



suggestion for a proposed rule change
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Advisory Committee

Federal Rules of Appellate Procedure

c/o Secretary of the Committee on Rules of Practice and Procedure

Administrative Office of the United States Courts

One Columbus Circle, NE

Washington, D.C. 20544

SUGGESTION FOR PROPOSED AMENDMENT TO THE FEDERAL RULES OF APPELLATE

PROCEDURE

Dear Advisory Committee:

My name is Roger Roots and I am an attorney in private practice, a member of the bars of the State of Rhode Island and the U.S. 1st, 8th, 9th and 10th Circuit Courts of Appeals. Over the past couple of years, I have been conducting some research regarding the fairness of the various Federal Rules of Procedure. I have authored a law review article entitled, "Unfair Rules of Procedure: Why Does the Government Get More Time?", *American Journal of Trial Advocacy*, Vol. 33, pp. 493-520 (2010) (available at http://www.constitution.org/lrev/roots/unfair_rules_procedure2.pdf).

SUGGESTION FOR RULE CHANGE:

At present, *Federal Rule of Appellate Procedure* 4(b) provides that the United States has 30 days to appeal from criminal judgments, compared with only 14 days for criminal defendants.

I would like to suggest that this Rule be amended to read:

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

I believe this rule change is necessary to eliminate an unfair advantage that the government has in federal criminal litigation. I believe the current filing disparity in Rule 4 also violates the common law rule that parties before the courts are to litigate on a level playing field. *See, e.g., State v. Bowers*, 9 A. 125, 126 (Md. 1886) (indicating that although criminal appeals should be resolved as quickly as reasonably possible, the law of notice periods should make "no distinction between an appeal or writ of error taken by the state and one taken by the accused." *See also* Roots, *supra*, 33 Am. J. Trial Adv. 493, 503-09 (2010) (discussing common law and constitutional basis for a requirement of equal procedures).

Sincere thanks,

/s/ Roger Roots

Dr. Roger Roots