

Agenda H-13
Rules of Practice
and Procedure
March 1982

**REPORT OF THE JUDICIAL CONFERENCE COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE**

SUMMARY

This report contains the following recommendation for the consideration of the Conference:

1. That the Conference approve the proposed amendments to Rule 4 of the Federal Rules of Civil Procedure, set out in Appendix A., and transmit them to the Supreme Court with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

**REPORT OF THE COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE**

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

Your Committee on Rules of Practice and Procedure met in Washington, D.C. on January 28-29, 1982. All members of the Committee were present except Professor Bernard J. Ward who was unavoidably absent. The Secretary of the Committee, Mr. Spaniol, also attended the meeting.

I. Federal Rules of Civil Procedure

A. The Advisory Committee on the Federal Rules of Civil Procedure has submitted to your Committee proposed amendments to Rule 4 of the Federal Rules of Civil Procedure pertaining to the service of process in a civil action. The proposed amendments to the rule are set out in Appendix A and are accompanied by an advisory committee note explaining their purpose and intent.

The proposed amendments are designed to relieve the United States marshals of the duty of serving summonses and complaints in most civil actions in which the government is not a party. Any person who is not a party to the litigation and is not less than 18 years of age would be permitted to serve the summons and complaint. In addition, the amendments would permit service of summonses and complaints by registered or certified mail, return receipt requested and delivery restricted to the addressee. A default or default judgment could not be entered unless it appears of record that the defendant accepted or refused to accept service by mail.

At the request of a party, the United States marshals would continue to serve the summons and complaint: (1) on behalf of a party authorized to proceed in forma pauperis

28 U.S.C. § 1915, or of a seaman authorized to proceed without the prepayment of costs, 28 U.S.C. § 1916; (2) when required by federal statute; and (3) pursuant to a court order when necessary to guarantee effective service in a particular action. The marshals would continue to serve forms of process which require an enforcement presence, such as temporary restraining orders, injunctions, attachments, arrests and orders relating to judicial sales.

The proposed amendments to Rule 4 are occasioned by the reduction in appropriations available to the Marshal's Service and pending legislation to relieve marshals of the duty to serve the summons and complaint in private civil litigation. Appropriations have already been reduced and it appears that the proposed legislation will soon be enacted into law. For these reasons it is important that Rule 4 be amended promptly.

Your Committee recommends that the proposed amendments to Rule 4 be approved by the Conference and transmitted immediately to the Supreme Court for its consideration with the recommendation that the amendments be approved and transmitted to the Congress pursuant to law.

B. The Advisory Committee has conducted public hearings on the proposed amendments to the civil rules distributed to the bench and bar last June. The Committee has reviewed all comments received and will be submitting its proposals in final form at the June meeting of the Standing Committee.

II. Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules has prepared a draft of new bankruptcy rules and official forms to govern bankruptcy procedure under the new Bankruptcy Code, title 11 of the United States Code, and your Committee has authorized their distribution to the bench and bar, and the public generally, for comment. Public hearings will be held in New York, Chicago and San Francisco during the summer months

and written comments will be received until August 1st. The Advisory Committee will meet in early August to complete its work, and will submit its final proposals to the Standing Committee in August. Meanwhile the Standing Committee will carry on its review of the rules during the comment period.

The Committee plans to submit the proposed bankruptcy rules to the Conference next September. The Committee believes that this schedule will make it possible for the new rules to become effective in 1983 before the new Bankruptcy Code becomes fully effective on March 31, 1984.

III. Appellate Rules

The Advisory Committee on Appellate Rules is presently without a chairman because of the recent death of Judge Robert A. Ainsworth. The reporter to the Committee, Professor Kenneth Ripple of Notre Dame Law School, is continuing to work on matters previously assigned and to circulate information to the advisory committee members. No meeting of the Advisory Committee is planned, however, until a new chairman is named.

IV. Criminal Rules

In February the Advisory Committee on the Federal Rules of Criminal Procedure conducted public hearings on the proposed amendments to the criminal rules distributed to the bench and bar last October. Comments will continue to be received until May 15th and thereafter the Advisory Committee will report its recommendations to the Standing Committee.

V. Statement of Operating Procedures

The Committee intends to prepare a statement of its operating procedures to be published for the information of the public. The drafting work, however, has not been completed. The Committee hopes to be able to present a statement at the next session of the Conference.

Respectively submitted,

Judge Edward T. Gignoux,
Chairman
Judge Carl McGowan
Judge James S. Holden
Professor Frank J. Remington
Professor Bernard J. Ward
Edward H. Hickey, Esq.
Francis N. Marshall, Esq.

February 19, 1982