

Good morning Rules Committee Secretary,

Whether FRCP 6(d) requires clarification as to its application in calculating the 28 period for filing posttrial motions.

Whether FRCP 60 should be amended to remove the 'trap' currently set in FRAP 4(a)(4)(A)(vi).

Because of the constraints on the judiciary the improvements suggested will:

- Increase judicial efficiencies
- Reduce the number of resources devoted to certain 'jurisdictional' issues
- Create additional amity and comity
- Improve consistency and clarity
- Preserve the style and integrity of the rules

I. FRCP 6(d) and entry of judgment

In keeping with the Guidelines for Drafting and Editing Court Rules and honoring the command of FRCP 1 to "secure the just, speedy, and inexpensive determination of every action and proceeding", I respectfully submit a simplification of FRCP 6(d) by adding a phrase already contained elsewhere in the FRCP. By adding the phrase "or after entry of judgment" will simplify the rule, comports with the style of the rules, and removing any remaining doubt that FRCP 6(d) applies to entry of judgment mentioned elsewhere in these rules.

To me, as a disabled layperson, FRCP 6 is ambiguous, cumbersome, and confusing. Specifically, the interplay between FRCP 6(d) and FRCP 6(a) when involving the required service of the notice of entry of judgment under FRCP 77. "That should have been clear to any federal litigator, and to read it the way McCarty's attorney has constitutes inexcusable neglect." *McCarty v. Astrue*, 528 F.3d 541, 545 (7th Cir. 2008).

Currently FRCP 59(e) and FRCP 60 (via FRAP 4(a)(4)(A)(vi) require a motion be filed within 28 days of the entry of judgment (FRCP 58) in order to "toll the time" for filing a notice of appeal.

Here is how the mental model I built looks:

The court enters judgment (58), which is a 'paper' (5). The Clerk then makes service (77) to the parties according to the method the parties consented to (5) and records service on the docket (79).

Because time, 28 days, starts the day after the event (6(a)(1)(A) the period is then calculated. (Day of event + 1 day) + 28 days

Because local rules (83) allow a pro se to be served by mail (5(b)(2)(c) and 6(d) requires additional time after certain kinds of service be added after the expiration of the time calculated in 6(a). That would give us:

Calculation of period in FRCP 6(a):

(Day of event + 1) + 28 days + 3 days.

From the 2018 calendar:

Day of entry: Wednesday, June 13, 2018

Day to start counting: Thursday, June 14, 2018

Days to count: 28 days

June 14 + 28 = July 11, 2018 (Wednesday) = 28 days as calculated in FRCP 6(a). Because notice of entry was served by mail, 3 days are added per 6(d). July 11 + 3 days = Saturday, July 14, 2018. Because July 14, 2018 is a Saturday, the filing day becomes the non-Saturday, non-Sunday, non-Holiday, which is Monday, July 16, 2018.

Because 6(d) is an 'automatic' calculation and requires neither action nor discretion by the court, rule 6(b) is inapplicable.

In 2005 the rules committee wrote “Rule 6(e) is amended to remove any doubt as to the method for extending the time...” When viewed together with Fed. R. Civ. P. 5(d)(4) “Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice” that means the service by mail of the notification of entry of judgment adds 3 days to the 28-day period one must file a posttrial motion for the tolling of time. Compare with " Fed.R.Civ.P. 6(e) applies only to documents `served' on opposing counsel, not to documents such as complaints or notices of appeal that must be filed in court."” *McCarty v. Astrue*, 528 F.3d 541, 545 (7th Cir. 2008).

I propose adding “or after entry of judgment” to FRCP 6(d):

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served or after entry of judgment

and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

The application of Rule 6(d) to the calculation of time for the filing of posttrial motion(s) and a notice of appeal has no effect on the finality of the judgment/order and opinion nor does the additional 3 days cause a disadvantage to the appellee.

II. FRCP 60 and the FRAP trap.

FRAP 1(a) limits the scope of the rules to the United States courts of appeals. FRAP 1(b) goes on to discuss the filing of motions or other document in the district court, the procedure must comply with the practice of the district court. The FRCP refers to 'paper(s)' and FRAP diverges by use of 'document.' Perhaps, that difference between the two sets of rules should be reconciled as well.

To toll the time for filing a Notice of Appeal, the FRCP requires posttrial motions to be filed within 28 days, except FRCP 60. The 28-day limitation for FRCP 60 appears in FRAP 4(a)(4)(A)(vi).

This minor language tweak will result in greater amity and comity amongst the districts and their circuits. For purposes of continuous improvement and consistency between the sets of rules FRCP Rule 60 should be amended to include the 28-day limitation and the reference to 28-days should be simultaneously removed from FRAP 4(a)(4)(A)(vi).

I propose amending FRCP Rule 60(c):

(c) TIMING AND EFFECT OF THE MOTION.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—

(A) no more than a year after the entry of the judgment or order or the date of the proceeding for reasons (b)(1), (b)(2), and (b)(3)

(B) within 28 days to toll the time for filing an appeal.

I propose the following amendment to FRAP Rule 4(a)(4)(A)(vi):

(vi) for relief under Rule 60 ~~if the motion is filed no later than 28 days after the judgment is entered.~~

Thank you for your time, attention, and consideration of the analysis, and proposed amendments to the FRCP and FRAP. Because a litigant can lose important appeal rights, I beg you to fast-track these items. Alternatively, if my analysis is erroneous, I ask that you point out any errors in a compassionate manner.

Sincerely,

Greg Patmythes

Totally and permanently disabled