



NEW YORK
CITY BAR

COMMITTEE ON FEDERAL COURTS

January 28, 2015

IRA M. FEINBERG
CHAIR
875 THIRD AVENUE
NEW YORK, NY 10028
Phone: (212) 918-3509
Fax: (212) 918-3100
ira.feinberg@hoganlovells.com

BENJAMIN A. FLEMING
SECRETARY
875 THIRD AVENUE
NEW YORK, NY 10028
Phone: (212) 918-3283
Fax: (212) 918-3100
benjamin.fleming@hoganlovell.com

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, N.E., Suite 7-240
Washington, DC 20544

RE: Proposed Amendments to the
Federal Rules of Civil Procedure

At the request of Ira Feinberg, Chair of the Committee on Federal Courts of the Association of the Bar of the City of New York, I am submitting for consideration by the Advisory Committee on Civil Rules a copy of the Association's report on certain of the proposed amendments to the Federal Rules of Civil Procedure. A copy of this report has been submitted electronically using the "Submit a Comment" link made available on the United States Courts website.

Sincerely,

Peter C. Hein, Member
Committee on Federal Courts

cc: Ira Feinberg, Chair, Committee on Federal Courts
Alan Rothstein, General Counsel, Association of the Bar
of the City of New York

**REPORT OF THE ASSOCIATION
OF THE BAR OF THE CITY OF NEW YORK ON
PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE**

The Association of the Bar of the City of New York City greatly appreciates this opportunity for public comment provided by the Judicial Conference’s Committee on Rules of Practice and Procedure on the amendments to the Federal Rules of Civil Procedure proposed by the Advisory Committee on Civil Rules. The Association, founded in 1870, has over 24,000 members practicing throughout the nation and in more than fifty foreign jurisdictions. The Association includes among its membership many lawyers in every area of law practice, including lawyers generally representing plaintiffs and those generally representing defendants; lawyers in large firms, in small firms, and in solo practice; and lawyers in private practice, government service, public defender organizations, and in-house counsel at corporations.

The Association’s Committee on Federal Courts (the “Federal Courts Committee”) is charged with responsibility for reviewing and making recommendations regarding proposed amendments to the Federal Rules of Civil Procedure. The Federal Courts Committee respectfully submits comments on two of the proposed amendments. Specifically, we support (a) the proposed amendment to Rule 4(m) and (b) the proposal to amend Rule 6(d) to eliminate the provision allowing three additional days to respond to service by electronic means. The Federal Courts Committee takes no position with respect to any other amendments proposed by the Advisory Committee.

I. Rule 4(m)

The Advisory Committee has proposed a further revision to Rule 4(m) that will make clear that the shortening of the time period to serve a summons and complaint (recommended in

a separate, prior amendment) does not apply to service on foreign corporate entities. This amendment has been proposed because of the ambiguity that arises from Rule 4(m)'s lack of any explicit reference to Rule 4(h)(2), which governs service on foreign corporate entities, even though the rule already contains exceptions for service on an individual in a foreign country under Rule 4(f) and service on a foreign state under Rule 4(j)(1). As the Advisory Committee notes in its discussion, this ambiguity was identified by the Federal Courts Committee in its report last year on the earlier round of proposed amendments, and, at that time, we suggested adding an explicit reference to Rule 4(h)(2) in Rule 4(m). *See* Report of the Ass'n of the Bar of the City of N.Y. on Proposed Amendments to the Fed. R. Civ. P. (Feb. 7, 2014) at 2-4. We thus agree with the proposed amendment and thank the Advisory Committee for taking into consideration our earlier suggestion.

II. Rule 6(d)

The Advisory Committee has proposed an amendment to Rule 6(d) that will delete the provision that affords three additional days to respond after service by electronic means. The Federal Courts Committee supports this proposed amendment. In particular, we agree with the Advisory Committee's observation that technological advances in both transmission time and software/systems compatibility, along with increased education and familiarity with electronic transmission methodologies, have substantially alleviated concerns over delays and other difficulties in receiving, opening, and reviewing electronic documents. Electronic transmission of documents has now become such a routine and accepted practice – and provides such instantaneous notice to other parties – that it no longer makes sense to provide for extra time to respond to a pleading served electronically. Accordingly, we agree that the Advisory

Committee's proposal is a fitting update of the Rules that reflects the technological realities of today's law practice.

We note that there are parallel proposals to eliminate the extra three days for electronic service that are included in the proposed amendments of the Appellate, Bankruptcy, and Criminal Rules. The Federal Courts Committee similarly supports those amendments as well.

Dated: January 28, 2015
New York, New York

Respectfully submitted,

Committee on Federal Courts
Association of the Bar of the City of New York

Ira M. Feinberg, *Chair*
Benjamin A. Fleming, *Secretary*
Cindy P. Abramson, Esq.
Alex Bein
Neil S. Binder, Esq.
Laura G. Birger, Esq.
Julia L. Brickell, Esq.
Daniel Joseph Brooks, Esq.
Olga Kaplan Buland, Esq.
Partha P. Chattoraj, Esq.
Theodore K. Cheng, Esq.
James Clare, Esq.
Seth D. Eichenholtz, Esq.
Brian J. Farrar, Esq.
Michael S. Flynn, Esq.
The Honorable Martin Glenn
Jason M. Halper, Esq.
Peter C. Hein, Esq.
Anna Kadyshevich, Esq.
Anne Catharine Lefever, Esq.
Michelle L. Levin, Esq.
Elaine K. Lou, Esq.

John M. Lundin, Esq.
Margaret Malloy, Esq.
Glen G. McGorty, Esq.
Natalie Marcus, Esq.
Pamela Miller, Esq.
Concepcion A. Montoya
Parvin D. Moyne, Esq.
Eric S. Olney, Esq.
Winston Paes, Esq.
Francesca J. Perkins, Esq.
Carolyn Pokorny, Esq.
Clay J. Pierce, Esq.
Nathaniel P.T. Read, Esq.
Harry Rimm, Esq.
Jorge Salva, Esq.
The Honorable Vera M. Scanlon
MaryAnn Sung, Esq.
Jeffrey A. Udell, Esq.
Jeannette A. Vargas, Esq.
George S. Wang, Esq.
William R. Weinstein, Esq.
Robert Weintraub, Esq.
Sidney N. Weiss, Esq.
Adrienne Eason Wheatley, Esq.
Sam A. Yospe, Esq.