



Federal Rules of Civil Procedure 26(a) / Additional Days for Service?

15-CV-HH

Amy Reverdy

to:

Rules_Support

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From: Amy Reverdy <areverdy@gmail.com>

To: Rules_Support@ao.uscourts.gov

Dear Rules Committee,

I'm writing regarding Rule 26(a) of the Federal Rules of Civil Procedure and to inquire whether additional days should be added for service under Rule 6(d).

Subsection (a)(2)(D)(ii) of Rule 26 states that absent stipulation or court order parties must make their rebuttal expert witness disclosures "within 30 days after the other party's disclosure" and subsection (a)(3)(B) states that parties should file and serve objections to pretrial disclosures "[w]ithin 14 days after they are made."

Subsection (a)(4) of Rule 26 requires that disclosures be "served" and Rule 6(d) provides that "[w]hen a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a)."

As expert witness disclosures and pretrial disclosures must be served and the opposing party may or must act within a specific time, e.g., 30 days and 14 days, respectively, it seems that the rebutting/objecting party should receive additional time in which to respond if service is made as outlined in Rule 6(d). Though in practice, this does not seem to be the case.

The argument for not adding additional days for service is placed on the terms "disclose" in subsection (a)(2)(D)(ii) and "made" in subsection (a)(3)(B). The date the expert witnesses are disclosed and the date the pretrial disclosures are made are considered to be the triggers from which the deadlines run. However, if these disclosures must be served, then it would seem the date that they are disclosed or made is the service date. Otherwise, it's not clear how the disclosure and made dates are determined for purposes of responding.

If the Committee's intent was to have the additional time for service apply, I suggest that subsection (a)(2)(D)(ii) be amended to provide that rebuttal witnesses must be served 30 days after the other party's disclosure is served, and that (a)(3)(B) be amended to read that objections must be filed and served within 14 days after the pretrial disclosures are served.

Conversely, if the Committee intended that additional time for service not apply to the rebuttal and objection deadlines, perhaps a sentence could be added to subsection (a)(4), or elsewhere, indicating as such.

Thank you for your consideration.

Sincerely,

Amy Reverdy

CA Bar No. 203678