



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

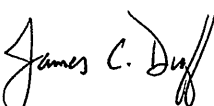
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

April 2, 2015

MEMORANDUM

To: Scott S. Harris

From: James C. Duff 

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

I write in response to your letter of February 11, 2015, in which you acknowledged the Supreme Court's examination of the Judicial Conference's September 26, 2014, package of proposed amendments to the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure, and conveyed the Court's recommendation that the Judicial Conference's Advisory Committee on Civil Rules make changes to two of its proposed Committee Notes.

The Court specifically suggested that the Advisory Committee delete the words "for good cause" at the end of the first sentence in the second paragraph of the Committee Note for Civil Rule 4(m). The Court also suggested revising the Committee Note for Civil Rule 84 to clarify that the abrogation of Rule 84 does not alter existing pleading standards and to identify other sources for civil procedure forms.

The Committee considered and agreed with the Supreme Court's suggested revisions. At its March 2015 session, the Judicial Conference approved the resulting changes to the Committee Notes accompanying the proposed amendments to Civil Rules 4 and 84. The Judicial Conference recommends the Court approve these changes, in addition to the proposed amendments transmitted to the Court on September 26, 2014, and forward the same to the Congress pursuant to law.

For your assistance in considering these proposed amendments, I am transmitting: (i) a redline version of the amendments to Civil Rules 4 and 84 and the accompanying Committee Notes; and (ii) an excerpt from the Addendum to the March 2015 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference explaining the changes proposed.

Attachments

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE***

1 **Rule 4. Summons**

2 * * * * *

3 **(m) Time Limit for Service.** If a defendant is not served
4 within ~~120~~90 days after the complaint is filed, the
5 court — on motion or on its own after notice to the
6 plaintiff — must dismiss the action without prejudice
7 against that defendant or order that service be made
8 within a specified time. But if the plaintiff shows
9 good cause for the failure, the court must extend the
10 time for service for an appropriate period. This
11 subdivision (m) does not apply to service in a foreign
12 country under Rule 4(f) or 4(j)(1) or to service of a
13 notice under Rule 71.1(d)(3)(A).

* New material is underlined; matter to be omitted is lined through.

Committee Note

Subdivision (m). The presumptive time for serving a defendant is reduced from 120 days to 90 days. This change, together with the shortened times for issuing a scheduling order set by amended Rule 16(b)(2), will reduce delay at the beginning of litigation.

Shortening the presumptive time for service will increase the frequency of occasions to extend the time ~~for~~ ~~good cause~~. More time may be needed, for example, when a request to waive service fails, a defendant is difficult to serve, or a marshal is to make service in an in forma pauperis action.

The final sentence is amended to make it clear that the reference to Rule 4 in Rule 71.1(d)(3)(A) does not include Rule 4(m). Dismissal under Rule 4(m) for failure to make timely service would be inconsistent with the limits on dismissal established by Rule 71.1(i)(1)(C).

Shortening the time to serve under Rule 4(m) means that the time of the notice required by Rule 15(c)(1)(C) for relation back is also shortened.

1 **Rule 84. Forms**

2 [Abrogated (Apr. __, 2015, eff. Dec. 1, 2015).]

3 ~~The forms in the Appendix suffice under these rules~~
4 ~~and illustrate the simplicity and brevity that these rules~~
5 ~~contemplate.~~

Committee Note

Rule 84 was adopted when the Civil Rules were established in 1938 “to indicate, subject to the provisions of these rules, the simplicity and brevity of statement which the rules contemplate.” The purpose of providing illustrations for the rules, although useful when the rules were adopted, has been fulfilled. Accordingly, recognizing that there are many excellent alternative sources for forms, including the website of the Administrative Office of the United States Courts, the websites of many district courts, and local law libraries that contain many commercially published forms, Rule 84 and the Appendix of Forms are no longer necessary and have been abrogated. The abrogation of Rule 84 does not alter existing pleading standards or otherwise change the requirements of Civil Rule 8.

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APPENDIX OF FORMS

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[Abrogated (Apr. __, 2015, eff. Dec. 1, 2015)]

ADDENDUM TO THE REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

FEDERAL RULES OF CIVIL PROCEDURE

Rules Recommended for Approval and Transmission

The Committee on Rules of Practice and Procedure asks the Judicial Conference to modify the rules package that it approved on September 16, 2014, specifically the amendments to Civil Rules 4(m) and 84.

The proposed amendment to Rule 4(m)—the rule addressing time limit for service—is part of a larger package of rules amendments developed over several years designed to implement the conclusions reached during the May 2010 Conference on Civil Litigation held at the Duke University School of Law. Following that conference, the advisory committee formed a subcommittee to develop rules amendments consistent with the overarching goal of improving the disposition of civil cases by reducing the costs and delays in civil litigation, increasing realistic access to the courts, and furthering the goals of Rule 1 “to secure the just, speedy, and inexpensive determination of every action and proceeding.” The proposed amendment to Rule 4(m) seeks to improve early and active judicial case management by reducing the time limit for serving the summons and complaint from 120 days to 90 days. The goal of the proposed amendment is to shorten the length and expense of litigation.

NOTICE

NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE UNLESS
APPROVED BY THE CONFERENCE ITSELF.

The proposed amendment to Rule 84 would abrogate that rule and the Appendix of Forms that appears at the end of the civil rules. There are 36 forms in the Appendix; included among them are pleading captions, signature blocks, summonses, requests for waivers of service, complaints, answers, and judgments. The proposal to eliminate the forms appended to the rules follows significant efforts to gather information about how often the forms are used and whether they provide meaningful help to litigants. After carefully studying the issue, the advisory committee determined that abrogation was the best course.

In September 2014, the proposed amendments to Rules 4(m) and 84 were transmitted to the Supreme Court as part of a larger rules package. By letter dated February 11, 2015, the Clerk of the Court notified the Director of the Administrative Office, in his capacity as Secretary of the Judicial Conference, that the Court recommended changes to the committee notes to Rules 4(m) and 84.

The first change recommended by the Court is to delete the words “for good cause” at the end of the first sentence in the second paragraph of the committee note for Rule 4(m), making that sentence read: “Shortening the presumptive time for service will increase the frequency of occasions to extend the time.” No member of the advisory committee or the standing committee objected to this change.

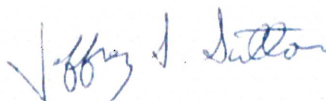
The second suggestion concerns the committee note for Rule 84—and recommends that the committee note be revised to clarify that the abrogation of Rule 84 does not alter existing pleading standards and to elaborate on other sources for civil procedure forms. Accordingly, the advisory committee made two changes to the committee note. First, the following sentence was added to the end of the Rule 84 note: “The abrogation of Rule 84 does not alter existing pleading standards or otherwise change the requirements of Civil Rule 8.” Second, the final sentence of the committee note was revised to include specific mention of other sources of civil procedure

forms. The sentence now reads: “Accordingly, recognizing that there are many alternative sources for forms, including the website of the Administrative Office of the United States Courts, the websites of many district courts, and local law libraries that contain many commercially published forms, Rule 84 and the Appendix of Forms are no longer necessary and have been abrogated.” No member of the advisory committee or the standing committee objected to these changes.

Recommendation: That the Judicial Conference approve the proposed amendments to Civil Rules 4(m) and 84, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to Federal Rules of Civil Procedure 4(m) and 84 are set forth in Appendix A. A document comparing the amendments proposed herein to the proposed amendments approved by the Conference on September 16, 2014, is included as Appendix B. The changes to the September 2014 proposed amendments are shown in gray.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jeffrey S. Sutton". The signature is written in a cursive style.

Jeffrey S. Sutton, Chair

Appendix A – Proposed Amendments to Civil Rules 4(m) and 84

Appendix B – Comparison of Proposed Amendments to Civil Rules 4(m) and 84

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