

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

1 **Rule 1. Scope and Purpose**

2 These rules govern the procedure in all civil actions
3 and proceedings in the United States district courts, except
4 as stated in Rule 81. They should be construed, ~~and~~
5 administered, and employed by the court and the parties to
6 secure the just, speedy, and inexpensive determination of
7 every action and proceeding.

Committee Note

Rule 1 is amended to emphasize that just as the court should construe and administer these rules to secure the just, speedy, and inexpensive determination of every action, so the parties share the responsibility to employ the rules in the same way. Most lawyers and parties cooperate to achieve these ends. But discussions of ways to improve the administration of civil justice regularly include pleas to discourage over-use, misuse, and abuse of procedural tools that increase cost and result in delay. Effective advocacy is

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

consistent with — and indeed depends upon — cooperative and proportional use of procedure.

This amendment does not create a new or independent source of sanctions. Neither does it abridge the scope of any other of these rules.

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).

14 * * * * *

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 55. Default; Default Judgment**

2 * * * * *

3 **(c) Setting Aside a Default or a Default Judgment.**

4 The court may set aside an entry of default for good
5 cause, and it may set aside a final default judgment
6 under Rule 60(b).

7 * * * * *

Committee Note

Rule 55(c) is amended to make plain the interplay between Rules 54(b), 55(c), and 60(b). A default judgment that does not dispose of all of the claims among all parties is not a final judgment unless the court directs entry of final judgment under Rule 54(b). Until final judgment is entered, Rule 54(b) allows revision of the default judgment at any time. The demanding standards set by Rule 60(b) apply only in seeking relief from a final judgment.

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.

1 **APPENDIX OF FORMS**

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

1 **Rule 4. Summons**

2 * * * * *

3 **(d) Waiving Service.**

4 **(1) *Requesting a Waiver.*** An individual,
5 corporation, or association that is subject to
6 service under Rule 4(e), (f), or (h) has a duty to
7 avoid unnecessary expenses of serving the
8 summons. The plaintiff may notify such a
9 defendant that an action has been commenced
10 and request that the defendant waive service of a
11 summons. The notice and request must:

12 * * * * *

13 **(C)** be accompanied by a copy of the complaint,
14 2 copies of athe waiver form appended to
15 this Rule 4, and a prepaid means for
16 returning the form;

17 (D) inform the defendant, using ~~text prescribed~~
18 ~~in Form 5~~ the form appended to this Rule 4,
19 of the consequences of waiving and not
20 waiving service;

21 * * * * *

22 **Rule 4 Notice of a Lawsuit and Request to Waive**
23 **Service of Summons.**

24 (Caption)

25 To (name the defendant or — if the defendant is a
26 corporation, partnership, or association — name an officer
27 or agent authorized to receive service):

28 **Why are you getting this?**

29 A lawsuit has been filed against you, or the entity you
30 represent, in this court under the number shown above. A
31 copy of the complaint is attached.

32 This is not a summons, or an official notice from the
33 court. It is a request that, to avoid expenses, you waive
34 formal service of a summons by signing and returning the
35 enclosed waiver. To avoid these expenses, you must return
36 the signed waiver within (give at least 30 days or at least
37 60 days if the defendant is outside any judicial district of
38 the United States) from the date shown below, which is the

39 date this notice was sent. Two copies of the waiver form
40 are enclosed, along with a stamped, self-addressed
41 envelope or other prepaid means for returning one copy.
42 You may keep the other copy.

43 **What happens next?**

44 If you return the signed waiver, I will file it with the
45 court. The action will then proceed as if you had been
46 served on the date the waiver is filed, but no summons will
47 be served on you and you will have 60 days from the date
48 this notice is sent (see the date below) to answer the
49 complaint (or 90 days if this notice is sent to you outside
50 any judicial district of the United States).

51 If you do not return the signed waiver within the time
52 indicated, I will arrange to have the summons and
53 complaint served on you. And I will ask the court to
54 require you, or the entity you represent, to pay the expenses
55 of making service.

56 Please read the enclosed statement about the duty to
57 avoid unnecessary expenses.

58 I certify that this request is being sent to you on the
59 date below.

60 Date: _____

61 _____
62 (Signature of the attorney
63 or unrepresented party)

64 _____
65 (Printed name)

66 _____
67 (Address)

68 _____
69 (E-mail address)

70 _____
71 (Telephone number)

72 **Rule 4 Waiver of the Service of Summons.**

73 (Caption)

74 To (name the plaintiff's attorney or the unrepresented
75 plaintiff):

76 I have received your request to waive service of a
77 summons in this action along with a copy of the complaint,
78 two copies of this waiver form, and a prepaid means of
79 returning one signed copy of the form to you.

80 I, or the entity I represent, agree to save the expense
81 of serving a summons and complaint in this case.

82 I understand that I, or the entity I represent, will keep
83 all defenses or objections to the lawsuit, the court's
84 jurisdiction, and the venue of the action, but that I waive
85 any objections to the absence of a summons or of service.

86 I also understand that I, or the entity I represent, must
87 file and serve an answer or a motion under Rule 12 within
88 60 days from _____, the date when this
89 request was sent (or 90 days if it was sent outside the
90 United States). If I fail to do so, a default judgment will be
91 entered against me or the entity I represent.

92 Date: _____

93 _____
94 (Signature of the attorney
95 or unrepresented party)

96 _____
97 (Printed name)

98 _____
99 (Address)

100 _____
101 (E-mail address)

102 _____
103 (Telephone number)

104 (Attach the following)

105 **Duty to Avoid Unnecessary Expenses**
106 **of Serving a Summons**

107 Rule 4 of the Federal Rules of Civil Procedure
108 requires certain defendants to cooperate in saving
109 unnecessary expenses of serving a summons and complaint.
110 A defendant who is located in the United States and who
111 fails to return a signed waiver of service requested by a
112 plaintiff located in the United States will be required to pay
113 the expenses of service, unless the defendant shows good
114 cause for the failure.

115 “Good cause” does not include a belief that the
116 lawsuit is groundless, or that it has been brought in an
117 improper venue, or that the court has no jurisdiction over
118 this matter or over the defendant or the defendant’s
119 property.

120 If the waiver is signed and returned, you can still
121 make these and all other defenses and objections, but you
122 cannot object to the absence of a summons or of service.

123 If you waive service, then you must, within the time
124 specified on the waiver form, serve an answer or a motion
125 under Rule 12 on the plaintiff and file a copy with the
126 court. By signing and returning the waiver form, you are
127 allowed more time to respond than if a summons had been
128 served.

Committee Note

Subdivision (d). Abrogation of Rule 84 and the other official forms requires that former Forms 5 and 6 be directly incorporated into Rule 4.