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Via Electronic and First Class U.S. Mail

Peter G. McCabe  
Secretary of the Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
Washington, DC 20544

Re Comments on Proposed Amendments

Dear Mr. McCabe

After reviewing the preliminary draft of proposed amendments to the Federal Rules of Civil Procedure, including the proposed time-computation amendments, I am writing to submit the following comments and suggestions:

1. Federal Rule of Civil Procedure 15(a)

The proposed amendment to Rule 15(a) would meet its stated objectives to clarify and simplify the procedures for amendment as a matter of course. I am in favor of this amendment insofar as it would treat a motion to dismiss and an answer the same way. There is no sound basis for the disparity of treatment under the current rule. Moreover, the proposed amendment would clarify the procedures by specifically addressing both responsive pleadings and motions under Rule 12(b), (e) or (f).

I am not, however, in favor of the proposed amendment to Rule 15(a) insofar as it would permit amendment once as a matter of course within twenty-one days after service of either a responsive pleading or a motion under Rule 12. Instead, I would suggest a proposed amendment that would permit amendment of a pleading where a responsive pleading is allowed once as a matter of course only until such responsive pleading or a motion under Rule 12 is filed. My firm frequently files motions to dismiss complaints filed against its clients before filing responsive pleadings. My experience has been that, even if leave of court is required to file an amended pleading, the first motion for leave to amend is often granted. I believe that if leave is required any time after a responsive pleading or Rule 12 motion plaintiffs would be encouraged to take greater care in framing the first amended complaint. In addition, my suggestion would provide better protection to defendants by the closer scrutiny that follows where plaintiffs seek leave to amend more than once.

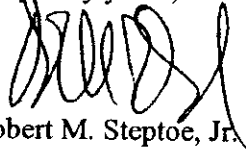
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2. Time-Computation Rules

The proposed time-computation rules could also simplify the method of computing all periods of time, including short time periods, with its “days-are-days” approach. I understand that the days-are-days approach would be almost entirely offset – as to rule-based periods – by amendments that lengthen most short rule-based deadlines. I am concerned, however, that the proposed time-computation rules would govern a number of statutory deadlines that do not themselves provide a method for computing time. I am concerned also that the proposed time-computation rules may cause hardship if short time periods set in local rules are not adjusted accordingly. Therefore, I would suggest that the proposed time-computation rules not be implemented unless and until the Standing Committee is sure that it will receive the necessary cooperation from Congress and the local rules committees to meet the desired objective of simplification.

Please do not hesitate to contact me if you have any questions. Thank you for all of the work that the Committee has done in an effort to clarify and simplify the rules.

Very truly yours,



Robert M. Steptoe, Jr.

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