

On March 26, 2009, the Supreme Court approved amendments to Appellate Rule 26, Bankruptcy Rule 9006, Civil Rule 6 and Criminal Rule 45. The changes are the result of a major project to make all federal rules on calculating time periods simpler, clearer and consistent. These amendments are due to take effect on December 1, 2009.

The current rules exclude intermediate weekends and holidays for some short time periods, resulting in inconsistency and unnecessary complication. The amended rules are consistent and simple: count intermediate weekends and holidays for all time periods.

The time-computation rules amendments are at www.uscourts.gov/rules. Attached is a power point presentation, which you may find helpful in understanding the amended rules and their operation in appellate, bankruptcy and district court proceedings.

The Days of Our Bankruptcy Court Lives

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Excluding intermediate Saturdays,
Sundays, and legal holidays when
the period is less than 8 days but
otherwise we count every day

Why?

- Fed. Rule Bank. P. 9006(a)

Less than 8 days, exclude intermediate Saturdays, Sundays, and legal holidays in counting when something must be done

Is This a Problem?

- If a seven-day period and an eight-day period start on the same day, which one ends first under the rules?

It's Relative!

- Under Current Rules
 - 8 days usually last 8 days
 - 7 days NEVER last just 7 days
 - 7 days always last at least 9 days
 - 8 times a year 7 days can last 10 days
 - Once per year 7 days can last 11 days

Time Computation Project

“Days are Days”

- To simplify time computation provisions and to eliminate the inconsistencies found in the Appellate, Bankruptcy, Civil & Criminal Rules
- Public Comment through February 15, 2008
- Passed by JCUS September 2008
- Approved by Supreme Court March 26, 2009
- Promulgated December 1, 2009

Application?

- Apply to all pending actions unless infeasible or would work injustice
- If infeasible or unjust, apply the former rule

Rules Enabling Act, 28 U.S.C. § 2074

Intent

- New Time Computation Rules, so no <8 day distinction
- Amended Federal Rules to conform to current use (unless unjust/unfair)
- Adopt multiples of 7 as a deadline numbering convention for shorter periods
 - (e.g., 7, 14, 21 & 28)

Under New Rule 9006(a) Effective 12/1/09

In computing time in any Bankruptcy Rule, local rule or court order, or in any statute *that does not specify a method of computing time*

- *Exclude the day that triggers the period and*
- *Count every day thereafter, including intermediate Saturdays, Sundays, and legal holidays*

Now v. Then

- Bank. Rule 1007(a)(2)
 - 15 days to file list
- Bank. Rule 8002(a)
 - 10 days to file notice of appeal
- Bank. Rule 1007(a)(2)
 - 14 days to file list
- Bank. Rule 8002(a)
 - 14 days to file notice of appeal

Now v. Then

- Bank. Rule 2007 (b)(1)
 - 5 days' notice
- Bank. Rule 2007 (b)(1)
 - 7 days' notice
- Bank. Rule 3017 (f)(1)
 - 25 days' notice
- Bank. Rule 3017 (f)(1)
 - 28 days' notice

Final Day on a Weekend or Holiday

The period continues to run until the
“next day that is not a Saturday,
Sunday or legal holiday”

“Next Day” Calculated by

- Continuing to Count forward-when period measured after an event
- Continuing to Count backward-when period measured before an event
 - e.g., 14 days before trial

Legal Holidays

- Rule is largely unchanged
 - Enumerated holidays in the rule

Or

- Days declared by President, Congress or, for forward-counted periods, the state in which the court sits



What About Hours?

Same basic concept applies:

Begin counting immediately
and

Count every hour thereafter, including
intermediate Saturdays, Sundays, and
legal holidays

Final Hour on a Weekend or Holiday

The period continues to run until the same time on the next "day that is not a Saturday, Sunday or legal holiday "

Clerk's Office Inaccessible?

- Last Day of Filing:
 - Time extended to first accessible day that's not a weekend or legal holiday

Last Hour of Filing:

- Time extended to same time on first accessible day that's not a weekend or legal holiday

“Last Day” Ends

- Electronic Filing
 - for e-filing in the court, at midnight in court's time zone
 - for e-filing in court of appeals, at midnight in time zone of circuit clerk's principal office
- Other Filing - when clerk's office is scheduled to close

Implications

- Courts will need to review their local rules and standing orders for compliance
- Conform any pending or new rules to the upcoming change
- Because the Federal Rules will trump. *See, Fed. R. Bank. P. 9006(a), 9029(a)(1)*

Implications

- Does not change judicial orders in orders that set a date certain