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May 1, 2009

MEMORANDUM

To: Chief Judges, United States Courts

From: Honorable Lee H. Rosenthal 
Chair, Committee on Rules of Practice and Procedure

RE: CHANGES TO FEDERAL RULES THAT REQUIRE AMENDMENT OF TIME DEADLINES
IN LOCAL RULES AND STANDING ORDERS (**ACTION REQUESTED**)

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 the federal rules on calculating time periods simpler, clearer, and consistent. The amendments have been sent to Congress and 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. All the deadlines in the Federal Appellate, Bankruptcy, Civil, and Criminal Rules were reviewed and most short periods extended to offset the shift in the time-computation rules and to ensure that each period is reasonable. The amended rules will affect some local rules and standing orders, especially those that set short deadlines. To maintain consistency with the national rules and to avoid confusion, we ask courts to review their local rules and standing orders and make necessary adjustments. It is important that the adjustments take effect on December 1, the same date as the national rule changes.

Neither the review nor the adjustments should be difficult. The ability to electronically search local rules and standing orders greatly simplifies the task. For example, an electronic search of any district court's local rules, using the key words "day," "week," and "hour," should quickly identify all or almost all the time deadlines that need adjustment.

The simple "days are days" approach to computing deadlines has the effect of shortening current periods less than 11 days in appellate, civil, and criminal proceedings and 8 days in bankruptcy proceedings. Virtually all short periods in the federal rules were lengthened to offset the change in the computation method — 5-day periods became 7-day periods and 10-day periods became 14-day periods — in effect maintaining the status quo. Periods shorter than 30 days were revised to be multiples of 7 days, to reduce the likelihood of ending on weekends.

Additionally, time periods in a few rules were extended because they were too short and impractical.¹ In total, 91 rules were changed. Congress passed legislation on April 27 adjusting time periods in 28 statutes that are similarly affected by the federal rules time-computation amendments (H.R. 1626). The legislation is awaiting the President's signature. Both the federal rules amendments and the legislation will take effect on December 1, 2009.

Amendments to local rules and standing orders are necessary because the federal rules for calculating time periods also apply to them. In most cases, only slight adjustments will be needed. A 10-day period that was effectively 14 days (because two weekends were excluded) should be lengthened to 14 days; a 5-day period that was effectively 7 days (because one weekend was excluded) should be lengthened to 7 days. Ideally, periods of less than 30 days should be revised to be a multiple of 7 days. Using terms such as "business days" or "court days" to describe how to compute a time period should be revised to use "days." Local provisions that are designed to fit with a period stated in the federal rules should be adjusted consistent with the federal rule changes. These conforming amendments to the local rules and standing orders should take effect on December 1, 2009, consistent with the effective date of the federal rules amendments.

Other changes to the federal time-computation rules affect how to tell when the last day of a period ends, how to compute hourly time periods, how to calculate a time period when the clerk's office is inaccessible, and how to compute backward-counted periods that end on a weekend or holiday. Courts are also asked to review their local rules and standing orders to determine whether any amendments are necessary to be consistent with these changes, especially provisions defining when the clerk's office is "inaccessible" for filing purposes.

The time-computation rules amendments are at www.uscourts.gov/rules. Separate power point presentations, which you may find helpful, explaining the amended rules and their operation in appellate, bankruptcy, and district court proceedings are at <http://www.uscourts.gov/rules/presentations.html>. If you have any questions, please contact John K. Rabiej, Chief, Rules Committee Support Office, at (202) 502-1820.

Thank you.

cc: Circuit Executives
District Court Executives
Clerks, United States Courts

¹ App. R. 4(a)(4)(A)(vi) (adjusting time to file a Civil Rule 60 motion that tolls appeal time); App. R. 4(a)(6)(B) (adjusting time for motion to reopen time to file appeal); Civ. R. 6(c) (adjusting time to serve motion and any affidavit supporting motion in opposition); Civ. R. 50, 52, and 59 (adjusting time to file certain posttrial motions); Civ. R. 54(d)(1) (adjusting timing of taxation of costs); Civ. R. 56 (establishing presumptive deadline for motions); Cr. R. 29, 33, and 34 (adjusting time to file certain posttrial motions and motion for judgment of acquittal); and Cr. R. 35 (adjusting deadline to file motion to correct technical errors in sentencing).