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12-CV-F

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BY ELECTRONIC MAIL

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544
Rules_Support@ao.uscourts.gov

Re: Amendment to Rule 77(c)(1)

To Whom It May Concern:

Logan T. Mohs and I propose a technical and conforming amendment to Rule 77(c)(1). Mr. Mohs is a first-year student in my civil procedure course. He noticed a cross-reference in that rule to “Rule 6(a)(4)(A)” that should read “Rule 6(a)(6)(A).” I believe that this error was caused by the 2009 time-computation amendments, which added new subdivisions of Rule 6 without correcting the cross-reference.

Rule 77 states in part as follows:

Rule 77. Conducting Business; Clerk’s Authority; Notice of an Order or

Judgment

* * *

(c) CLERK’S OFFICE HOURS; CLERK’S ORDERS.

(1) *Hours.* The clerk’s office—with a clerk or deputy on duty—must be open during business hours every day except Saturdays, Sundays, and legal holidays. But a court may, by local rule or order, require that the office be open for specified hours on

Saturday or a particular legal holiday other than one listed in Rule 6(a)(4)(A).

* * *

This cross-reference was accurate as of the 2007 restyling, when Rule 6(a)(4) read:

(4) *“Legal Holiday” Defined.* As used in these rules, “legal holiday” means:

(A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and

(B) any other day declared a holiday by the President, Congress, or the state where the district court is located.

See 28 U.S.C. app. at 104 (Supp. I 2007). As of 2007, then, Rule 77(c)(1) prevented courts from keeping the clerk’s office open on certain enumerated holidays.

In 2009, however, the time-computation amendments added two new subdivisions to Rule 6 and revised its language. It now reads in part:

Rule 6. Computing and Extending Time; Time for Motion Papers

* * *

(4) *“Last Day” Defined.* Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing, at midnight in the court’s time zone; and

(B) for filing by other means, when the clerk’s office is scheduled to close.

(5) *“Next Day” Defined.* The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *“Legal Holiday” Defined.* “Legal holiday” means:

(A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.

* * *

But Rule 77 was not amended in 2009, and it has not been amended since—rendering the current cross-reference to 6(a)(4)(A) nonsensical.

We propose amending Rule 77 as follows:

Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or
Judgment

* * *

(c) CLERK'S OFFICE HOURS; CLERK'S ORDERS.

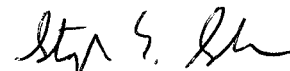
(1) *Hours.* The clerk's office—with a clerk or deputy on duty—
must be open during business hours every day except Saturdays,
Sundays, and legal holidays. But a court may, by local rule or
order, require that the office be open for specified hours on
Saturday or a particular legal holiday other than one listed in Rule
~~6(a)(4)(A)~~ 6(a)(6)(A).

* * *

Thank you very much for your time and attention.

Sincerely yours,


Logan T. Mohs


Stephen E. Sachs