



Victoria Katz
Aderant
500 Northridge Road, Suite 800
Atlanta, GA 30350
(404) 720-3600
victoria.katz@aderant.com
CA Bar #: 193234

Comment re R-23-0055 Rules of Procedure for Special Actions

Revised Rule 16(b) says:

Any party opposing a claim for attorney fees raised in a petition or a cross-petition must do so in the response to a petition or cross-petition. Any party opposing a claim for attorney fees raised in a response either to a petition or a cross-petition must do so in a separate brief in opposition filed no later than 10 days after the notice is served. The brief may not exceed 4 pages. [Emphasis added.]

It is not clear what “notice” Rule 16(b) is referring to as a triggering event for the opposition deadline, as there is no “notice” specifically referenced in Rule 16(b) or elsewhere in Rule 16.

Based on the language of ARCAP 21(a), it seems that “notice” may be meant to refer to the claim for attorney fees raised in the petition or cross-petition. However, in order to avoid any confusion, we request that Rule 16(b) be further revised to clarify the triggering event for the opposition deadline. For example, the sentence might be revised to say that the brief in opposition must be filed “no later than 10 days after *the petition or cross-petition containing a claim for attorney fees* is served.”

In addition, Revised Rule 18(a)(1) provides:

A motion for reconsideration requests the court to consider whether its decision contained an erroneous determination of material fact or law. Any party may file a motion for reconsideration within 15 days after the clerk gives written notice of the decision in an appellate special action. An additional 5 days will be added for any party to whom the decision is sent only by U.S. Mail. The motion must state the particular grounds for reconsideration, as provided in ARCAP 22(b). [Emphasis added.]

Although it is clear that an additional 5 days are to be added to the 15-day deadline to file a motion for consideration, it is not clear how that extra time is to be added. Are parties to add the time directly to the end of the 15 days, making the deadline after service by mail effectively 20 days after the clerk gives written notice of the decision, or are the 5 days to be added “after the specified period would otherwise expire,” similar to how extra time is added under Rule of Civil Procedure 6(c)?

In either case, we request that Rule 18(a)(1) be further revised to state specifically how the extra time is to be added. For example, it might be revised to say, “For any party to whom the clerk sends the decision only by U.S. mail, the motion for reconsideration may be filed within 20 days after the decision is mailed.” Alternatively, it might be revised to say, “An additional 5 days will be added *after the 15-day period would otherwise expire* for any party to whom the decision is sent only by U.S. Mail.”