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Subject: Comment on Proposed Amendment to Civil Rule 6(e)

Dear Peter,

At the invitation of Ed Cooper, I submit this comment on the proposed amendment to Civil Rule 6(e).

I believe that the proposed amendment is sound and should be approved, but I recommend that language be added to the Committee Note to make certain that there is no ambiguity regarding the following situation: A paper is served by mail. The prescribed period is 30 days. The 30th day falls on a Saturday. Are the three days counted beginning on that Saturday — thus making the paper due on Tuesday — or are the three days counted beginning on Monday (when the prescribed period would expire under the time calculation provisions of the Civil Rules, in the absence of the three-day extension) — thus making the paper due on Thursday? Rule 6(e) is not entirely clear on this point.

In the Committee Note that I drafted for the proposed amendment to Appellate Rule 26(c) (which proposed amendment and Note have not, as of this writing, been approved by the Appellate Rules Committee), I described the operation of the proposed amendment as follows:

"Under the amendment, a party that is required or permitted to act within a prescribed period should first calculate that period, without reference to the 3-day extension provided by Rule 26(c), but with reference to the other time computation provisions of the Appellate Rules. (For example, if the prescribed period is less than 11 days, the party should exclude intermediate Saturdays, Sundays, and legal holidays, as instructed by Rule 26(a)(2).) After the party has identified the date on which the prescribed period would expire but for the operation of Rule 26(c), the party should add 3 calendar days. The party must act by the third day of the extension, unless that day is a Saturday, Sunday, or legal holiday, in which case the party must act by the next day that is not a Saturday, Sunday, or legal holiday."

I also included the following example in the Note:

"To illustrate further: A paper is served by mail on Thursday, August 11, 2005. The prescribed time to respond is 30 days. Whether or not there are intervening legal holidays, the prescribed period ends on Monday, September 12 (because the 30th day falls on a Saturday, the prescribed period extends to the following Monday). Under Rule 26(c), three calendar days are added — Tuesday, Wednesday, and Thursday — and thus the response is due on Thursday, September 15, 2005."

I recommend that the Civil Rules Committee add similar language -- and perhaps a similar example -- to the Note to the proposed amendment to Civil Rule 6(e).

Sincerely,  
Patrick Schiltz

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