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LITIGATION

- CONSTITUTIONALITY OF CONSENT TRIALS BEFORE U.S. MAGISTRATES
- REFORM OF FEDERAL TORT LIABILITY
- THE ROLE OF THE FEDERAL LITIGATOR
- NEW AMENDMENTS FRCP
- PRINCIPLES FOR THE NEW FEDERAL PRACTICE

OTHER HIGHLIGHTS

1984 BWC News/Centennial Review of the Civil Service/Transfer of Technology in the International Marketplace/'84 Elections

A change is taking place in our federal courts. Federal judges are becoming increasingly active in case management and are holding the attorneys appearing before them to a stricter standard of responsibility. Most attorneys will welcome the change; some will not. Everyone, however, must be prepared to deal with it. I will provide ten principles to aid the reader's adjustment. But first, I will address the reasons for the change and some of its most recent manifestations.

Like all major change, what may be called the new federal practice did not spring up overnight. It has its roots in the litigation explosion of the last several years. The traditional response to this problem has been for courts to ask for more judges, more staff, more facilities and less jurisdiction. However, it has become obvious that litigation follows what I'm certain is one of Murphy's laws, namely that work expands at roughly twice the rate of new resources allocated to deal with it. Therefore, in recent years there has been a shift in emphasis away from increasing the number of judges towards decreasing the amount of litigation activity through active judicial intervention. Thus, one major shift in federal practice is the change in the judge's role from a passive adjudicator to a case manager.

10 Principles for the New Federal Practice

By ALEX KOZINSKI*

Case Management

In earlier times, case management was a relatively simple proposition. In the 13th century, for example, King Louis IX was wont to dispense justice outside under a large oak.[1] His case management technique was not too complicated. He just lined up plaintiffs on one side defendants on the other and dealt with them two by two. Unfortunately, developments over the last several centuries have rendered the two-by-two case management method somewhat obsolete. Case management today is a complex and demanding task, requiring perseverence and imagination. Nevertheless, the busier district courts have followed the practice for years. There is now strong pressure on all federal trial judges to become active case managers.

Jaquette v. Black Hawk County, Iowa,[2] decided last June by the Eighth Circuit, illustrates this trend. Plaintiff brought an action pursuant to 42 U.S.C. § 1983 charging she was dismissed unlawfully. Three years later, on the eve of trial, the case settled. Plaintiff got her job back plus $1,500. Defendant conceded that plaintiff was the prevailing party for purposes of an award of attorney's fees pursuant to section 1988. The question was how much.

Plaintiff's counsel presented a bill in excess of $96,000; the district court cut the award to a mere $22,000. The court of appeals, obviously troubled by the case, noted that it could not understand "how this case could remain in district court for almost three years, and generate such an astounding expenditure of legal time."[3] The court suggested that early judicial intervention might have avoided much of this expense. It urged all district judges to hold management conferences and to engage in more active judicial supervision to prevent "excessive discovery, the development of complex and multiple issues, extended motion practice, and long and expensive trials."[4]

Chief Judge Lay, the author of the circuit opinion, warned that:

> Early and ongoing judicial management is essential if the judicial process is to survive. It is now obvious that adversarial lawyers are unable to achieve proper management alone. This new procedure may necessitate changes in the practice of many judges and attorneys, but unless we are willing to innovate . . . the result will be the denial of justice in our courts.[5]

Chief Judge Lay put his finger on one cause of the problem: attorneys involved in adversary proceedings may be unable to control the scope of litigation; in a sincere effort to perform well, they may impose unreasonable costs on their clients, their adversaries, and the entire court system. It is up to the judge to impose some limits.

Members of the bench and bar are becoming increasingly convinced that more effective pretrial procedures are vital.[6] One need not agree with this assessment, however, to recognize that it is now the official view of the federal courts. It is of immense significance that although the recent amendments to the Federal Rules of Civil Procedure expand the judge's power and discretion in numerous ways, they eliminate entirely his discretion to just let cases run their course.

New rule 16(b) is extremely specific. The judge must enter a scheduling order in every case (unless exempted by local rule). He is not permitted the luxury of issuing the order in his own good time, but must do so within 120 days of the filing of the complaint. Nor can he enter the order unilaterally; he must first consult with the parties. Nor is the judge afforded discretion as to what to put

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in the order; the order *must* contain time limits for joining parties, amending pleadings, filing and hearing motions, and completing discovery.

Thus, one impetus for the change in the judge's function has been the problem of the well-meaning but overzealous lawyer; the response has been more active case management. A separate problem has been abuse of the adversary process, particularly in the area of discovery. Mr. Justice Powell dissented from the 1980 amendments to the Federal Rules of Civil Procedure because he did not believe they went far enough in encouraging district courts to limit discovery. He suggested acceptance of "these tinkering changes" would indefinitely delay the adoption of genuinely effective reforms.[7]

With the benefit of hindsight, we can say that Mr. Justice Powell need not have feared. By 1980, the winds of change were already sweeping in a new attitude within the federal judiciary. Following the direction signaled by the Supreme Court in *Alyeska Pipeline Service Co. v. Wilderness Society*,[8] *National Hockey League v. Metropolitan Hockey Club, Inc.*,[9] and *Roadway Express, Inc. v. Piper*,[10] the federal courts have become much more willing to impose sanctions upon litigants who abuse the adversary process.

Sanctions

The sanctions fall into two categories: those directed against the party and those directed against the attorney, although sanctions are sometimes imposed upon both. Courts have imposed sanctions upon parties by assessing costs and attorney's fees,[11] limiting the presentation of the case at trial,[12] striking pleadings,[13] and even dismissing the complaint or entering default judgment.[14] While cases imposing such sanctions are now legion, perhaps the most significant recent one is *Tatum v. Regents of Nebraska-Lincoln*,[15] where the Supreme Court last term for the first time awarded damages on grounds that a petition for certiorari was frivolous.

It is of particular interest that much of the activity involving the imposition of sanctions has taken place at the appellate level. A review of recent cases indicates that circuit judges are increasingly willing to invoke Federal Rule of Appellate Procedure 38, assessing single or double costs and attorney's fees against parties who file frivolous appeals.[16] In addition, appellate courts have been surprisingly stringent in enforcing the time limits for filing the notice of appeal. A majority of the United States Courts of Appeals have now dismissed appeals as untimely, holding that district courts had abused their discretion in finding excusable neglect based merely on the mistake of counsel.[17] This increased willingness by the courts of appeals and the Supreme Court to impose sanctions and procedural defaults is strong encouragement to trial judges to exercise similar controls in appropriate cases.

Courts, however, express qualms about penalizing clients for defaults caused by their lawyers.[18] The trend, therefore, is to punish errant lawyers, and courts in recent years have been imaginative indeed in devising sanctions directed against attorneys which do not necessarily harm the client.

Perhaps the mildest such sanction is the public pronouncement of displeasure. *Marquee Television Network, Inc. v. Early*,[19] decided recently by the Court of Appeals for the District of Columbia Circuit, is a prime example. The court ruled on a motion to reopen an appeal that had been dismissed for lack of prosecution. The court granted the motion but only after berating the lawyer, whose name was prominently mentioned, terming his conduct "inexcusable" and "unconscionable."[20]

In re Tranakos,[21] from the Ninth Circuit, shows how far courts are willing to go to punish the lawyer but not the client. The attorney in that case was suspended indefinitely and fined $500. The lawyer was prohibited from seeking reimbursement from his clients for any portion of the fine. To protect his clients further, the court ordered that the suspension was not to apply to the attorney's participation in the cases then pending before the court.

Another popular tactic is to bring the attorney's shortcomings to the client's attention. In *Vela v. Western Electric Company*,[22] the Fifth Circuit affirmed a dismissal based on counsel's repeated failure to comply with discovery orders. As a postscript, the court directed counsel to deliver a copy of the opinion to his client and then to file a receipt with the clerk to prove that he had complied.[23]

In re Complaint of Judicial Misconduct No. 1,[24] combined several of these techniques. The attorneys in that case had made unfounded and misleading charges of misconduct against a judge of the Claims Court in an effort to have him removed from a case. The court found the attempt to be a flagrant abuse of the judicial misconduct procedures. It therefore publicly reprimanded the attorneys and assessed them $500 each, directing that they could not seek reimbursement from their clients. In addition, the court ordered that the clerk serve copies of the opinion upon each of their clients and upon each court where the attorneys were admitted to practice.[25] Four months later the same attorneys were again sanctioned monetarily, this time by the Seventh Circuit pursuant to appellate rule 38, for filing a frivolous appeal.[26] The circuit's opinion cited, *inter alia*, the Claims Court's earlier order imposing sanctions.[27]

In deciding whether to impose sanctions against attorneys, courts have generally rejected what may be termed the Nuremberg defense: "I was just following the client's orders." For example, in *McCandless v. Great Atlantic and Pacific Tea Company*,[28] the Seventh Circuit rejected counsel's argument that he had filed suit at plaintiff's insistence. The court stated:

> If there are any acceptable reasons for filing a frivolous suit, this is certainly not one of them. We agree with Elihu Root that '[a]bout half of the practice of a decent lawyer is telling would-be clients that they are damned fools and should stop.'"[29]

Almost every lawyer I know has a story to tell about an opponent who abused the system and got away with it. A prominent role in such stories is played by a judge—generally described as lily-livered—who stood by and let it happen. I predict that such stories will become increasingly rare. Judges are coming to realize that litigants who abuse the adversary process constitute a tiny minority of those who appear in court, but impose upon the system costs grossly disproportionate to their number.

The recent revisions to the Federal Rules of Civil Procedure amplify the move in this direction. They do so by amendments to rules 11 and 26, imposing greater personal responsibility upon the lawyer. Attorneys are now required to make a reasonable inquiry into the substance of pleadings and certify that discovery requests and responses are properly made.[30] Benign ignorance is no longer enough. Moreover, the new rules make the imposition of sanctions mandatory when a violation is found.[31] The advisory committee candidly notes that the amendments are intended "to reduce the reluctance of courts to impose sanctions."[32]

Ten Principles for Change

In sum, there are two major changes in the new federal practice: expanded judicial control and the imposition of deserved sanctions. To deal with these changes, here are some things to keep in mind.

First. If you are representing a plaintiff, be sure you have a reasonable basis for filing the complaint. What's more, you must reassess the basis of your claim as the case progresses. In *Nemeroff v. Abelson*,[33] the Second Circuit recently upheld the award of attorney's fees largely because the case was pursued after plaintiff and his lawyers

should have known that they had no support for their claim. A similar ruling comes from the Western District of Missouri in *Davidson v. Allis-Chalmers Corp.*,[34] where the court noted that counsel should have persuaded plaintiff to settle or, if unable to do so, should have considered withdrawing from the case.

Second. Be familiar with the court's rules and follow them strictly. There are numerous examples for this proposition but none so sad as those involving motions to compel the clerk of the Supreme Court to file certiorari petitions. The first such motion recited the following chain of events. Petitioner's counsel, who was in Los Angeles, had instructed the printer to complete the petition and place it in the United States mail on the last permissible filing date. A petition so mailed is deemed timely under the Court's rules.[35] The attorney called the printer's attention to the requirements of this rule "on at least six separate occasions" and was given solemn assurances of compliance.[36] A low level employee of the printer nevertheless took it upon himself to use a private courier instead of the U.S. mail. This got the petition to the Court much sooner than if it had been mailed, but one day after the last filing date. The clerk refused filing because petitions sent by private courier are not entitled to the date of mailing rule. The court summarily denied the motion and refused to order the clerk to file the petition.

Since that time the Court has denied several other such motions. Some have come from pro se litigants who argued that they did not have the money to prepare a timely petition[37] or that the petition was prepared in time but lost in the mail.[38] Attorneys have unsuccessfully argued inexperience with the rules.[39] The last such motion, filed in June 1983, argued that counsel had been seriously ill for six weeks and had miscalculated the due date, all to no avail.[40]

A study of the arcane law pertaining to motions to file petitions for certiorari leads to a corollary to this principle: if you do follow the rules but are misled by an ambiguity, the court will give you the benefit of the doubt. In a recent case, the clerk refused to file a petition because it failed to comply with the Court's size requirements. Supreme Court Rule 33.1(d) provides that petitions shall be 6⅛ inches by 9¼ inches. Of course, a petition that complies with these measurements is generally 6⅛ inches wide and 9¼ inches tall. The petition in question transposed the measurements, making the document 9¼ inches wide and 6⅛ inches tall, which gave it a shape somewhat like a photo album. Counsel nevertheless argued that the petition literally complied with the rule and that he made an honest mistake. The Court granted the motion and ordered the clerk to file the petition.[41]

A second corollary to this principle is that compliance with the rules must be not only strict but also in good faith. *Standing Committee on Discipline v. Yagman*,[42] from the Central District of California, illustrates this principle. Like many other courts, the Central District has a rule of random assignment of cases.[43] The attorney filed five identical actions simultaneously and each was assigned to a different judge. An hour later, the attorney dismissed all cases except the one assigned to the judge he liked best. The matter was referred to a disciplinary committee and resulted in a suspension, a $500 fine, and a press release disclosing the lawyer's name and the relevant circumstances.[44]

Third. Make all reasonable efforts to comply with time limits. In rare instances you should consider filing for an enlargement of time but never forget that enlargements are a matter of judicial discretion and not of right.[45] You should always check with your adversary and inform the court whether an opposition is contemplated. Nevertheless, the consent of opposing counsel does not guarantee an enlargement; it is merely one factor the court may consider. You must still make a showing of good cause.[46]

Moreover, motions for enlargement must be filed early enough for the court to act on them before your time expires.[47] A motion for enlargement which is filed on the last day a pleading is due puts the court in an awkward position since a denial means that the party will be out of time in filing its pleading. There are, of course, situations where nothing else is possible: for example, sudden illness, death of a family member, or malfunction of key equipment. Except where the cause for the enlargement is both compelling and unanticipated, however, attorneys have a responsibility to file a motion in sufficient time so the court can say no without imposing a substantial forfeiture.

Fourth. Read the judge's procedural order and follow it scrupulously. When a judge prepares a lengthy procedural order he is generally fond of it. The rules set forth in such an order reflect the way the judge's office operates. Failure to follow the order can cause the judge and his staff serious work disruptions. This is not likely to predispose the judge in your favor.

Fifth. Prepare a narrow, directed discovery plan to present to the court. Under the new rules, judges will become more and more involved in the control of discovery. A blunderbuss approach is likely to be disapproved or limited. A well-designed, artfully presented, unified approach will get you and the court off to a good start.

Sixth. Try to work out discovery and other procedural squabbles without involving the judge. The only thing I like less than having my procedural order ignored is spending all morning as discovery umpire. Of course, legitimate disputes should be presented to the court. But your chances of success are always better if you can demonstrate that you were reasonable and brought the matter to court only as a last resort.

Seventh. Give prompt consideration to the filing of any dispositive motion. If you intend to file such a motion, or are even thinking about it, it helps to inform the court early. No judge likes having a case on his docket for three years only to learn he never had jurisdiction in the first place.

Eighth. Unless invited to do so by the judge, do not call the judge's law clerk or secretary to discuss your case. The judge's personal staff is not a sounding board for complaints nor an avenue for ex parte communications. They are also not an appropriate source of advice on how to handle your case. While some judges may differ on this, my view is that staff may speak to counsel only pursuant to my specific instructions or to schedule matters for trial or oral argument. My procedural order expressly alerts counsel to this; nevertheless, we regularly get calls violating this rule. All I can say is that speaking to the judge's staff in contravention of the judge's orders is playing with fire.

Ninth. Do not let yourself be drawn into questionable dealings by your client. The celebrated case of *Litton Systems, Inc. v. AT&T*,[48] where the district court denied statutory attorney's fees in excess of $10 million because of counsel's participation in the concealment of evidence, stands as a stark illustration of that principle. To the same effect is *Wyle v. R. J. Reynolds Industries*,[49] where the Ninth Circuit Court affirmed dismissal of a complaint on grounds that the lawyer's deliberate ignorance of key evidence was equivalent to concealment of the truth.

Tenth. Perhaps as important as any of the above is the admonition that you should know when to give up. There are examples galore to support this proposition but two stand out. In September 1982, the Second Circuit dismissed as frivolous the appeal of defendant in *United States v. Potamkin Cadillac Corp.*[50] Pursuant to appellate rule 38, the court assessed double costs plus $500 in attorney's fees. Client and lawyer were to be jointly responsible for payment, the court explained, since they are "in the best position between them to determine who caused this appeal to be taken."[51] On remand, defendant brought a motion pur-

suant to rule 60(b) claiming newly discovered evidence. The district court denied the motion, and defendant appealed once again. The second appeal was heard in January 1983, less than four months after dismissal of the first appeal. The Second Circuit affirmed and once again imposed double costs and attorney's fees. This time, however, the court no longer entertained doubt as to who was responsible and directed that the entire amount be paid by the lawyer.[52] Undeterred, defendant filed a petition for certiorari which was promptly denied with three justices expressing their view that sanctions should have been imposed because the petition was frivolous.[53]

An equally sad case comes out of the Ninth Circuit which last February dismissed the appeal in *Wood v. Santa Barbara Chamber of Commerce, Inc.*, and imposed $10,000 in costs and attorney's fees against plaintiff and his lawyer.[54] The lawyer then applied for admission to the bar of the Supreme Court for the purpose of filing a petition for certiorari. The Court granted the motion for admission, with the Chief Justice dissenting.[55] The Chief Justice described the underlying litigation and expressed his view that the applicant had shown himself unfit to be a member of the bar of the Supreme Court by assisting his client in filing the latest in a serious of frivolous appeals. In the Chief Justice's view,

> to grant his application could be construed fairly as an implicit blessing on applicant's actions and dilutes the value of imposing valid sanctions against counsel whose record manifests unprofessional conduct. I am unwilling to condone attempts by counsel to use this Court as a means of 'laundering' a judicial reprimand.[56]

The applicant was admitted to practice and filed timely petitions for certiorari that are now pending.[57] The attorney's conduct is, however, for better or for worse, immortalized by the Chief Justice's dissent.

Conclusion

Now I realize I've dispensed a lot of advice and as Bertolt Brecht once said, "a grown man should know better than to go around advising people." Still, whether or not you follow the specifc principles I have enumerated, I hope I have made it clear that the ground rules of federal litigation have changed. In the parlance of the race course, you will now be driving on a much faster track. As such, it is important that you adjust your maneuvering to avoid losing control. And, you had better do so early in the case because, as Paul Newman once observed about race car driving, "it is useless to put on your brakes once you're upside down."

FOOTNOTES

[1]*See United States v. Barnett*, 346 F.2d 99, 106 (5th Cir. 1965) (Wisdom, J., dissenting).

[2]710 F.2d 455 (8th Cir. 1983).

[3]*Id.* at 461.

[4]*Id.* at 463-64.

[5]*Id.* at 464.

[6]*See generally* R. Peckham, *The Federal Judge as a Case Manager: The New Role in Guiding a Case from Filing to Disposition*, 69 Calif. L. Rev. 770 (1981).

[7]Order of the Supreme Court Adopting Amendments to the Federal Rules of Civil Procedure, 85 F.R.D. 521 (1980) (Powell, J., dissenting).

[8]421 U.S. 240 (1975).

[9]427 U.S. 639 (1976).

[10]447 U.S. 752 (1980).

[11]*See, e.g., Analytica, Inc. v. NPD Research, Inc.*, 708 F.2d 1263 (7th Cir. 1983); *Victory Beauty Supply v. Lus-ter-oil Beauty Products Co.*, 562 F. Supp. 786 (N.D. Ill. 1983).

[12]*See, e.g., Insurance Corp. of Ireland v. Compagnie des Bauxites*, 456 U.S. 694 (1982) (taking certain facts as established for failure to comply with discovery order); *Sterling-Kates Properties v. United States*, No. 602-81C (Cl. Ct. Mar. 21, 1983) (order limiting presentation of witnesses and exhibits at trial).

[13]*See, e.g., Barta v. Long*, 670 F.2d 907 (10th Cir. 1982) (striking defendant's pleading for failure to answer interrogatories after court order).

[14]*See, e.g., Ingvoldstad v. Estate of Young*, 95 F.R.D. 79 (D.V.I. 1982); *Vela v. Western Electric Co.*, 709 F.2d 375 (5th Cir. 1983).

[15]103 S.Ct. 3084 (1983). *See also Escofil v. Pennsylvania*, 103 S.Ct. 3084 (1983) (denying motion to proceed *in forma pauperis*); *In re Rush*, 103 S.Ct. 3084 (1983) (denying motion to proceed *in forma pauperis*); n.53 & accompanying text *infra*.

[16]*See, e.g., Connell v. Sears, Roebuck & Co.*, Nos. 83-841/83-842, slip op. at 24 (Fed. Cir. Oct. 12, 1983); *Lonsdale v. L. L. Smelser*, 709 F.2d 910 (5th Cir. 1983); *United States v. Hart*, 701 F.2d 749 (8th Cir. 1983); *Collins v. Amoco Production Co.*, 706 F.2d 1114 (11th Cir. 1983). *See also* nn.50-52 & accompanying text *infra*.

[17]*See, e.g., Danna v. United States*, No. 83-1083 (Fed. Cir. Aug. 17, 1983); *Mesa v. Washington State Dep't. of Social & Health Services*, 683 F.2d 314 (9th Cir. 1982); *Pellegrino v. Marathon Bank*, 640 F.2d 696 (5th Cir. 1981); *Airline Pilots in Service of Executive Airlines, Inc., Counsel Number 2 v. Executive Airlines, Inc.*, 569 F.2d 1174 (1st Cir. 1978); *Fase v. Seafarers Welfare & Pension Plan*, 574 F.2d 72 (2d Cir. 1978); *Gooch v. Skelly Oil Co.*, 493 F.2d 366 (10th Cir.), *cert. denied*, 419 U.S. 997 (1974); *Grantham v. Morgan Linen Service, Inc.*, 426 F.2d 237 (7th Cir. 1970); *Winchell v. Lortscher*, 377 F.2d 247 (8th Cir. 1967).

[18]*Hawkins v. Fulton County*, 96 F.R.D. 416, 422 (N.D. Ga. 1982).

[19]713 F.2d 837 (D.C. Cir. 1983).

[20]*Id.* at 838. *See also CPC Partnership v. Nasco Plastics, Inc.*, No. 83-982, slip op. at 2 (Fed Cir. Sept. 28, 1983) (court noted that "filing of this 'appeal' represents the outer limits of advocacy" but denied a request for sanctions).

[21]639 F.2d 492 (9th Cir. 1981).

[22]709 F.2d 375 (5th Cir. 1983).

[23]*Id.* at 377.

[24]2 Cl. Ct. 255 (1983).

[25]*Id.* at 262.

[26]*Reid v. United States*, No. 81-1112 (7th Cir. Aug. 16, 1983).

[27]*Id.*, slip op. at 13 n.9.

[28]697 F.2d 198 (7th Cir. 1983).

[29]*Id.* at 201-02 (citing A. Kaufman, *Problems in Professional Responsibility* 4 (1976)).

[30]Fed. R. Civ. P. 11, 26(g).

[31]*Id.*

[32]*Amendments to the Federal Rules of Civil Procedure*, H.R. Doc. No. 98-54, 98th Cong., 1st Sess. 38 (1983), *reprinted in* 97 F.R.D. 165, 198 (1983).

[33]704 F.2d 652, 660 (2d Cir. 1983).

[34]No. 80-0757, slip op. at 13 (W.D. Mo. July 15, 1983).

[35]Sup. Ct. R. 28.2.

[36]Motion of Petitioner at 2, *Homan & Crimen, Inc. v. Schweiker*, 450 U.S. 975 (1981).

[37]Motion of Petitioner at 1, *Sampson v. Committee on Probation*, 103 S. Ct. 1868 (1983).

[38]Motion of Petitioner at 1, *Mullen v. United States*, 103 S. Ct. 2077 (1983).

[39]Motion of Petitioner at 5, *Boland & Cornelius, Inc. v. Chesapeake & Ohio Ry.*, 103 S. Ct. 1868 (1983).

[40]Motion of Petitioner at 1, *Detenber v. Turnage*, 103 S. Ct. 3531 (1983).

[41]*Bouma v. Iverson, Inc.*, 103 S. Ct. 1516 (1983). The Court thereafter denied certiorari. *Id.* at 1896.

[42]No. CV 82-5412-AAH (C.D. Cal. March 28, 1983).

[43]C.D. Cal. R. 2(a).

[44]No. CV 82-5412-AAH, slip op. at 4 (C.D. Cal. March 28, 1983).

[45]*Connecticut Gen. Life Ins. Co. v. Chicago Title & Trust Co.*, 690 F.2d 115 (7th Cir. 1982) (Posner, J.).

[46]*See generally Whorton v. United States*, 1 Cl. Ct. 41 (1982).

[47]*See id.* at 43. *See also Degenaars v. United States*, 1 Cl. Ct. 129, 131 (1983) (where motion for enlargement filed too late for court to act before time expires, it must be accompanied by motion to shorten response time and for expedited consideration).

[48]91 F.R.D. 574, 578 (S.D.N.Y. 1981), *aff'd*, 700 F.2d 785, 827-28 (2d Cir.), *petition for cert. filed*, 52 U.S.L.W. 3001 (U.S. June 28, 1983) (No. 82-2128).

[49]709 F.2d 585, 590 (9th Cir. 1983).

[50]689 F.2d 379 (2d Cir. 1982).

[51]*Id.* at 382.

[52]697 F.2d 491, 495 (2d Cir. 1983).

[53]103 S. Ct. 3128 (1983) (Burger, C. J., Rehnquist & O'Connor, JJ.).

[54]699 F.2d 484, 485-86 (9th Cir. 1983).

[55]*In re Admission of Brose*, 51 U.S.L.W. 3898 (U.S. June 21, 1983).

[56]*Id.* at 3899.

[57]No. 83-5310 (U.S. Aug. 18, 1983).