

Judge Melgren

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09-CV-D

Lee Rosenthal

Mark Kravitz

Question on new civil rules

Colleagues:

The interplay of some of the changes to the Civil Rules has confused me, in the context of matters filed Christmas Eve in a case of mine, and after discussion with some of my colleagues here they have encouraged me to inquire of you for any insight you might be able to provide.

Previously, Rule 62(a) provided a 10 day automatic stay for execution of judgment, and Rule 62(b) permitted a stay of execution pending disposition of motions filed under Rules 50 and 59 (as well as others). Motions filed under those rules were also required within 10 days, which allowed a defendant/judgment debtor to seamlessly segue from one stay to the other, upon the filing of the appropriate motion.

Under the Rules as amended December 1, the automatic stay under Rule 62(a) has been extended to 14 days, after which a party must seek stay under 62(b). But the time for filing motions under Rules 50 and 59, which would authorize a Rule 62(b) stay, has been extended to 28 days. The times are no longer coterminous, leaving a judgment debtor without authorization to obtain a stay of execution from days 15 to 28. Of course, the judgment debtor could file its Rule 50 and 59 motions earlier than allowed, and if filed within 14 days it could still segue immediately to Rule 62(b) protection. But requiring the judgment debtor to file its Rule 50 or 59 motions within 14 days, in order to take advantage of the stay offered by Rule 62(b), is in conflict with the Committee Note that "[E]xperience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays."

My judgment debtor has asked me to issue a Rule 62(b) stay pending the disposition of Rule 50 and 59 motions *which it plans to file*, but I'm not persuaded that Rule 62(b) allows me to stay execution pending disposition of motions which have not yet been filed. What was the committee's thought regarding this gap in the availability of a stay of execution.

Sorry to trouble you this holiday week, but these matters have arisen quite abruptly, as is their nature.

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