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To Rules_Comments@ao.uscourts.gov

cc

Subject August 2007 Proposed Timing Rules Changes

07-AP-007

07-BK-011

07-CV-008

Dear Members of the Rules Committee,

07-CR-008

I offer three comments

1 Title 28 U S C § 636(b)(1) *must* be changed from 10 days to 14 days for making Objections to Magistrate Judge rulings in order to achieve consistency with the proposed changes in FRCP 6 & 72, FRCrP 59, and Rule 8 of the §2254 and §2255 Rules, as has been mentioned in the Committee Comments

2 Since other significant time periods are being considered for change, it would be worthwhile to consider the merits and demerits of changing the short time period for filing Objections to rulings by Magistrate Judges when the rulings address case-dispositive matters. For example, under the current rules, if a Magistrate Judge issues a Report & Recommendation on a case-dispositive issue such as a civil motion to dismiss or motion for summary judgment, a Social Security Appeal, a Bankruptcy appeal, or a petition for habeas corpus relief, an aggrieved party has only 10 days (not including intervening Saturdays, Sundays, and holidays, etc.) to file an appeal (or "Objections"). These types of decisions are often worthy of significant research, effort and reflection, since they may deal with numerous or complex issues. For this reason alone, justice may demand a longer appeal time for litigants. The short time line (14 calendar days under the proposed Rule changes) may work even harsher effects on prisoner litigants who may receive delayed notice of Magistrate Judge decisions due to the imponderables of prison mail systems.

There is already a natural division addressing the time for Objections between FRCP Rule 72(a) and (b). Rule 72(b) would be an appropriate place to insert a more generous time period for objecting to potentially dispositive rulings of a Magistrate Judge, such as 28 days (a multiple of 7) or 30 days (a common practice). In the interests of fairness to prisoner litigants, some courts already include a 30-day time period for Objections within the court order or R&R. For consistency, amendments would also be required to Rule 8 of the §2254 and §2255 Rules as well as 28 U S C 636(b)(1).

3 It is not clear whether the proposed FRCP Rule 6 timing amendments retain, or discard, the extra 3 days provided in current Rule 6(d) and former Rule 6(e). The proposed Civil Rule 6 does not appear to address the subject in the way that the proposed Appellate Rule 26(c) does. Perhaps subsection (d) of Civil Rule 6 is meant to be left as it currently exists.

I would suggest it be given a state funeral and then forgotten. Currently, it is the subject of much confusion and debate among litigants. It occasionally spawns needless motions to strike the filing that looks "late" but is not. It is not needed when a document is served electronically but the existing rule still grants 3 extra days. Questions abound from the rule. Does a party receive the 3 extra days when it is the court that is serving an order electronically? If a plaintiff serves a motion by mail or by e-mail under proposed civil Rule 6 on Monday, February 11th 14 days before a hearing scheduled for Monday, February 25th by when must the defendant file his or her response brief? Under the proposed amendments, would it be Tuesday, February 19th (because seven days prior to the hearing counting backwards would be Monday, February 18th, which is a holiday, which would require counting backward to the next business day of Friday, February 15th, plus 3 additional days because of mail/email service which would land back on the holiday Monday, February 18th, moving forward this time to the next day the Clerk's Office is open for business, *i.e.*, Tuesday, February 19th)? If the 3-day rule applies when an opposition brief must be filed, then a court may not receive the full 7 days' time consideration prior to a hearing. If the 3-day rule does not apply, then a responding party may have a very short window between receipt of a motion and the time for filing a response.

Whatever the intent of the proposed amendments, an official Committee Note would be extremely helpful.

Sincerely,

Robert J. Newmeyer

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