

From: Judge Raymond Lyons/NJB/03/USCOURTS
To: Judge Judith Wizmur/NJB/03/USCOURTS@USCOURTS
Cc: James Wannamaker/DCA/AO/USCOURTS@USCOURTS, John Rabiej/DCA/AO/USCOURTS@USCOURTS
Date: 03/29/2010 01:24 PM
Subject: Rule 9006(d)

Dear Judy:

I am writing to you in your capacity as a member of the Advisory Committee on Bankruptcy Rules. I suggest that Rule 9006(d) be deleted. It sets a seven day time period for service of a motion, notice and supporting affidavit. It also sets a one day time period for serving an opposing affidavit. I believe the rule is superfluous because most districts have local rules establishing the time for serving motions and responses. It is also misplaced since Rules 9013 and 9014 deal with motions. The Advisory Committee Notes to Rules 9013 and 9014 do not even cross reference Rule 9006(d).

To the extent that Rule 9006(d) is inconsistent with local rules it may lead to confusion. This morning I heard from a state deputy attorney general, who does not regularly handle bankruptcy matters, that he believed opposition to a motion was not due until one day prior to the hearing, citing Rule 9006(d). He was unaware of our local rule D.N.J. LBR 9013-1(d)(1) requiring answering papers to be filed and served 7 days before the return date.

Colliers comment states, "Rule 9006(d) does not address the service of replies to motions, a subject usually dealt with by local rule or court order." I think the whole subject of scheduling motions and opposition is best left to local practice.

Ray