

(e) EFFECTIVE DATE OF AMENDMENTS. The amendments adopted by the Supreme Court on January 21, 1963, and transmitted to the Congress on January 21, 1963, shall take effect on July 1, 1963. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Jan. 21 and Mar. 18, 1963, eff. July 1, 1963.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

See [former] Equity Rule 81 (These Rules Effective February 1, 1913—Old Rules Abrogated).

NOTES OF ADVISORY COMMITTEE ON RULES—1948 AMENDMENT

By making the general amendments effective on the day following the adjournment of the first regular session of Congress to which they are transmitted, subdivision (c), supra, departs slightly from the prior practice of making amendments effective on the day which is three months subsequent to the adjournment of Congress or on September 1 of that year, whichever day is later. The reason for this departure is that no added period of time is needed for the Bench and Bar to acquaint themselves with the general amendments, which effect a change in nomenclature to conform to revised Title 28, substitute present statutory references to this Title and cure the omission or defect occasioned by the statutory revision in relation to the substitution of public officers, to a cost bond on appeal, and to procedure after removal (see Rules 25(d), 73(c), 81(c)).

EFFECTIVE DATE OF 1966 AMENDMENT; TRANSMISSION TO CONGRESS; RESCISSION

Sections 2-4 of the Order of the Supreme Court, dated Feb. 28, 1966, 383 U.S. 1031, provided:

"2. That the foregoing amendments and additions to the Rules of Civil Procedure shall take effect on July 1, 1966, and shall govern all proceedings in actions brought thereafter and also in all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action then pending would not be feasible or would work injustice, in which event the former procedure applies.

"3. That the Chief Justice be, and he hereby is, authorized to transmit to the Congress the foregoing amendments and additions to the Rules of Civil Procedure in accordance with the provisions of Title 28, U.S.C., §§2072 and 2073.

"4. That: (a) subdivision (c) of Rule 6 of the Rules of Civil Procedure for the United States District Courts promulgated by this court on December 20, 1937, effective September 16, 1938; (b) Rule 2 of the Rules for Practice and Procedure under section 25 of An Act To amend and consolidate the Acts respecting copyright, approved March 4, 1909, promulgated by this court on June 1, 1909, effective July 1, 1909; and (c) the Rules of Practice in Admiralty and Maritime Cases, promulgated by this court on December 6, 1920, effective March 7, 1921, as revised, amended and supplemented be, and they hereby are, rescinded, effective July 1, 1966."

APPENDIX OF FORMS

(See Rule 84)

INTRODUCTORY STATEMENT

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms. Each form assumes the action to be brought in the Southern District of New York. If the district in which an action is brought has divisions, the division should be indicated in the caption.

2. Except where otherwise indicated each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons". In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers, it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4(b), 7(b)(2), and 10(a).

3. In Form 3 and the forms following, the words, "Allegation of jurisdiction," are used to indicate the appropriate allegation in Form 2.

4. Each pleading, motion, and other paper is to be signed in his individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his address as indicated in Form 3. In forms following Form 3 the signature and address are not indicated.

5. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

Form 1. Summons

United States District Court for the Southern District of New York

Civil Action, File Number _____

A. B., Plaintiff }
v. } Summons
C. D., Defendant }

To the above-named Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you, within 20¹ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

[Seal of the U.S. District Court]

Dated _____

(This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure)

¹If the United States or an officer or agency thereof is a defendant, the time to be inserted as to it is 60 days.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949.)

NOTES OF ADVISORY COMMITTEE ON RULES—1948 AMENDMENT

The change in nomenclature conforms to the official designation of a district court and of a court of appeals in Title 28, U.S.C., §§43(a), 132(a); and the more appropriate reference to "United States Court House, Foley Square, City of New York" in Form 19 replaces the outmoded reference.

Form 1A. Notice of Lawsuit and Request for Waiver of Service of Summons

TO: _____ (A) [as _____ (B) of _____ (C)]

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the _____ (D) and has been assigned docket number _____ (E).

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within _____ (F) days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, ____.

Signature of Plaintiff's Attorney or Unrepresented Plaintiff

NOTES

- A—Name of individual defendant (or name of officer or agent of corporate defendant)
- B—Title, or other relationship of individual to corporate defendant
- C—Name of corporate defendant, if any
- D—District
- E—Docket number of action
- F—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver (As added Apr. 22, 1993, eff. Dec. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1993

Forms 1A and 1B reflect the revision of Rule 4. They replace Form 18-A.

Form 1B. Waiver of Service of Summons

TO: _____ (name of plaintiff's attorney or unrepresented plaintiff) _____

I acknowledge receipt of your request that I waive service of a summons in the action of _____ (caption of action) _____, which is case number _____ (docket number) _____ in the United States District Court for the _____ (district) _____. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____ (date request was sent) _____, or within 90 days after that date if the request was sent outside the United States.

Date _____ Signature _____
 Printed/typed name: _____
 [as _____]
 [of _____]

To be printed on reverse side of the waiver form or set forth at the foot of the form:

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

(As added Apr. 22, 1993, eff. Dec. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1993

Forms 1A and 1B reflect the revision of Rule 4. They replace Form 18-A.