First, the state-wide practice standards would preempt the local rules in all jurisdictions. Those subject areas that were thought important enough to warrant state-wide uniform treatment would repeal existing inconsistent local rules. Second, the content of the new practice standards would be developed and supervised by the state supreme court. The task of repealing or re-drafting unworkable or unneeded standards could then be more easily accomplished. Third, a new, comprehensive rule would avoid the evil of creating inconsistencies with the Federal Rules of Civil Procedure within the existing state procedural rules. Finally, the practice standards would be published as part of the state rules of civil procedure and would be easily available to all practitioners.

The high visibility of the new practice standards was considered beneficial because all affected parties would have an opportunity to become knowledgeable about the new rules. It was also believed that state-wide, uniform rules would be more reasonable and more widely accepted because they would be highly visible and widely used. Not only would practitioners be aware of their procedural responsibilities, but clients would also have easy access to the rules that shape the conduct of lawsuits. Furthermore, it was thought that state-wide practice standards compiled in a separate rule would remain flexible enough to be changed as the bench and bar became more experienced with the uniform rules. It would be an easy task to change existing rules.

108. Id.
110. The committee called its state-wide uniform "local" rules "practice standards" because it wanted to stress that local rules should deal primarily with practice and procedure, and not with substantive topics.
111. See Laugesen, supra note 103, at 2507.
112. Id. at 2508.
113. Id. at 2507.
114. Id.
115. Id. at 2508.
or to add new subject matter in other areas thought important enough to have a state-wide standard.

The committee drafting the proposals was guided by several presumptions. To begin with, it was assumed that a state-wide drafting committee would profit from past experiences with local rules.\textsuperscript{116} Instead of drafting the new rules in a vacuum, existing local rules would be surveyed for novel and workable rules. The new standards would incorporate the best aspects of the existing local rules.\textsuperscript{117} Second, it was assumed that uniform local rules would simplify judicial administration and reduce the amount of time both courts and attorneys had to spend on routine matters.\textsuperscript{118} Third, it was thought that if standards provided enough detail to alleviate confusion, they might avoid the pre-reform evil of subjecting rules to judicial discretion.\textsuperscript{119}

The second part of the new Colorado rule repealed the old Rule 83, although it preserved some of its earlier language. The first section of the rule dealt with "matters which are strictly local."\textsuperscript{120} Because of the new practice standards, strictly local matters were to have a much more limited scope. Only procedural matters of truly local concern were likely to be the subject of a local rule. Presumably, most of the new local rules promulgated after Rule 121 went into effect would reflect both the urban and rural needs of Colorado state courts. Local rules would be adopted by a procedure similar to that found in the old Rule 83. Local rules not inconsistent with the new practice standards would be submitted to the Supreme Court Administrator and would take effect within forty-five days after submission unless the Supreme Court had rejected them in writing. Rules inconsistent with the Colorado Rules of Civil Procedure, of course, would not become effective. Rule 121 emphasized that the goal of local rules is to achieve reasonable uniformity with state-wide practices.

The proposed Colorado plan considered all matters not strictly local as potentially subject to state-wide uniform rules. The second section of Rule 121 stated that local rules covering a subject of state-wide con-

\textsuperscript{116} Id. at 2507.
\textsuperscript{117} Id. at 2508.
\textsuperscript{118} Id.
\textsuperscript{119} Id.
\textsuperscript{120} (a) \textit{Matters which are strictly local}. Each court by action of a majority of its judges may from time to time make and amend local rules not inconsistent with the Colorado Rules of Civil Procedure or Practice Standards set forth in C.R.C.P. 121(b) nor inconsistent with any directive of the Supreme Court. Copies of proposed local rules or amendments to be made by any court, before their adoption, shall be lodged with the Supreme Court through the office of the State Court Administrator. Rules so submitted shall take effect 45 days after being so lodged except as to those rules which the Supreme Court may have rejected in writing during said period. Reasonable uniformity of local rules is encouraged.
Colo. R. Civ. P. 121.
cern were to be called "practice standards" and would preempt any inconsistent, non-uniform local rule. 121

After the committee finished drafting its proposal, the details of the plan were disseminated to the state bar through a state-wide legal publication. Members of the bench and bar were invited to make comments and criticisms of the plan before it was to go into effect. The plan evoked wide-ranging responses that led to several revisions. Some judges opposed the plan, arguing that "there is no single solution that is applicable to all courts in the area of court organization." 122 Others feared that the new practice standards would be beneficial to lawyers in the metropolitan area practicing in several judicial districts, while increasing the cost of processing cases in rural areas that do not have similar problems. Most attorneys, however, supported the plan as it was drafted.

The comments and criticisms of the bench and bar were added to the proposed changes and, in the summer of 1982, the plan went into effect. 123 A standing committee of the Supreme Court Civil Rules Committee was established to monitor the progress and effect of the new local rules procedures; it was thought that monitoring would lead to a better understanding of the effects of the preemption and standardization method of reforming local rules. At present, it is too early to tell just how successful the plan has been.

Colorado's plan incorporates most of the best features of the proposals by Judge Weinstein and Steven Flanders. Prepromulgation publication, bar input, and uniformity are stressed in the Colorado plan and have been successfully followed so far. Matters of truly local concern have been left to the local courts to handle. Colorado's "practice standards" approach supplements the procedural and informational goals of the various proposals; local rules are centrally gathered and

121. (b) Matters of statewide concern. The following rule subject areas to be called "PRACTICE STANDARDS" are declared to be of statewide concern and shall preempt and control in their form and content over any differing local rules.

COLO. R. CIV. P. 121. The rule originally adopted practice standards for the following matters: entry and withdrawal of appearance, special admission of out-of-state attorneys, audio-visual devices, jury fees, settings for trials or hearings, settings by telephone, jury instructions, dismissal for failure to prosecute, suppression for service of process, limitation of access to court files, court settlement conferences, matters related to discovery, deposition by tape recording, default judgments, pretrial procedure, pretrial conference, and determination of motions. The local rules committee recommended that practice standards be adopted for consolidations, multi-district litigation, continuances, preparation of orders, paper size, reporter transcripts, bonds, setting of deadlines, and costs.


122. Letter from ____ to Colorado Local Rule Preemption Committee (date) (on file with the Colorado Supreme Court).

123. The rule was adopted April 1, 1982, with an effective date of July 1, 1982. See 11 COLO. LAW. 1166 (1982).
easily available as part of the rules of civil procedure. The plan is a significant attempt at bridging the gap between theoretical proposals and practical and workable plans.

Although the Colorado approach represents a substantial step forward in improving problems engendered by excessive local rules, the plan is not perfect and could benefit from several modifications. The federal courts in the state of Colorado should consider adopting local rules that are uniform with the state-wide practice standards. Lawyers could then move with ease between the state and federal systems without having to study each federal district court for its peculiarities. Furthermore, lawyers from outside the jurisdiction would have easy access to the Colorado Rules of Civil Procedure which would enumerate the local practices that Colorado’s federal courts expected. A substantial amount of waste and duplication that now exists in the federal system could then be eliminated.

Other improvements on Colorado’s plan are possible. It would be wise to schedule annual meetings at the state bar convention where practitioners and judges could meet with members of the rules committee and testify at concurrent hearings held by the subcommittee on local rules and practice standards. Although constant rules revisions would not represent a substantial improvement over the current system, it is likely that when adopting a state-wide plan, it may take a few years to work out unforeseen problems. In addition to the annual review, it would be helpful to schedule a comprehensive review by the local rules committee after the standards have been in effect for two years. A week-long conference at which in-depth study and revision could occur should be instigated at that time. The local rules subcommittee should also continue to research other state and federal jurisdictions and review their experiences with local rules problems. The best aspects of plans from other jurisdictions could be incorporated into the Colorado plan.124

Lastly, courts that adopt strictly local rules should consider reviewing their rules whenever a new member enters the bench. This procedure would eliminate the problems created when new judges find themselves saddled by local rules adopted by past judges.

**Conclusion**

Local rules have proliferated beyond reason and are more of a problem in judicial administration than a benefit.

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124. Compare the proposals of Judge Weinstein and Steven Flanders, supra notes 73-98 with text accompanying note 124.
Reform of local rules is essential if court costs and delay are to be brought under control. The federal court system and each state court system should examine its local rules situation with a view toward delivering justice at the cheapest cost and in the most expeditious manner. At the very least, procedures should be adopted that allow for bar and public participation, publication of the rules, and continued supervision by a standing local rules committee. The Colorado answer to the local rules dilemma has gone a long way in providing standard rules while retaining the flexibility needed in a decentralized judicial system. For this reason, the Colorado approach should be studied as a first step toward the elimination of local rules that are contrary to the needs and spirit of a comprehensive system of civil procedure.