



Comment on proposed amendment to Federal Rule of Bankruptcy Procedure 8002.

Thomas R. Morris

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From: "Thomas R. Morris" <Morris@SilvermanMorris.com>

To: <rules_comments@ao.uscourts.gov>

Distinguished members of the Committee on Rules of Practice and Procedure:

The proposed amendment to Rule 8002, in the form of a new subsection (c) to that rule, calls for the "prisoner mailbox rule" to apply to any appeal from a bankruptcy court order. The application of that rule should instead be made subject to the exceptions provided for in present Rule 8002(c)(2) / proposed Rule 8002(d)(2). Rule 8002(c)(2) currently excludes certain types of bankruptcy court orders from being subject to an extension of time for the filing of an appeal. This exclusion helps to ensure the finality of certain types of orders of bankruptcy courts, such as an order confirming a plan or an order approving the sale of property. These are orders upon which transactions, ranging in size from a consumer loan to the sale of the assets of General Motors, often rely. Certainty in those types of transactions is essential to our system of law. Were the "prisoner mailbox rule" to be adopted without this exclusion, a transaction which relies upon the finality of a bankruptcy court order could be held hostage to the possibility of a prisoner appeal, or thrown into uncertainty when a prisoner appeal becomes known after the expiration of the ordinary appeal period.

The "prisoner mailbox rule", which treats an appeal by a prison inmate as "filed" upon the prisoner's deposit of a notice of appeal in the prison mail, originated with the case of a prisoner who was unable to timely appeal his conviction due to the fact of his incarceration. The rule was incorporated in 1993 into FRAP 4 so as to apply to any appeal from an order of a district court. This procedural rights of prisoners, and consistency between the FRBP and the FRAP are the impetus behind the proposed new Rule 8002(c). These are both important considerations. However, because of the high incidence of transactional reliance upon certain types of bankruptcy court orders, the considerations favoring the extension of the "prisoner mailbox rule" to bankruptcy court orders must be balanced with the need for certainty in certain bankruptcy matters. That balance will be found by the application of the present Rule 8002(c)(2) exceptions to the proposed new "bankruptcy prisoner mailbox rule".

Thank you for your consideration of my comments.

Thomas R. Morris
Silverman & Morris, P.L.L.C.
30500 Northwestern Highway, Suite 200
Farmington Hills, Michigan 48334
Morris@SilvermanMorris.com
direct 248.862.3946
main 248.539.1330
fax 248.539.1355
www.SilvermanMorris.com