

FRBP 2019

09-BK-017

Judge Kathryn Ferguson o Rules_Comments

01/06/2010 06:18 PM

Dear Mr. Secretary,

I write with comment on a proposed change to FRBP 2019 (d).

As I understand it, the proposed change would require an attorney to file a monthly statement setting forth any material change in the facts disclosed in a previously filed statement. The language of the rule itself suggests that every attorney must file a monthly supplement, even though the overwhelming majority of those supplements are likely to say "no change." This seems like a colossal waste of attorney and staff time.

The comments to the proposed rule change seem to suggest that a monthly filing is required only if there are material changes to report. While this interpretation is somewhat less wasteful, it leaves lawyers trying to figure out what changes are material in the context of an artificial deadline rather than as the need for supplemental disclosure develops. I know that I would prefer to hear of a developing conflict as soon as it is discovered rather than a month later.

"Monthly" also gives no clear indication of the deadline for when the supplemental disclosure must be filed. Does "monthly" mean every 30 days as calculated from the date the petition was filed? 31 days? By a fixed date every month?

I believe the case law generally holds that attorneys are required to update their 2019 statements on an as needed basis. I understand the desire to place that requirement in a rule. What I don't understand (or approve of, for what it is worth) is the insertion of the word "monthly."

Thank you for your consideration of this comment.

Kathryn Ferguson