

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**

**RE: Report of Advisory Committee on Criminal Rules**

**DATE: December 20, 2013**

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**I. Introduction**

The Advisory Committee on the Federal Rules of Criminal Procedure (“the Committee”) was unable to meet as scheduled on October 18 in Salt Lake City because of the lapse in appropriated funds, and the meeting was not rescheduled. This report discusses briefly four information items:

- (1) a proposal by the Department of Justice to amend Rule 4 to permit service of a summons on a foreign organization that has no agent or principal place of business within the United States;
- (2) a new proposal by the Department of Justice to amend Rule 41 to enlarge the territorial limits for warrants to search electronic storage media and electronically stored information;
- (3) a proposal (parallel to that being proposed by the Advisory Committee on Civil Rules) to amend Rule 45(c) to eliminate the 3-day rule for service by electronic means; and
- (4) proposals to consider amendments to Rules 53, 11, and 32.

## **II. Information Items**

### **A. 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 proposed amendment would ensure organizations that are 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.

A subcommittee met by teleconference throughout the summer and early fall, and it approved a proposed amendment for discussion at the October meeting. Because of the cancellation of that meeting, discussion of the proposed amendment has been deferred to the Committee's April meeting.

### **B. Rule 41**

The Department of Justice has submitted a proposal to amend Rule 41 to enlarge the territorial limits for warrants to search electronic storage media and electronically stored information. The purpose of the proposed amendment is enable law enforcement to investigate and prosecute botnets and crimes involving Internet anonymizing technologies. Rule 41(b) does not directly address the circumstances that arise when officers seek to execute search warrants, via remote access, over modern communications networks such as the Internet.

The proposed amendment is intended to address two increasingly common situations: (1) where the warrant sufficiently describes the computer to be searched but the district within which that computer is located is unknown, and (2) where the investigation requires law enforcement to coordinate searches of numerous computers in numerous districts.

The proposed amendment would authorize a court in a district where activities related to a crime have occurred to issue a warrant to be executed by remote access for electronic storage media and electronically stored information whether located within or outside the district. At present, Rule 41(b) authorizes search warrants for property located outside the judge's district in only four situations: (1) for property in the district that might be removed before execution of the warrant; (2)

for tracking devices installed in the district, which may be monitored outside the district; (3) for investigations of domestic or international terrorism; and (4) for property located in a U.S. territory or a U.S. diplomatic or consular mission. The proposed amendment would add an additional exception to the territorial limitations for electronic storage media and electronically stored information.

This proposal has been referred to a subcommittee, which has met once by teleconference and is expected to report at the April meeting.

### **C. Rule 45 and Other Proposals Arising from the CM/ECF Committee**

Rule 45(c) and Rule 6(d) of the Federal Rules of Civil Procedure contain parallel provisions providing additional time for actions after certain modes of service, identifying those modes by reference to Civil Rule 5(b)(2). The CM/ECF Committee has concluded that it is no longer necessary or desirable to provide additional time when service has been made by electronic means.

Parallel amendments to Rule 45(c) and Rule 6(d) have been drafted, and the Civil Rule amendment will be presented at the January meeting of the Standing Committee. If the Civil Rules proposal is approved, the Committee will move forward with the parallel amendment to Rule 45, taking note of any relevant discussion in the Standing Committee.

It is possible that other proposals from the CM/ECF Committee may be ripe for consideration at the April meeting.

### **D. Other Proposals**

The Advisory Committee has also received two other requests to consider amendments to (1) Rule 53 and (2) Rules 11 and 32.

Acting at the request of Magistrate Judge Clay D. Land, the Judicial Conference Criminal Law Committee referred the question whether there is any need to clarify Rule 53, which prohibits “broadcasting” judicial proceedings in order to clarify the rule’s application to tweets from the courtroom. This proposal has been referred to a subcommittees that has not met.

Professor Gabriel Chin requested that the Advisory Committee consider amending Rules 11 and 32 to make presentence reports available in advance of a guilty plea so that all parties will be aware of the potential sentence. The Administrative Office is researching prior action and consideration of related issues.