

AMENDMENTS TO THE FEDERAL RULES OF
CIVIL PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT
OF THE UNITED STATES

TRANSMITTING

AN AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE
THAT HAVE BEEN ADOPTED BY THE SUPREME COURT, PURSU-
ANT TO 28 U.S.C. 2074(a); PUBLIC LAW 100-702, SEC. 401(a); (102
STAT. 4649)



MAY 4, 2017.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 27, 2017.

Hon. PAUL D. RYAN,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to submit to the Congress the amendment to the Federal Rules of Civil Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying this rule are following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated March 16, 2017; a redline version of the rule with committee note; an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the December 9, 2016 Report of the Advisory Committee on Civil Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

April 27, 2017

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein an amendment to Civil Rule 4.

[*See infra* pp. ___ ___.]

2. That the foregoing amendment to the Federal Rules of Civil Procedure shall take effect on December 1, 2017, and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

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

Rule 4. Summons

* * * * *

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

* * * * *



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

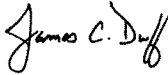
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

March 16, 2017

MEMORANDUM

To: The Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff 

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

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court the proposed amendment to Rule 4 of the Federal Rules of Civil Procedure, which was approved by the Judicial Conference at its March 2017 session. The Judicial Conference recommends that the amendment be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendment, I am transmitting: (i) a "clean" copy of the affected rule incorporating the proposed amendment and accompanying Committee Note; (ii) a redline version of the same; (iii) an excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the December 2016 Report of the Advisory Committee on Civil Rules.

Attachments

**PROPOSED AMENDMENT 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 90 days after the complaint is filed, the court—on
5 motion or on its own after notice to the plaintiff—must
6 dismiss the action without prejudice against that defendant
7 or order that service be made within a specified time. But
8 if the plaintiff shows good cause for the failure, the court
9 must extend the time for service for an appropriate period.
10 This subdivision (m) does not apply to service in a foreign
11 country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a
12 notice under Rule 71.1(d)(3)(A).

13 * * * * *

* New material is underlined.

2 FEDERAL RULES OF CIVIL PROCEDURE

Committee Note

This is a technical amendment that integrates the intended effect of the amendments adopted in 2015 and 2016.

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

**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

Rule Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted a proposed technical amendment to restore the 2015 amendment to Rule 4(m), with a recommendation that it be approved and transmitted to the Judicial Conference.

Civil Rule 4(m) (Summons–Time Limit for Service) was amended on December 1, 2015, and again on December 1, 2016. In addition to shortening the presumptive time for service from 120 days to 90 days, the 2015 amendment added, as an exemption to that time limit, Rule 71.1(d)(3)(A) notices of a condemnation action. The 2016 amendment added to the list of exemptions Rule 4(h)(2) service on a corporation, partnership, or association at a place not within any judicial district of the United States.

The 2016 amendment exempting Rule 4(h)(2) was prepared in 2014 before the 2015 amendment adding Rule 71.1(d)(3)(A) to the list of exemptions was in effect. Once the 2015 amendment became effective, it should have been incorporated into the proposed 2016 amendment then making its way through the Rules Enabling Act process. It was not, and, as a result, Rule 71.1(d)(3)(A) was omitted from the list of exemptions in Rule 4(m) when the 2016 amendment became effective. The proposed amendment restores Rule 71.1(d)(3)(A) to the list of exemptions in Rule 4(m). The proposed amendment is technical in nature—it is identical to the amendment published for public comment in 2013, approved by the Judicial Conference, and adopted by the Court. Accordingly, re-publication for public comment is not required.

Excerpt from the March 2017 Report of the Committee on Rules of Practice and Procedure

The Standing Committee voted unanimously to support the recommendation of the Advisory Committee on Civil Rules.

Recommendation: That the Judicial Conference approve the proposed amendment to Civil Rule 4(m) and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,


David G. Campbell, Chair

Jesse M. Furman	Amy J. St. Eve
Gregory G. Garre	Larry D. Thompson
Daniel C. Girard	Richard C. Wesley
Susan P. Graber	Sally Q. Yates
Frank M. Hull	Robert P. Young, Jr.
Peter D. Keisler	Jack Zouhary
William K. Kelley	

Excerpt from the December 9, 2016 Report of the Advisory Committee on Civil Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

DAVID G. CAMPBELL
CHAIR
REBECCA A. WOMELDORF
SECRETARY

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DONALD W. MOLLOY
CRIMINAL RULES
WILLIAM K. SESSIONS III
EVIDENCE RULES

TO: Hon. David G. Campbell, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Hon. John D. Bates, Chair
Advisory Committee on Civil Rules

DATE: December 9, 2016

RE: Report of the Advisory Committee on Civil Rules

Introduction

The Civil Rules Advisory Committee met at the Administrative Office of the United States Courts in Washington, D.C., on November 3, 2016.

* * * * *

One action item is presented. Part I recommends that Rule 4(m) be submitted to the Judicial Conference as a technical amendment to restore a provision inadvertently omitted from the proposal that took effect on December 1, 2016.

* * * * *

I. ACTION ITEM: RULE 4(m)

Rule 4(m) was amended on December 1, 2015, and again on December 1, 2016. The intended result of the two amendments is clear. But the proposed 2015 amendment was inadvertently overlooked in preparing the proposal that led to adoption of the 2016 amendment. This action item recommends approval of the intended rule text for submission to the Judicial Conference in March 2017 as a technical amendment, looking toward adoption by the Supreme Court this spring.

Excerpt from the December 9, 2016 Report of the Advisory Committee on Civil Rules

The proposed rule text revises the final sentence of Rule 4(m). Rule 4(m) establishes a presumptive time for serving the summons and complaint, allowing for extension by the court. The final sentence of the rule should read:

This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

The two-step process of amending Rule 4(m) went astray in this way: The 2015 amendment began as part of a large package designed in part to accelerate the initial steps in a civil action. The published proposal shortened the presumptive time for service from 120 days to 60 days; after hearings and comments, the time was set at 90 days. While this change was being considered, the Department of Justice recommended that the exemptions be expanded to add Rule 71.1(d)(3)(A) notices of a condemnation action. This recommendation was accepted without controversy. As of December 1, 2015, service of a notice under Rule 71.1(d)(3)(A) was excluded from Rule 4(m).

The 2016 amendment added Rule 4(h)(2) to the set of exemptions. The addition was made in response to many comments on the published proposal that eventually became the 2015 amendment. These comments reflected uncertainty, even confusion, as to Rule 4(h)(2) service on a corporation, partnership, or association at a place not within any judicial district of the United States. Rule 4(h)(2) allows such service “in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).” Invoking Rule 4(f) might bring service under (h)(2) within the Rule 4(m) exemption for service under Rule 4(f). That result makes sense—the problems with effecting prompt service outside the United States are much the same, and are augmented by shortening the presumptive time from 120 days to 90 days. But the rule text is ambiguous. So Rule 4(h)(2) was added to the exemptions.

The problem arose from preparing the Rule 4(h)(2) proposal by working from Rule 4(m) as it was in 2014, before the 2015 amendment. Adding the exemption for service under Rule 71.1(d)(3)(A) had been proposed, but final action was more than a year in the future. That change was inadvertently not included in the proposal that, as subsequently published, recommended, and adopted, read:

This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1).

The possibility of correcting the rule text as a scrivener’s error was explored with Congress. The outcome is that the official print for the House of Representatives Committee on the Judiciary will include this footnote:

Rule 4(m) is set out above as it appears in the Supreme Court order of Apr. 28, 2016. As amended by the Supreme Court order of Apr. 29, 2015, the last sentence of Rule 4(m) reads as follows: “This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1) or to service of a notice under Rule 71.1(d)(3)(A).” The language added to the last sentence in 2015, “or to service

Excerpt from the December 9, 2016 Report of the Advisory Committee on Civil Rules

of a notice under Rule 71.1(d)(3)(A)”, probably should be part of Rule 4(m), but does not appear in the 2016 amendment.

The omission of Rule 71.1(d)(3)(A) from the list of exemptions should be corrected through the Rules Enabling Act process. The provision has already been published, reviewed, and adopted. Because the omission resulted from sheer inadvertence, the correction can be recommended for adoption without further publication.

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