Legal Aid Society
OF THE DISTRICT OF COLUMBIA
MAKING JUSTICE REAL

November 27, 2013

Julio A. Castillo
Clerk of the Court
District of Columbia Court of Appeals
Historic Courthouse
430 E Street, NW
Washington, D.C. 20001

RE: Commenting With Approval on Amendment to D.C. App. R. 6(a)(2) on the Time Limit of Small Claims Litigants for Application for Allowance of Appeal

Dear Mr. Castillo,

The Legal Aid Society of the District of Columbia ("Legal Aid") is the oldest and largest general civil legal services program in the District of Columbia. Legal Aid submits the following in response to this Court's invitation for comments regarding the rule amendment in this Court's Order M-243-13, dated September 27, 2013. In that Order, this Court appropriately restored the extra five days accorded litigants—who are overwhelmingly without counsel—to file an application for allowance of appeal from small claims decisions. An August decision of this Court had an unintended consequence on these mostly *pro se* litigants, requiring them to file an application for permission to appeal within three days of entry of the judgment or order, even when the order was entered outside of the presence of the party or counsel. In those shortened time constraints, the three days often would have expired prior to the delivery of mail containing notice of the order. *See* Order M-243-13 at 2; *see also Clark v. Bridges*, No. 12-CV-49 (August 22, 2013). The amendment implemented by Order M-243-13 restored to such appellants an additional five days to file the application for permission to appeal. *See* Order M-243-13. Legal Aid supports this amendment and likewise supports legislative action to remove the artificially short three-day limit in D.C. Code § 17-307 from which Rule 6 (a)(2) is derived.

Legal Aid regularly helps its clients and other litigants in Small Claims Court to decide whether or not an appeal is warranted in a specific case. This decision takes time. In order to determine whether or not the indigent party has a viable issue for appeal, Legal Aid must carefully review the record—which may not be immediately available—and relevant statutes, regulations, and decisions by this and other courts. Legal Aid also must determine appropriate staffing, including *pro bono* or other representation with Legal Aid's various partners in the community. The time period between entry of judgment and filing—or deciding to abstain from filing—an application for permission to appeal is a critical window for potential Legal Aid clients and other small claimants. This is especially true of individuals who were unrepresented in small claims court, the group that most directly benefits from the additional five-day period provided in the rule amendment. In appeals of small claims cases in which the litigant was unrepresented, the litigant needs additional time to seek counsel. Allowing time for careful consideration of potential appeals benefits not only litigants, but also this Court, by reducing the number of decisions on whether to permit an appeal.

While strongly supporting the amendment's restoration of an eight-day limit—rather than the unintended three-day limit in D.C. Code § 17-307, Legal Aid notes that it is unaware of any local policy reason for the continuation of this much too short three-day time limit, initially enacted by Congress in the 1960's and not revisited.[1] The statute puts a heavy burden on *pro se* small claimants without much apparent justification. Civil Division litigants have thirty days to appeal; why should small claimants have only three days to seek permission to appeal?

In conclusion, Legal Aid supports the amendment because the restored eight days is better than the unintended three, but believes that it is only a first necessary step to begin to equalize the opportunity for justice for small claimants.

Respectfully submitted,

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[1] A compelling argument can be made that the three-day limitation is not jurisdictional and that it therefore should not be a bar in appropriate cases. *See Sebelius v. Auburn Reg'l Med. Ctr.*, 133 S. Ct. 817, 824-25 (2013) (holding that statutory 180-day limit for filing appeals to the Provider Reimbursement Review Board was not jurisdictional); *Henderson v. Shinseki*, 131 S. Ct. 1197, 1204–06 (2011) (holding that 120-day Veterans Court appeal deadline was not jurisdictional). Nevertheless, this Court has held the bar to be jurisdictional. *See Sturgis v. Kanter*, 728 A.2d 1229 (D.C. 1999). Unless and until that ruling is overturned—either by decision of this Court or by statutory amendment—it is particularly important that this rule amendment be enacted.