

DECEMBER
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To: John_Rabiej@ao.uscourts.gov

cc:

Subject: Criminal rule 6 and habeas rule 9

03-CR-F

Hi John,

A couple of things

1. Has anything happened to Criminal Rule 6 yet? I haven't been following that closely, and we're nearing the end of a cycle, so I thought I'd check in.

2. Have you read *Walker v. Crosby*, 341 F.3d 1240 (11th Cir. 2003)? Basically, 8 years after his conviction, defendant got a resentencing and then filed his first federal habeas petition raising 1 claim as to the resentencing and 4 as to the original conviction. The 11th Circuit held that if one claim is timely then they all are, because section 2244 speaks of *applications* and not *claims*. Thus, the old claims were revived even though they had been previously time-barred. My suggestion is that you might want to take a look at revising Habeas Rule 9(a) so that it refers to a *claim* and not to the *petition*. I had thought that rule 9(a) wasn't necessary anymore, because a claim could never be timely under the statute of limitations but delayed under the rule, but I was wrong. If *Walker* is right (and I'm pretty sure they are) my suggestion would fit in exactly with the situation created by the decision.

I trust all is well with you,

Steve Allen