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07-AP-018

BY ELECTRONIC DELIVERY TO:

Rules_Comments@ao.uscourts.gov

**To: Committee on Rules of Practice and Procedure,
Judicial Conference of the United States**

**From: Thomas J. Wiegand, Chair
Seventh Circuit Bar Association, Rules and
Practice Committee**

Re: Proposed Amendments to Federal Rules

Date: February 15, 2008

On August 15, 1997, the Judicial Conference Advisory Committees on Appellate, Bankruptcy, Civil and Criminal Rules published proposed amendments to those Rules, and solicited comments from the bench and bar. The leadership of the Seventh Circuit Bar Association wanted to promote awareness among, and encourage comments from, its membership. On December 4, 2007, the Seventh Circuit Bar sponsored a lunchtime program where seasoned practitioners in each of these four practice areas presented an overview of the proposed changes and solicited any comments or discussion. Our members were able to attend either in person, at the Chicago office of Winston & Strawn LLP, or electronically from their computers through a "webinar" connection that allowed a live feed of the presentation and the ability to submit questions electronically in writing. This was the first year we have attempted this format, and are pleased that about 40 attorneys attended, including two sitting judges. We recommend this format to other federal bar associations.

Most of the proposed changes were received at the session with little or no comment, but a few of them led to interesting comments that we believe are important to forward to you:

New Civil Rule 62.1 and new Appellate Rule 12.1: It appeared that these new rules are aimed primarily or exclusively at motions pursuant to civil Rule 60. If that indeed is the case, then the new rules or the comments might mention that fact, so as to avoid a variety of other motions being made under the new rules, such as motions for fees.
Appellate Rule 4(a)(4)(B)(ii): Participants doubted whether the proposed change to this Rule for amending notices of appeal would have any practical effect because, if there is any chance that the amended judgment could be argued as affecting the appeal, the appealing party

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always will file an amended notice of appeal in order to avoid any risk of waiving an issue on appeal. The suggestion for avoiding this was to amend the Rule to state that any post-appeal amendment to an underlying judgment is automatically incorporated into the scope of the originally filed notice of appeal.

Bankruptcy Rule 8002: The existing Rule allows 10 days in which to file an appeal from the judgment or order of a bankruptcy court. Proceeding on an expedited basis through the appeal process is a hallmark of bankruptcy practice and is often necessary in cases in which an entity operating in bankruptcy is depending on the resolution of a significant business matter before the bankruptcy court. However, as part of the time computation project, it is proposed to extend this period from 10 to 14 days. Some attorneys attending the meeting were strongly concerned that the reduction of this period would disrupt long-standing expectations regarding the pace of a bankruptcy case (and particularly a corporate restructuring case) and slow the bankruptcy appellate process without conferring on the parties or the courts any demonstrable benefit. As an alternative it was suggested, consistent with the desire to move to multiples of 7, to change the time period to 7 days. This period would come closer to maintaining current practice while also rendering its duration consistent with the time computation project's general goal of uniformity.

"Hours-are-hours": Also related to the time computation project, it was noted that the "hours-are-hours" approach to computing time would conflict with how Civil Rule 30(d)(2)'s 7-hour limit for depositions is calculated. (The advisory committee's notes to the 2000 amendment of Rule 30 state that only the time taken for the actual deposition, not including lunch or other breaks, counts toward the 7 hours, and case law states that the deposition is to occur in one day.) While there was no unanimous view, some present at our session suggested that adopting the "hours-are-hours" approach to the 7-hour deposition would be a beneficial change, as 7 hours of actual testimony in one day, with a single witness being asked questions by a single examiner, can be difficult.¹ It may be that no further comment is needed, as no change is being proposed to the 7-hour limit of Rule 30(d)(2). Yet if an overall explanation is anywhere offered for the time computation project, the Committee might desire to make clear whether any change is intended for calculating the 7-hour period in Rule 30(d)(2).

Civil Rule 15: Finally, one change that received strong support at the session was the proposed change to Civil Rule 15, requiring that a party desiring to amend a complaint after a responsive pleading is filed must seek leave of court. This promotes economy and eliminates delay where a Rule 12 motion is filed in response to the original complaint and the amendments ultimately do not alter the bases for the Rule 12 motion.

We thank the Advisory Committees for all of the hard work they have done in developing the proposed amendments, and hope these comments prove helpful. Please feel free to contact me if we can provide any further comment or explanation.

¹ On the assumption that changing how to calculate the 7-hour period is outside of this year's proposed changes to the Civil Rules, some members believe that changing either the 7-hour duration in Rule 30(d)(2), or how to calculate it, should be considered by the Committee in the future