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**03-CV-C**

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May 28, 2003

**BY FEDERAL EXPRESS**

Prof. Daniel R. Coquillette  
Boston College Law School  
Stuart House – Room M506  
885 Centre Street, Newton Centre  
Boston, MA 02459

**Re: Civil Rules Committees: Proposed Issues for Consideration**

Dear Professor Coquillette:

I very much enjoyed meeting you, and I am following up on our conversation, at the recent meeting of the Civil Rules, Styles, etc , Committees in Washington, D.C., which I attended as a representative of the ABA Section of Litigation

In particular, in connection with the proposal to clarify how one calculates the "additional days for mailing," I mentioned two similar issues that I had often come across, and with respect to which neither I, nor other practitioners with whom I have spoken, had an answer with which we were comfortable. You had suggested that I certify the issues in writing, so that they could go into your ominous-sounding Folder of Issues To Be Addressed Down The Road (capitalization added).

First, one often is required to "count backwards": i.e., the Court sets a hearing for a particular date, and requires the parties' papers to be served "x days before the hearing " If, by counting back, one's papers are due on a Saturday (for example), are the papers required to be served on Friday (the next business day if one continues counting backward from the hearing date), or Monday (the next business day after the day on which papers otherwise would be due, based on the language of the scheduling order)? The Federal Rules are unclear; practitioners with whom I have spoken are unclear; and as I recall the discussion when I raised the issue at the Washington meeting, several of the judges acknowledged that they were aware of the issue, but did not have an

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answer, either. Although most of us work this out by stipulation or a teleconference with the Court, that is not always possible - - and clarification would be extremely helpful.

Second, Rule 62 provides for an automatic stay of both execution upon, and proceedings to enforce, a judgment. The stay is in effect "until the expiration of 10 days after [the judgment's] entry." Rule 6(a) provides that "[w]hen the period of time prescribed . . . is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation."

[i] Does Rule 62 constitute a "less than 11 days" rule which thereby implicates Rule 6(a), and one therefore does not count intervening Saturdays, Sundays and holidays? Or is it an "11 day" rule (i.e., execution/enforcement is permitted 11 days after entry of the order), such that the intervening "no court" days are counted as part of the ten days?

[ii] Similarly, execution upon a judgment can be effected in many ways and does not require the court to be open: if the tenth day is a Friday, can execution be made on the next day, even though it is a weekend? What if the tenth day is a Saturday, Sunday or holiday? Under Rule 6(a): "The last day of the period so computed shall be included, unless it is a Saturday, or a Sunday, or a legal holiday, . . . in which event the period runs until the end of the next day which is not one of the aforementioned days." If the tenth day is Friday (regardless of how one got there, in light of the answer to question [i]), it would seem permissible to execute on Saturday (since Saturday is not part of "the period so computed"), but as to a situation where the tenth day is a Saturday or Sunday, it would seem that the "last day" becomes Monday -- in which case one cannot first execute on Monday, but only on Tuesday.

I would greatly appreciate your thoughts on these issues and, if you think the issues are worth addressing, your raising them with whichever committee or sub-committee would be appropriate. I look forward to hearing from you and to seeing you at future meetings.

With best regards,

Sincerely,



Irwin H. Warren



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*Daniel R. Coquillette*  
*Lester Kissel Visiting Professor of Law*  
*J. Donald Monan S.J. University Professor, Boston College*

June 11, 2003

The Honorable David F. Levi  
United States District Judge  
United States Courthouse  
501 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95814

Professor Edward H. Cooper  
University of Michigan Law School  
312 Hutchins Hall  
Ann Arbor, MI 48109-1215

Mr. John K. Rabiej, Esq  
Chief, Rules Committee Support Office  
Administrative Office of the U.S. Courts  
Washington, DC 20544

Dear David, Ed, and John.

Here is the letter from the ABA representative. I have already replied, and indicated that his concerns have been officially forwarded to you.

Ideally, we should address all time issues at once, and I do not think he expects immediate action. A brief response from Ed to him would be appropriate, however.

In the long term, the idea of a conference or task force solely devoted to counting time excites me. I volunteer Ed to do it. It could be held at "a secure facility." Nobody would be released until it was done.

Very best regards,

Enclosure

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

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July 3, 2003

Irwin H. Warren, Esquire  
Weil, Gotshal & Manges, LLP  
767 Fifth Avenue  
New York, New York 10153

*Re: Your Suggestion for Amendments to Federal Rules of Civil Procedure 6 and 62  
(Docket Number 03-CV-C)*

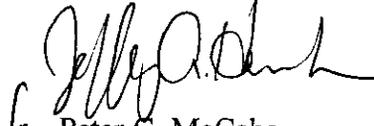
Dear Mr. Warren:

Thank you for your letter of May 28, 2003, to Professor Daniel R. Coquillette, suggesting consideration in the rulemaking process of certain time-counting issues in Civil Rules 6 and 62. A copy of your letter has been sent to the chair and reporter of the Advisory Committee on Civil Rules for their consideration

The federal rulemaking process is an exacting and time-consuming process. From beginning to end, it usually takes two to three years for a suggestion to be enacted as a rule. To follow the progress on your suggestion, you may log on to the Judiciary's web site at [www.uscourts.gov/rules](http://www.uscourts.gov/rules).

We welcome your suggestion and appreciate your interest in the rulemaking process.

Sincerely,

  
for Peter G. McCabe  
Secretary

cc: Honorable David F. Levi  
Professor Edward H. Cooper