

07-BR-012

**Judge Judith  
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Subject expansion of time to file appeals from 10 to 14 days

Thank you for the opportunity to comment on the proposed expansion of the time to file appeals from bankruptcy court orders. First, let me say that I endorse any rule that accords due process to the parties. I believe, however, that the current rule, with its ability to extend the time to file appeals, does accord due process and does not require a change. Here is a summary of my rationale.

Changing the time to file appeals from the current 10 days to 30 days simply to be "consistent" with the Federal Rules of Civil Procedure does not appropriately consider the need for expeditious treatment that attends most of the proceedings in the bankruptcy courts. There is not total consistency between all of the rules of civil and bankruptcy procedure as it is, nor should there be given the differences in the nature of the cases and proceedings handled in the two courts. (It goes without saying, perhaps, that if there were no need for differences in the rules, there would not be two separate Judicial Conference Rules Committees to address the issues of concern in processing the cases within the civil and bankruptcy systems.) Most chapter 7 cases, for example, are closed within approximately 6 months of when they are filed, so a 30-day window to file an appeal has no bearing on the nature of the matters that would be litigated in that type of case, compared with, for example, an antitrust suit in the district courts as to which the first pretrial conference to discuss discovery may be the only event scheduled within the first 6 months of the case.

Changing the number of days within which a litigant can file an appeal from a bankruptcy court's order from the current 10 days to 14 days is likewise inadvisable. That minor of a change is likely to cause confusion that will not materially advance anyone's interests. Motions for reconsideration are due within 10 days. I can envision the circumstance in which a litigant (particularly pro se litigants, of which the bankruptcy system has a multitude) will be confused, wish to file a motion for reconsideration and miss the time to do so due to the change in the time to file the appeal, not file an appeal, and lose the ability to have a court take a second look at the matter either on reconsideration or on appeal due to this mistake. Given the Supreme Court's recent pronouncement that rules providing time to file appeals in the habeas corpus context must be strictly complied with even when the district court inadvertently provided a longer time period (and without mentioning whether the extra 3 days added by the district court may have been to accommodate a notice by mail), and that failure to comply deprives the appellate court of jurisdiction to address the appeal, I would be concerned about a similar ruling in the bankruptcy context, should an appellant miss this important deadline through mistake, inadvertence or otherwise.

Moreover, Bankruptcy Rule 8002(c) already permits extension of the time to file appeals in most circumstances, so a party ought not to be prejudiced by the 10-day period in the typical circumstance

Ten days is a short time, but virtually everything in the bankruptcy world happens on a compressed time frame. For example, motions to dismiss the case must be heard within 30 days and decided within 15 days after the hearing commences (11 USC section 1112(a)(3)), applications for rejection of a collective bargaining agreement must be held not later than 14 days after the application is filed (11 USC section 1113(d)(1)), certain motions for relief from stay must be heard within 30 days after the motion is filed or relief is granted by operation of law (11 USC section 362 (e)(1)) etc

Given the implementation of CM/ECF nationwide, virtually every litigant now receives notice of the entry of orders immediately upon their docketing. In essence, this means that the parties now get MORE time to appeal than they had before because they receive more timely notice of the entry of the orders than they had when service was only by mail. With this timely notice and the accelerated pace of actions in the bankruptcy courts, the additional 4 days (from 10 to 14 days) does not seem to warrant the possible negative effects that could result from such a minor change, and the additional 20 days (from 10 to 30 days) is simply an unnecessary impediment to processing cases, paying creditors and discharging debtors when Rule 8002 already provides that relief

Respectfully,

Judith K Fitzgerald  
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