

07-BR-019

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Subject: Comment on proposed Rule 8002

To the Advisory Committee on Bankruptcy Rules:

I write to submit a comment on the proposed amendment to Bankruptcy Rule 8002. I am currently a Bankruptcy Judge in Chicago and have held that appointment for five years. Before my appointment, I spent almost eight years as an Assistant Attorney General in the Civil Appeals Division of the Illinois Attorney General's Office and was a Supervising Attorney in the Division for most of that time. In 2001-2002, I served as President of the Illinois Appellate Lawyers Association.

I support the proposal to extend to 14 days the time to appeal from a bankruptcy judgment. I cannot see that an increase of four days would materially disrupt bankruptcy practice. By increasing the appeal time to a multiple of seven days, moreover, the amendment would promote fairness and the consistent treatment of litigants. Under the time computation rules now in place, the current 10-day period allows some prospective appellants 10 calendar days to appeal but allows others more, all depending on when the order to be appealed was docketed. With a 14-day period, every prospective appellant will have the same 14 days to file a notice of appeal.

I do not support an extension of the time to appeal to 30 days. Although I am still a relative newcomer to bankruptcy practice, my impression is that the pace of bankruptcy is too brisk, and the need for finality too great, for a 30-day appeal period to be practical.

The arguments in favor of a 30-day period seem to me to be misplaced. In my experience, sensible lawyers do not rely on Code sections like 363(m) or on judge-made doctrines like "equitable mootness" to provide finality. Only the passage of the appeal deadline will do the trick. As for the concern that even 14 days might not be enough to decide whether to take an appeal, a prospective appellant who needs more time can simply file his notice of appeal and then, should he decide not to go forward, dismiss the appeal. Appellate lawyers call this filing a "protective notice." The practice is common.

Especially unpersuasive to me, finally, is the argument that a 30-day appeal period would be consistent with the period for appeals in other civil cases and so would eliminate a trap for lawyers unfamiliar with bankruptcy. In my experience, appellate lawyers are the most rule-conscious members of the bar. If they are unfamiliar with the rules governing bankruptcy appeals, they will open the book and find them. As for other members of the bar, rules should not be drafted to help lawyers unwilling to read rules in the first place.

Thank you for giving me an opportunity to comment

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