

03-AP-071

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Please respond to
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To: Rules_Comments@ao.uscourts.gov
cc:
Subject: Amendments to Rule FRAP 4 and Extension of Time

Honorable members of the Judiciary Committee;

My attention to the US Courts website was a coincidence. Nevertheless I noticed a proposed amendment to Rule 4 and wish to convey my comments.

Although most of the proposed changes deal with extension of time to appeal, one critical factor in filing the notice of appeal, is the timely/untimely "filing".

from "uscourts.gov"

The good cause and excusable neglect standards have "different domains." Lorenzen v. 2 Employees Retirement Plan, 896 F.2d 228, 232 (7th Cir. 1990). They are not interchangeable, 3 and one is not inclusive of the other. The excusable neglect standard applies in situations in 4 which there is fault; in such situations, the need for an extension is usually occasioned by 5 something within the control of the movant. The good cause standard applies in situations in 6 which there is no fault - excusable or otherwise. In such situations, the need for an extension is 7 usually occasioned by something that is not within the control of the movant. 9 Thus, the good cause standard can apply to motions brought during the 30 days following 10 the expiration of the original deadline. If, for example, the Postal Service fails to deliver a notice of appeal, a movant might have good cause to seek a post-expiration extension. It may be unfair 12 to make such a movant prove that its "neglect" was excusable, given that the movant may not 13 have been neglectful at all.

The Supreme Court "prisoner mailbox rule" has been established for a good reason and works as long as the prison mailroom operates, the date of mailing controls.

Congress has also amended the Internal Revenue Code for the same reason, and works as long as the taxpayer can prove its mailing.

The civil litigant, such as myself can not benefit of the Supreme Court common law Mailbox Rule and the District Court can arbitrarily deny the appeal even for mishandling in the Court's mailroom..

I, as a litigant in a civil case was unable to succeed to reverse my untimely notice of appeal ruling in spite of an undeniable proof of mailing postmarked 6 days prior to the deadline and a mailing distance of 30 miles.

Additionally, during my intensive civil case/law researches, I found too many mailing issues particularly for civil litigants.

My comments to the Judiciary Committee

There is much to gain for litigants, Federal Courts and Court Clerks if the Supreme Court's Mailbox Rule or an amendment to the Federal Rules make the date of proven mailing as the date of filing the Notice of Appeal, even if the 30 days time to file is reduced by 2 days.

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