

Senneff, Angie

From: Sullivan, Judge Kent (DCA) [Kent_Sullivan@Justex.net]
Sent: Friday, April 07, 2006 4:25 PM
To: Babcock, Chip; 'Nathan Hecht'
Cc: Senneff, Angie
Subject: Supreme Court Advisory Committee - Potential Amendment of Rule 21
Attachments: Rule21Amendment.doc

Per our earlier discussion, I am writing with the request that we consider amending Rule 21 by enlarging the minimum notice requirement set forth in that rule. I believe that three days is an inadequate statewide minimum notice requirement for hearings consistent with the contemporary administration of justice. Candidly, I think it is inadequate preparation time for almost any event with potentially significant legal consequences. It is particularly inadequate, however, for the hearing of a motion that, in fairness, requires a substantive written response in advance of the hearing. There is little chance that a court will have the opportunity to receive, review, and digest a motion and response involving an issue of any complexity in so short a time period.

Our current rule is also particularly troublesome in a state as geographically large as Texas. This state is increasingly a forum for litigation of national and international significance. Consequently, it is not uncommon for a forum to be in a location relatively remote to some of the parties or their counsel. A three-day rule disproportionately burdens out-of-town litigants. An expanded notice period would help to avoid any appearance of parochialism or unfairness.

I have attached a draft of an amendment to Rule 21 for the consideration of the Committee. My student law clerks also prepared a chart setting forth some of the similar notice provisions applicable in other jurisdictions. I thought I would forward it as well as a possible reference.

Thank you for your consideration.

KCS

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80th District Court
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4/7/2006

Rule 21 Filing and Serving Pleadings and Motions.

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefor, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge.

The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application.

After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

Deleted: An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing, unless otherwise provided by these rules or shortened by the court.

[New]

Any motion filed shall be served upon all other parties not less than ten (10) days before the time specified for any hearing except:

- (1) as otherwise provided for by these rules;
- (2) upon agreement of the parties; or
- (3) upon written motion and leave of court for good cause shown.

Such motion shall include written notice of the date and time of any scheduled hearing. Any desired written response shall be filed and served upon all other parties not less than three (3) days before any hearing.

The term "hearing" as used in this rule includes written submission to the Court (if disposition is scheduled without oral argument) as well as an oral hearing.

State Notice Requirements

State	Minimum Notice Prior to Disposition:	Citation
Arizona	10 days ⁱ	ARIZ. R. CIV. P. 7.1
California	16 days ⁱⁱ	CAL. CODE CIV. PROC. § 1005 (2006)
District of Columbia	10 days ⁱⁱⁱ	D.C. S.C.R. CIVIL Rule 5 (2006)
Florida	Reasonable time ^{iv}	FLA. R. CIV. P. 1.090 (2006)
Massachusetts	7 days	MASS. R. CIV. P. 6(c)
Michigan	9 days ^v	M.C.R. 2.119 (2006)
New York	8 days ^{vi}	N.Y. C.P.L.R. 2214 (2006)
Ohio	7 days	OHIO CIV. R. 6 (2006)
Pennsylvania	20 days ^{vii}	PA. R.C.P. 208.3 (2005)
U.S. District Court, N.D. Tex.	20 days ^{viii}	U.S.D.C. N.D. TX LR 7.1 (2005)
U.S. District Court, S.D. Tex.	20 days ^{ix}	U.S.D.C. S.D. TX LR 7 (2005)
U.S. District Court, E.D. Tex.	12 days ^x	U.S.D.C. E.D. TX LR CV 7 (2005)
U.S. District Court, W.D. Tex	11 days ^{xi}	U.S.D.C. W.D. TX R. CV 7 (2005)

ⁱ **Arizona:** Once a motion is filed and served the responding party has 10 days to file an answer. The moving party has 5 days thereafter to file a reply to the response. If service is made by mail 5 calendar days are to be added to the prescribed period.

ⁱⁱ **California:** All motions should be served and filed at least 16 days before the hearing. If notice is served by mail 5 days must be added if notice is sent within the state, 10 days if notice is sent to a state other than California, and 20 days must be added if notice is sent outside the U.S.

ⁱⁱⁱ **District of Columbia:** Once a motion is filed the responding party has 10 days to file an answer or the motion may be deemed conceded.

^{iv} **Florida:** Florida courts have held that notice of hearing served two working days before the date set for hearing was not reasonable and that a party must have actual notice and time to appear. *See, Harreld v. Harreld*, 682 So. 2d 635 (Fla. Dist. Ct. App. 2d Dist. 1996); *Donner v. Smith*, 517 So. 2d 622 (Fla. Dist. Ct. App. 4th Dist. 1984).

^v **Michigan:** If a motion is served by mail the notice and motion must be served at least 9 days before the time set for hearing; if by delivery the motion and notice must be served within 7 days of the hearing.

^{vi} **New York:** A motion and notice thereof should be served 8 days prior to the date set for hearing. Any response thereto should be filed at least 2 days before the date set for hearing. However, if the motion and notice are served 12 days prior to the hearing and the motion requests the responding party to answer at least 7 days prior to the hearing the responding party must acquiesce. Any reply to a response must be filed at least 1 day before the date set for the hearing.

^{vii} **Pennsylvania:** Once a motion is filed and served the responding party has 20 days to file an answer to the motion unless the time requirement is modified by a court order or enlarged by a local rule.

^{viii} **US District Court for the N.D. of Texas:** A response must be filed within 20 days from the date the motion is filed. A reply to the response must be made within 15 days from the date the response is filed.

^{ix} **US District Court for the S.D. of Texas:** Opposed motions will be submitted to the judge 20 days from filing and any response thereto must be filed by the submission day.

^x **US District Court for the E.D. of Texas:** A response must be filed within 12 days from the date the motion is served. A reply to the response must be made within 5 days from the date the response is served.

^{xi} **US District Court for the W.D. of Texas:** A response must be filed within 11 days from the date the motion is filed. A reply to the response must be filed within 11 days from the date the response is served.