



"Robert MacKay"
<Robert.MacKay@law.duke.edu>

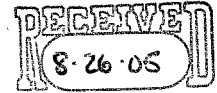
08/26/2005 06:16 PM

To <rules_comments@ao.uscourts.gov>

cc

bcc

Subject Suggested Revision of the Federal Rules of Civil Procedure



Hello,

I have a suggestion that I hope will be helpful with regard to Rule 12 (h). If I have read it correctly it won't change the meaning of the Rule, but will get rid of what appears to be an irrelevant point [12(h)(1)(B)(i)]. This is in the effort of making the Rule a little bit more streamlined.

It seems that if you admit that the defense has been omitted from the motion 12(h)(1)(A), then you have basically said that the specified defense was not set forth in a motion, making 12(h)(1)(B)(i) irrelevant.

To restate it in a better way (hopefully), if you have omitted any defense in Rule 12(b)(2-5) in the circumstances described in Rule 12(g)(2), you have already failed to make it by motion under Rule 12.

So my argument would be to get rid of Rule 12(h)(1)(B)(i) and instead state Rule 12(h)(1)(B) as just "failing to include it in a responsive pleading or in an amendment allowed by Rule 15(a) as a matter of course."

I hope that the argument makes sense and is relevant to the Rule. I do admit that my experience with the Federal Rules of Civil Procedure is limited and I may have incorrectly read the Rule in question. If so, I apologize and I look forward to seeing the complete revised rules.

Thank you,

Robert MacKay