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**Federal Rules
Of Civil Procedure**

**With Selected
Statutes**

1992

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and Company**

FEDERAL RULES OF CIVIL PROCEDURE

with Selected Statutes — 1992

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PREFACE

This volume is intended to serve as a rules pamphlet for any civil procedure course. The statutes and rules reflect amendments through December 9, 1991.

I am grateful to Bryan Biesterfeld for help in preparing this supplement.

Stephen C. Yeazell

May 1992

NOTE ON THE FEDERAL RULES OF CIVIL PROCEDURE

The Federal Rules of Civil Procedure govern the conduct of civil trials in federal courts. Their authority comes from Congress, but, unlike the Judiciary Code (Title 28 of the United States Code, found at page 299 of this supplement), the Rules are not a product of direct congressional legislation. Instead Congress has enacted 28 U.S.C. §2072 (the Rules Enabling Act), which authorizes the Supreme Court to promulgate rules of procedure.

Although the Rules Enabling Act gives the Supreme Court power to promulgate the Rules, the Justices do not in practice do the actual drafting. That process instead occurs in committees of the Judicial Conference, a supervisory and administrative arm of the federal courts. In 1988 a set of amendments to 28 U.S.C. §§2072-2074 formalized this committee process. Under these provisions the Judicial Conference appoints a standing committee on rules of practice, procedure, and evidence. This standing committee screens all recommendations for consistency. The Judicial Conference may also appoint committees with a more defined jurisdiction—for example, civil rules, rules of evidence, bankruptcy rules. Judges, practitioners, and scholars are appointed to these advisory committees. Each advisory committee considers proposals for amendments to the Rules, circulates drafts of proposed amendments to members of the bench and bar, revises in light of their comments, and then transmits the revised proposals to the Committee on Practice and Procedure, which reports to the Judicial Conference, which in turn recommends changes to the Supreme Court.

The Court, if it concurs with the proposals, officially promulgates the revised Rules by May 1, to take effect on December 1 of the same year if Congress does not act in the meantime. The Court has rarely rejected outright a Rules amendment recommended by the Judicial Conference (although several justices have on occasion dissented from the promulgation of various sets of amendments). May 1991, however, saw such a refusal to accede to the Judicial Conference recommendations: The Court deleted several proposed rules from the original package. The deleted Rules would have revamped service of process and the long-arm jurisdiction of the federal courts and adapted discovery to international contexts. The Court gave no reason for its actions.

Like the Supreme Court, Congress has usually acceded to the recommendations of the Judicial Conference. As with the Court, however, there are exceptions. In 1982 Congress exercised its power to reject the Supreme Court's recommended amendments to Rule 4 and instead rewrote the Rule legislatively; the present version of Rule 4 reflects that legislative action.

Note on the Federal Rules of Civil Procedure

The original Rules were promulgated in 1938. Since then there have been significant revisions in 1948, 1961, 1963, 1966, 1970, 1980, 1983, 1985, 1987, and 1991 (with technical amendments in 1971, 1975, and 1988). The most important amendments in the past thirty years were:

- the 1966 amendments, which revised the rules for joinder of claims and parties;
- the 1970 amendments, which revamped discovery procedures;
- the 1983 amendments, which strengthened judicial control over the pre-trial process and stiffened sanction provisions; and
- the 1991 amendments, which changed back the relation of amended pleadings, revamped the law of subpoenas, and revised the rules for entry of judgments according to law in both jury and bench trials.

This supplement reprints portions of the advisory committee's notes for significant amendments after the Rule in question. Though they do not have the force of law, these notes often serve the same function for the Rules that legislative history does for statutes.

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As Amended Through December 1, 1991

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These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966.

✓ Rule 2. One Form of Action

There shall be one form of action to be known as “civil action.”

II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

✓ Rule 3. Commencement of Action

A civil action is commenced by filing a complaint with the court.

Rule 4. Process

(a) **Summons: Issuance.** Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff’s attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) **Same: Form.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff’s attorney, if any, otherwise the plaintiff’s address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in