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ADMITTED IN NEW YORK
PENNSYLVANIA
AND THE UNITED STATES
SUPREME COURT

5 February 2004

Hon. Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

Re:Preliminary Draft of Proposed Amendment to Federal Rules (August, 2003)
Proposed Fed. R. Civ. P. 6 and Proposed Fed. R. Bankr. P. 9006

Dear Mr. McCabe:

I write to provide comments and suggestions regarding the above. By way of information, in addition to my many years of practice before the federal courts, I am a professor of law, the author of numerous law review articles on various topics of federal law, and have been honored by several federal judges citing same in their legal opinions. That having been said, permit me to turn to my brief, specific comments, which are limited to the two proposed changes as referenced above.

The proposed changes to the "Time" rule of the Civil Rules and the parallel Bankruptcy Rule is necessary, beneficial, and worthy of enactment, and its importance far outweighs the mere appearance of relatively small size. In my view, the changes to be made are valuable on two discrete levels.

First, the proposed change in language is beneficial because it achieves the goal of making crystal clear that the additional three days for mailing is added to the end of the prescribed period in which to act. This is not merely academic, because the calculation of time, especially in rather short periods that are subject to a myriad of intervening rules, is often times difficult to calculate, and subject to much controversy, not only with adversaries, but even among attorneys on the same side. In all too real situations, there is much "discussion" and wringing of hands between senior and junior attorneys over the precise deadline for action, all due to uncertainty over the addition of three days. The exacting language of what are to be the new Rules 6 and 9006 alleviates such concerns, and replacing controversy with certainty.

Second, the proposed amendment exemplifies the continued evolution of the all Federal Rules towards a more straightforward, less confusing usage of language. Simple changes, to be sure, that of eliminating "shall be" and "to" in favor of "are" and "after." But it is their simple directedness that bodes well for the future. We can all agree that, some times, our Rules must be a bit more verbose that we would like, in order to fully

serve due process. Yet these proposed reforms speak to the willingness to utilize clear, concise language whenever possible. In that regard, this change, no matter how inconsequential it may seen, is in truth a sign of continuing evolution towards a more succinct body of procedural rules. Thus, the ripple effect of its benefits will be felt far beyond the "three day for mailing" rule.

A final, small comment: I found it interesting that the Civil Committee Note was the soul of brevity with its single illustration, but the Bankruptcy Note was somewhat more expansive. Each approach has its own merits. However, I respectfully suggest that, given the "parent-offspring" relationship between the Rules, it might be best for the Notes to be uniform, and that uniformity be found in a middle ground of illustration, i.e., a Note a bit longer than the current Civil Note, and a bit shorter than the pending Bankruptcy Note.

I thank you and the Committees for the opportunity to be heard.

Very truly yours,

Anthony Michael Sabino
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