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January 29, 2004

Peter G. McCabe, Secretary of the Committee on Rules of Practice and Procedure  
Administrative Office of the Courts  
One Columbus Circle, N.E.  
Washington, DC 20054

Dear Mr. McCabe:

Please find attached comments on proposed changes to Federal Rule of Civil Procedure 6(e) and Federal Rule of Bankruptcy Procedure 9006. I have also submitted these comments electronically via the Internet.

Sincerely,



Alex Manners  
Director of Product Development  
CompuLaw LLC

Comment on Proposed Change to Federal Rule of Civil Procedure 6(e) and Federal Rule of Bankruptcy Procedure 9006.

The current language of Rule 6(e) is silent on how time periods of less than 11 days are calculated when service is performed by mail and the time period is therefore subject to the provisions of Rule 6(a) and (e). The proposed amendment is a step in the right direction, but is still ambiguous as to this issue. The amendment also leaves another issue unresolved, and creates a new area of ambiguity, as discussed below.

The proposed amendment does nothing to clarify the question of whether the three additional days added by Rule 6(e) are calendar days, or are subject to Rule 6(a) and are to be counted as court days (excluding holidays and weekends). This issue can be resolved by amending Rule 6(e) to state that the three additional days are calendar days, or by adding language to state that the three days are not subject to the requirements of Rule 6(a).

Furthermore, the proposed amendment to Rule 6(e) may lead to confusion when calculating deadlines where the original period counted is longer than 10 days and, therefore, includes holidays and weekends. The question that arises is: If the last day of the original period lands on a holiday or weekend, does one move the date to the next court day pursuant to Rule 6(a) and then count the three additional days? Pursuant to the proposed language of Rule 6(e), 'the period' may be interpreted as the final day resulting from the original calculation, with the three days 'added after the period.'

For example,

If a party is to respond to a discovery request 30 days after service of the demand, and the demand is served by mail, and the 30<sup>th</sup> day is a Saturday, then the last day of the original period for response would be moved to the following Monday. Then, pursuant to proposed Rule 6(e), if the 3 days are added after the prescribed period, the response would be due on the following Thursday.

This method of calculation would be a departure from the traditional and accepted method currently used, whereby attorneys simply count 33 days to determine the deadline.

The following changes to the proposed rule would clarify the issues stated above.

(e) Additional Time After Certain Kinds of Service. Whenever a party must or may act within a prescribed period after service and service is made under Rule 5(b)(2)(B),(C), or (D), 3 calendar days are added to the period, unless the period is less than 11 days, in which case 3 calendar days are added after the period.

However, the new language that is proposed for Rule 6(e) and used in the suggestion above may still be confusing, as the difference between adding three days 'to' or adding three days 'after' the period is not obvious. While in the process of amending this rule,

why partially clarify it when there is an opportunity to write a clear and unambiguous rule? With this in mind, Rule 6(e) should be amended as follows:

(e) Additional Time After Certain Kinds of Service. Whenever a party must or may act within a prescribed period after service and service is made under Rule 5(b)(2)(B),(C), or (D), 3 calendar days are added to the period. If the original period is less than 11 days, the original period is subject to Rule 6(a), whereby holidays and weekends are excluded from the computation, and then three calendar days are added.

All comments here also apply to the proposed amendments to Federal Rule of Bankruptcy Procedure Rule 9006.