

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

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MEMORANDUM

To: Hon. Jeffrey S. Sutton, Chair
Standing Committee on Rules of Practice and Procedure

From: Hon. Reena Raggi, Chair
Advisory Committee on Federal Rules of Criminal Procedure

Subject: Report of the Advisory Committee on Criminal Rules

Date: November 26, 2012

I. Introduction

Because of Hurricane Sandy, the Advisory Committee on the Federal Rules of Criminal Procedure (“the Committee”) was unable to meet as scheduled on October 29-30 in Washington, D.C. The fall meeting was not rescheduled because of the difficulty of securing overlapping hotel accommodations and conference space at the Administrative Office for early to mid-November on such short notice, as well as the busy schedule of members.

This report discusses briefly two information items: (1) the proposed amendments to Rules 12 and 34 regarding pretrial motions, which were published for public comment and are being studied further by the Committee, and (2) a new proposal by the Department of Justice to amend Rule 4 to permit effective service of a summons on a foreign organization that has no agent or principal place of business within the United States.

II. Information Items

A. Rules 12 and 34

Proposed amendments to Rule 12 (which governs pretrial motions) and conforming changes to Rule 34 were published for public comment in August 2011, and numerous submissions were received, including detailed objections and suggestions from defense bar organizations.

Since the close of the comment period in February 2012, the Rule 12 Subcommittee (chaired by Judge Morrison England) and the Reporters have been studying the comments and discussing possible changes. The Reporters prepared an extensive memorandum, totaling more than 80 pages, analyzing the comments and discussing possible changes in the amendments as published. The Rule 12 Subcommittee discussed this memorandum and the concerns raised by the public comments at a half-day meeting held in conjunction with the full Committee's April meeting in San Francisco. The Reporters were asked to prepare additional materials, and following receipt of the additional materials the Rule 12 Subcommittee met again by teleconference in preparation for the Committee's October meeting. The Subcommittee reaffirmed the need for the amendment, but it concluded that several changes were warranted based on the public comments. With those changes, the Subcommittee has recommended to the Advisory Committee that the amended proposal be approved and transmitted to the Standing Committee.

As noted, Hurricane Sandy made it impossible to hold the Committee's fall meeting, and consideration of the Rule 12 Subcommittee's report has been deferred until the Committee's April meeting.

B. Rule 4

The Department of Justice has submitted a proposal to amend Rule 4 to permit effective service of a summons on a foreign organization that has no agent or principal place of business within the United States. The Department recommends that Rule 4 be amended in two key respects:

- (1) to remove the requirement that a copy of the summons be sent to the organization's last known mailing address within the district or principal place of business within the United States, and
- (2) to provide the means to serve a summons upon an organization located outside the United States.

The Department argues the proposed amendments are necessary to ensure that organizations committing domestic offenses are not able to avoid liability through the simple expedient of declining to maintain an agent, place of business and mailing address within the United States.

Because of the cancellation of the October meeting, the Committee has not yet discussed the Department's proposal. It will be on the agenda for the April meeting.