



Nancy Sylvester <nancyjs@utcourts.gov>

Comment on Inmate Mailbox Rule

5 messages

Nancy Sylvester <nancyjs@utcourts.gov>
To: kkaiser@agutah.gov

Fri, Sep 22, 2017 at 4:48 PM

Dear Kyle,

I'm preparing the materials for the next Civil Rules Committee meeting and I wonder if you'd weigh in on Nathan Whittaker's comment [here](#) on the proposed inmate mailbox rule in Rule 6.

It appears that he responded a couple hours after you did and he proposed the following language:

(e) Filing or service by inmate.

(e)(1) As used in these rules, an inmate is a person confined to an institution or committed to a place of legal confinement.

(e)(2) A paper filed or served under Rule 5 by an inmate is timely filed or served if it is deposited in the institution's internal mail system on or before the last day for filing or service.

(e)(3) For purposes of computing time under Rule 6, a paper filed or served under this paragraph (e) is filed when it is accepted by the court and is served when it is placed in the mail as indicated by the date of the postmark.

(e)(4) A paper filed or served under this paragraph (e) must include a notarized statement or written declaration stating:

(e)(4)(A) the date of deposit and that first-class postage is being prepaid; or

(e)(4)(B) that the inmate has complied with any applicable requirements for legal mail set by the institution.

Compare the current language:

(e) Filing or service by inmate.

(e)(1) For purposes of Rule 45(i) and this paragraph (e), an inmate is a person confined to an institution or committed to a place of legal confinement.

(e)(2) Papers filed or served by an inmate are timely filed or served if they are deposited in the institution's internal mail system on or before the last day for filing or service. Timely filing or service may be shown by a contemporaneously filed notarized statement or written declaration setting forth the date of deposit and stating that first-class postage has been, or is being, prepaid, or that the inmate has complied with any applicable requirements for legal mail set by the institution. Response time will be calculated from the date the papers are received by the court, or for papers served on parties that do not need to be filed with the court, the postmark date the papers were deposited in U.S. mail.

(e)(3) The provisions of paragraph (e)(2) do not apply to service of process, which is governed by Rule 4.

I think the committee will be interested in your perspective since you provided such a comprehensive response before and were also in favor of the language as drafted in this last comment version.

I appreciate your help with this.

Sincerely,

Nancy

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Kyle Kaiser <kkaiser@agutah.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Fri, Sep 22, 2017 at 5:38 PM

Hi Nancy.

Thank you for providing me the opportunity to respond to Nathan's comments. I think I'm in general agreement, as his proposed Rule 6(e) appears to be easier to read, but because they include changes to Rule 5 and 6, I think I'll need a bit of time to closely review to make sure I'm not missing anything.

I'll review over the weekend and try to get back to you by the close of the comment period. Or Monday, if that's OK.

From: Nancy Sylvester [mailto:nancyjs@utcourts.gov]
Sent: Friday, September 22, 2017 4:48 PM
To: Kyle Kaiser <kkaiser@agutah.gov>
Subject: Comment on Inmate Mailbox Rule

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Nancy Sylvester <nancyjs@utcourts.gov>
To: Kyle Kaiser <kkaiser@agutah.gov>

Fri, Sep 22, 2017 at 6:15 PM

Monday is great. Thank you very much, Kyle. Have a great weekend.

Nancy
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Kyle Kaiser <kkaiser@agutah.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Mon, Sep 25, 2017 at 6:23 PM

Hi Nancy,

Sorry for the delay.

Nathan did a good job rewriting the rule.

- I agree with all of Nathan's comments re: Rule 6(d). His revisions make the rule clearer and simpler.
- I agree with Nathan's preference to put Rule 6(e) back into Rule 5, as it is more about *filing and service* than *time* (the title of Rule 5), except for response times. It'll be easier for inmates to find the rule, *I think*. But, for reasons

stated below, the “response time” section (Nathan’s (e)(3)) might be better left in Rule 6.

- I agree with Nathan’s preference for the changes in subsection (e)(1). But now that I’m looking at the proposed rule more closely, I’m wondering where the committee got its definitional language. The older federal rule uses the term “inmate *confined in an institution*” (emphasis mine). The new federal rule just says “inmate.” Other federal statutes use the term “confined in an institution” (e.g., 28 U.S.C. s. 2254, for habeas corpus proceedings). I don’t think “committed to a place of legal confinement” is necessary, and the committee’s use of “to” vs. “in” might create unnecessary confusion. So I’d urge a modified version of Nathan’s changes (see below).
- I agree with Nathan’s (e)(2).
- **I think (e)(3) needs a little rewrite.**
 - I didn’t immediately understand from the text that the point of (e)(3) was to calculate a *response* time to the inmate’s paper, because “computing time under Rule 6” is a little vague. What if we separated (e)(3) and put it in Rule 6, but put (e)(1), (2), and (4) in Rule 5? That would make more sense, because one sentence of the rule tells an inmate how he has to file and serve papers, and one other sentence tells a responding party when they have to respond.
 - We also have a slight difference in our verbs used for calculating response times to papers filed with the Court. I used “received”; Nathan used “accepted.” I am not quite familiar enough with state court filing procedures to know which verb is better. Are papers “accepted” if they’re not e-filed? I used “received” to indicate the date the court received the paper (which usually is indicated by a docket stamp), but I’ve had problems in the past with not getting notifications of filings in pro se cases on the docket, so if we’re not also served, we might not know that the document was filed. That creates problems for me. If filed documents aren’t “accepted” by the Court, and if a clerk doesn’t always docket pro se filings the day they come in, then perhaps we should think of a different verb. “Placed on the docket?”
- I don’t have a problem with Nathan’s e(4).
- I don’t have a big problem with taking out the reference to Rule 4, except that inmates rarely have annotated copies of the rules. I agree that the proposed e(3) is redundant, but including the language makes it crystal clear for inmates.

My suggested rule, incorporating Nathan’s changes.

5(g) Filing or service by an inmate.

(g)(1) As used in these rules, an inmate is a person confined in an institution.

(g)(2) A paper filed or served under this rule is considered timely if it is deposited in the institution’s internal mail system on or before the last day for filing or service.

(g)(3) A paper filed or served under this paragraph (e) must include a notarized statement or written declaration stating:

(g)(3)(A) the date of deposit and that first-class postage is being prepaid; or

(g)(3)(B) that the inmate has complied with any applicable requirements for legal mail set by the institution.

Rule 6(e) Computing time in response to a paper filed or served by an inmate

If an inmate has filed or served a paper pursuant to Rule 5(g), the triggering event for purposes of Rule 6(a)(1) is:

6(e)(1) For a paper filed with the court, the day the paper is received [or “placed on the docket”] by the court; or

6(e)(2) For a paper which is not filed with the court, the date the paper is placed in the U.S. Mail as indicated by the date of the postmark.

If you want to keep all of the provisions together, then make my proposed 6(e) subsection (4) of the rule (whether you put it in Rule 5 or 6. (Was that confusing enough?)

Thanks again for letting me add my comments.

From: Nancy Sylvester [mailto:nancyjs@utcourts.gov]
Sent: Friday, September 22, 2017 6:16 PM
To: Kyle Kaiser <kkaiser@agutah.gov>
Subject: RE: Comment on Inmate Mailbox Rule

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Nancy Sylvester <nancyjs@utcourts.gov>
To: Kyle Kaiser <kkaiser@agutah.gov>

Tue, Sep 26, 2017 at 12:54 PM

Thank you very much for the thought you put into this, Kyle. I will pass along your suggestions to the committee and let you know what they decide to do.

Warm regards,

Nancy

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