

**Public Citizen Litigation Group's
Comments on Proposed Time-Computation Amendments**

In general, Public Citizen Litigation Group supports the days-are-days approach and amending the rules to provide that most time periods be 7, 14, or 21 days. We note, however, that the committee's desire that due dates land on week days will only be fully realized in the relatively rare circumstance where the relevant filing is delivered non-electronically to the adverse party on the date of service. We also agree with most of the particular proposed amendments, which, in general, are accomplished by moving up to the next closest increment (*e.g.*, the period to seek permission to appeal under FRCP 23(f) moves from 10 days to 14 days).

We disagree, however, with the recommendation that the 10-day periods for filing "tolling" motions under FRCP 50, 52, and 59 become 30-day periods. We also disagree with the recommendation that a Rule 60(b) motion filed within 30 days of entry of judgment cut off the running of the appeal period. For the reasons that follow, we recommend a 21-day period for all of these motions.

The only justification provided for more than doubling the effective period for filing a post-judgment "tolling" motion is the committee's brief statement that "[e]xperience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays." For 35 years, our office has engaged in a wide range of complex federal litigation, and we file and respond to a fair number of "tolling" motions, particularly Rule 59(e) motions. Although the current 10-day period is tight, we have never found it unmanageable. We acknowledge, however, that the current deadline may make it difficult to file some post-trial motions, particularly those under Rules 50 and 52. Nevertheless, we are concerned that a 30-day period will unnecessarily delay the proceedings and may even encourage litigants to file unwarranted post-judgment motions. Moreover, we do not think it is a good idea for the filing period for post-judgment motions to be the same as the filing period for appeal in most cases. A 30-day period for filing "tolling" motions guarantees that some parties will file those motions on the same day that other parties in the same case file appeals. On the other hand, if, as under current law, the period for filing post-judgment motions is substantially shorter than that for filing an appeal, once a motion is filed, all

litigants will know that they do not need to file an appeal, if at all, until after the motion is decided. Although an appeal filed before the disposition of a “tolling” motion is effective once the motion is decided, FRAP 4(a)(4)(B)(i), that is no reason to implement a rule that will significantly increase the number of instances in which appeals and post-judgment motions are pending simultaneously. At the very least, circuit clerks will have to send out forms to litigants prematurely, and litigants will have to fill them out prematurely. In sum, we think that a 21-day period better balances the needs of all litigants and the courts.

Brian Wolfman – February 11, 2008