

**SUMMARY OF THE  
REPORT OF THE JUDICIAL CONFERENCE**

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

The Committee on Rules of Practice and Procedure recommends that the Judicial Conference:

1. Seek legislation adjusting the time periods in 29 statutory provisions affecting court proceedings to account for the proposed changes in the time-computation rules. pp. 4-12
2. Approve the proposed amendments to Appellate Rules 4(a)(4), 22, and 26(c), and new Rule 12.1 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law . . . . . pp. 12-14
3. Approve the proposed amendments to Appellate Rules 4, 5, 6, 10, 12, 15, 19, 25, 26, 27, 28.1, 30, 31, 39, and 41 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law . . . . . pp. 14-15
4.
  - a. Approve the proposed amendments to Bankruptcy Rules 2016, 4008, 7052, 9006, 9015, 9021, 9023, and new Rule 7058 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.
  - b. Approve the proposed revisions to Bankruptcy Official Forms 8, 9F, 10, 23, and Exhibit D to Form 1 to take effect on December 1, 2008.
  - c. Approve the proposed new Bankruptcy Official Form 27 to take effect on December 1, 2009 . . . . . pp. 17-20

**NOTICE**  
NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL  
CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

5. Approve the proposed amendments to Bankruptcy Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law . . . . . pp. 20-21
6. Approve the proposed amendments to Civil Rules 13(f), 15(a), 48(c), and 81(d), and new Rule 62.1 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law . . . . . pp. 23-25
7. Approve the proposed amendments to Civil Rules 6, 12, 14, 15, 23, 27, 32, 38, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, 81, Supplemental Rules B, C, and G, and Illustrative Forms 3, 4, and 60 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law . . . . . pp. 25-27
8. Approve the proposed amendments to Criminal Rules 7, 32, 32.2, 41, and Rule 11 of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 and 2255 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law . . . . . pp. 30-32
9. Approve the proposed amendments to Criminal Rules 5.1, 7, 12.1, 12.3, 29, 33, 34, 35, 41, 45, 47, 58, 59, and Rule 8 of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 and 2255 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law . . . . . pp. 32-33

The remainder of the report is submitted for the record, and includes the following items for the information of the Conference:

- ▶ Time-Computation Project . . . . . pp. 2-12
- ▶ Federal Rules of Appellate Procedure . . . . . pp. 12-16
- ▶ Federal Rules of Bankruptcy Procedure . . . . . pp. 17-23
- ▶ Federal Rules of Civil Procedure . . . . . pp. 23-29
- ▶ Federal Rules of Criminal Procedure . . . . . pp. 30-34
- ▶ Federal Rules of Evidence . . . . . pp. 34-35
- ▶ Long-Range Planning . . . . . p. 36

**REPORT OF THE JUDICIAL CONFERENCE**

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES:**

The Committee on Rules of Practice and Procedure met on June 9-10, 2008. All members attended. Mark R. Filip, the Deputy Attorney General, attended part of the meeting and Ronald J. Tenpas, Assistant Attorney General, Environment and Natural Resources Division, attended the remainder of the meeting on behalf of the Department of Justice.

Representing the advisory rules committees were: Judge Carl E. Stewart, chair, and Professor Catherine T. Struve, reporter, of the Advisory Committee on Appellate Rules; Judge Laura Taylor Swain, chair, and Professor Jeffrey W. Morris, reporter, and Professor S. Elizabeth Gibson, incoming reporter, of the Advisory Committee on Bankruptcy Rules; Judge Mark R. Kravitz, chair, and Professor Edward H. Cooper, reporter, of the Advisory Committee on Civil Rules; Judge Richard C. Tallman, chair, and Professor Sara Sun Beale, reporter, of the Advisory Committee on Criminal Rules; and Judge Robert L. Hinkle, chair, and Professor Daniel J. Capra, reporter, of the Advisory Committee on Evidence Rules.

Participating in the meeting were Peter G. McCabe, the Committee's Secretary; Professor Daniel R. Coquillette, the Committee's reporter; John K. Rabiej, Chief of the Administrative Office's Rules Committee Support Office; James N. Ishida, Jeffrey N. Barr, and Tim Dole, attorneys in the Office of Judges Programs in the Administrative Office; Joe Cecil of the Federal

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Judicial Center; and Joseph F. Spaniol and Professor Geoffrey C. Hazard, consultants to the Committee.

Although the list of proposed rules changes recommended to the Judicial Conference is lengthy, much of it is the result of coordinated work by the Appellate, Bankruptcy, Civil, and Criminal Rules Advisory Committees to clarify and simplify the rules on how to calculate time periods and related rules changes to ensure that all the deadlines in the rules are reasonable.

### **TIME-COMPUTATION PROJECT**

In consultation with the Committee's Time-Computation Subcommittee, the Appellate, Bankruptcy, Civil, and Criminal Rules Advisory Committees proposed amendments to Appellate Rule 26, Bankruptcy Rule 9006, Civil Rule 6, and Criminal Rule 45 to make the method of computing time consistent, simpler, and clearer. In tandem with this work, each advisory rules committee also reviewed and proposed changes to the time periods in all the rules to ensure that every deadline is reasonable and that changing the time-computation method did not have the effect of shortening existing time periods.

The time-computation project was launched in response to frequent complaints about the time, energy, and anxiety expended in calculating time periods, the potential for error, and the anomalous results of the current computation provisions.

#### ***Proposed Rules Changes***

The principal simplifying change in the amended time-computation rules is the adoption of a "days-are-days" approach to computing all time periods. Under some of the current rules, intermediate weekends and holidays are omitted when computing short periods but included when computing longer periods. By contrast, under the proposed rules amendments, intermediate weekends and holidays are counted regardless of the length of the specified period.



Other changes in the amended time-computation rules clarify how to count forward when the period measured is after an event (for example, 21 days after service of a motion) and the deadline falls on a weekend or holiday; and how to count backward when the period measured is before an event (for example, 14 days before a scheduled hearing) and the deadline falls on a weekend or holiday. The proposed amendments also provide for computing hourly time periods, to address recent legislation affecting court proceedings in which deadlines are expressed in hours (for example, 72 hours for action).

The amended time-computation rules also fill a gap in the present rules by addressing the special timing considerations that accompany electronic filing. Under the proposed amendments, unless a statute, local rule, or court order provides otherwise, the last day of a period for an electronic filing ends at midnight in the court's time zone, while the last day for a paper filing ends when the clerk's office is scheduled to close. (Additional refinements to these principles are made in proposed Appellate Rule 26(a)(4) for reasons specific to appellate practice.) Filing deadlines are extended if the clerk's office is inaccessible. The proposed amendments provide a court with flexibility to define when a deadline should be adjusted or a failure to comply with a deadline should be excused because the clerk's office was "inaccessible." The proposed amendments and the Committee Notes do not specify the meaning of "inaccessibility," which can vary depending on whether a filing is electronic or paper, leaving the definition to local rules and case law development.

The advisory committees also reviewed every rule to ensure that all time periods would be reasonable taking into account the effect of changing the time-computation method. The advisory committees concluded that virtually all short time deadlines should be extended to adjust for the effect of including intermediate weekends and holidays in calculating deadlines.

To further simplify time-counting, the advisory committees proposed changing most periods of less than 30 days to multiples of 7 days. The advisory committees adopted 7, 14, 21, and 28-day periods when possible, so that deadlines will usually fall on weekdays. The advisory committees' comprehensive review of time-computation rules and the rules containing time periods resulted in proposed amendments to a total of 91 rules.

In August 2007, proposed amendments to each set of rules were published for comment from the bench and bar. Scheduled public hearings on the amendments were canceled because no one asked to testify. The specific proposed amendments are discussed later in this report in the respective sections describing the advisory committees' recommendations.

### ***Proposed Statutory Changes***

The time-computation method in the procedural rules generally applies to time periods set in statutes that affect court proceedings, unless the statutes themselves specify how to compute time. Applying the proposed time-computation rules to statutes that affect court proceedings could effectively shorten the time periods in those statutes because intermediate weekends and holidays would no longer be excluded. Although there are a large number of statutory time periods that could theoretically be affected by the change to the time-computation rules — the advisory committees identified 170 — only a few have short time periods that are frequently used or present another reason for avoiding any change to the present time periods. The Committee recommends that the Judicial Conference approve seeking legislation that would simply extend these statutory time periods to accommodate the change resulting from the proposed time-computation rules.

The advisory committees worked closely with the Department of Justice to evaluate the effects of the proposed changes on the statutory time periods. The complete list of the statutory provisions containing short time periods was also posted on the internet during the six-month

public comment stage. The public was invited to identify the statutory provisions that should be extended to accommodate the effects of the changes in the time-computation rules.

The advisory committees concluded that the great majority of the statutory time periods do not justify seeking amendment because of the proposed changes in the procedural time-computation rules. Many of the statutory provisions involve arcane matters and are rarely used. After careful review, the advisory committees proposed seeking legislation to extend the time periods in a total of 29 statutory provisions, all containing short deadlines (such as five or seven days) that affect court proceedings, to adjust for the effect of including intermediate weekends and holidays in calculating the deadlines. For most of the 29 provisions, the adjustment involves increasing the stated time period by two or four days, which keeps the existing time period unchanged in practice. The Department of Justice agreed with the advisory committees' recommendations. The list of proposed statutory amendments was also sent to selected national bar organizations for comment on both the statutes that were identified as candidates for seeking legislation to extend the deadlines and on whether additional statutes should be included. The American Bar Association, American College of Trial Lawyers, American Association for Justice, and National Association of Criminal Defense Lawyers, among others, have been asked for reaction. The Federal Practice Group of the American College of Trial Lawyers has already responded endorsing the committees' recommendations.

The proposed amendments to the time-computation rules and the pertinent statutory provisions should both take effect on December 1, 2009. The Committee has been working with Congressional leadership and staff to coordinate the effective dates of the proposed amendments. The members and staff have been receptive to the proposed amendments and believe that the

project is worthwhile. They also believe that legislation can be enacted so that its effective date is coordinated with the time-computation rules amendments.

The statutes recommended for legislative amendment are set out below. The proposed changes to each set of rules are set out in the report section for each advisory committee. The advisory committees recommend that the time periods in the following statutory provisions be amended to be consistent with the proposed changes to the time-computation rules.

1. The proposed amendments change five-day periods to seven-day periods in the following bankruptcy-related statutes:
  - a. 11 U.S.C. § 109(h)(3)(A)(ii) — If within five days after requesting credit counseling services from an approved agency a debtor is unable to obtain the services, the debtor may qualify under certain circumstances for a waiver of the requirement to receive a briefing on credit counseling and perform a budget analysis within 180 days before the petition is filed.
  - b. 11 U.S.C. § 322(a) — A trustee has five days after selection to file a bond in favor of the United States before beginning official duties.
  - c. 11 U.S.C. § 332(a) — A trustee has five days after a hearing begins to appoint a consumer privacy ombudsman in a case.
  - d. 11 U.S.C. § 342(e)(2) — Five days after the court and debtor receive a creditor's notice of address at which it desires to receive notice in a chapter 7 or chapter 13 individual-debtor case, the court and the debtor must use that address for any notice required to be sent to the creditor.

- e. 11 U.S.C. § 521(e)(3)(B) — No later than five days after a creditor in a chapter 13 case files a request to receive a copy of the plan filed by the debtor, the court shall make a copy of the plan available to the creditor.
  - f. 11 U.S.C. § 521(i)(2) — No later than five days after a party in interest requests a dismissal in certain cases, if an individual debtor fails to file required information within 45 days after filing the petition, subject to certain other provisions, the court shall enter the dismissal order.
  - g. 11 U.S.C. § 704(b)(1)(B) — No later than five days after receiving a statement from the United States trustee made after reviewing the debtor’s filings with respect to individual debtors in chapter 7 cases as to whether the debtor’s case would be presumed to be an abuse under § 707(b), the court shall provide a copy of the statement to all creditors.
  - h. 11 U.S.C. § 764(b) — A trustee handling commodity-broker liquidations may not avoid a transfer made before five days after the order for relief in certain cases.
  - i. 11 U.S.C. § 749(b) — A trustee handling stockbroker liquidations may not avoid a transfer made before five days after the order for relief in certain cases.
2. The proposed amendments change certain timing provisions applicable to the period between a criminal defendant’s initial appearance and the preliminary hearing (and related provisions concerning that phase of a prosecution) from 10 to 14 days:
- a. 18 U.S.C. § 3060(b) provides that preliminary examinations, except in certain circumstances, “shall be held . . . no later than the tenth day following the date of the initial appearance of the arrested person.”

- b. 18 U.S.C. § 983(j)(3) provides that a temporary restraining order with respect to property against which no complaint has yet been filed “shall expire not more than 10 days after the date on which it is entered.”
  - c. 18 U.S.C. § 1467(c) provides that a temporary restraining order with respect to property against which no indictment has yet been filed “shall expire not more than 10 days after the date on which it is entered.”
  - d. 18 U.S.C. § 1514(a)(2)(C) provides that a temporary restraining order “prohibiting harassment of a victim or witness in a Federal criminal case” shall not remain in effect more than “10 days from issuance.”
  - e. 18 U.S.C. § 1963(d)(2) provides that a restraining order, injunction, or “any other action to preserve the availability of property . . . shall expire not more than ten days after the date on which it is entered.”
  - f. 21 U.S.C. § 853(e)(2) provides that “a temporary restraining order under this subsection . . . shall expire not more than ten days after the date on which it is entered.”
3. The proposed amendments modify the four-day deadlines in the Classified Information Procedures Act (“CIPA”) § 7(b) and in the material-support statute, 18 U.S.C. § 2339B(f)(5)(B), to specify that intermediate weekends and holidays are excluded. This change has the effect of maintaining the existing statutory deadlines.
- a. 18 U.S.C. § 2339B(f)(5)(B)(iii)(I) provides that if an appeal is taken under 18 U.S.C. § 2339B (statute against providing material support or resources to designated foreign terrorists), “the trial court shall adjourn the trial until the

appeal is resolved, and the court of appeals — (I) shall hear argument . . . not later than 4 days after the adjournment of the trial; . . . .”

- b. 18 U.S.C. § 2339B(f)(5)(B)(iii)(III) provides that if an appeal is taken under 18 U.S.C. § 2339B (statute against providing material support or resources to designated foreign terrorists), “the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals — (III) shall render its decision not later than 4 days after argument on appeal . . . .”
  - c. 18 U.S.C. App. 3 § 7(b)(1) provides that in an appeal pursuant to the CIPA statute, “the court of appeals shall hear argument . . . within four days of the adjournment of the trial.”
  - d. 18 U.S.C. App. 3 § 7(b)(3) provides that in an appeal pursuant to the CIPA statute, the court of appeals “shall render its decision within four days of argument on appeal.”
4. The proposed amendments change the deadlines in the material-support statute and in CIPA for taking a pretrial appeal from 10 to 14 days.
- a. 18 U.S.C. § 2339B(f)(5)(B)(ii) provides that “[i]f an appeal is of an order made prior to trial, an appeal shall be taken not later than 10 days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.”
  - b. 18 U.S.C. App. 3 § 7(b) provides that “[p]rior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved.”

5. The proposed amendments modify the two-day notice provision in 18 U.S.C. § 1514(a)(2)(E) to exclude weekends and holidays. The statute provides that “if on two days notice to the attorney for the Government . . . the adverse party appears and moves to dissolve or modify [a] temporary restraining order, the court shall proceed to hear and determine such motion . . . .” This change has the effect of maintaining the existing statutory deadline.
6. The proposed amendments change the 10-day notice deadline in 18 U.S.C. § 2252A(c) to 14 days. Under the statute a defendant seeking to use select affirmative defenses against child pornography charges must notify the court “in no event later than 10 days before the commencement of the trial.” Extending the time for notification to 14 days will conform to the times provided for notice of other defenses. The Criminal Rules Committee has proposed extending the period for such notice under Rule 12.1 (alibi defense) and Rule 12.3 (public-authority defense) to 14 days.
7. The proposed amendments modify the three-day period set by 18 U.S.C. § 3432 to exclude weekends and holidays. Under the statute “a person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment . . . .” This proposed change has the effect of keeping the existing statutory deadline.
8. The proposed amendments change the five-day deadline for applications under 18 U.S.C. § 3509(b)(1)(A) to seven days. The statute provides that a person seeking an order for a child’s testimony to be taken via two-way closed circuit video “shall apply for such an order at least five days before the trial date.” Extending this period to seven days will



permit adequate time for the party against whom the child would testify to file any objections and for the court to rule on the request.

9. The proposed amendments change the 10-day mandamus petition deadline in the Crime Victims' Rights Act ("CVRA"), 18 U.S.C. § 3771(d)(5), to 14 days. The statute sets a 10-day time period for victims to seek mandamus review in the court of appeals for certain purposes. Under the proposed amendment to Appellate Rule 4(b), the defendant's time to appeal would also be extended from 10 to 14 days, avoiding inconsistency between the two periods.
10. The proposed amendments change the 10-day period in 28 U.S.C. § 636(b)(1) to 14 days. Section 636(b)(1) sets the period for objecting to magistrate judge orders and recommendations at 10 days. Proposed Civil Rules 72(a) and (b), which address the same subject matter, extend the time from 10 days to 14 days, recognizing that under the present computation method 10 days has effectively meant at least 14 calendar days. The proposed changes to § 636(b) allow 14 days so that statute and rule would remain consistent.
11. The proposed amendments change the "not less than 7" day period in 28 U.S.C. § 1453(c)(1) to "not more than 10" days. This period limits the time for seeking appellate review, under the Class Action Fairness Act, of a district court's remand order; "not less than" was clearly a drafting error. Section 1453 should be amended to set the time limit at "not more than 10 days" to correct the drafting error and offset the change in the rules' time-computation method.
12. The proposed amendments change the seven-day deadline in 28 U.S.C. § 2107(c) to 14 days. This period, one of the time limits on making a motion to reopen the time to appeal

in a civil case, should be extended from seven to 14 days in keeping with the proposed amendment to the corresponding time period in Appellate Rule 4(a)(6)(B). The Appellate Rules Committee suggests choosing 14 days as opposed to 10 days, in keeping with the time-computation project's preference for periods that are multiples of seven days.

Lengthening the period to 14 days would not unduly threaten any principle of repose; a party that wishes to be confident about the expiration of appeal time can protect itself by giving notice of the judgment to other parties.

The Committee concurred with the advisory committees' recommendations.

**Recommendation:** That the Judicial Conference —

Seek legislation adjusting the time periods in 29 statutory provisions affecting court proceedings to account for the proposed changes in the time-computation rules.

The proposed amendments to the statutory provisions are in Appendix A.

## **FEDERAL RULES OF APPELLATE PROCEDURE**

### ***Rules Recommended for Approval and Transmission***

The Advisory Committee on Appellate Rules submitted proposed amendments to Rules 4, 22, and 26(c), and new Rule 12.1 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed changes were circulated to the bench and bar for comment in August 2007. The scheduled public hearings on the proposed changes were canceled because no one requested to testify.

The proposed amendment to Rule 4(a)(4) eliminates an ambiguity arising from the 1998 restyling of the rule, which might be construed to require an appellant to amend a notice of appeal filed before a district court amends the judgment, even if the amendment favors the appellant.

Proposed new Rule 12.1, which is coordinated with proposed new Civil Rule 62.1, provides a clearly stated and consistent procedure for a party to request an “indicative ruling” on a motion that the district court lacks authority to grant because of a pending appeal. Many courts follow a variation of this practice but there is no clear or consistent statement in the rules. The proposed new appellate rule facilitates the remand to the district court for a ruling on the motion when the district court has indicated that it would grant the motion if the court of appeals remanded for that purpose or that the motion raises a substantial issue. The proposed procedure ensures proper coordination of proceedings dealing with indicative rulings in the district court and court of appeals. Unless the court of appeals expressly dismisses the appeal, it retains jurisdiction despite the remand and may consider the appeal even after the district court has granted relief on remand. The proposed new rule is integrated with proposed new Civil Rule 62.1.

The proposed amendment to Rule 22 conforms the rule to changes proposed to Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 or 2255. The proposed amendment deletes the requirement that the district court judge who rendered the judgment either issue a certificate of appealability or state why a certificate should not issue, because the relevant requirement is now set out in proposed Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 or 2255, where it is more appropriately located.

The proposed amendment to Rule 26, in addition to the changes made to adopt the revised time-computation method, clarifies the operation of the three-day rule when a time period ends on a weekend or holiday. The proposed amendment tracks the language of similar recent amendments to Civil Rule 6 and Criminal Rule 45.

The Committee concurred with the advisory committee’s recommendations.

**Recommendation:** That the Judicial Conference —

Approve the proposed amendments to Appellate Rules 4(a)(4), 22, and 26(c), and new Rule 12.1 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Appellate Procedure are in Appendix B with an excerpt from the advisory committee report.

The advisory committee also proposed amendments to Rules 4, 5, 6, 10, 12, 15, 19, 25, 26, 27, 28.1, 30, 31, 39, and 41 as part of the time-computation project with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendment to Rule 26 simplifies and clarifies the general time-computation method. The proposed amendments to the listed rules adjust time periods consistent with the change to the time-computation method.

The proposed adjustments to the time periods in the rules are minor — accounting for the inclusion of holidays and weekends in the time-computation method and the preference for stating periods in multiples of seven days — with some exceptions noted below. The following adjustments are proposed:

- References to “calendar days” in Rules 25, 26, and 41 become simply references to “days,” consistent with the change to the time-computation method.
- Three and five days are extended to seven days in Rules 27, 28.1, and 31.
- Seven and eight days are extended to 10 days in Rules 5(b)(2), 19, and 27.
- Seven and 10 days are extended to 14 days in Rules 4(a)(5), 4(a)(6), 4(b), 5(d)(1), 6, 10, 12, 30, and 39. The seven-day time period in Rule 4, which governs motions to reopen the time to appeal, is increased to 14 days. As noted above with respect to the recommendations concerning statutory deadlines, the advisory committee suggested

choosing 14 days as opposed to 10 days in keeping with the time-computation project's preference for stating periods that are multiples of seven days. Lengthening the time period to 14 days would not unduly threaten any principle of repose; a party that wished to be confident about the expiration of appeal time could protect itself by giving notice of the judgment to other parties.

- Ten days are extended to 28 days in Rule 4(a)(4)(A)(vi). The provision delineates which motions under Civil Rule 60 have the effect under Appellate Rule 4(a)(4)(A) of extending the time to file an appeal. The proposed change in Appellate Rule 4(a)(4)(A)(vi) matches the revision to the time limits for postjudgment motions under Civil Rules 50, 52, and 59.

- Twenty days are extended to 21 days in Rule 15.

The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference —

Approve the proposed amendments to Appellate Rules 4, 5, 6, 10, 12, 15, 19, 25, 26, 27, 28.1, 30, 31, 39, and 41 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Appellate Procedure are in Appendix B with an excerpt from the advisory committee report.

### ***Rules Approved for Publication and Comment***

The advisory committee proposed amendments to Rules 1 and 29(a) and Form 4 with a recommendation that they be published for public comment.

The proposed amendment to Rule 1 defines the term “state” to include the “District of Columbia and any United States commonwealth or territory.”

The proposed amendments to Rule 29 conform to the proposed amendment to Rule 1 by substituting the term “state” for Rule 29(a)’s current reference to a “State, Territory, Commonwealth, or the District of Columbia.” The proposed amendments to Rule 29 also include changes approved for publication by the Committee at its January 2008 meeting, setting amicus-brief disclosure requirements modeled on Supreme Court Rule 37.6.

The proposed revision of Form 4 makes changes to avoid asking for certain information. The changes are consistent with privacy protections following the E-Government Act of 2002 (Pub. L. No. 107-347, as amended by Pub. L. No. 108-281) and the recent adoption of Rule 25(a)(5), which address privacy concerns.

The Committee approved the advisory committee’s recommendation to publish the proposed changes for public comment.

### ***Informational Items***

The advisory committee continues to discuss proposed amendments to Rules 4 and 40 concerning the time for filing an appeal or a petition for rehearing in cases that involve a federal officer or employee sued in his or her individual capacity. Action on earlier proposed amendments to Rules 4 and 40 addressing this issue was deferred in light of *Bowles v. Russell*, 127 S. Ct. 2360 (2007), which held that Rule 4’s 14-day time limit on reopening the time to take a civil appeal is mandatory and jurisdictional.

The advisory committee discussed and retained on its study agenda several other issues concerning appeal bonds under Rule 7, amicus briefs with respect to panel rehearing and rehearing en banc, the effect of the “separate document” requirement in cases involving belated tolling motions, and the prepayment of postage in connection with inmate filings.

## **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

### ***Rules Recommended for Approval and Transmission***

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 2016, 4008, 7052, 9006, 9015, 9021, 9023, and new Rule 7058, and proposed revisions to Official Forms 8, 9F, 10, 23, and Exhibit D to Official Form 1, and new Official Form 27 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed changes were circulated to the bench and bar for comment in August 2007. The scheduled public hearings on the proposed changes were canceled because no one requested to testify. Proposed new Rule 1017.1 was also published for public comment, but it was later withdrawn because the advisory committee concluded that it was not necessary.

The proposed amendment to Rule 2016 was not published for public comment because it is a technical conforming change to correct a cross-reference to a subsection of the Bankruptcy Code that was recently changed.

The proposed amendment to Rule 4008 requires an entity filing a reaffirmation agreement also to file a cover sheet that includes sufficient information for the court to determine whether the proposed reaffirmation agreement is presumed to be an undue hardship for the debtor under § 524(m) of the Bankruptcy Code.

The proposed amendments to Rules 7052 and 9021 and new Rule 7058 account for the amendment of Civil Rule 58 in 2002, which clarifies the time when a judgment that is not set forth on a separate document becomes final for appeal purposes. With some exceptions involving posttrial motions, Civil Rule 58 requires that every judgment be set forth on a separate document and provides a 150-day default appeal period if the requirement is not met. Under proposed new Rule 7058 and amendments to Rule 7052, the separate-document requirement and

the 150-day default appeal period will apply only to a judgment in an adversary proceeding.

They will not apply to a judgment or order in other actions, including contested matters.

The proposed amendment to Rule 7052 clarifies that “entry of judgment” in an adversary proceeding means the entry of a judgment or order under the Bankruptcy Rules, either new Rule 7058 or Rule 9021. The proposed amendment also sets a 14-day deadline to file a postjudgment motion for amended or additional findings, which is different from the proposed increased 28-day deadline in the Civil Rules that would otherwise apply in an adversary proceeding. The proposed revision of the time deadline was not published for public comment because it is a technical conforming change that maintains the current appeal period as modified to account for the change in the time-computation method. New Rule 7058 makes Civil Rule 58, including its separate-document requirement and 150-day default appeal period, applicable only to adversary proceedings. The proposed amendment to Rule 9021 makes clear that the separate-document requirement does not apply outside of adversary proceedings.

The proposed amendment to Rule 9006 was not published for public comment because it is a technical and conforming change to correct the cross-reference to Civil Rule 5(b)(2), which was renumbered as part of the recent restyling project.

The proposed amendments to Rule 9015 and Rule 9023 were not published for public comment because they are technical and conforming changes that maintain the current appeal period as modified to account for the change in the time-computation method. The proposed amendments set a 14-day deadline to file certain postjudgment motions, which is different from the proposed increased 28-day deadline in the Civil Rules that would otherwise apply in a bankruptcy case.



The proposed revision of Exhibit D to Official Form 1 deletes the requirement that a debtor file a separate motion for an order postponing the debtor's mandatory credit-counseling briefing before the case is filed. The debtor is warned that the court may dismiss the case if it concludes that a postponement is not warranted.

The proposed amendments to Official Form 8 require the debtor to provide additional information indicating the debtor's intentions to use leased personal property and property subject to security interests, consistent with recently enacted § 362(h) and amended § 521(a)(2) of the Bankruptcy Code.

The proposed revisions of Official Forms 9F, 10, and 23 were not published for public comment because they are technical and conforming. The reference to a debtor's telephone number in Official Form 9F would be deleted to protect the debtor's privacy. Official Form 10 would be revised to include information in the instructions about health care-related claims and to revise the definition of "creditor" and "claim" to conform to the definitions in the Bankruptcy Code. The proposed revision of Official Form 23 includes a reference to § 1141(d)(5)(B) of the Bankruptcy Code in the filing deadlines.

Proposed new Official Form 27 implements the proposed amendments to Rule 4008 scheduled to take effect on December 1, 2009. The form requires the disclosure of financial information necessary for the court to determine whether a reaffirmation agreement creates a presumption of undue hardship for the debtor under § 524(m) of the Bankruptcy Code. It also requires the debtor to identify and explain any differences between the income and expenses reported on schedules I and J and the income and expenses reported in the debtor's statement in support of the reaffirmation agreement.

The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference —

- a. Approve the proposed amendments to Bankruptcy Rules 2016, 4008, 7052, 9006, 9015, 9021, 9023, and new Rule 7058 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.
- b. Approve the proposed revisions to Bankruptcy Official Forms 8, 9F, 10, 23, and Exhibit D to Form 1 to take effect on December 1, 2008.
- c. Approve the proposed new Bankruptcy Official Form 27 to take effect on December 1, 2009.

The proposed amendments to the Federal Rules of Bankruptcy Procedure are in Appendix C with an excerpt from the advisory committee report.

The advisory committee also proposed amendments to Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033 as part of the time-computation project with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendment to Rule 9006 simplifies and clarifies the general time-computation method. The proposed amendments to the other rules adjust time periods consistent with the change to the time-computation method.

The proposed adjustments to the time periods in the rules are minor, accounting for the inclusion of holidays and weekends in the time-computation method and the preference for stating periods in multiples of seven days. The following adjustments are proposed:

- Five days are extended to seven days in Rules 2006, 2007, 2008, 2015.3, 6004, 9006, and 9027.

- Ten days are extended to 14 days in Rules 1007, 2003, 2015.1, 2015.2, 2016, 3020, 4001, 6004, 6006, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9027, and 9033.
- Fifteen days are changed to 14 days in Rules 1007, 1019, 1020, 2015, 2015.1, 2016, 3015, 4001, 4002, 6004, 6007, and 8009.
- Twenty days are extended to 21 days in Rules 1011, 2002, 2003, 2007.2, 2015, 2015.3, 3001, 3015, 3019, 6003, 7012, 8002, 9027, and 9033.
- Twenty-five days are extended to 28 days in Rules 2002, 3017, and 4004.

The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference —

Approve the proposed amendments to Bankruptcy Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Bankruptcy Procedure are in Appendix C with an excerpt from the advisory committee report.

### ***Rules Approved for Publication and Comment***

The advisory committee submitted proposed amendments to Rules 1014, 1015, 1018, 5009, and 9001 and proposed new Rules 1004.2 and 5012 with a request that they be published for public comment. The Committee approved the publication for public comment of proposed amendments to Rules 1007, 1019, 4004, and 7001 at an earlier meeting.

Proposed new Rule 1004.2 requires an entity filing a chapter 15 petition to identify the country where the debtor has its main interests and list each country in which a case involving the debtor is pending.

The proposed amendment to Rule 1014 applies the rule's venue provisions to chapter 15 cases involving foreign proceedings.

The proposed amendment to Rule 1015 applies the rule's consolidation and joint administration provisions to chapter 15 cases involving foreign proceedings.

The proposed amendment to Rule 1018 includes proceedings contesting chapter 15 petitions for recognition of foreign proceedings among those subject to enumerated rules in Part VII of the Bankruptcy Rules. It also clarifies the rule to apply to contests over involuntary petitions and not to matters that are merely "related to" a contested involuntary petition.

The proposed amendments to Rule 5009 require the clerk of court to provide notice to individual debtors in chapter 7 and chapter 13 cases that their case may be closed without entry of a discharge if they fail to file a timely statement that they have completed a personal financial management course. The amendments would also require a foreign representative in a chapter 15 case to file and give notice of the filing of a final report describing the nature and results of the representative's activities in the United States court.

Proposed new Rule 5012 establishes a procedure in chapter 15 cases for approving a protocol governing communications in and coordination of proceedings in cases involving a debtor pending in other countries.

The proposed amendment to Rule 9001 adds § 1502, which defines certain words and phrases, to the list of definitional provisions in the Code that apply to the Bankruptcy Rules.

### *Informational Items*

The advisory committee's subcommittee on forms, with the assistance of a group of experienced bankruptcy practitioners, court staff, and judges has undertaken a multiyear project to revise and modernize bankruptcy forms. The group has met. It will study the forms' content, ways to make the forms easier to use and more effective to meet the needs of the judiciary and all those involved in resolving bankruptcy matters, and how to take advantage of technology advances.

### **FEDERAL RULES OF CIVIL PROCEDURE**

#### *Rules Recommended for Approval and Transmission*

The Advisory Committee on Civil Rules submitted proposed amendments to Rules 13(f), 15(a), 48(c), and 81(d), and proposed new Rule 62.1 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments and new rule were circulated to the bench and bar for comment in August 2007. The scheduled public hearings on the proposed changes were canceled because no one asked to testify. The proposed amendment to Rule 8(c), which deletes the reference to a "discharge in bankruptcy" from the rule's list of affirmative defenses, was withdrawn for further consideration in light of concerns expressed by the Department of Justice.

The proposed amendment to Rule 13 deletes subdivision (f), which sets out standards for amending pleadings to add a counterclaim. The subdivision is redundant of Rule 15, which sets out standards for amending pleadings in general. The proposed change codifies courts' practice of applying uniform standards to the amendment of pleadings.

The proposed amendment to Rule 15(a) limits the time when a party may amend a pleading to which a responsive pleading is required once as a matter of course. The proposal

eliminates the distinction drawn by present Rule 15(a), under which a responsive pleading immediately cuts off the right to amend, while a Rule 12 motion does not cut off the right and prolongs the time to amend a pleading until the motion is resolved. Significant problems can arise when a party files an amended pleading as a matter of right on the eve of a court's ruling on a dispositive Rule 12 motion. Under the proposed amendment, a party may file an amended pleading without leave of court within 21 days after service of a responsive pleading or 21 days after service of a Rule 12 motion, whichever is earlier. After that, a party may file an amended pleading only with leave of court.

The proposed amendment to Rule 48 adds a provision similar to that in corresponding Criminal Rule 31 that allows a court to poll the jury individually on its own and requires a poll at a party's request.

Proposed new Rule 62.1 is integrated with the parallel proposed new Appellate Rule 12.1. Proposed Rule 62.1 codifies and makes consistent practices followed in almost all circuits when a motion is made regarding a matter that the district court is in a better position to determine than the court of appeals, but the district court judge cannot rule on the motion because an appeal has been filed and jurisdiction invested in the court of appeals. The district court may defer ruling, deny the motion, or either indicate that it would be inclined to grant the motion if the case were remanded (the so-called indicative ruling) or state that the motion raises a substantial issue. Requests for indicative rulings typically arise when a party files a Rule 60(b) motion after an appeal has been filed. The procedure facilitates cooperation between the district court and the court of appeals, enabling them to determine whether it is better to decide the appeal before deciding the motion. A party must notify the court of appeals if the district court states that it would grant the postjudgment motion or that the motion raises a substantial issue.

The proposed amendment to Rule 81 clarifies the definition of “state” to include not only the District of Columbia but also any United States commonwealth or territory.

The Committee concurred with the advisory committee’s recommendations.

**Recommendation:** That the Judicial Conference —

Approve the proposed amendments to Civil Rules 13(f), 15(a), 48(c), and 81(d), and new Rule 62.1 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Civil Procedure are in Appendix D with an excerpt from the advisory committee report.

The advisory committee also proposed amendments to Rules 6, 12, 14, 15, 23, 27, 32, 38, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, 81, Supplemental Rules B, C, and G, and Illustrative Forms 3, 4, and 60 as part of the time-computation project with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendment to Rule 6 simplifies and clarifies the general time-computation method. The proposed amendments to the other rules adjust time periods consistent with the change to the time-computation method.

The proposed adjustments to the time periods in the rules are minor — accounting for the inclusion of holidays and weekends in the time-computation method and the preference for expressing periods in multiples of seven days — with some exceptions noted below. The following adjustments are proposed:

- The one-day period in Rule 6(c)(2) becomes seven days. The adjustment would extend the time for a party to serve any affidavit opposing a motion to seven days before a hearing.
- The one-day period in Rule 54(d) becomes 14 days. The increased time period corrects an unrealistic short time period for the clerk to give notice before taxing costs.

- The three-day period in Rule 55 becomes seven days.
- Five-day periods in Rules 32, 54, and 81 become seven days.
- The five-day period in Rule 6(c)(1) becomes 14 days. The adjustment extends the time for a party to serve a written motion and notice of hearing before the scheduled hearing date.
- Ten-day periods in Rules 12, 14, 15, 23, 38, 59(c), 62, 65, 68, 72, 81, and Supplemental Rule C become 14 days.
- Ten-day periods in Rules 50, 52, and 59(b), (d), and (e) become 28-day periods. The adjustment extends the present inadequate time allowed to prepare and file postjudgment motions. To prevent unfair results from these unrealistic short time periods, courts have avoided the rule by delaying entry of judgment or permitting timely filing of a barebones motion but permitting the brief to expand the stated grounds.
- The less-than-11-day period in Rule 32 becomes less than 14 days.
- Twenty-day periods in Rules 12, 15, 27, 53, 71.1, 81, Forms 3, 4, and 60, and Supplemental Rules B, C and G become 21 days.
- Rule 6(b)'s reference to provisions for extending the times set by enumerated provisions in Rules 50, 52, 59, and 60, and Rule 59(c)'s reference to a 20-day extension are eliminated.
- The timing provisions in Rules 56(a) and (c) are replaced by new provisions that recognize authority to set deadlines for summary-judgment motions by local rule or by court order and, in default of a local rule or court order, that allow a motion to be made at any time until 30 days after the close of all discovery. The new provisions also establish default times for response and reply.



The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference —

Approve the proposed amendments to Civil Rules 6, 12, 14, 15, 23, 27, 32, 38, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, 81, Supplemental Rules B, C, and G, and Illustrative Forms 3, 4, and 60 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Civil Procedure are in Appendix D with an excerpt from the advisory committee report.

### ***Rules Approved for Publication and Comment***

The advisory committee submitted proposed amendments to Rules 26 and 56 with a request that they be published for public comment.

The proposed amendments to Rule 26 address issues dealing with discovery of information from trial expert witnesses. The American Bar Association raised concerns about the operation of the present rules and passed a resolution recommending that federal and state discovery rules be amended to prohibit the discovery of draft expert reports and to limit discovery of attorney-expert communications, without impeding discovery into the expert's opinions and the facts or data considered in forming them. Several states have adopted such rules. The advisory committee held two mini-conferences with lawyers from diverse practices and judges to learn more about the problems with the existing expert-disclosure rule and practices and about the experience under different rules. The ABA's recommendations address concerns that the present rules providing for broad discovery of attorney-expert communications and draft expert reports have resulted in artificial and expensive litigation procedures that do not meaningfully contribute to determining the strengths or weaknesses of the expert's opinions. For example, experts and counsel often go to great lengths to avoid creating any draft expert reports,

written communications between expert witness and counsel, or notes by the expert. Parties with sufficient resources often retain two sets of experts, one for consultation purposes and a second for report and testimony. Depositions are prolonged by often useless inquiry into every editorial change in the draft reports.

The proposed Rule 26 amendments address two distinct topics. The first deals with expert witnesses who are not required to prepare a detailed report under Rule 26(a)(2)(B). These experts include such persons as treating physicians, employees of a party whose duties do not regularly involve giving expert testimony, and law enforcement officers who are accident investigators. Some courts, attracted by the advantages of advance disclosure of expected expert testimony, have read the present rule, which excludes these experts from the report requirement, to nonetheless require them to prepare reports. The proposed amendment strikes a middle ground, requiring the party (not the expert) to include in the Rule 26(a)(2)(A) disclosure a statement of the subject matter of the expected expert testimony and a summary of the expected facts and opinions. The second topic applies the work-product protections of Rule 26(b)(3)(A) and (B) to limit discovery of drafts of the new disclosure statement or of Rule 26(a)(2)(B) reports. The same work-product limits are applied to communications between the party's attorney and an expert who is required to prepare a Rule 26(a)(2)(B) report. But exceptions are made — allowing discovery free of the work-product limits — for parts of the attorney-expert communications regarding compensation, identifying facts or data considered by the expert in forming the opinions, and identifying assumptions relied upon by the expert in forming the opinions.

The proposed amendments to Rule 56 improve the procedures for presenting and deciding summary-judgment motions and make the procedures more consistent with those

already used in many courts. The proposed amendments do not affect the substantive standards for granting or denying summary judgment.

The Federal Judicial Center conducted an empirical study on summary-judgment practices, which provided useful insights into the rule's operation. The advisory committee conducted two mini-conferences with experienced judges and lawyers that provided additional information on the wide variances in the courts' summary-judgment rules and practices. The data clearly show that the practice and procedures that the district courts have developed to comply with Rule 56 are much different from the rule text, which has not been significantly changed for decades. Many districts have adopted comprehensive local rules governing summary-judgment motion practice, indicating that the national rule is no longer useful. Though there is little uniformity among the practices in the courts, some common themes are apparent. The proposed amendments have drawn extensively on experience under the local court rules.

The proposed amendments to Rule 56 require a statement of facts that are asserted to be undisputed and entitle the movant to summary judgment and a response that, for the purpose of the motion, addresses each fact by accepting, disputing, or accepting it in part and disputing it in part. Specific citations to the record are required. The statement of facts is separate from a brief that sets out the legal arguments. The statement is intended to require the parties to identify and focus on what is really at issue and provide an effective process for the judge to rule on the motion. Other proposed changes include supplementing the existing provision recognizing summary judgment on all or part of a claim or defense.

The Committee approved the advisory committee's recommendation to publish the proposed amendments to Rules 26 and 56 for public comment.

## **FEDERAL RULES OF CRIMINAL PROCEDURE**

### ***Rules Recommended for Approval and Transmission***

The Advisory Committee on Criminal Rules submitted proposed amendments to Rules 7, 32, 32.2, 41, and Rule 11 of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 and 2255 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments were circulated to the bench and bar for comment in August 2007. The scheduled public hearings on the proposed changes were canceled because no one asked to testify.

The proposed amendment to Rule 7 deletes, as unnecessary, a forfeiture-related provision that is more appropriately set out in Rule 32.2, which consolidates the forfeiture procedures in a single rule.

The proposed amendment to Rule 32 provides that a presentence report should state whether the government is seeking forfeiture to promote timely consideration of issues concerning forfeiture as part of the sentencing.

The proposed amendments to Rule 32.2: (1) state that the government's notice of forfeiture should not be designated as a count in an indictment or information; (2) provide that the notice of forfeiture need not identify the specific property or money judgment that is subject to forfeiture (additional detail may be provided in a bill of particulars); (3) require the court to enter a preliminary forfeiture order sufficiently in advance of sentencing to permit the parties to suggest modifications; (4) expressly authorize a court to enter a forfeiture order that is general in nature in a case in which it is not possible to identify all of the property subject to forfeiture; (5) clarify when the forfeiture order becomes final as to the defendant, state what the district court is required to do at sentencing, and require the government to submit a special verdict form;

and (6) provide technical changes modifying the notice, publication, and interlocutory sale of property subject to forfeiture.

The proposed amendment to Rule 41 clarifies how the rule's warrant provisions apply to the seizure of electronically stored information. It sets up a two-stage process, authorizing the seizure of electronic storage media or the seizure and copying of electronically stored information and a subsequent review of the storage media or electronically stored information consistent with the warrant. No specific time period is imposed on any off-site review of the media or electronically stored information because the review time can be substantial, depending on the volume of information and the presence of hidden "traps" or encrypted data. A judge may impose a specific deadline, however, for the return of the storage media or access to the electronically stored information when the warrant is issued. Under the proposed amendment, the inventory describing the electronically stored information may be limited to a description of the physical storage media seized or copied.

The proposed amendments to Rule 11 of the Rules Governing Proceedings under §§ 2254 and 2255 consolidate and highlight the requirements concerning certificates of appealability. The proposed amendments also require the district court judge to rule on the certificate of appealability when a final order is issued, rather than later after a notice of appeal is filed. The proposed procedure ensures that the judge will promptly rule on the certificate when the issues and facts are fresh. The proposed procedure will expedite proceedings, avoid unnecessary remands, and inform the moving party's decision whether to file an appeal. The proposed amendments clarify the requirements for filing a notice of appeal and expressly state that a district court's grant of a certificate of appealability does not eliminate the need to file a notice of appeal. This last provision was added after the public comment period. The advisory committee

concluded that the proposed amendments need not be republished because the added provision did not represent a substantial change from the published version, was uncontroversial, and was consistent with the public comments.

The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference —

Approve the proposed amendments to Criminal Rules 7, 32, 32.2, 41, and Rule 11 of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 and 2255 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Criminal Procedure are in Appendix E with an excerpt from the advisory committee report.

The advisory committee also proposed amendments to Rules 5.1, 7, 12.1, 12.3, 29, 33, 34, 35, 41, 47, 58, 59, and Rule 8 of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 and 2255, as part of the time-computation project with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendment to Rule 45 clarifies and simplifies the general time-computation method. The proposed amendments to the other rules adjust time periods consistent with the change to the time-computation method.

The proposed adjustments to the time periods in the rules are minor, accounting for the inclusion of holidays and weekends in the time-computation method and the preference for stating periods in multiples of seven days. The following adjustments are proposed:

- Five days are extended to seven days in Rule 47.
- Seven and 10 days are extended to 14 days in Rules 5.1, 7, 12.1, 12.3, 29, 33, 34, 35, 41, 58, 59, and Rule 8 of the Rules Governing Proceedings under 28 U.S.C. § 2254 and § 2255.

- Twenty days are extended to 21 days in Rules 5.1 and 12.3.

The Committee concurred with the advisory committee's recommendations.

**Recommendation:** That the Judicial Conference —

Approve the proposed amendments to Criminal Rules 5.1, 7, 12.1, 12.3, 29, 33, 34, 35, 41, 45, 47, 58, 59, and Rule 8 of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 and 2255 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Criminal Procedure are in Appendix E with an excerpt from the advisory committee report.

#### ***Rules Approved for Publication and Comment***

The advisory committee submitted proposed amendments to Rules 6, 15, and 32.1 with a request that they be published for public comment.

The proposed amendment to Rule 6 authorizes a court to receive the return of an indictment by video teleconference to avoid unnecessary cost and delay. In sparsely populated districts, there may be no judicial officer present in the courthouse where the grand jury meets, requiring the judicial officer to travel long distances to receive the return of an indictment. The travel consumes significant time, and weather conditions can make it hazardous.

The proposed amendment to Rule 15 authorizes the deposition of a witness outside the United States without the defendant's presence in very limited circumstances when there is a substantial likelihood the witness's attendance at trial cannot be obtained and it would be impossible securely to transport the defendant to the witness's location for a deposition.

The proposed amendment to Rule 32.1 codifies case law imposing the burden of proof on a person seeking release in a proceeding revoking or modifying probation or supervised release

to show by clear and convincing evidence that the person will not flee or pose a danger to any other person or the community.

The Committee approved the advisory committee's recommendation to publish the proposed amendments to the rules for public comment.

### ***Informational Items***

The advisory committee continues to reach out to victims' rights organizations for feedback on the operation of recent victims' rights rules amendments and comment on proposed rules amendments. The Department of Justice reported on its first meeting with representatives from a dozen or more national victims' rights organizations. The Department plans to hold such meetings regularly, before the advisory committee's meetings, and keep the advisory committee informed about the concerns raised.

## **FEDERAL RULES OF EVIDENCE**

### ***Rules Approved for Publication and Comment***

The Advisory Committee on Evidence Rules submitted proposed amendments to Rules 101-415 and 804(b)(3) with a request that they be published for comment.

The proposed package of amendments to Rules 101-415 is the first of three sets of "restyled" Evidence Rules to make them clearer and easier to read. The advisory committee plans to complete work on the remaining two sets in approximately twelve months. The restyling project follows the successful restyling of the Federal Rules of Appellate, Criminal, and Civil Procedure. As with the prior restyling projects, this project is limited to making changes that are stylistic and do not change substantive meaning.

The proposed amendment to Rule 804(b)(3) extends the "corroborating circumstances" requirement, which currently applies only to statements against penal interest offered by a defendant in a criminal case, to similar statements offered by a witness for the prosecution as an



exception to the hearsay rule for declarations against interest. The Department of Justice supports publishing the proposed amendment for comment.

The Committee approved the advisory committee's recommendation to publish the proposed amendment to Rule 804(b)(3) in August 2008 and to delay publishing the proposed amendments to Rules 101-415 until all the rules have been restyled.

### ***Informational Items***

The advisory committee continues to monitor case law developments after the Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 34 (2004), which held that the admission of "testimonial" hearsay violates the accused's right to confrontation unless the accused has an opportunity to cross-examine the declarant. Subsequently, the Court in *Davis v. Washington*, 547 U.S. 813 (2006), held that a hearsay statement is not testimonial if the primary motivation for making the statement was for some purpose other than for use in a criminal prosecution. In addition, the court in *Whorton v. Bockting*, 549 U.S. 406 (2007), held that nontestimonial hearsay is unregulated by the Confrontation Clause. The advisory committee is continuing to study whether any rules changes are appropriate.

## LONG-RANGE PLANNING

The Committee was provided a report of the March 2008 meeting of the Judicial Conference's committee chairs involved in long-range planning.

Respectfully submitted,



Lee H. Rosenthal, Chair

David J. Beck	John G. Kester
Douglas R. Cox	William J. Maledon
Mark R. Filip	Daniel J. Meltzer
Ronald M. George	Reena Raggi
Harris L Hartz	James A. Teilborg
Marilyn L. Huff	Diane P. Wood

Appendix A — Proposed Amendments to Statutory Time Periods  
Appendix B — Proposed Amendments to Federal Rules of Appellate Procedure  
Appendix C — Proposed Amendments to Federal Rules of Bankruptcy Procedure  
Appendix D — Proposed Amendments to Federal Rules of Civil Procedure  
Appendix E — Proposed Amendments to Federal Rules of Criminal Procedure

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

Agenda E-19 (Appendix A)  
Rules  
September 2008

LEE H. ROSENTHAL  
CHAIR

PETER G. McCABE  
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

CARL E. STEWART  
APPELLATE RULES

LAURA TAYLOR SWAIN  
BANKRUPTCY RULES

MARK R. KRAVITZ  
CIVIL RULES

RICHARD C. TALLMAN  
CRIMINAL RULES

ROBERT L. HINKLE  
EVIDENCE RULES

**TO: Judge Lee H. Rosenthal  
Standing Committee on Rules of Practice and Procedure**

**CC: John K. Rabiej**

**FROM: Judge Marilyn L. Huff  
Catherine T. Struve**

**DATE: May 16, 2008**

**RE: Time-Computation Project**

We write on behalf of the Time-Computation Subcommittee to report on the progress of the Time-Computation Project.

\* \* \* \* \*

The Advisory Committees have also compiled a list of statutory periods that are priorities for legislative amendment to offset the effect of the Rules' shift in time-computation approach. That list, too, is now before the Standing Committee for approval.

\* \* \* \* \*

**Approval of list of statutory deadlines.** Each of the relevant Advisory Committees voted this spring on a list of statutory periods that are priorities for legislative amendment. The purpose of such amendments will be to ensure that the shift to a days-are-days time-computation approach does not cause hardship or thwart statutory purposes. As you know, we are in the process of securing input from potentially interested groups on the question of the proposed statutory amendments. The goal is to secure passage of legislation that will amend the listed statutory periods, with the same effective date as the proposed Rules amendments. These issues are discussed in Part III.A. below. Subject to any comments received from potentially affected

groups prior to the Standing Committee meeting, we recommend that the Standing Committee consider and approve the list of statutory provisions that are priorities for legislative amendment.

\* \* \* \* \*

### III. Statutory deadlines and local rules deadlines

The major outstanding tasks in connection with the time-computation project concern the changes that will be necessary in certain time periods set by statutes or by local rules.

#### A. Statutory deadlines

Current Appellate Rule 26(a), Bankruptcy Rule 9006(a), and Civil Rule 6(a) explicitly apply to statutory time periods. Prior to the 2002 restyling, Criminal Rule 45(a) covered “any period of time”; Rule 45(a) now governs “any period of time specified in these rules, any local rule, or any court order.” Under the template’s proposed approach, Criminal Rule 45(a) would once again apply to statutory periods. There are more than 170 statutory time periods that could theoretically be affected by the proposed shift in the Rules’ time-computation approach. The universe of statutory provisions to which existing caselaw has applied the time-computation Rules, however, is smaller. And within that smaller universe, not all the provisions will necessarily require amendment in order to avoid hardship to the bar. When the time-computation project was published for comment, the AO provided a link where the public could peruse the spreadsheet that contains the full list of statutory provisions of which we are aware. Few comments specifically addressed the time-computation amendments’ likely effect on any particular statutory periods.<sup>1</sup>

At their spring 2008 meetings, the four Advisory Committees each compiled a list of the statutory periods that they consider to be priorities for amendment. The resulting combined list is as follows. The list is roughly ordered by code provision, but that ordering has been altered to group related provisions together. Bankruptcy-related provisions are listed first, followed by provisions relating to criminal practice and then by provisions relating to civil practice.

- In the following bankruptcy-related statutes, the noted **5-day** periods should be changed to **7-day** periods:

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<sup>1</sup> An exception was the comment submitted by Richard J. Osterman, Jr., Acting Deputy General Counsel of the Litigation Branch of the Federal Deposit Insurance Corporation, who, as noted in Part III.D., urges that Congress *not* be asked to amend the time periods set in certain provisions of the Federal Deposit Insurance Act.

More importantly, as noted above, in late March Jonathan Wroblewski provided the Criminal Rules Committee with a memo listing criminal statutory provisions that the DOJ believes are the highest priority for amendment in the light of the new time-computation approach.

- 11 U.S.C. § 109(h)(3)(A)(ii)
  - **Five-day** period concerning debtor’s unsuccessful attempt to obtain credit-counseling services.
- 11 U.S.C. § 322(a)
  - **Five-day** period within which trustee must file bond.
- 11 U.S.C. § 332(a)
  - **Five-day** deadline for United States trustee to appoint consumer privacy ombudsman.
- 11 U.S.C. § 342(e)(2)
  - If a creditor specifies an address at which it desires to receive notice in a chapter 7 and 13 case of an individual debtor, that address must be used by the court and the debtor for any notice required to be provided the creditor later than **five days** after the court and debtor receive the creditor’s notice of address.
- 11 U.S.C. § 521(e)(3)(B)
  - If a creditor in a Chapter 13 case files a request to receive a copy of the plan filed by the debtor, the court shall make a copy of the plan available to such creditor not later than **5 days** after such request is filed.
- 11 U.S.C. § 521(i)(2)
  - Provides for dismissal, in certain cases, if an individual debtor fails to file required information within 45 days after filing of the petition; and provides that if a party in interest requests such an order of dismissal, the court shall (subject to certain other provisions) enter the order of dismissal not later than **5 days** after such request.
- 11 U.S.C. § 704(b)(1)(B)
  - With respect to individual debtors in cases under Chapter 7, United States trustee shall review debtor’s filings and file a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and the court shall provide a copy of the statement to all creditors not later than **5 days** after receiving it.

- 11 U.S.C. § 764(b)
  - With respect to commodity broker liquidations, limits trustee’s ability to avoid certain transfers of commodity contracts made before **five days** after the order for relief.
- 11 U.S.C. § 749(b)
  - With respect to stockbroker liquidations, limits trustee’s ability to avoid certain transfers of securities contracts made before **five days** after the order for relief.
- Certain timing provisions applicable to the period between a criminal defendant’s initial appearance and the preliminary hearing (and related provisions concerning that phase of a prosecution) should be changed **from 10 to 14 days**:
  - 18 U.S.C. § 3060(b): preliminary examinations, except in certain circumstances, “shall be held . . . no later than the **tenth day** following the date of the initial appearance of the arrested person.”
  - 18 U.S.C. § 983(j)(3): a temporary restraining order with respect to property against which no complaint has yet been filed “shall expire not more than **10 days** after the date on which it is entered.”
  - 18 U.S.C. § 1467(c): a temporary restraining order with respect to property against which no indictment has yet been filed “shall expire not more than **10 days** after the date on which it is entered.”
  - 18 U.S.C. § 1514(a)(2)(C): a temporary restraining order “prohibiting harassment of a victim or witness in a Federal criminal case” shall not remain in effect more than “**10 days** from issuance.”
  - 18 U.S.C. § 1963(d)(2): a restraining order, injunction, or “any other action to preserve the availability of property . . . shall expire not more than **ten days** after the date on which it is entered.”
  - 21 U.S.C. § 853(e)(2): “a temporary restraining order under this subsection . . . shall expire not more than **ten days** after the date on which it is entered.”
- The **four-day deadlines** in the Classified Information Procedures Act (“CIPA”) § 7(b) and in the material-support statute, 18 U.S.C. § 2339B(f)(5)(B), should be amended to specify that **intermediate weekends and holidays are excluded**.

- 18 U.S.C. § 2339B(f)(5)(B)(iii)(I): if an appeal is taken under 18 U.S.C. § 2339B (statute against providing material support or resources to designated foreign terrorists), “the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals-- (I) shall hear argument . . . not later than **4 days** after the adjournment of the trial; . . . .”
- 18 U.S.C. § 2339B(f)(5)(B)(iii)(III): if an appeal is taken under 18 U.S.C. § 2339B (statute against providing material support or resources to designated foreign terrorists), “the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals--(III) shall render its decision not later than **4 days** after argument on appeal . . . .”
- 18 U.S.C. App. 3 § 7(b)(1): in an appeal pursuant to the CIPA statute, “the court of appeals shall hear argument . . . within **four days** of the adjournment of the trial.”
- 18 U.S.C. App. 3 § 7(b)(3); in an appeal pursuant to the CIPA statute, the court of appeals “shall render its decision within **four days** of argument on appeal.”
- The deadlines in the material-support statute and in CIPA for taking a pre-trial appeal should be changed **from 10 to 14 days**.
  - 18 U.S.C. § 2339B(f)(5)(B)(ii) provides that “[i]f an appeal is of an order made prior to trial, an appeal shall be taken not later than **10 days** after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.”
  - 18 U.S.C. App. 3 § 7(b) provides that “[p]rior to trial, an appeal shall be taken within **ten days** after the decision or order appealed from and the trial shall not commence until the appeal is resolved.”
- The **two-day** notice provision in 18 U.S.C. § 1514(a)(2)(E) should be amended to **exclude weekends and holidays**.
  - 18 U.S.C. § 1514(a)(2)(E) provides that “if on **two days** notice to the attorney for the Government . . . the adverse party appears and moves to dissolve or modify [a] temporary restraining order, the court shall proceed to hear and determine such motion . . . .”
- The **10-day** notice deadline in 18 U.S.C. § 2252A(c) should be changed to **14 days**.
  - Under 18 U.S.C. § 2252A(c) a defendant seeking to utilize select affirmative defenses against charges of child pornography must notify the court “in no event

later than **10 days** before the commencement of the trial.” Extending the time for notification to 14 days will conform to the times provided for notice of other defenses. The Criminal Rules Committee has proposed extending the period for such notice under Rule 12.1 (alibi defense) and Rule 12.3 (public-authority defense) to 14 days.

- The **three-day** period set by 18 U.S.C. § 3432 should be amended to **exclude weekends and holidays**.
  - Under 18 U.S.C. § 3432 “a person charged with treason or other capital offense shall at least **three entire days** before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial.”
- The **five-day** deadline for applications under 18 U.S.C. § 3509(b)(1)(A) should be changed to **7 days**.
  - 18 U.S.C. § 3509(b)(1)(A) provides that a person seeking an order for a child’s testimony to be taken via 2-way closed circuit video “shall apply for such an order at least **5 days** before the trial date.” Extending this period to 7 days will permit adequate time for the party against whom the child would testify to file any objections, and for the court to rule on the request.
- The **10-day** mandamus petition deadline in the Crime Victims’ Rights Act (“CVRA”), 18 U.S.C. § 3771(d)(5), should be changed to **14 days**.
  - 18 U.S.C. § 3771(d)(5) sets a **10-day** time period for victims to seek mandamus review in the court of appeals for certain purposes. Under the proposed amendment to FRAP 4(b), the defendant’s time to appeal would also be extended from 10 to 14 days, so there would be no conflict between the two periods.
- The **10-day** period in 28 U.S.C. § 636(b)(1) should be changed to **14 days**.
  - Section 636(b)(1) sets the period for objecting to magistrate judge orders and recommendations at **10 days**. Proposed Rules 72(a) and (b) extend the time from 10 days to 14 days, recognizing that under the present computation method 10 days has always meant at least 14 calendar days. Section 636(b) should be amended to allow 14 days so that statute and rule continue to operate in harmony.
- The “**not less than 7” day** period in 28 U.S.C. § 1453(c)(1) should be changed to “**not more than 10” days**.”



- This period limits the time for seeking appellate review, under the Class Action Fairness Act, of a district court’s remand order; “not less than” was clearly a drafting error. Section 1453 should be amended to set the time limit at “not more than 10 days” to correct the drafting error and offset the shift in time-computation method.
- The **7-day** deadline in 28 U.S.C. § 2107(c) should be increased to **14 days**.
  - This period, which constitutes one of the time limits on making a motion to reopen the time to appeal in a civil case, should be extended **from 7 to 14 days** in keeping with the proposed amendment to the corresponding time period in Rule 4(a)(6)(B). The Appellate Rules Committee suggests choosing 14 days as opposed to 10 days, in keeping with the time-computation project’s preference for periods that are multiples of 7 days. Lengthening the time period to 14 days would not unduly threaten any principle of repose; a party that wishes to be confident about the expiration of appeal time can protect itself by giving notice of the judgment to other parties.

At this time, we are in the process of seeking comment from potentially affected groups concerning the proposed changes included on this list. Subject to the input received from those groups, we recommend that the Standing Committee consider and approve this list of statutory periods for recommendation to Congress.

\* \* \* \* \*



COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

**Agenda E-19 (Appendix B)**  
**Rules**  
**September 2008**

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CHAIR

**PETER G. McCABE**  
SECRETARY

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**RICHARD C. TALLMAN**  
CRIMINAL RULES

**ROBERT L. HINKLE**  
EVIDENCE RULES

**TO: Judge Lee H. Rosenthal, Chair**  
**Standing Committee on Rules of Practice and Procedure**

**FROM: Judge Carl E. Stewart, Chair**  
**Advisory Committee on Appellate Rules**

**DATE: May 13, 2008 (revised June 20, 2008)**

**RE: Report of Advisory Committee on Appellate Rules**

**I. Introduction**

The Advisory Committee on Appellate Rules met on April 10 and 11 in Monterey, California. The Committee gave final approval to the package of time-computation amendments, to one new rule, and to three other proposed amendments.

\* \* \* \* \*

Part II.A of this report discusses the proposals for which the Committee seeks final approval: the time-computation amendments, proposed new Rule 12.1, and amendments to Rules 26(c), 4(a)(4)(B)(ii) and 22.

\* \* \* \* \*

## **II. Action Items**

The Committee is seeking final approval of the time-computation amendments and of four other items. The Committee is seeking approval for publication of three items.

### **A. Items for Final Approval**

#### **1. Time-Computation Amendments**

##### **a. Introduction**

The Committee proposes to amend Rule 26(a) to implement the time-computation project. The project's core innovation is to adopt a days-are-days approach to the computation of all time periods, including short time periods.

To offset the change in the method of computing short time periods, the Committee proposes to amend time periods contained in the Appellate Rules. The changes can be summarized as follows. References to "calendar days" in Rules 25, 26 and 41 become simply references to "days." Three-day periods in Rules 28.1(f) and 31(a) become seven-day periods. The five-day period in Rule 27(a)(4) becomes a seven-day period. The seven-day period in Rule 4(a)(6) lengthens to 14 days. The seven-day periods in Rules 5(b)(2) and 19 become ten days. The eight-day period in Rule 27(a)(3)(A) becomes ten days. The ten-day period in Rule 4(a)(4)(A)(vi) becomes 28 days to correspond with proposed changes in the Civil Rules. The ten-day periods in Rules 4(a)(5)(C), 4(b), 5, 6, 10, 12, 30 and 39 become 14 days. The 20-day period in Rule 15(b) becomes 21 days.

The Committee also compiled a short list of appeal-related statutory time periods that the Committee recommends including among the periods that Congress will be asked to amend. The Committee's recommendations are as follows:

- The 7-day deadline in 28 U.S.C. § 2107(c) should be increased to 14 days.
  - This period, which constitutes one of the time limits on making a motion to reopen the time to appeal in a civil case, should be extended from 7 to 14 days in keeping with the proposed amendment to the corresponding time period in Rule 4(a)(6)(B).
- The "not less than 7" day period in 28 U.S.C. § 1453(c)(1) should be changed to "not more than 10" days.
  - This period limits the time for seeking appellate review, under the Class Action Fairness Act, of a district court's remand order; "not less than" was clearly a

drafting error. Section 1453 should be amended to set the time limit at “not more than 10 days” to correct the drafting error and offset the shift in the time-computation method.

- The four-day deadlines in the Classified Information Procedures Act (“CIPA”) § 7(b) and in the material-support statute, 18 U.S.C. § 2339B(f)(5)(B), should be amended to specify that intermediate weekends and holidays are excluded.
  - CIPA § 7(b) sets a 10-day deadline for pretrial appeals relating to orders concerning disclosure of classified information, and sets 4-day deadlines for the court of appeals to hear argument and render decision with respect to appeals taken during trial. 18 U.S.C. § 2339B(f)(5)(B) sets 10-day and 4-day deadlines (similar to those in CIPA § 7(b)) relating to certain appeals of orders concerning classified information in civil actions brought by the United States concerning the provision of material support to foreign terrorist organizations.
  - Concerning the 10-day deadlines in CIPA and the material-support statute, the Committee voted to defer to the views of the Criminal Rules Committee.
- The 10-day mandamus petition deadline in the Crime Victims’ Rights Act (“CVRA”), 18 U.S.C. § 3771(d)(5), should be extended to 14 days.
  - 18 U.S.C. § 3771(d)(5) sets a 10-day time period for victims to seek mandamus review in the court of appeals for certain purposes. 18 U.S.C. § 3771(d)(3) sets a 72-hour deadline for the court of appeals to decide a victim’s mandamus petition and a 5-day limit on continuances in the district court.
  - The Committee does not recommend any changes to the 72-hour or 5-day periods in the CVRA.

**b. Text of Proposed Amendments and Committee Notes (on next page)**

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF APPELLATE PROCEDURE<sup>1</sup>**

**Rule 26. Computing and Extending Time**

- 1       **(a) Computing Time.** ~~The following rules apply in~~  
2            computing any period of time specified in these rules or  
3            in any local rule, court order, or applicable statute:
- 4        ~~—(1) Exclude the day of the act, event, or default that~~  
5            begins the period.
- 6        ~~—(2) Exclude intermediate Saturdays, Sundays, and legal~~  
7            holidays when the period is less than 11 days, unless  
8            stated in calendar days:
- 9        ~~—(3) Include the last day of the period unless it is a~~  
10           Saturday, Sunday, legal holiday, or ~~—~~ if the act to be  
11           done is filing a paper in court ~~—~~ a day on which the  
12           weather or other conditions make the clerk's office  
13           inaccessible:

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<sup>1</sup>New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF APPELLATE PROCEDURE

14 ~~(4) As used in this rule, “legal holiday” means New~~  
15 ~~Year’s Day, Martin Luther King, Jr.’s Birthday,~~  
16 ~~Washington’s Birthday, Memorial Day, Independence~~  
17 ~~Day, Labor Day, Columbus Day, Veterans’ Day,~~  
18 ~~Thanksgiving Day, Christmas Day, and any other day~~  
19 ~~declared a holiday by the President, Congress, or the~~  
20 ~~state in which is located either the district court that~~  
21 ~~rendered the challenged judgment or order, or the circuit~~  
22 ~~clerk’s principal office. The following rules apply in~~  
23 ~~computing any time period specified in these rules, in~~  
24 ~~any local rule or court order, or in any statute that does~~  
25 ~~not specify a method of computing time.~~

26 **(1) Period Stated in Days or a Longer Unit.** When  
27 the period is stated in days or a longer unit of time:

28 **(A) exclude the day of the event that triggers the**  
29 **period;**

30 (B) count every day, including intermediate  
31 Saturdays, Sundays, and legal holidays; and

32 (C) include the last day of the period, but if the  
33 last day is a Saturday, Sunday, or legal  
34 holiday, the period continues to run until the  
35 end of the next day that is not a Saturday,  
36 Sunday, or legal holiday.

37 **(2) Period Stated in Hours.** When the period is  
38 stated in hours:

39 (A) begin counting immediately on the  
40 occurrence of the event that triggers the  
41 period;

42 (B) count every hour, including hours during  
43 intermediate Saturdays, Sundays, and legal  
44 holidays; and

45 (C) if the period would end on a Saturday,  
46 Sunday, or legal holiday, the period continues



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47 to run until the same time on the next day that  
48 is not a Saturday, Sunday, or legal holiday.

49 (3) **Inaccessibility of the Clerk’s Office.** Unless the  
50 court orders otherwise, if the clerk’s office is  
51 inaccessible:

52 (A) on the last day for filing under Rule 26(a)(1),  
53 then the time for filing is extended to the first  
54 accessible day that is not a Saturday, Sunday,  
55 or legal holiday; or

56 (B) during the last hour for filing under Rule  
57 26(a)(2), then the time for filing is extended  
58 to the same time on the first accessible day  
59 that is not a Saturday, Sunday, or legal  
60 holiday.

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

- 64            (A) for electronic filing in the district court, at  
65                            midnight in the court’s time zone;
- 66            (B) for electronic filing in the court of appeals, at  
67                            midnight in the time zone of the circuit  
68                            clerk’s principal office;
- 69            (C) for filing under Rules 4(c)(1), 25(a)(2)(B),  
70                            and 25(a)(2)(C) — and filing by mail under  
71                            Rule 13(b) — at the latest time for the  
72                            method chosen for delivery to the post office,  
73                            third-party commercial carrier, or prison  
74                            mailing system; and
- 75            (D) for filing by other means, when the clerk’s  
76                            office is scheduled to close.
- 77            (5) “Next Day” Defined. The “next day” is  
78                            determined by continuing to count forward when  
79                            the period is measured after an event and backward  
80                            when measured before an event.

6 FEDERAL RULES OF APPELLATE PROCEDURE

81 (6) “Legal Holiday” Defined. “Legal holiday”

82 means:

83 (A) the day set aside by statute for observing New

84 Year’s Day, Martin Luther King Jr.’s

85 Birthday, Washington’s Birthday, Memorial

86 Day, Independence Day, Labor Day,

87 Columbus Day, Veterans’ Day, Thanksgiving

88 Day, or Christmas Day;

89 (B) any day declared a holiday by the President or

90 Congress; and

91 (C) for periods that are measured after an event,

92 any other day declared a holiday by the state

93 where either of the following is located: the

94 district court that rendered the challenged

95 judgment or order, or the circuit clerk’s

96 principal office.

97 \* \* \* \* \*

**Committee Note**

**Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a statute that does not specify a method of computing time, a Federal Rule of Appellate Procedure, a local rule, or a court order. In accordance with Rule 47(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) “does not apply to situations where the court has established a specific calendar day as a deadline”), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is “no later than November 1, 2007,” subdivision (a) does not govern. But if a filing is required to be made “within 10 days” or “within 72 hours,” subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 20 U.S.C. § 7711(b)(1) (requiring certain petitions for review by a local educational agency or a state to be filed “within 30 working days (as determined by the local educational agency or State) after receiving notice of” federal agency decision).

**Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to

time periods that are stated in weeks, months, or years; though no such time period currently appears in the Federal Rules of Appellate Procedure, such periods may be set by other covered provisions such as a local rule. *See, e.g.*, Third Circuit Local Appellate Rule 46.3(c)(1). Subdivision (a)(1)(B)'s directive to “count every day” is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 26(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 26(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day — and the 10-day period not infrequently ended later than the 14-day period. *See Miltimore Sales, Inc. v. Int’l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk’s office is inaccessible.

Where subdivision (a) formerly referred to the “act, event, or default” that triggers the deadline, new subdivision (a) refers simply to the “event” that triggers the deadline; this change in terminology

is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. *See, e.g.*, Rules 5(b)(2), 5(d)(1), 28.1(f), & 31(a).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method — two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods. Thirty-day and longer periods, however, were retained without change.

**Subdivision (a)(2).** New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Appellate Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same

time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be “rounded up” to the next whole hour. Subdivision (a)(3) addresses situations when the clerk’s office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:00 a.m. on Friday, November 2, 2007, will run until 9:00 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

**Subdivision (a)(3).** When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk’s office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk’s office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday or day when the clerk’s office is inaccessible.

Subdivision (a)(3)’s extensions apply “[u]nless the court orders otherwise.” In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to “weather or other conditions” as the reason for the inaccessibility of the clerk’s office. The reference to “weather” was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a

reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, *see, e.g., Tchakmakjian v. Department of Defense*, 57 Fed. Appx. 438, 441 (Fed. Cir. 2003) (unpublished per curiam opinion) (inaccessibility "due to anthrax concerns"); *cf. William G. Phelps, When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, local provisions may address inaccessibility for purposes of electronic filing.

**Subdivision (a)(4).** New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may, for example, address the problems that might arise under subdivision (a)(4)(A) if a single district has clerk's offices in different time zones, or provide that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." A corresponding provision exists in Rule 45(a)(2). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g., Casalduc v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.



Subdivision (a)(4)(A) addresses electronic filings in the district court. For example, subdivision (a)(4)(A) would apply to an electronically-filed notice of appeal. Subdivision (a)(4)(B) addresses electronic filings in the court of appeals.

Subdivision (a)(4)(C) addresses filings by mail under Rules 25(a)(2)(B)(i) and 13(b), filings by third-party commercial carrier under Rule 25(a)(2)(B)(ii), and inmate filings under Rules 4(c)(1) and 25(a)(2)(C). For such filings, subdivision (a)(4)(C) provides that the “last day” ends at the latest time (prior to midnight in the filer’s time zone) that the filer can properly submit the filing to the post office, third-party commercial carrier, or prison mail system (as applicable) using the filer’s chosen method of submission. For example, if a correctional institution’s legal mail system’s rules of operation provide that items may only be placed in the mail system between 9:00 a.m. and 5:00 p.m., then the “last day” for filings under Rules 4(c)(1) and 25(a)(2)(C) by inmates in that institution ends at 5:00 p.m. As another example, if a filer uses a drop box maintained by a third-party commercial carrier, the “last day” ends at the time of that drop box’s last scheduled pickup. Filings by mail under Rule 13(b) continue to be subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

Subdivision (a)(4)(D) addresses all other non-electronic filings; for such filings, the last day ends under (a)(4)(D) when the clerk’s office in which the filing is made is scheduled to close.

**Subdivision (a)(5).** New subdivision (a)(5) defines the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Appellate Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.*, Rule 4(a)(1)(A) (subject to certain exceptions, notice

of appeal in a civil case must be filed “within 30 days after the judgment or order appealed from is entered”). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rule 31(a)(1) (“[A] reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.”). In determining what is the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk’s office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday—no earlier than Tuesday, September 4.

**Subdivision (a)(6).** New subdivision (a)(6) defines “legal holiday” for purposes of the Federal Rules of Appellate Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of “legal holiday” days that are declared a holiday by the President or Congress.

For forward-counted periods — i.e., periods that are measured after an event — subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal



- 7                    appeal runs for all parties from the entry of  
8                    the order disposing of the last such remaining  
9                    motion:
- 10                  (i) for judgment under Rule 50(b);
  - 11                  (ii) to amend or make additional factual  
12                        findings under Rule 52(b), whether or  
13                        not granting the motion would alter the  
14                        judgment;
  - 15                  (iii) for attorney’s fees under Rule 54 if the  
16                        district court extends the time to appeal  
17                        under Rule 58;
  - 18                  (iv) to alter or amend the judgment under  
19                        Rule 59;
  - 20                  (v) for a new trial under Rule 59; or
  - 21                  (vi) for relief under Rule 60 if the motion is  
22                        filed no later than ~~10~~ 28 days after the  
23                        judgment is entered.

16 FEDERAL RULES OF APPELLATE PROCEDURE

24

\* \* \* \* \*

25

**(5) Motion for Extension of Time.**

26

\* \* \* \* \*

27

(C) No extension under this Rule 4(a)(5)

28

may exceed 30 days after the prescribed

29

time or ~~10~~ 14 days after the date when

30

the order granting the motion is entered,

31

whichever is later.

32

**(6) Reopening the Time to File an Appeal.** The

33

district court may reopen the time to file an

34

appeal for a period of 14 days after the date

35

when its order to reopen is entered, but only

36

if all the following conditions are satisfied:

37

\* \* \* \* \*

38

(B) the motion is filed within 180 days after

39

the judgment or order is entered or

40

within ~~7~~ 14 days after the moving party

41 receives notice under Federal Rule of  
42 Civil Procedure 77(d) of the entry,  
43 whichever is earlier; and

44 \* \* \* \* \*

45 **(b) Appeal in a Criminal Case.**

46 **(1) Time for Filing a Notice of Appeal.**

47 (A) In a criminal case, a defendant's notice  
48 of appeal must be filed in the district  
49 court within ~~10~~ 14 days after the later  
50 of:

51 (i) the entry of either the judgment or  
52 the order being appealed; or

53 (ii) the filing of the government's  
54 notice of appeal.

55 \* \* \* \* \*

56 **(3) Effect of a Motion on a Notice of Appeal.**

18 FEDERAL RULES OF APPELLATE PROCEDURE

- 57 (A) If a defendant timely makes any of the  
58 following motions under the Federal Rules of  
59 Criminal Procedure, the notice of appeal from  
60 a judgment of conviction must be filed within  
61 ~~10~~ 14 days after the entry of the order  
62 disposing of the last such remaining motion,  
63 or within ~~10~~ 14 days after the entry of the  
64 judgment of conviction, whichever period  
65 ends later. This provision applies to a timely  
66 motion:
- 67 (i) for judgment of acquittal under Rule 29;
  - 68 (ii) for a new trial under Rule 33, but if  
69 based on newly discovered evidence,  
70 only if the motion is made no later than  
71 ~~10~~ 14 days after the entry of the  
72 judgment; or
  - 73 (iii) for arrest of judgment under Rule 34.

**Committee Note**

**Subdivision (a)(4)(A)(vi).** Subdivision (a)(4) provides that certain timely post-trial motions extend the time for filing an appeal. Lawyers sometimes move under Civil Rule 60 for relief that is still available under another rule such as Civil Rule 59. Subdivision (a)(4)(A)(vi) provides for such eventualities by extending the time for filing an appeal so long as the Rule 60 motion is filed within a limited time. Formerly, the time limit under subdivision (a)(4)(A)(vi) was 10 days, reflecting the 10-day limits for making motions under Civil Rules 50(b), 52(b), and 59. Subdivision (a)(4)(A)(vi) now contains a 28-day limit to match the revisions to the time limits in the Civil Rules.

**Subdivision (a)(5)(C).** The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

**Subdivision (a)(6)(B).** The time set in the former rule at 7 days has been revised to 14 days. Under the time-computation approach set by former Rule 26(a), “7 days” always meant at least 9 days and could mean as many as 11 or even 13 days. Under current Rule 26(a), intermediate weekends and holidays are counted. Changing the period from 7 to 14 days offsets the change in computation approach. See the Note to Rule 26.

**Subdivisions (b)(1)(A) and (b)(3)(A).** The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.



20 FEDERAL RULES OF APPELLATE PROCEDURE

**Rule 5. Appeal by Permission**

1

\* \* \* \* \*

2

**(b) Contents of the Petition; Answer or Cross-Petition;**

3

**Oral Argument.**

4

\* \* \* \* \*

5

(2) A party may file an answer in opposition or a

6

cross-petition within ~~7~~ 10 days after the petition is

7

served.

8

\* \* \* \* \*

9

**(d) Grant of Permission; Fees; Cost Bond; Filing the**

10

**Record.**

11

(1) Within ~~10~~ 14 days after the entry of the order

12

granting permission to appeal, the appellant must:

13

(A) pay the district clerk all required fees; and

14

(B) file a cost bond if required under Rule 7.

15

\* \* \* \* \*

**Committee Note**

**Subdivision (b)(2).** Subdivision (b)(2) is amended in the light of the change in Rule 26(a)'s time computation rules. Subdivision (b)(2) formerly required that an answer in opposition to a petition for permission to appeal, or a cross-petition for permission to appeal, be filed "within 7 days after the petition is served." Under former Rule 26(a), "7 days" always meant at least 9 days and could mean as many as 11 or even 13 days. Under current Rule 26(a), intermediate weekends and holidays are counted. Changing the period from 7 to 10 days offsets the change in computation approach. See the Note to Rule 26.

**Subdivision (d)(1).** The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

**Rule 6. Appeal in a Bankruptcy Case From a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel**

1

\* \* \* \* \*

2

**(b) Appeal From a Judgment, Order, or Decree of a**

3

**District Court or Bankruptcy Appellate Panel**

4

**Exercising Appellate Jurisdiction in a Bankruptcy**

5

**Case.**

6

\* \* \* \* \*

22 FEDERAL RULES OF APPELLATE PROCEDURE

7 (2) **Additional Rules.** In addition to the rules made  
8 applicable by Rule 6(b)(1), the following rules  
9 apply:

10 \* \* \* \* \*

11 (B) **The record on appeal.**

12 (i) Within ~~10~~ 14 days after filing the notice  
13 of appeal, the appellant must file with  
14 the clerk possessing the record  
15 assembled in accordance with  
16 Bankruptcy Rule 8006 — and serve on  
17 the appellee — a statement of the issues  
18 to be presented on appeal and a  
19 designation of the record to be certified  
20 and sent to the circuit clerk.

21 (ii) An appellee who believes that other  
22 parts of the record are necessary must,  
23 within ~~10~~ 14 days after being served

24 with the appellant's designation, file  
25 with the clerk and serve on the appellant  
26 a designation of additional parts to be  
27 included.

28 \* \* \* \* \*

**Committee Note**

**Subdivision (b)(2)(B).** The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

**Rule 10. The Record on Appeal**

1 \* \* \* \* \*

2 **(b) The Transcript of Proceedings.**

3 **(1) Appellant's Duty to Order.** Within ~~10~~ 14 days  
4 after filing the notice of appeal or entry of an order  
5 disposing of the last timely remaining motion of a  
6 type specified in Rule 4(a)(4)(A), whichever is  
7 later, the appellant must do either of the following:

8

\* \* \* \* \*

9

(3) **Partial Transcript.** Unless the entire transcript is

10

ordered:

11

(A) the appellant must — within the ~~10~~ 14 days

12

provided in Rule 10(b)(1) — file a statement

13

of the issues that the appellant intends to

14

present on the appeal and must serve on the

15

appellee a copy of both the order or

16

certificate and the statement;

17

(B) if the appellee considers it necessary to have

18

a transcript of other parts of the proceedings,

19

the appellee must, within ~~10~~ 14 days after the

20

service of the order or certificate and the

21

statement of the issues, file and serve on the

22

appellant a designation of additional parts to

23

be ordered; and

24 (C) unless within ~~10~~ 14 days after service of that  
25 designation the appellant has ordered all such  
26 parts, and has so notified the appellee, the  
27 appellee may within the following ~~10~~ 14 days  
28 either order the parts or move in the district  
29 court for an order requiring the appellant to  
30 do so.

31 \* \* \* \* \*

32 **(c) Statement of the Evidence When the Proceedings**  
33 **Were Not Recorded or When a Transcript Is**  
34 **Unavailable.** If the transcript of a hearing or trial is  
35 unavailable, the appellant may prepare a statement of the  
36 evidence or proceedings from the best available means,  
37 including the appellant's recollection. The statement  
38 must be served on the appellee, who may serve  
39 objections or proposed amendments within ~~10~~ 14 days  
40 after being served. The statement and any objections or

26 FEDERAL RULES OF APPELLATE PROCEDURE

41 proposed amendments must then be submitted to the  
42 district court for settlement and approval. As settled and  
43 approved, the statement must be included by the district  
44 clerk in the record on appeal.

45 \* \* \* \* \*

**Committee Note**

**Subdivisions (b)(1), (b)(3), and (c).** The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

**Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record**

1 \* \* \* \* \*

2 **(b) Filing a Representation Statement.** Unless the court  
3 of appeals designates another time, the attorney who  
4 filed the notice of appeal must, within ~~10~~ 14 days after  
5 filing the notice, file a statement with the circuit clerk  
6 naming the parties that the attorney represents on appeal.

7

\* \* \* \* \*

**Committee Note**

**Subdivision (b).** The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

**Rule 15. Review or Enforcement of an Agency Order —  
How Obtained; Intervention**

1

\* \* \* \* \*

2

**(b) Application or Cross-Application to Enforce an  
Order; Answer; Default.**

3

4

\* \* \* \* \*

5

(2) Within ~~20~~ 21 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

6

7

8

9

10

11

\* \* \* \* \*



**Committee Note**

**Subdivision (b)(2).** The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 26.

**Rule 19. Settlement of a Judgment Enforcing an Agency Order in Part**

1           When the court files an opinion directing entry of  
2           judgment enforcing the agency’s order in part, the agency  
3           must within 14 days file with the clerk and serve on each  
4           other party a proposed judgment conforming to the opinion.  
5           A party who disagrees with the agency’s proposed judgment  
6           must within ~~7~~ 10 days file with the clerk and serve the agency  
7           with a proposed judgment that the party believes conforms to  
8           the opinion. The court will settle the judgment and direct  
9           entry without further hearing or argument.

**Committee Note**

Rule 19 formerly required a party who disagreed with the agency’s proposed judgment to file a proposed judgment “within 7 days.” Under former Rule 26(a), “7 days” always meant at least 9



30 FEDERAL RULES OF APPELLATE PROCEDURE

14 \* \* \* \* \*

15 (c) **Manner of Service.**

16 (1) Service may be any of the following:

17 \* \* \* \* \*

18 (C) by third-party commercial carrier for delivery  
19 within 3 calendar days; or

20 \* \* \* \* \*

**Committee Note**

Under former Rule 26(a), short periods that span weekends or holidays were computed without counting those weekends or holidays. To specify that a period should be calculated by counting all intermediate days, including weekends or holidays, the Rules used the term “calendar days.” Rule 26(a) now takes a “days-are-days” approach under which all intermediate days are counted, no matter how short the period. Accordingly, “3 calendar days” in subdivisions (a)(2)(B)(ii) and (c)(1)(C) is amended to read simply “3 days.”



**Rule 27. Motions**

1 **(a) In General.**

2 \* \* \* \* \*

3 **(3) Response.**

4 **(A) Time to file.** Any party may file a response  
5 to a motion; Rule 27(a)(2) governs its  
6 contents. The response must be filed within 8  
7 10 days after service of the motion unless the  
8 court shortens or extends the time. A motion  
9 authorized by Rules 8, 9, 18, or 41 may be  
10 granted before the ~~8-day~~ 10-day period runs  
11 only if the court gives reasonable notice to  
12 the parties that it intends to act sooner.

13 \* \* \* \* \*

14 **(4) Reply to Response.** Any reply to a response must  
15 be filed within 5 7 days after service of the

16 response. A reply must not present matters that do  
 17 not relate to the response.

18 \* \* \* \* \*

**Committee Note**

**Subdivision (a)(3)(A).** Subdivision (a)(3)(A) formerly required that a response to a motion be filed “within 8 days after service of the motion unless the court shortens or extends the time.” Prior to the 2002 amendments to Rule 27, subdivision (a)(3)(A) set this period at 10 days rather than 8 days. The period was changed in 2002 to reflect the change from a time-computation approach that counted intermediate weekends and holidays to an approach that did not. (Prior to the 2002 amendments, intermediate weekends and holidays were excluded only if the period was less than 7 days; after those amendments, such days were excluded if the period was less than 11 days.) Under current Rule 26(a), intermediate weekends and holidays are counted for all periods. Accordingly, revised subdivision (a)(3)(A) once again sets the period at 10 days.

**Subdivision (a)(4).** Subdivision (a)(4) formerly required that a reply to a response be filed “within 5 days after service of the response.” Prior to the 2002 amendments, this period was set at 7 days; in 2002 it was shortened in the light of the 2002 change in time-computation approach (discussed above). Under current Rule 26(a), intermediate weekends and holidays are counted for all periods, and revised subdivision (a)(4) once again sets the period at 7 days.

**Rule 28.1. Cross-Appeals**

1 \* \* \* \* \*

2 **(f) Time to Serve and File a Brief.** Briefs must be served  
3 and filed as follows:

4 \* \* \* \* \*

5 (4) the appellee’s reply brief, within 14 days after the  
6 appellant’s response and reply brief is served, but  
7 at least ~~3~~ 7 days before argument unless the court,  
8 for good cause, allows a later filing.

**Committee Note**

**Subdivision (f)(4).** Subdivision (f)(4) formerly required that the appellee’s reply brief be served “at least 3 days before argument unless the court, for good cause, allows a later filing.” Under former Rule 26(a), “3 days” could mean as many as 5 or even 6 days. See the Note to Rule 26. Under revised Rule 26(a), intermediate weekends and holidays are counted. Changing “3 days” to “7 days” alters the period accordingly. Under revised Rule 26(a), when a period ends on a weekend or holiday, one must continue to count in the same direction until the next day that is not a weekend or holiday; the choice of the 7-day period for subdivision (f)(4) will minimize such occurrences.

**Rule 30. Appendix to the Briefs**

\* \* \* \* \*

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16

**(b) All Parties' Responsibilities.**

**(1) Determining the Contents of the Appendix.** The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within ~~10~~ 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within ~~10~~ 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of



17 the record, because the entire record is available to  
18 the court. This paragraph applies also to a  
19 cross-appellant and a cross-appellee.

20 \* \* \* \* \*

**Committee Note**

**Subdivision (b)(1).** The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

**Rule 31. Serving and Filing Briefs**

1 **(a) Time to Serve and File a Brief.**

2 (1) The appellant must serve and file a brief within 40  
3 days after the record is filed. The appellee must  
4 serve and file a brief within 30 days after the  
5 appellant's brief is served. The appellant may serve  
6 and file a reply brief within 14 days after service of  
7 the appellee's brief but a reply brief must be filed  
8 at least 3 7 days before argument, unless the court,  
9 for good cause, allows a later filing.

10

\* \* \* \* \*

**Committee Note**

**Subdivision (a)(1).** Subdivision (a)(1) formerly required that the appellant’s reply brief be served “at least 3 days before argument, unless the court, for good cause, allows a later filing.” Under former Rule 26(a), “3 days” could mean as many as 5 or even 6 days. See the Note to Rule 26. Under revised Rule 26(a), intermediate weekends and holidays are counted. Changing “3 days” to “7 days” alters the period accordingly. Under revised Rule 26(a), when a period ends on a weekend or holiday, one must continue to count in the same direction until the next day that is not a weekend or holiday; the choice of the 7-day period for subdivision (a)(1) will minimize such occurrences.

**Rule 39. Costs**

1

\* \* \* \* \*

2 **(d) Bill of Costs: Objections; Insertion in Mandate.**

3

\* \* \* \* \*

4 (2) Objections must be filed within ~~10~~ 14 days after  
 5 service of the bill of costs, unless the court extends  
 6 the time.

7

\* \* \* \* \*

**Committee Note**

**Subdivision (d)(2).** The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

**Rule 41. Mandate: Contents; Issuance and Effective Date; Stay**

1

\* \* \* \* \*

2

**(b) When Issued.** The court's mandate must issue 7

3

calendar days after the time to file a petition for

4

rehearing expires, or 7 calendar days after entry of an

5

order denying a timely petition for panel rehearing,

6

petition for rehearing en banc, or motion for stay of

7

mandate, whichever is later. The court may shorten or

8

extend the time.

9

\* \* \* \* \*

**Committee Note**

Under former Rule 26(a), short periods that span weekends or holidays were computed without counting those weekends or holidays. To specify that a period should be calculated by counting all intermediate days, including weekends or holidays, the Rules used

the term “calendar days.” Rule 26(a) now takes a “days-are-days” approach under which all intermediate days are counted, no matter how short the period. Accordingly, “7 calendar days” in subdivision (b) is amended to read simply “7 days.”

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### **c. Changes Made After Publication and Comment**

The Appellate Rules Committee made only one change to Rule 26(a) after publication and comment: Because the Committee is seeking permission to publish for comment a proposed new Rule 1(b) that would adopt a FRAP-wide definition of the term “state,” the Committee decided to delete from Rule 26(a)(6)(B) the following parenthetical sentence: “(In this rule, ‘state’ includes the District of Columbia and any United States commonwealth, territory, or possession.)” That change required the corresponding deletion — from the Note to Rule 26(a)(6) — of part of the final sentence (the deleted portion read “, and defines the term ‘state’ — for purposes of subdivision (a)(6) — to include the District of Columbia and any commonwealth, territory or possession of the United States. Thus, for purposes of subdivision (a)(6)’s definition of ‘legal holiday,’ ‘state’ includes the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.”)

The Appellate Rules Committee made one change to its proposed amendments concerning Appellate Rules deadlines. Based on comments received with respect to the timing for motions that toll the time for taking a civil appeal, the Committee changed the cutoff time in Rule 4(a)(4)(A)(vi) to 28 days (rather than to 30 days as in the published proposal). The published proposal’s choice of 30 days had been designed to accord with the proposed amendments published by the Civil Rules Committee, which would have extended the deadline

for tolling motions to 30 days. Because 30 days is also the time period set by Appellate Rule 4 and by 28 U.S.C. § 2107 for taking a civil appeal (when the United States and its officers or agencies are not parties), commentators pointed out that adopting 30 days as the cutoff for filing tolling motions would sometimes place would-be appellants in an awkward position: If the deadline for making a tolling motion falls on the same day as the deadline for filing a notice of appeal, then in a case involving multiple parties on one side, a litigant who wishes to appeal may not know, when filing the notice of appeal, whether a tolling motion will be filed; such a timing system can be expected to produce instances when appeals are filed, only to go into abeyance while the tolling motion is resolved.

By the time of the Appellate Rules Committee's April 2008 meeting, the Civil Rules Committee had discussed this issue and had determined that the best resolution would be to extend the deadline for tolling motions to 28 days rather than 30 days. The choice of a 28-day deadline responds to the concerns of those who feel that the current 10-day deadlines are much too short, but also takes into account the problem of the 30-day appeal deadline. As described in the draft minutes of the Committee's April meeting, Committee members carefully discussed the relevant concerns and determined, by a vote of 7 to 1, to assent to the 28-day time period for tolling motions and to change the cutoff time in Rule 4(a)(4)(A)(vi) to 28 days.

---

The Standing Committee changed Rule 26(a)(6) to exclude state holidays from the definition of "legal holiday" for purposes of computing backward-counted periods; conforming changes were made to the Committee Note.

\* \* \* \* \*

**2. Rule 26(c)****a. Introduction**

During the time-computation project the question arose whether the three-day rule should be altered. The decision was taken not to change the three-day rule for the time being. The Appellate Rules Committee did, however, publish for comment a technical amendment designed to clarify the three-day rule's application and to make Rule 26(c)'s three-day rule parallel the three-day rule in Civil Rule 6. The Committee seeks final approval of this proposal. Assuming that the Standing Committee also gives final approval to the time-computation amendments, the word "calendar" will be deleted from Rule 26(c) as stated in the package of time-computation amendments (discussed above).

**b. Text of Proposed Amendment and Committee Note**

**Rule 26. Computing and Extending Time**

1

\* \* \* \* \*

2 (c) **Additional Time After Service.** When a party is  
3 ~~required or permitted to act within a prescribed period~~  
4 ~~after a paper is served on that party~~ may or must act  
5 within a specified time after service, 3 calendar days are  
6 added to after the ~~prescribed~~ period would otherwise  
7 expire under Rule 26(a), unless the paper is delivered on  
8 the date of service stated in the proof of service. For  
9 purposes of this Rule 26(c), a paper that is served  
10 electronically is not treated as delivered on the date of  
11 service stated in the proof of service.

**Committee Note**

**Subdivision (c).** Rule 26(c) has been amended to eliminate uncertainty about application of the 3-day rule. Civil Rule 6(e) was amended in 2004 to eliminate similar uncertainty in the Civil Rules.

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 rule provided by Rule 26(c), but with reference to the other time computation provisions of the Appellate Rules. 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.

To illustrate: A paper is served by mail on Thursday, November 1, 2007. The prescribed time to respond is 30 days. The prescribed period ends on Monday, December 3 (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, December 6.

\* \* \* \* \*

---

**c. Changes Made After Publication and Comment**

No changes were made after publication and comment, except for the style changes (described below) which were suggested by Professor Kimble.

\* \* \* \* \*



**Style suggestions.** Professor Kimble suggests capitalizing “after” in the subdivision heading; deleting “prescribed” from “prescribed period”; and placing a comma after “under Rule 26(a)”.

### **3. New Rule 12.1**

#### **a. Introduction**

The Committee seeks final approval of proposed new Appellate Rule 12.1 concerning indicative rulings. This Rule was published for comment in August along with proposed Civil Rule 62.1. Both rules will formalize (and raise awareness concerning) the practice of indicative rulings.

**b. Text of Proposed Amendment and Committee Note****Rule 12.1. Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal**

- 1     **(a) Notice to the Court of Appeals.** If a timely motion is  
2             made in the district court for relief that it lacks authority  
3             to grant because of an appeal that has been docketed and  
4             is pending, the movant must promptly notify the circuit  
5             clerk if the district court states either that it would grant  
6             the motion or that the motion raises a substantial issue.
- 7     **(b) Remand After an Indicative Ruling.** If the district  
8             court states that it would grant the motion or that the  
9             motion raises a substantial issue, the court of appeals  
10            may remand for further proceedings but retains  
11            jurisdiction unless it expressly dismisses the appeal. If  
12            the court of appeals remands but retains jurisdiction, the  
13            parties must promptly notify the circuit clerk when the  
14            district court has decided the motion on remand.

### Committee Note

This new rule corresponds to Federal Rule of Civil Procedure 62.1, which adopts for any motion that the district court cannot grant because of a pending appeal the practice that most courts follow when a party moves under Civil Rule 60(b) to vacate a judgment that is pending on appeal. After an appeal has been docketed and while it remains pending, the district court cannot grant relief under a rule such as Civil Rule 60(b) without a remand. But it can entertain the motion and deny it, defer consideration, state that it would grant the motion if the court of appeals remands for that purpose, or state that the motion raises a substantial issue. Experienced lawyers often refer to the suggestion for remand as an “indicative ruling.” (Appellate Rule 4(a)(4) lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of. The district court has authority to grant the motion without resorting to the indicative ruling procedure.)

The procedure formalized by Rule 12.1 is helpful when relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal. In the criminal context, the Committee anticipates that Rule 12.1 will be used primarily if not exclusively for newly discovered evidence motions under Criminal Rule 33(b)(1) (*see United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984)), reduced sentence motions under Criminal Rule 35(b), and motions under 18 U.S.C. § 3582(c).

Rule 12.1 does not attempt to define the circumstances in which an appeal limits or defeats the district court’s authority to act in the face of a pending appeal. The rules that govern the relationship between trial courts and appellate courts may be complex, depending in part on the nature of the order and the source of appeal jurisdiction.

Appellate Rule 12.1 applies only when those rules deprive the district court of authority to grant relief without appellate permission.

To ensure proper coordination of proceedings in the district court and in the court of appeals, the movant must notify the circuit clerk if the district court states that it would grant the motion or that the motion raises a substantial issue. The “substantial issue” standard may be illustrated by the following hypothetical: The district court grants summary judgment dismissing a case. While the plaintiff’s appeal is pending, the plaintiff moves for relief from the judgment, claiming newly discovered evidence and also possible fraud by the defendant during the discovery process. If the district court reviews the motion and indicates that the motion “raises a substantial issue,” the court of appeals may well wish to remand rather than proceed to determine the appeal.

If the district court states that it would grant the motion or that the motion raises a substantial issue, the movant may ask the court of appeals to remand so that the district court can make its final ruling on the motion. In accordance with Rule 47(a)(1), a local rule may prescribe the format for the litigants’ notifications and the district court’s statement.

Remand is in the court of appeals’ discretion. The court of appeals may remand all proceedings, terminating the initial appeal. In the context of postjudgment motions, however, that procedure should be followed only when the appellant has stated clearly its intention to abandon the appeal. The danger is that if the initial appeal is terminated and the district court then denies the requested relief, the time for appealing the initial judgment will have run out and a court might rule that the appellant is limited to appealing the denial of the postjudgment motion. The latter appeal may well not provide the appellant with the opportunity to raise all the challenges

that could have been raised on appeal from the underlying judgment. *See, e.g., Browder v. Dir., Dep't of Corrections of Ill.*, 434 U.S. 257, 263 n.7 (1978) (“[A]n appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review.”). The Committee does not endorse the notion that a court of appeals should decide that the initial appeal was abandoned — despite the absence of any clear statement of intent to abandon the appeal — merely because an unlimited remand occurred, but the possibility that a court might take that troubling view underscores the need for caution in delimiting the scope of the remand.

The court of appeals may instead choose to remand for the sole purpose of ruling on the motion while retaining jurisdiction to proceed with the appeal after the district court rules on the motion (if the appeal is not moot at that point and if any party wishes to proceed). This will often be the preferred course in the light of the concerns expressed above. It is also possible that the court of appeals may wish to proceed to hear the appeal even after the district court has granted relief on remand; thus, even when the district court indicates that it would grant relief, the court of appeals may in appropriate circumstances choose a limited rather than unlimited remand.

If the court of appeals remands but retains jurisdiction, subdivision (b) requires the parties to notify the circuit clerk when the district court has decided the motion on remand. This is a joint obligation that is discharged when the required notice is given by any litigant involved in the motion in the district court.

When relief is sought in the district court during the pendency of an appeal, litigants should bear in mind the likelihood that a new or amended notice of appeal will be necessary in order to challenge the district court’s disposition of the motion. *See, e.g., Jordan v.*

*Bowen*, 808 F.2d 733, 736-37 (10th Cir. 1987) (viewing district court’s response to appellant’s motion for indicative ruling as a denial of appellant’s request for relief under Rule 60(b), and refusing to review that denial because appellant had failed to take an appeal from the denial); *TAAG Linhas Aereas de Angola v. Transamerica Airlines, Inc.*, 915 F.2d 1351, 1354 (9th Cir. 1990) (“[W]here a 60(b) motion is filed subsequent to the notice of appeal and considered by the district court after a limited remand, an appeal specifically from the ruling on the motion must be taken if the issues raised in that motion are to be considered by the Court of Appeals.”).

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### **c. Changes Made After Publication and Comment**

No changes were made to the text of Rule 12.1. The Appellate Rules Committee made two changes to the Note in response to public comments, and made additional changes in consultation with the Civil Rules Committee and in response to some Appellate Rules Committee members’ suggestions. The Standing Committee made two further changes to the Note.

As published for comment, the second paragraph of the Note read: “[Appellate Rule 12.1 is not limited to the Civil Rule 62.1 context; Rule 12.1 may also be used, for example, in connection with motions under Criminal Rule 33. *See United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984).] The procedure formalized by Rule 12.1 is helpful whenever relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal.” The Appellate Rules Committee discussed the Solicitor General’s concern that Appellate Rule 12.1 might be misused in the criminal context. In response, the Appellate Rules Committee deleted the second paragraph as published and substituted the following language: “The procedure formalized by Rule 12.1 is helpful when

relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal. In the criminal context, the Committee anticipates that Rule 12.1's use will be limited to newly discovered evidence motions under Criminal Rule 33(b)(1) (see *United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984)), reduced sentence motions under Criminal Rule 35(b), and motions under 18 U.S.C. § 3582(c).” The Standing Committee further revised the latter sentence to read: “In the criminal context, the Committee anticipates that Rule 12.1 will be used primarily if not exclusively for newly discovered evidence motions under Criminal Rule 33(b)(1) (see *United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984)), reduced sentence motions under Criminal Rule 35(b), and motions under 18 U.S.C. § 3582(c).”

As published for comment, the first sentence of the Note's last paragraph read: “When relief is sought in the district court during the pendency of an appeal, litigants should bear in mind the likelihood that a separate notice of appeal will be necessary in order to challenge the district court's disposition of the motion.” In response to a suggestion by Public Citizen, the Appellate Rules Committee revised this sentence to refer to a “new or amended” notice of appeal rather than a “separate” notice of appeal.

The Appellate Rules Committee, in consultation with the Civil Rules Committee, added the following parenthetical at the end of the Note's first paragraph: “(The effect of a notice of appeal on district-court authority is addressed by Appellate Rule 4(a)(4), which lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of. The district court has authority to grant the motion without resorting to the indicative ruling procedure.)” This parenthetical is designed to forestall confusion concerning the effect of tolling motions on a district court's power to

act. The Standing Committee approved a change to the first sentence of the parenthetical; it now reads: “Appellate Rule 4(a)(4) lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of. “

The Appellate Rules Committee, acting at the suggestion of the Civil Rules Committee, altered the wording of one sentence in the first paragraph and one sentence in the fifth paragraph of the Note. The changes are designed to remove references to remands of “the action,” since those references would be in tension with the Note’s advice concerning the advisability of limited remands. Thus, in the Note’s first paragraph “if the action is remanded” became “if the court of appeals remands for that purpose,” and in the Note’s fifth paragraph “may ask the court of appeals to remand the action” became “may ask the court of appeals to remand.”

The Appellate Rules Committee also made stylistic changes to the Note’s first and third paragraphs. “Experienced appeal lawyers” became “Experienced lawyers,” and “act in face of a pending appeal” became “act in the face of a pending appeal.”

\* \* \* \* \*



**4. Rule 4(a)(4)(B)(ii)**

**a. Introduction**

The Committee seeks final approval for an amendment to Rule 4(a)(4)(B)(ii) that will eliminate an ambiguity that resulted from the 1998 restyling. The Rule’s current language might be read to require the appellant to amend a prior notice of appeal if the district court amends the judgment after the notice of appeal is filed, even if the amendment is in the appellant’s favor. This ambiguity will be removed by replacing the current reference to challenging “a judgment altered or amended upon” a timely post-trial motion with a reference to challenging “a judgment’s alteration or amendment upon” such a motion.

**b. Text of Proposed Amendment and Committee Note**

**Rule 4. Appeal as of Right — When Taken**

1 **(a) Appeal in a Civil Case.**

2 \* \* \* \* \*

3 **(4) Effect of a Motion on a Notice of Appeal.**

4 \* \* \* \* \*

5 (B) (i) If a party files a notice of appeal after  
6 the court announces or enters a  
7 judgment — but before it disposes of  
8 any motion listed in Rule 4(a)(4)(A) —  
9 the notice becomes effective to appeal a  
10 judgment or order, in whole or in part,  
11 when the order disposing of the last  
12 such remaining motion is entered.

13 (ii) A party intending to challenge an order  
14 disposing of any motion listed in Rule  
15 4(a)(4)(A), or a judgment altered or

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16                    amended judgment’s alteration or  
17                    amendment upon such a motion, must  
18                    file a notice of appeal, or an amended  
19                    notice of appeal — in compliance with  
20                    Rule 3(c) — within the time prescribed  
21                    by this Rule measured from the entry of  
22                    the order disposing of the last such  
23                    remaining motion.

24                    \* \* \* \* \*

**Committee Note**

**Subdivision (a)(4)(B)(ii).** Subdivision (a)(4)(B)(ii) is amended to address problems that stemmed from the adoption — during the 1998 restyling project — of language referring to “a judgment altered or amended upon” a post-trial motion.

Prior to the restyling, subdivision (a)(4) instructed that “[a]ppellate review of an order disposing of any of [the post-trial motions listed in subdivision (a)(4)] requires the party, in compliance with Appellate Rule 3(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file a notice, or amended notice, of appeal within the time prescribed by this Rule 4 measured from the entry of the order disposing of the last such motion outstanding.” After the

restyling, subdivision (a)(4)(B)(ii) provided: “A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal — in compliance with Rule 3(c) — within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.”

One court has explained that the 1998 amendment introduced ambiguity into the Rule: “The new formulation could be read to expand the obligation to file an amended notice to circumstances where the ruling on the post-trial motion alters the prior judgment in an insignificant manner or in a manner favorable to the appellant, even though the appeal is not directed against the alteration of the judgment.” *Sorensen v. City of New York*, 413 F.3d 292, 296 n.2 (2d Cir. 2005). The current amendment removes that ambiguous reference to “a judgment altered or amended upon” a post-trial motion, and refers instead to “a judgment’s alteration or amendment” upon such a motion. Thus, subdivision (a)(4)(B)(ii) requires a new or amended notice of appeal when an appellant wishes to challenge an order disposing of a motion listed in Rule 4(a)(4)(A) or a judgment’s alteration or amendment upon such a motion.

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**c. Changes Made After Publication and Comment**

No changes were made to the proposal as published. Instead, the Committee has added the commentators’ suggestions to its study agenda.

\* \* \* \* \*

**5. Rule 22(b)(1)****a. Introduction**

The Committee seeks final approval of an amendment to Rule 22 that would conform the Appellate Rules to a change that the Criminal Rules Committee proposes to make to the Rules Governing Proceedings Under 28 U.S.C. §§ 2254 or 2255. The Appellate Rules amendment deletes from Rule 22 the requirement that the district judge who rendered the judgment either issue a certificate of appealability (COA) or state why a certificate should not issue. The relevant requirement will be delineated in Rule 11(a) of the Rules Governing Proceedings Under 28 U.S.C. § 2254 or § 2255.

**b. Text of Proposed Amendment and Committee Note**

**Rule 22. Habeas Corpus and Section 2255 Proceedings**

1 \* \* \* \* \*

2 **(b) Certificate of Appealability.**

3 (1) In a habeas corpus proceeding in which the  
4 detention complained of arises from process issued  
5 by a state court, or in a 28 U.S.C. § 2255  
6 proceeding, the applicant cannot take an appeal  
7 unless a circuit justice or a circuit or district judge  
8 issues a certificate of appealability under 28 U.S.C.  
9 § 2253(c). If an applicant files a notice of appeal,  
10 ~~the district judge who rendered the judgment must~~  
11 ~~either issue a certificate of appealability or state~~  
12 ~~why a certificate should not issue. The the district~~  
13 ~~clerk must send to the court of appeals the~~  
14 ~~certificate or statement (if any) and the statement~~  
15 ~~described in Rule 11(a) of the Rules Governing~~

16                    Proceedings Under 28 U.S.C. § 2254 or § 2255 (if  
17                    any) to the court of appeals, along with the notice  
18                    of appeal and the file of the district-court  
19                    proceedings. If the district judge has denied the  
20                    certificate, the applicant may request a circuit  
21                    judge to issue ~~the certificate~~ it.

22                    \* \* \* \* \*

**Committee Note**

**Subdivision (b)(1).** The requirement that the district judge who rendered the judgment either issue a certificate of appealability or state why a certificate should not issue has been deleted from subdivision (b)(1). Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. § 2254 or § 2255 now delineates the relevant requirement. When an applicant has filed a notice of appeal, the district clerk must transmit the record to the court of appeals; if the district judge has issued a certificate of appealability, the district clerk must include in this transmission the certificate and the statement of reasons for grant of the certificate.

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**c. Changes Made After Publication and Comment**

The Appellate Rules Committee approved the proposed amendment to Appellate Rule 22(b) with the style changes (described below) which were suggested by Professor Kimble. As detailed in the report of the Criminal Rules Committee, a number of changes were made to the proposals concerning Rule 11 of the habeas and Section 2255 rules in response to public comment.

At the Standing Committee's direction, the language proposed for Appellate Rule 22(b) was circulated to the circuit clerks for their comment. Pursuant to comments received from the circuit clerks, the second sentence of Rule 22(b) was revised to make clear that the Rule requires the transmission of the record by the district court when an appeal is filed, regardless of whether the certificate of appealability was granted or denied by the district judge; a conforming change was made to the last sentence of the Committee Note.

\* \* \* \* \*

**Style suggestions.** Professor Kimble suggests that the proposed Rule 22 amendment be slightly modified, by capitalizing "under" in the phrase "Proceedings under 28 U.S.C. § 2254 or § 2255," and by inserting ", along" between "court of appeals" and "with the notice."

\* \* \* \* \*



COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

Agenda E-19 (Appendix C)  
Rules  
September 2008

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CHAIR

PETER G. McCABE  
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

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APPELLATE RULES

LAURA TAYLOR SWAIN  
BANKRUPTCY RULES

MARK R. KRAVITZ  
CIVIL RULES

RICHARD C. TALLMAN  
CRIMINAL RULES

ROBERT L. HINKLE  
EVIDENCE RULES

**TO:** Honorable Lee H. Rosenthal, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Honorable Laura Taylor Swain, Chair  
Advisory Committee on Bankruptcy Rules

**DATE:** May 14, 2008 (Revised June 30, 2008)

**RE:** Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 27-28, 2008, at St. Michaels, Maryland.

The Advisory Committee considered public comments on the Time-Computation amendments proposed for Bankruptcy Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033. The Committee received numerous comments on the proposed amendment to Rule 8002 that would change the deadline for filing a notice of appeal from 10 days to 14 days, as well as comments in response to the Committee's inquiry as to whether the appeal time should be extended further to 30 days. We also received several comments on the proposed amendments to Rule 9006(a), which revises the method for computing time periods. We received no comments on the bulk of these rules amendments that simply substituted a multiple of seven days for time periods of less than 30 days in this package of amendments.

The Advisory Committee also considered public comments regarding the preliminary draft of proposed amendments to Bankruptcy Rules 4008, 7052 and 9021, and proposed new Bankruptcy Rules 1017.1 and 7058, as well as comments received on proposed amendments to Official Form 8 and proposed new Official Form 27, all of which were published in August 2007.

Since no person who submitted a written comment requested to appear at the public hearings scheduled for January 16 and 25, 2008, the hearings were canceled.

The Advisory Committee withdraws proposed Bankruptcy Rule 1017.1 and recommends that the Standing Committee approve the remaining amendments and additions to the Bankruptcy Rules and Official Forms and transmit them to the Judicial Conference. In connection with the withdrawal of proposed Rule 1017.1, the Advisory Committee recommended approval of a revision of the amendment to Exhibit D to Official Form 1 which was published in August 2006 and approved by the Standing Committee in June 2007. The Advisory Committee also recommends that the Standing Committee approve proposed technical amendments to Bankruptcy Rules 2016, 7052, 9006, 9015, and 9023 and Official Forms 9F, 10, and 23 without publication. The proposed amendments and additions and the comments received thereon are set out below in the Action Items section of this report.

\* \* \* \* \*

## II Action Items

- A. Proposed Amendments to Bankruptcy Rules 9006, 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference to Implement the Time-Computation Project.

**The Advisory Committee on Bankruptcy Rules recommends that the Standing Committee approve the proposed amendments to Bankruptcy Rules 9006, 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033 for submission to the Judicial Conference to implement the Time-Computation Project as set out below. These amendments are to become effective on December 1, 2009.**

### 1. *Public Comment.*

The preliminary draft of proposed amendments to Bankruptcy Rules 9006, 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033 were published for comment in August 2007. A public hearing on the preliminary draft of the Time-Computation Amendments was scheduled for January 16, 2008, but there were no requests to appear at the hearings.

The Advisory Committee received comments on Rule 9006(a) and the Time-Computation Rule Template as set out immediately after Rule 9006. The only other Time-Computation Amendment on which the Committee received comments was the proposed amendment to Rule 8002, on which we received 40 comments. Again, those comments are described below immediately after Rule 8002.

### 2. *Synopsis of Proposed Amendments to Implement the Time-Computation Project.*

- (a) **Rule 9006(a) (Time Computation Template Rule)** replaces subdivision (a) with the template being adopted throughout the Federal Rules for computing time. There are minor differences from the template in the Committee Note that include changes specific to bankruptcy law and practice. The amendment is offered in conjunction with proposed amendments to the deadlines set out in 39 rules. Those amendments include changes only in the time periods.

(b) **Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033** are each amended to make the deadlines under the rules multiples of seven days for any period less than 30 days. The various deadlines in these rules are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

The changes to the Bankruptcy Rules to implement the Time-Computation project, other than the changes to Rule 9006(a), are limited to changes in the deadlines as set out above.

3. *Text of Proposed Bankruptcy Rules Amendments to Implement the Time-Computation Project (on next page).*

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>**

**Rule 9006. Computing and Extending Time**

1       ~~(a) COMPUTATION. In computing any period of~~  
2       ~~time prescribed or allowed by these rules or by the Federal~~  
3       ~~Rules of Civil Procedure made applicable by these rules, by~~  
4       ~~the local rules, by order of court, or by any applicable statute,~~  
5       ~~the day of the act, event, or default from which the designated~~  
6       ~~period of time begins to run shall not be included. The last~~  
7       ~~day of the period so computed shall be included, unless it is~~  
8       ~~a Saturday, a Sunday, or a legal holiday, or, when the act to be~~  
9       ~~done is the filing of a paper in court, a day on which weather~~  
10       ~~or other conditions have made the clerk's office inaccessible,~~  
11       ~~in which event the period runs until the end of the next day~~  
12       ~~which is not one of the aforementioned days. When the period~~  
13       ~~of time prescribed or allowed is less than 8 days, intermediate~~  
14       ~~Saturdays, Sundays, and legal holidays shall be excluded in~~  
15       ~~the computation. As used in this rule and in Rule 5001(e),~~  
16       ~~"legal holiday" includes New Year's Day, Birthday of Martin~~  
17       ~~Luther King, Jr., Washington's Birthday, Memorial Day,~~  
18       ~~Independence Day, Labor Day, Columbus Day, Veterans Day,~~  
19       ~~Thanksgiving Day, Christmas Day, and any other day~~

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<sup>1</sup>New material is underlined; matter to be omitted is lined through.

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20 ~~appointed as a holiday by the President or the Congress of the~~  
21 ~~United States, or by the state in which the court is held.~~

22 (a) COMPUTING TIME. The following rules apply  
23 in computing any time period specified in these rules, in the  
24 Federal Rules of Civil Procedure, in any local rule or court  
25 order, or in any statute that does not specify a method of  
26 computing time.

27 (1) Period Stated in Days or a Longer Unit.

28 When the period is stated in days or a longer unit of time:

29 (A) exclude the day of the event that triggers  
30 the period;

31 (B) count every day, including intermediate  
32 Saturdays, Sundays, and legal holidays; and

33 (C) include the last day of the period, but if  
34 the last day is a Saturday, Sunday, or legal holiday, the period  
35 continues to run until the end of the next day that is not a  
36 Saturday, Sunday, or legal holiday.

37 (2) Period Stated in Hours. When the period is  
38 stated in hours:

39 (A) begin counting immediately on the  
40 occurrence of the event that triggers the period;

41                   (B) count every hour, including hours during  
42 intermediate Saturdays, Sundays, and legal holidays; and

43                   (C) if the period would end on a Saturday,  
44 Sunday, or legal holiday, then continue the period until the  
45 same time on the next day that is not a Saturday, Sunday, or  
46 legal holiday.

47                   (3) *Inaccessibility of Clerk's Office.* Unless the  
48 court orders otherwise, if the clerk's office is inaccessible:

49                   (A) on the last day for filing under Rule  
50 9006(a)(1), then the time for filing is extended to the first  
51 accessible day that is not a Saturday, Sunday, or legal holiday;  
52 or

53                   (B) during the last hour for filing under Rule  
54 9006(a)(2), then the time for filing is extended to the same  
55 time on the first accessible day that is not a Saturday, Sunday,  
56 or legal holiday.

57                   (4) "*Last Day*" Defined. Unless a different time  
58 is set by a statute, local rule, or order in the case, the last day  
59 ends:

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





**COMMITTEE NOTE**

**Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a Federal Rule of Bankruptcy Procedure, a Federal Rule of Civil Procedure, a statute, a local rule, or a court order. In accordance with Bankruptcy Rule 9029(a), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) “does not apply to situations where the court has established a specific calendar day as a deadline”), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is “no later than November 1, 2007,” subdivision (a) does not govern. But if a filing is required to be made “within 10 days” or “within 72 hours,” subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 11 U.S.C. § 527(a)(2) (debt relief agencies must provide a written notice to an assisted person “not later than 3 business days” after providing bankruptcy assistance services).

**Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to

time periods that are stated in weeks, months, or years. *See, e.g.*, Federal Rule of Civil Procedure 60(c)(1) made applicable to bankruptcy cases under Rule 9024. Subdivision (a)(1)(B)'s directive to "count every day" is relevant only if the period is stated in days (not weeks, months, or years).

Under former Rule 9006(a), a period of eight days or more was computed differently than a period of less than eight days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 9006(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results.

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than eight days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the

change. *See, e.g.*, Rules 2008 (trustee's duty to notify court of acceptance of the appointment within five days is extended to seven days); 6004(b) (time for filing and service of objection to proposed use, sale or lease of property extended from five days prior to the hearing to seven days prior to the hearing); and 9006(d) (time for giving notice of a hearing extended from five days prior to the hearing to seven days).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. *See, e.g.*, Rules 1007(h) (10-day period to file supplemental schedule for property debtor becomes entitled to acquire after the commencement of the case is extended to 14 days); 3020(e) (10-day stay of order confirming a chapter 11 plan extended to 14 days); 8002(a) (10-day period in which to file notice of appeal extended to 14 days). A 14-day period also has the advantage that the final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting seven-day periods to replace some of the periods set at less than 10 days, 21-day periods to replace 20-day periods, and 28-day periods to replace 25-day periods. Thirty-day and longer periods, however, were generally retained without change.

**Subdivision (a)(2).** New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Bankruptcy Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the

time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be “rounded up” to the next whole hour. Subdivision (a)(3) addresses situations when the clerk’s office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

**Subdivision (a)(3).** When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk’s office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk’s office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday, or day when the clerk’s office is inaccessible.

Subdivision (a)(3)’s extensions apply “[u]nless the court orders otherwise.” In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to “weather or other conditions” as the reason for the inaccessibility of the clerk’s office. The reference to “weather” was deleted from the text to underscore

that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw. *See, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing. *See, e.g.*, D. Kan. Rule 5.4.11 ("A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.").

**Subdivision (a)(4).** New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may provide, for example, that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." A corresponding provision exists in Rule 5001(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g., Casalduc v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

**Subdivision (a)(5).** New subdivision (a)(5) defines the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Bankruptcy Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.*, Rules 1007(c) (the schedules, statements, and other documents shall be filed by the debtor within 14 days of the entry of the order for relief); 1019(5)(B)(ii) (“the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account”); and 7012(a) (“If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court.”).

A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rules 6004(b) (“an objection to a proposed use, sale, or lease of property shall be filed and served not less than seven days before the date set for the proposed action”); 9006(d) (“A written motion, other than one which may be heard *ex parte*, and notice of any hearing shall be served not later than seven days before the time specified for such hearing”). In determining what is the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31.

**Subdivision (a)(6).** New subdivision (a)(6) defines “legal holiday” for purposes of the Federal Rules of Bankruptcy Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of “legal holiday” days that are declared a holiday by the President or Congress.

For forward-counted periods — *i.e.*, periods that are measured after an event — subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays, and defines the term “state” — for purposes of subdivision (a)(6) — to include the District of Columbia and any commonwealth or territory of the United States. Thus, for purposes of subdivision (a)(6)’s definition of “legal holiday,” “state” includes the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot’s Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21; the fact that April 21 is a state holiday does not make April

21 a legal holiday for purposes of computing this backward-counted deadline. But note that if the clerk’s office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday – no earlier than Tuesday, April 22.

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Changes Made After Publication:

The reference to Rule 6(a)(1) in subdivision (a)(3)(A) at line 50 of the rule as it was published was corrected by referring instead to Rule 9006(a)(1).

The Standing Committee changed Rule 9006(a)(6) to exclude state holidays from the definition of “legal holiday” for purposes of computing backward-counted periods; conforming changes were made to the Committee Note to subdivision (a)(6). In addition, the term “possession” was deleted from the definition of “state” in subdivision (a)(6), and a conforming change was made to the Committee Note.

**Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits<sup>2</sup>**

- 1 (a) CORPORATE OWNERSHIP STATEMENT,  
2 LIST OF CREDITORS AND EQUITY SECURITY  
3 HOLDERS, AND OTHER LISTS  
4 \* \* \* \* \*

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<sup>2</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.





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25 subdivision (b)(1) shall be filed by the debtor within ~~15~~ 14  
26 days of the entry of the order for relief. In a voluntary case,  
27 the documents required by paragraphs (A), (C), and (D) of  
28 subdivision (b)(3) shall be filed with the petition. Unless the  
29 court orders otherwise, a debtor who has filed a statement  
30 under subdivision (b)(3)(B), shall file the documents required  
31 by subdivision (b)(3)(A) within ~~15~~ 14 days of the order for  
32 relief. In a chapter 7 case, the debtor shall file the statement  
33 required by subdivision (b)(7) within 45<sup>4</sup> days after the first  
34 date set for the meeting of creditors under § 341 of the Code,  
35 and in a chapter 11 or 13 case no later than the date when the  
36 last payment was made by the debtor as required by the plan  
37 or the filing of a motion for a discharge under § 1141(d)(5)(B)  
38 or § 1328(b) of the Code. The court may, at any time and in  
39 its discretion, enlarge the time to file the statement required  
40 by subdivision (b)(7). The debtor shall file the statement  
41 required by subdivision (b)(8) no earlier than the date of the  
42 last payment made under the plan or the date of the filing of  
43 a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or  
44 1328(b) of the Code. Lists, schedules, statements, and other

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<sup>4</sup> The Committee on Practice and Procedure has approved for publication in August 2008 an amendment to this deadline. Under the proposal, the 45-day deadline would become a 60-day deadline.

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45 documents filed prior to the conversion of a case to another  
46 chapter shall be deemed filed in the converted case unless the  
47 court directs otherwise. Except as provided in § 1116(3), any  
48 extension of time to file schedules, statements, and other  
49 documents required under this rule may be granted only on  
50 motion for cause shown and on notice to the United States  
51 trustee, any committee elected under § 705 or appointed under  
52 § 1102 of the Code, trustee, examiner, or other party as the  
53 court may direct. Notice of an extension shall be given to the  
54 United States trustee and to any committee, trustee, or other  
55 party as the court may direct.

56 \* \* \* \* \*

57 (f) STATEMENT OF SOCIAL SECURITY  
58 NUMBER. An individual debtor shall submit a verified  
59 statement that sets out the debtor's social security number, or  
60 states that the debtor does not have a social security number.  
61 In a voluntary case, the debtor shall submit the statement with  
62 the petition. In an involuntary case, the debtor shall submit  
63 the statement within ~~15~~ 14 days after the entry of the order for  
64 relief.

65 \* \* \* \* \*





**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case**

1

\* \* \* \* \*

2

(5) *Filing Final Report and Schedule of*

3

*Postpetition Debts.*

4

(A) Conversion of Chapter 11 or Chapter 12

5

Case. Unless the court directs otherwise, if a chapter 11 or

6

chapter 12 case is converted to chapter 7, the debtor in

7

possession or, if the debtor is not a debtor in possession, the

8

trustee serving at the time of conversion, shall:

FEDERAL RULES OF BANKRUPTCY PROCEDURE 19

9 (i) not later than ~~15~~ 14 days after  
10 conversion of the case, file a schedule of unpaid debts  
11 incurred after the filing of the petition and before conversion  
12 of the case, including the name and address of each holder of  
13 a claim; and

14 (ii) not later than 30 days after  
15 conversion of the case, file and transmit to the United States  
16 trustee a final report and account;

17 (B) Conversion of Chapter 13 Case. Unless  
18 the court directs otherwise, if a chapter 13 case is converted  
19 to chapter 7,

20 (i) the debtor, not later than ~~15~~ 14 days  
21 after conversion of the case, shall file a schedule of unpaid  
22 debts incurred after the filing of the petition and before  
23 conversion of the case, including the name and address of  
24 each holder of a claim; and

25 (ii) the trustee, not later than 30 days  
26 after conversion of the case, shall file and transmit to the  
27 United States trustee a final report and account;

28 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 1020. Small Business Chapter 11 Reorganization Case<sup>6</sup>**

- 1           (a) SMALL BUSINESS DEBTOR DESIGNATION.
- 2           In a voluntary chapter 11 case, the debtor shall state in the
- 3           petition whether the debtor is a small business debtor. In an
- 4           involuntary chapter 11 case, the debtor shall file within ~~15~~ 14
- 5           days after entry of the order for relief a statement as to
- 6           whether the debtor is a small business debtor. Except as
- 7           provided in subdivision (c), the status of the case as a small
- 8           business case shall be in accordance with the debtor's

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<sup>6</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.



9 statement under this subdivision, unless and until the court  
10 enters an order finding that the debtor's statement is incorrect.

11 \* \* \* \* \*

### COMMITTEE NOTE

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee<sup>7</sup>**

1 (a) TWENTY-ONE-DAY NOTICES TO PARTIES IN  
2 INTEREST. Except as provided in subdivisions (h), (i), (l),

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<sup>7</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.

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3 (p), and (q) of this rule, the clerk, or some other person as the  
4 court may direct, shall give the debtor, the trustee, all creditors  
5 and indenture trustees at least ~~20~~ 21 days' notice by mail of:

6 \* \* \* \* \*

7 (b) ~~TWENTY-FIVE-EIGHT-DAY~~ NOTICES TO  
8 PARTIES IN INTEREST. Except as provided in subdivision  
9 (l) of this rule, the clerk, or some other person as the court may  
10 direct, shall give the debtor, the trustee, all creditors and  
11 indenture trustees not less than ~~25~~ 28 days notice by mail of  
12 the time fixed (1) for filing objections and the hearing to  
13 consider approval of a disclosure statement or, under  
14 § 1125(f), to make a final determination whether the plan  
15 provides adequate information so that a separate disclosure  
16 statement is not necessary; and (2) for filing objections and the  
17 hearing to consider confirmation of a chapter 9, chapter 11, or  
18 chapter 13 plan.

19 \* \* \* \* \*

20 (o) NOTICE OF ORDER FOR RELIEF IN  
21 CONSUMER CASE. In a voluntary case commenced by an  
22 individual debtor whose debts are primarily consumer debts,  
23 the clerk or some other person as the court may direct shall

24 give the trustee and all creditors notice by mail of the order for  
25 relief within ~~20~~ 21 days from the date thereof.

26 \* \* \* \* \*

27 (q) NOTICE OF PETITION FOR RECOGNITION OF  
28 FOREIGN PROCEEDING AND OF COURT'S INTENTION  
29 TO COMMUNICATE WITH FOREIGN COURTS AND  
30 FOREIGN REPRESENTATIVES.

31 (1) *Notice of Petition for Recognition.* The clerk,  
32 or some other person as the court may direct, shall forthwith  
33 give the debtor, all persons or bodies authorized to administer  
34 foreign proceedings of the debtor, all entities against whom  
35 provisional relief is being sought under § 1519 of the Code, all  
36 parties to litigation pending in the United States in which the  
37 debtor is a party at the time of the filing of the petition, and  
38 such other entities as the court may direct, at least ~~20~~ 21 days'  
39 notice by mail of the hearing on the petition for recognition of  
40 a foreign proceeding. The notice shall state whether the  
41 petition seeks recognition as a foreign main proceeding or  
42 foreign nonmain proceeding.

43 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 2003. Meeting of Creditors or Equity Security Holders<sup>8</sup>**

1           (a) DATE AND PLACE. Except as otherwise  
2           provided in § 341(e) of the Code, in a chapter 7 liquidation or  
3           a chapter 11 reorganization case, the United States trustee  
4           shall call a meeting of creditors to be held no fewer than ~~20~~  
5           21 and no more than 40 days after the order for relief. In a  
6           chapter 12 family farmer debt adjustment case, the United  
7           States trustee shall call a meeting of creditors to be held no  
8           fewer than ~~20~~ 21 and no more than 35 days after the order for  
9           relief. In a chapter 13 individual's debt adjustment case, the

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<sup>8</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.

10 United States trustee shall call a meeting of creditors to be  
11 held no fewer than ~~20~~ 21 and no more than 50 days after the  
12 order for relief. If there is an appeal from or a motion to  
13 vacate the order for relief, or if there is a motion to dismiss  
14 the case, the United States trustee may set a later date for the  
15 meeting. The meeting may be held at a regular place for  
16 holding court or at any other place designated by the United  
17 States trustee within the district convenient for the parties in  
18 interest. If the United States trustee designates a place for the  
19 meeting which is not regularly staffed by the United States  
20 trustee or an assistant who may preside at the meeting, the  
21 meeting may be held not more than 60 days after the order for  
22 relief.

23 \* \* \* \* \*

24 (d) REPORT OF ELECTION AND RESOLUTION  
25 OF DISPUTES IN A CHAPTER 7 CASE.

26 \* \* \* \* \*

27 (2) *Disputed Election.* If the election is disputed,  
28 the United States trustee shall promptly file a report stating  
29 that the election is disputed, informing the court of the nature  
30 of the dispute, and listing the name and address of any  
31 candidate elected under any alternative presented by the

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32 dispute. No later than the date on which the report is filed,  
33 the United States trustee shall mail a copy of the report to any  
34 party in interest that has made a request to receive a copy of  
35 the report. Pending disposition by the court of a disputed  
36 election for trustee, the interim trustee shall continue in office.  
37 Unless a motion for the resolution of the dispute is filed no  
38 later than ~~10~~ 14 days after the United States trustee files a  
39 report of a disputed election for trustee, the interim trustee  
40 shall serve as trustee in the case.

41 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases**

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\* \* \* \* \*

(c) AUTHORIZED SOLICITATION.

(1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to § 705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under § 702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over \$500 or the 100 creditors having the largest claims had at least five seven days notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition.

\* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 2007. Review of Appointment of Creditors' Committee Organized Before Commencement of the Case**

1

\* \* \* \* \*

2

**(b) SELECTION OF MEMBERS OF COMMITTEE.**

3

The court may find that a committee organized by unsecured creditors before the commencement of a chapter 9 or chapter 11 case was fairly chosen if:

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(1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) of the Code and were present in person or represented at a meeting of which all creditors having unsecured claims of over \$1,000 or the 100 unsecured creditors having the largest claims had at least ~~five~~ seven days



12 notice in writing, and of which meeting written minutes  
13 reporting the names of the creditors present or represented  
14 and voting and the amounts of their claims were kept and are  
15 available for inspection;

16 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 2007.2. Appointment of Patient Care Ombudsman  
in a Health Care Business Case<sup>9</sup>**

1 (a) ORDER TO APPOINT PATIENT CARE  
2 OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case

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<sup>9</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.

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3 in which the debtor is a health care business, the court shall  
4 order the appointment of a patient care ombudsman under  
5 § 333 of the Code, unless the court, on motion of the United  
6 States trustee or a party in interest filed no later than ~~20~~ 21  
7 days after the commencement of the case or within another  
8 time fixed by the court, finds that the appointment of a patient  
9 care ombudsman is not necessary under the specific  
10 circumstances of the case for the protection of patients.

11 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 2008. Notice to Trustee of Selection**

1           The United States trustee shall immediately notify the  
2           person selected as trustee how to qualify and, if applicable,  
3           the amount of the trustee's bond. A trustee that has filed a  
4           blanket bond pursuant to Rule 2010 and has been selected as  
5           trustee in a chapter 7, chapter 12, or chapter 13 case that does  
6           not notify the court and the United States trustee in writing of  
7           rejection of the office within ~~five~~ seven days after receipt of  
8           notice of selection shall be deemed to have accepted the  
9           office. Any other person selected as trustee shall notify the  
10          court and the United States trustee in writing of acceptance of  
11          the office within ~~five~~ seven days after receipt of notice of  
12          selection or shall be deemed to have rejected the office.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods



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(d) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within ~~15~~ 14 days after the date when the representative becomes aware of the subsequent information.

\* \* \* \* \*

#### COMMITTEE NOTE

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
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- 25-day periods become 28-day periods

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**Rule 2015.1. Patient Care Ombudsman<sup>11</sup>**

1           (a) REPORTS. A patient care ombudsman, at least ~~10~~  
2           14 days before making a report under § 333(b)(2) of the Code,  
3           shall give notice that the report will be made to the court,  
4           unless the court orders otherwise. The notice shall be  
5           transmitted to the United States trustee, posted conspicuously  
6           at the health care facility that is the subject of the report, and  
7           served on: the debtor; the trustee; all patients; and any  
8           committee elected under § 705 or appointed under § 1102 of  
9           the Code or its authorized agent, or, if the case is a chapter 9  
10          municipality case or a chapter 11 reorganization case and no  
11          committee of unsecured creditors has been appointed under  
12          § 1102, on the creditors included on the list filed under Rule  
13          1007(d); and such other entities as the court may direct. The  
14          notice shall state the date and time when the report will be  
15          made, the manner in which the report will be made, and, if the  
16          report is in writing, the name, address, telephone number,  
17          email address, and website, if any, of the person from whom  
18          a copy of the report may be obtained at the debtor's expense.

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<sup>11</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.

19 (b) AUTHORIZATION TO REVIEW  
20 CONFIDENTIAL PATIENT RECORDS. A motion by a  
21 patient care ombudsman under § 333(c) to review confidential  
22 patient records shall be governed by Rule 9014, served on the  
23 patient and any family member or other contact person whose  
24 name and address has been given to the trustee or the debtor  
25 for the purpose of providing information regarding the  
26 patient's health care, and transmitted to the United States  
27 trustee subject to applicable nonbankruptcy law relating to  
28 patient privacy. Unless the court orders otherwise, a hearing  
29 on the motion may not be commenced earlier than ~~15~~ 14 days  
30 after service of the motion.

#### COMMITTEE NOTE

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

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**Rule 2015.2. Transfer of Patient in Health Care Business Case<sup>12</sup>**

1           Unless the court orders otherwise, if the debtor is a  
2           health care business, the trustee may not transfer a patient to  
3           another health care business under § 704(a)(12) of the Code  
4           unless the trustee gives at least ~~10~~ 14 days' notice of the  
5           transfer to the patient care ombudsman, if any, the patient,  
6           and any family member or other contact person whose name  
7           and address has been given to the trustee or the debtor for the  
8           purpose of providing information regarding the patient's  
9           health care. The notice is subject to applicable nonbankruptcy  
10          law relating to patient privacy.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods

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<sup>12</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.





substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses<sup>14</sup>**

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(b) DISCLOSURE OF COMPENSATION PAID OR

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PROMISED TO ATTORNEY FOR DEBTOR. Every

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attorney for a debtor, whether or not the attorney applies for

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compensation, shall file and transmit to the United States

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trustee within ~~15~~ 14 days after the order for relief, or at

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another time as the court may direct, the statement required by

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<sup>14</sup>The Advisory Committee on Bankruptcy Rules has recommended approval of a proposed technical amendment to Rule 2016(c), which would also take effect on December 1, 2009, if the Judicial Conference and the Supreme Court approve and if Congress takes no action to the contrary. The proposed technical amendment is on page 96.

8 § 329 of the Code including whether the attorney has shared  
9 or agreed to share the compensation with any other entity.  
10 The statement shall include the particulars of any such sharing  
11 or agreement to share by the attorney, but the details of any  
12 agreement for the sharing of the compensation with a member  
13 or regular associate of the attorney's law firm shall not be  
14 required. A supplemental statement shall be filed and  
15 transmitted to the United States trustee within ~~15~~ 14 days  
16 after any payment or agreement not previously disclosed.

17 (c) DISCLOSURE OF COMPENSATION PAID OR  
18 PROMISED TO BANKRUPTCY PETITION PREPARER.  
19 Before a petition is filed, every Every bankruptcy petition  
20 preparer for a debtor shall ~~file~~ deliver to the debtor, a the  
21 declaration under penalty of perjury ~~and transmit the~~  
22 ~~declaration to the United States trustee within 10 days after~~  
23 ~~the date of the filing of the petition, or at another time as the~~  
24 ~~court may direct, as required by § 110(h)(1) (2).~~ The

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25 declaration ~~shall~~ **must** disclose any fee, and the source of any  
26 fee, received from or on behalf of the debtor within 12  
27 months of the filing of the case and all unpaid fees charged to  
28 the debtor. The declaration shall also **must** describe the  
29 services performed and documents prepared or caused to be  
30 prepared by the bankruptcy petition preparer. The declaration  
31 shall be filed with the petition. The petition preparer shall file  
32 a ~~A~~ supplemental statement ~~shall be filed~~ within ~~10~~ 14 days  
33 after any payment or agreement not previously disclosed.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5 day periods become 7 day periods
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- 15 day periods become 14 day periods
- 20 day periods become 21 day periods
- 25 day periods become 28 day periods

Subdivision (c) is amended to reflect the 2005 amendment to § 110(h)(1) of the Bankruptcy Code which now requires that the declaration be filed with the petition. The statute previously required that the petition preparer file the declaration within 10 days after the filing of the petition. The amendment to the rule also corrects the cross reference to § 110(h)(1), which was redesignated as subparagraph (h)(2) of § 110 by the 2005 amendment to the Code.

Other changes are stylistic.

**Rule 3001. Proof of Claim**

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\* \* \* \* \*

(e) TRANSFERRED CLAIM.

\* \* \* \* \*

(2) *Transfer of Claim Other than for Security after Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection

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11 thereto, if any, must be filed within ~~20~~ 21 days of the mailing  
12 of the notice or within any additional time allowed by the  
13 court. If the alleged transferor files a timely objection and the  
14 court finds, after notice and a hearing, that the claim has been  
15 transferred other than for security, it shall enter an order  
16 substituting the transferee for the transferor. If a timely  
17 objection is not filed by the alleged transferor, the transferee  
18 shall be substituted for the transferor.

19 \* \* \* \* \*

20 (4) *Transfer of Claim for Security after Proof*  
21 *Filed.* If a claim other than one based on a publicly traded  
22 note, bond, or debenture has been transferred for security after  
23 the proof of claim has been filed, evidence of the terms of the  
24 transfer shall be filed by the transferee. The clerk shall  
25 immediately notify the alleged transferor by mail of the filing  
26 of the evidence of transfer and that objection thereto, if any,  
27 must be filed within ~~20~~ 21 days of the mailing of the notice or

28 within any additional time allowed by the court. If a timely  
29 objection is filed by the alleged transferor, the court, after  
30 notice and a hearing, shall determine whether the claim has  
31 been transferred for security. If the transferor or transferee  
32 does not file an agreement regarding its relative rights  
33 respecting voting of the claim, payment of dividends thereon,  
34 or participation in the administration of the estate, on motion  
35 by a party in interest and after notice and a hearing, the court  
36 shall enter such orders respecting these matters as may be  
37 appropriate.

38 \* \* \* \* \*

#### COMMITTEE NOTE

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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- 10-day periods become 14-day periods
- 15-day periods become 14-day periods

- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 3015. Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer’s Debt Adjustment or a Chapter 13 Individual’s Debt Adjustment Case**

1 \* \* \* \* \*

2 (b) CHAPTER 13 PLAN. The debtor may file a  
3 chapter 13 plan with the petition. If a plan is not filed with  
4 the petition, it shall be filed within ~~15~~ 14 days thereafter, and  
5 such time may not be further extended except for cause shown  
6 and on notice as the court may direct. If a case is converted  
7 to chapter 13, a plan shall be filed within ~~15~~ 14 days  
8 thereafter, and such time may not be further extended except  
9 for cause shown and on notice as the court may direct.

10 \* \* \* \* \*

11 (g) MODIFICATION OF PLAN AFTER  
12 CONFIRMATION. A request to modify a plan pursuant to



FEDERAL RULES OF BANKRUPTCY PROCEDURE 45

13 § 1229 or § 1329 of the Code shall identify the proponent and  
14 shall be filed together with the proposed modification. The  
15 clerk, or some other person as the court may direct, shall give  
16 the debtor, the trustee, and all creditors not less than ~~20~~ 21  
17 days notice by mail of the time fixed for filing objections and,  
18 if an objection is filed, the hearing to consider the proposed  
19 modification, unless the court orders otherwise with respect  
20 to creditors who are not affected by the proposed  
21 modification. A copy of the notice shall be transmitted to the  
22 United States trustee. A copy of the proposed modification,  
23 or a summary thereof, shall be included with the notice. If  
24 required by the court, the proponent shall furnish a sufficient  
25 number of copies of the proposed modification, or a summary  
26 thereof, to enable the clerk to include a copy with each notice.  
27 Any objection to the proposed modification shall be filed and  
28 served on the debtor, the trustee, and any other entity  
29 designated by the court, and shall be transmitted to the United

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30 States trustee. An objection to a proposed modification is  
31 governed by Rule 9014.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case**

1 (a) HEARING ON DISCLOSURE STATEMENT  
2 AND OBJECTIONS. Except as provided in Rule 3017.1,  
3 after a disclosure statement is filed in accordance with Rule  
4 3016(b), the court shall hold a hearing on at least ~~25~~ 28 days'  
5 notice to the debtor, creditors, equity security holders and

6 other parties in interest as provided in Rule 2002 to consider  
7 the disclosure statement and any objections or modifications  
8 thereto. The plan and the disclosure statement shall be mailed  
9 with the notice of the hearing only to the debtor, any trustee  
10 or committee appointed under the Code, the Securities and  
11 Exchange Commission and any party in interest who requests  
12 in writing a copy of the statement or plan. Objections to the  
13 disclosure statement shall be filed and served on the debtor,  
14 the trustee, any committee appointed under the Code, and any  
15 other entity designated by the court, at any time before the  
16 disclosure statement is approved or by an earlier date as the  
17 court may fix. In a chapter 11 reorganization case, every  
18 notice, plan, disclosure statement, and objection required to  
19 be served or mailed pursuant to this subdivision shall be  
20 transmitted to the United States trustee within the time  
21 provided in this subdivision.

22 \* \* \* \* \*

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23 (f) NOTICE AND TRANSMISSION OF  
24 DOCUMENTS TO ENTITIES SUBJECT TO AN  
25 INJUNCTION UNDER A PLAN. If a plan provides for an  
26 injunction against conduct not otherwise enjoined under the  
27 Code and an entity that would be subject to the injunction is  
28 not a creditor or equity security holder, at the hearing held  
29 under Rule 3017(a), the court shall consider procedures for  
30 providing the entity with:

31 (1) at least ~~25~~ 28 days' notice of the time fixed for  
32 filing objections and the hearing on confirmation of the plan  
33 containing the information described in Rule 2002(c)(3); and

34 (2) to the extent feasible, a copy of the plan and  
35 disclosure statement.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to

substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
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- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case<sup>15</sup>**

\* \* \* \* \*

1 (b) MODIFICATION OF PLAN AFTER  
2 CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the  
3 debtor is an individual, a request to modify the plan under  
4 § 1127(e) of the Code is governed by Rule 9014. The request  
5 shall identify the proponent and shall be filed together with  
6 the proposed modification. The clerk, or some other person  
7 as the court may direct, shall give the debtor, the trustee, and  
8 all creditors not less than ~~20~~ 21 days' notice by mail of the

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<sup>15</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.

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9 time fixed to file objections and, if an objection is filed, the  
10 hearing to consider the proposed modification, unless the  
11 court orders otherwise with respect to creditors who are not  
12 affected by the proposed modification. A copy of the notice  
13 shall be transmitted to the United States trustee, together with  
14 a copy of the proposed modification. Any objection to the  
15 proposed modification shall be filed and served on the debtor,  
16 the proponent of the modification, the trustee, and any other  
17 entity designated by the court, and shall be transmitted to the  
18 United States trustee.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case**

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(e) STAY OF CONFIRMATION ORDER. An order

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confirming a plan is stayed until the expiration of ~~10~~ 14 days

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after the entry of the order, unless the court orders otherwise.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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- 20-day periods become 21-day periods
- 25-day periods become 28-day periods





16 may authorize the use of only that amount of cash collateral  
17 as is necessary to avoid immediate and irreparable harm to the  
18 estate pending a final hearing.

19 \* \* \* \* \*

20 (c) OBTAINING CREDIT.

21 \* \* \* \* \*

22 (2) *Hearing.* The court may commence a final  
23 hearing on a motion for authority to obtain credit no earlier  
24 than ~~15~~ 14 days after service of the motion. If the motion so  
25 requests, the court may conduct a hearing before such ~~15~~ 14  
26 day period expires, but the court may authorize the obtaining  
27 of credit only to the extent necessary to avoid immediate and  
28 irreparable harm to the estate pending a final hearing.

29 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to

substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 4002. Duties of Debtor<sup>16</sup>**

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\* \* \* \* \*

(b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE  
DOCUMENTATION.

\* \* \* \* \*

(4) *Tax Returns Provided to Creditors.* If a creditor, at least ~~15~~ 14 days before the first date set for the meeting of creditors under § 341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least 7 days before the first

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<sup>16</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.

10 date set for the meeting of creditors under § 341, shall provide  
11 to the requesting creditor a copy of the return, including any  
12 attachments, or a transcript of the tax return, or provide a  
13 written statement that the documentation does not exist.

14 \* \* \* \* \*

#### COMMITTEE NOTE

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

#### **Rule 4004. Grant or Denial of Discharge**

1 (a) TIME FOR FILING COMPLAINT OBJECTING  
2 TO DISCHARGE; NOTICE OF TIME FIXED. In a chapter  
3 7 liquidation case a complaint objecting to the debtor's

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4 discharge under § 727(a) of the Code shall be filed no later  
5 than 60 days after the first date set for the meeting of creditors  
6 under § 341(a). In a chapter 11 reorganization case, the  
7 complaint shall be filed no later than the first date set for the  
8 hearing on confirmation. At least ~~25~~ 28 days' notice of the  
9 time so fixed shall be given to the United States trustee and  
10 all creditors as provided in Rule 2002(f) and (k) and to the  
11 trustee and the trustee's attorney.

12 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case—Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts**

1           Except to the extent that relief is necessary to avoid  
2           immediate and irreparable harm, the court shall not, within 20  
3           21 days after the filing of the petition, grant relief regarding  
4           the following:

- 5           (a) an application under Rule 2014;
- 6           (b) a motion to use, sell, lease, or otherwise incur an  
7           obligation regarding property of the estate, including a motion  
8           to pay all or part of a claim that arose before the filing of the  
9           petition, but not a motion under Rule 4001; and
- 10          (c) a motion to assume or assign an executory contract  
11          or unexpired lease in accordance with § 365.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to



10 (d) SALE OF PROPERTY UNDER \$2,500.

11 Notwithstanding subdivision (a) of this rule, when all of the  
12 nonexempt property of the estate has an aggregate gross value  
13 less than \$2,500, it shall be sufficient to give a general notice  
14 of intent to sell such property other than in the ordinary course  
15 of business to all creditors, indenture trustees, committees  
16 appointed or elected pursuant to the Code, the United States  
17 trustee and other persons as the court may direct. An  
18 objection to any such sale may be filed and served by a party  
19 in interest within ~~15~~ 14 days of the mailing of the notice, or  
20 within the time fixed by the court. An objection is governed  
21 by Rule 9014.

22 \* \* \* \* \*

23 (g) SALE OF PERSONALLY IDENTIFIABLE  
24 INFORMATION.

25 \* \* \* \* \*

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26                   (2) *Appointment.* If a consumer privacy  
27 ombudsman is appointed under § 332, no later than ~~5~~ seven  
28 days before the hearing on the motion under § 363(b)(1)(B),  
29 the United States trustee shall file a notice of the appointment,  
30 including the name and address of the person appointed. The  
31 United States trustee's notice shall be accompanied by a  
32 verified statement of the person appointed setting forth the  
33 person's connections with the debtor, creditors, any other  
34 party in interest, their respective attorneys and accountants,  
35 the United States trustee, or any person employed in the office  
36 of the United States trustee.

37                   (h) **STAY OF ORDER AUTHORIZING USE, SALE,**  
38 **OR LEASE OF PROPERTY.** An order authorizing the use,  
39 sale, or lease of property other than cash collateral is stayed  
40 until the expiration of ~~10~~ 14 days after entry of the order,  
41 unless the court orders otherwise.



**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease**

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\* \* \* \* \*

(d) STAY OF ORDER AUTHORIZING  
ASSIGNMENT. An order authorizing the trustee to assign an  
executory contract or unexpired lease under § 365(f) is stayed  
until the expiration of ~~10~~ 14 days after the entry of the order,  
unless the court orders otherwise.

\* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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**Rule 6007. Abandonment or Disposition of Property**

1           (a) NOTICE OF PROPOSED ABANDONMENT OR  
2           DISPOSITION; OBJECTIONS; HEARING. Unless  
3           otherwise directed by the court, the trustee or debtor in  
4           possession shall give notice of a proposed abandonment or  
5           disposition of property to the United States trustee, all  
6           creditors, indenture trustees, and committees elected pursuant  
7           to § 705 or appointed pursuant to § 1102 of the Code. A party  
8           in interest may file and serve an objection within ~~15~~ 14 days

9 of the mailing of the notice, or within the time fixed by the  
10 court. If a timely objection is made, the court shall set a  
11 hearing on notice to the United States trustee and to other  
12 entities as the court may direct.

13 \* \* \* \* \*

#### COMMITTEE NOTE

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

#### **Rule 7004. Process; Service of Summons, Complaint**

1 \* \* \* \* \*

2 (e) SUMMONS: TIME LIMIT FOR SERVICE  
3 WITHIN THE UNITED STATES. Service made under Rule

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4 4(e), (g), (h)(1), (i), or (j)(2) F. R. Civ. P. shall be by delivery  
5 of the summons and complaint within ~~10~~ 14 days after the  
6 summons is issued. If service is by any authorized form of  
7 mail, the summons and complaint shall be deposited in the  
8 mail within ~~10~~ 14 days after the summons is issued. If a  
9 summons is not timely delivered or mailed, another summons  
10 shall be issued and served. This subdivision does not apply  
11 to service in a foreign country.

12 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 7012. Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on the Pleadings**

1           (a) WHEN PRESENTED. If a complaint is duly  
2 served, the defendant shall serve an answer within 30 days  
3 after the issuance of the summons, except when a different  
4 time is prescribed by the court. The court shall prescribe the  
5 time for service of the answer when service of a complaint is  
6 made by publication or upon a party in a foreign country. A  
7 party served with a pleading stating a cross-claim shall serve  
8 an answer thereto within ~~20~~ 21 days after service. The  
9 plaintiff shall serve a reply to a counterclaim in the answer  
10 within ~~20~~ 21 days after service of the answer or, if a reply is  
11 ordered by the court, within ~~20~~ 21 days after service of the  
12 order, unless the order otherwise directs. The United States  
13 or an officer or agency thereof shall serve an answer to a  
14 complaint within 35 days after the issuance of the summons,  
15 and shall serve an answer to a cross-claim, or a reply to a

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16 counterclaim, within 35 days after service upon the United  
17 States attorney of the pleading in which the claim is asserted.  
18 The service of a motion permitted under this rule alters these  
19 periods of time as follows, unless a different time is fixed by  
20 order of the court: (1) if the court denies the motion or  
21 postpones its disposition until the trial on the merits, the  
22 responsive pleading shall be served within ~~10~~ 14 days after  
23 notice of the court's action; (2) if the court grants a motion for  
24 a more definite statement, the responsive pleading shall be  
25 served within ~~10~~ 14 days after the service of a more definite  
26 statement.

27 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals<sup>18</sup>**

1

\* \* \* \* \*

2

(f) CERTIFICATION FOR DIRECT APPEAL TO

3

COURT OF APPEALS.

4

\* \* \* \* \*

5

(3) *Request for Certification; Filing; Service;*

6

*Contents.*

7

\* \* \* \* \*

8

(D) A party may file a response to a request

9

for certification or a cross request within ~~10~~ 14 days after the

---

<sup>18</sup> Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.

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10 notice of the request is served, or another time fixed by the  
11 court.

12 \* \* \* \* \*

13 (4) *Certification on Court's Own Initiative.*

14 \* \* \* \* \*

15 (B) A party may file a supplementary short  
16 statement of the basis for certification within ~~10~~ 14 days after  
17 the certification.

18 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods



**Rule 8002. Time for Filing Notice of Appeal**

1           (a) ~~TEN~~FOURTEEN-DAY PERIOD. The notice of  
2           appeal shall be filed with the clerk within ~~10~~ 14 days of the  
3           date of the entry of the judgment, order, or decree appealed  
4           from. If a timely notice of appeal is filed by a party, any other  
5           party may file a notice of appeal within ~~10~~ 14 days of the date  
6           on which the first notice of appeal was filed, or within the  
7           time otherwise prescribed by this rule, whichever period last  
8           expires. A notice of appeal filed after the announcement of a  
9           decision or order but before entry of the judgment, order, or  
10          decree shall be treated as filed after such entry and on the day  
11          thereof. If a notice of appeal is mistakenly filed with the  
12          district court or the bankruptcy appellate panel, the clerk of  
13          the district court or the clerk of the bankruptcy appellate panel  
14          shall note thereon the date on which it was received and  
15          transmit it to the clerk and it shall be deemed filed with the  
16          clerk on the date so noted.

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17 (b) EFFECT OF MOTION ON TIME FOR APPEAL.

18 If any party makes a timely motion of a type specified  
19 immediately below, the time for appeal for all parties runs  
20 from the entry of the order disposing of the last such motion  
21 outstanding. This provision applies to a timely motion:

22 \* \* \* \* \*

23 (4) for relief under Rule 9024 if the motion is  
24 filed no later than ~~10~~ 14 days after the entry of judgment. A  
25 notice of appeal filed after announcement or entry of the  
26 judgment, order, or decree but before disposition of any of the  
27 above motions is ineffective to appeal from the judgment,  
28 order, or decree, or part thereof, specified in the notice of  
29 appeal, until the entry of the order disposing of the last such  
30 motion outstanding. Appellate review of an order disposing  
31 of any of the above motions requires the party, in compliance  
32 with Rule 8001, to amend a previously filed notice of appeal.  
33 A party intending to challenge an alteration or amendment of

34 the judgment, order, or decree shall file a notice, or an  
35 amended notice, of appeal within the time prescribed by this  
36 Rule 8002 measured from the entry of the order disposing of  
37 the last such motion outstanding. No additional fees will be  
38 required for filing an amended notice.

39 (c) EXTENSION OF TIME FOR APPEAL.

40 \* \* \* \* \*

41 (2) A request to extend the time for filing a notice  
42 of appeal must be made by written motion filed before the  
43 time for filing a notice of appeal has expired, except that such  
44 a motion filed not later than ~~20~~ 21 days after the expiration of  
45 the time for filing a notice of appeal may be granted upon a  
46 showing of excusable neglect. An extension of time for filing  
47 a notice of appeal may not exceed ~~20~~ 21 days from the  
48 expiration of the time for filing a notice of appeal otherwise  
49 prescribed by this rule or ~~10~~ 14 days from the date of entry of  
50 the order granting the motion, whichever is later.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 8003. Leave to Appeal**

1           (a) CONTENT OF MOTION; ANSWER. A motion  
2           for leave to appeal under 28 U.S.C. § 158(a) shall contain:  
3           (1) a statement of the facts necessary to an understanding of  
4           the questions to be presented by the appeal; (2) a statement of  
5           those questions and of the relief sought; (3) a statement of the  
6           reasons why an appeal should be granted; and (4) a copy of  
7           the judgment, order, or decree complained of and of any  
8           opinion or memorandum relating thereto. Within ~~10~~ 14 days

9 after service of the motion, an adverse party may file with the  
10 clerk an answer in opposition.

11 \* \* \* \* \*

12 (c) APPEAL IMPROPERLY TAKEN REGARDED  
13 AS A MOTION FOR LEAVE TO APPEAL. If a required  
14 motion for leave to appeal is not filed, but a notice of appeal  
15 is timely filed, the district court or bankruptcy appellate panel  
16 may grant leave to appeal or direct that a motion for leave to  
17 appeal be filed. The district court or the bankruptcy appellate  
18 panel may also deny leave to appeal but in so doing shall  
19 consider the notice of appeal as a motion for leave to appeal.  
20 Unless an order directing that a motion for leave to appeal be  
21 filed provides otherwise, the motion shall be filed within ~~10~~  
22 14 days of entry of the order.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to

substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
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- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 8006. Record and Issues on Appeal**

1           Within ~~10~~ 14 days after filing the notice of appeal as  
2           provided by Rule 8001(a), entry of an order granting leave to  
3           appeal, or entry of an order disposing of the last timely  
4           motion outstanding of a type specified in Rule 8002(b),  
5           whichever is later, the appellant shall file with the clerk and  
6           serve on the appellee a designation of the items to be included  
7           in the record on appeal and a statement of the issues to be  
8           presented. Within ~~10~~ 14 days after the service of the  
9           appellant's statement the appellee may file and serve on the  
10          appellant a designation of additional items to be included in  
11          the record on appeal and, if the appellee has filed a cross

12 appeal, the appellee as cross appellant shall file and serve a  
13 statement of the issues to be presented on the cross appeal and  
14 a designation of additional items to be included in the record.  
15 A cross appellee may, within ~~10~~ 14 days of service of the  
16 cross appellant's statement, file and serve on the cross  
17 appellant a designation of additional items to be included in  
18 the record. The record on appeal shall include the items so  
19 designated by the parties, the notice of appeal, the judgment,  
20 order, or decree appealed from, and any opinion, findings of  
21 fact, and conclusions of law of the court. Any party filing a  
22 designation of the items to be included in the record shall  
23 provide to the clerk a copy of the items designated or, if the  
24 party fails to provide the copy, the clerk shall prepare the copy  
25 at the party's expense. If the record designated by any party  
26 includes a transcript of any proceeding or a part thereof, the  
27 party shall, immediately after filing the designation, deliver to  
28 the reporter and file with the clerk a written request for the

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29 transcript and make satisfactory arrangements for payment of  
30 its cost. All parties shall take any other action necessary to  
31 enable the clerk to assemble and transmit the record.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
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**Rule 8009. Briefs and Appendix; Filing and Service**

1 (a) BRIEFS. Unless the district court or the  
2 bankruptcy appellate panel by local rule or by order excuses  
3 the filing of briefs or specifies different time limits:



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4           (1) The appellant shall serve and file a brief  
5 within ~~15~~ 14 days after entry of the appeal on the docket  
6 pursuant to Rule 8007.

7           (2) The appellee shall serve and file a brief within  
8 ~~15~~ 14 days after service of the brief of appellant. If the  
9 appellee has filed a cross appeal, the brief of the appellee shall  
10 contain the issues and argument pertinent to the cross appeal,  
11 denominated as such, and the response to the brief of the  
12 appellant.

13           (3) The appellant may serve and file a reply brief  
14 within ~~10~~ 14 days after service of the brief of the appellee,  
15 and if the appellee has cross-appealed, the appellee may file  
16 and serve a reply brief to the response of the appellant to the  
17 issues presented in the cross appeal within ~~10~~ 14 days after  
18 service of the reply brief of the appellant. No further briefs  
19 may be filed except with leave of the district court or the  
20 bankruptcy appellate panel.

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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**Rule 8015. Motion for Rehearing**

1           Unless the district court or the bankruptcy appellate  
2           panel by local rule or by court order otherwise provides, a  
3           motion for rehearing may be filed within ~~10~~ 14 days after  
4           entry of the judgment of the district court or the bankruptcy  
5           appellate panel. If a timely motion for rehearing is filed, the  
6           time for appeal to the court of appeals for all parties shall run

7 from the entry of the order denying rehearing or the entry of  
8 subsequent judgment.

### COMMITTEE NOTE

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
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- 25-day periods become 28-day periods

#### **Rule 8017. Stay of Judgment of District Court or Bankruptcy Appellate Panel**

1 (a) AUTOMATIC STAY OF JUDGMENT ON  
2 APPEAL. Judgments of the district court or the bankruptcy  
3 appellate panel are stayed until the expiration of ~~10~~ 14 days  
4 after entry, unless otherwise ordered by the district court or  
5 the bankruptcy appellate panel.

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6

\* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
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- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Rule 9006. Time<sup>19</sup>**

1

\* \* \* \* \*

2

(d) FOR MOTIONS — AFFIDAVITS. A written

3

motion, other than one which may be heard ex parte, and

4

notice of any hearing shall be served not later than ~~five~~ seven

5

days before the time specified for such hearing, unless a

6

different period is fixed by these rules or by order of the court.

---

<sup>19</sup>Additional proposed amendments to Rule 9006(f) are on page 99.

7 Such an order may for cause shown be made on ex parte  
8 application. When a motion is supported by affidavit, the  
9 affidavit shall be served with the motion; and, except as  
10 otherwise provided in Rule 9023, opposing affidavits may be  
11 served not later than one day before the hearing, unless the  
12 court permits them to be served at some other time.

13 \* \* \* \* \*

#### COMMITTEE NOTE

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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#### Rule 9027. Removal

1 \* \* \* \* \*

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2 (e) PROCEDURE AFTER REMOVAL.

3 \* \* \* \* \*

4 (3) Any party who has filed a pleading in  
5 connection with the removed claim or cause of action, other  
6 than the party filing the notice of removal, shall file a  
7 statement admitting or denying any allegation in the notice of  
8 removal that upon removal of the claim or cause of action the  
9 proceeding is core or non-core. If the statement alleges that  
10 the proceeding is non-core, it shall state that the party does or  
11 does not consent to entry of final orders or judgment by the  
12 bankruptcy judge. A statement required by this paragraph  
13 shall be signed pursuant to Rule 9011 and shall be filed not  
14 later than ~~10~~ 14 days after the filing of the notice of removal.  
15 Any party who files a statement pursuant to this paragraph  
16 shall mail a copy to every other party to the removed claim or  
17 cause of action.

18 \* \* \* \* \*

19 (g) APPLICABILITY OF PART VII. The rules of Part  
20 VII apply to a claim or cause of action removed to a district  
21 court from a federal or state court and govern procedure after  
22 removal. Repleading is not necessary unless the court so  
23 orders. In a removed action in which the defendant has not  
24 answered, the defendant shall answer or present the other  
25 defenses or objections available under the rules of Part VII  
26 within ~~20~~ 21 days following the receipt through service or  
27 otherwise of a copy of the initial pleading setting forth the  
28 claim for relief on which the action or proceeding is based, or  
29 within ~~20~~ 21 days following the service of summons on such  
30 initial pleading, or within ~~five~~ seven days following the filing  
31 of the notice of removal, whichever period is longest.

32 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is

computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

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- 25-day periods become 28-day periods

**Rule 9033. Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings**

1

\* \* \* \* \*

2

(b) OBJECTIONS: TIME FOR FILING. Within ~~10~~

3

14 days after being served with a copy of the proposed

4

findings of fact and conclusions of law a party may serve and

5

file with the clerk written objections which identify the

6

specific proposed findings or conclusions objected to and

7

state the grounds for such objection. A party may respond to

8

another party's objections within ~~10~~ 14 days after being

9

served with a copy thereof. A party objecting to the

10

bankruptcy judge's proposed findings or conclusions shall



11 arrange promptly for the transcription of the record, or such  
12 portions of it as all parties may agree upon or the bankruptcy  
13 judge deems sufficient, unless the district judge otherwise  
14 directs.

15 (c) EXTENSION OF TIME. The bankruptcy judge  
16 may for cause extend the time for filing objections by any  
17 party for a period not to exceed ~~20~~ 21 days from the  
18 expiration of the time otherwise prescribed by this rule. A  
19 request to extend the time for filing objections must be made  
20 before the time for filing objections has expired, except that  
21 a request made no more than ~~20~~ 21 days after the expiration  
22 of the time for filing objections may be granted upon a  
23 showing of excusable neglect.

24 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is

computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
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- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

\* \* \* \* \*

- B. Proposed Amendments to Bankruptcy Rules 4008, 7052 and 9021, and Proposed New Bankruptcy Rule 7058, Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

**The Advisory Committee on Bankruptcy Rules recommends that the Standing Committee approve the proposed amendments to Bankruptcy Rules 4008, 7052 and 9021, and proposed new Bankruptcy Rule 7058 for submission to the Judicial Conference. These amendments and addition to the Rules are to become effective on December 1, 2009.**

1. *Public Comment.*

The preliminary draft of proposed amendments to Bankruptcy Rules 4008, 7052 and 9021, and proposed new Bankruptcy Rules 1017.1 and 7058, were published for comment in August 2007. A public hearing on the preliminary draft of the amendments and additions to the Bankruptcy Rules was scheduled for January 25, 2008, but there were no requests to appear at the hearing.

We received comments on many of the proposed additions and amendments, and the Advisory Committee reviewed these comments and, with the exception of proposed Rule 1017.1, approved the amendments to the rules either as published or with slight changes that are described in the Changes Made After Publication section.

The Advisory Committee received five comments on proposed new Rule 1017.1, which would have revised the process for granting an extension of time to complete the credit counseling requirement for individual debtors. The comments asserted that the rule is unnecessary because very few cases have arisen in which there was any request for an extension, and each of those cases was filed shortly after the effective date of the 2005 amendments to the Bankruptcy Code. The commentators noted that individual debtors and their attorneys seem to have adjusted to the new process, and the nearly universal availability of credit counseling briefing services has made the need for the time extensions almost nonexistent. Therefore, the Committee concluded that there is no need for the rules to adopt a process for these matters, and it withdraws proposed new Rule 1017.1.

2. *Synopsis of Proposed General Amendments:*

- (a) **Rule 4008** is amended to insert a requirement that the Official Form of a reaffirmation cover sheet be filed with the court along with the reaffirmation agreement. The cover sheet will include the information necessary to assist the court in determining what action to take regarding the proposed reaffirmation.
- (b) **Rule 7052** is amended to clarify that entry of judgment in an adversary proceeding means the entry of a judgment or order under the Bankruptcy Rules rather than under the Federal Rules of Civil Procedure.

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- (c) **Rule 7058** is new, and it makes Rule 58 of the Federal Rules of Civil Procedure applicable in adversary proceedings.
  - (d) **Rule 9021** is amended in connection with the addition of Rule 7058. Since that rule governs in adversary proceedings, Rule 9021 no longer needs to make Rule 58 of the Federal Rules of Civil Procedure applicable in those actions. This amendment and the addition of Rule 7058 results in the explicit adoption of the separate document requirement for judgments in adversary proceedings, while the effectiveness of an order or judgment in other actions within the case is determined under Rule 5003, which does not include the separate document requirement.
3. *Text of Proposed Amendments to Rules 4008, 7052, and 9021, and New Rule 7058 (on next page).*

**Rule 4008. Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement\***

1 (a) FILING OF REAFFIRMATION AGREEMENT.  
2 A reaffirmation agreement shall be filed no later than 60 days  
3 after the first date set for the meeting of creditors under  
4 § 341(a) of the Code. The reaffirmation agreement shall be  
5 accompanied by a cover sheet, prepared as prescribed by the  
6 appropriate Official Form. The court may, at any time and in  
7 its discretion, enlarge the time to file a reaffirmation  
8 agreement.

9 \* \* \* \* \*

**COMMITTEE NOTE**

Subdivision (a) of the rule is amended to require that the entity filing the reaffirmation agreement with the court also include Official Form 27, the Reaffirmation Agreement Cover Sheet. The form includes information necessary for the court to determine whether the proposed reaffirmation agreement is presumed to be an undue hardship for the debtor under § 524(m) of the Code.

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\*Incorporates amendments approved by the Supreme Court that are due to take effect on December 1, 2008, if Congress takes no action to the contrary.

Changes Made After Publication:

No changes since publication.

**Rule 7052. Findings by the Court\*\***

1 Rule 52 F. R. Civ. P. applies in adversary proceedings.  
2 In these proceedings, the reference in Rule 52 F. R. Civ. P. to  
3 the entry of judgment under Rule 58 F. R. Civ. P. shall be  
4 read as a reference to the entry of a judgment or order under  
5 Rule 5003(a).

---

\*\*In addition, the Advisory Committee on Bankruptcy Rules has recommended approval of a proposed amendment to Rule 7052 on page 98 as part of the time-computation project, which also would take effect on December 1, 2009, if the Judicial Conference and the Supreme Court approve and if Congress takes no action to the contrary. The rule as amended provides that: "Rule 52 F. R. Civ. P. applies in adversary proceedings, except that any motion under subdivision (b) of that rule for amended or additional findings shall be filed no later than 14 days after entry of judgment. In these proceedings, the reference in Rule 52 F. R. Civ. P. to the entry of judgment under Rule 58 F. R. Civ. P. shall be read as a reference to the entry of a judgment or order under Rule 5003(a)."

**COMMITTEE NOTE**

The rule is amended to clarify that the reference in Rule 52 F. R. Civ. P. to Rule 58 F. R. Civ. P. and its provisions is construed as a reference to the entry of a judgment or order under Rule 5003(a).

---

Changes Made After Publication:

No changes since publication.

**Rule 7058. Entering Judgment in Adversary Proceeding**

- 1 Rule 58 F. R. Civ. P. applies in adversary proceedings.
- 2 In these proceedings, the reference in Rule 58 F. R. Civ. P. to
- 3 the civil docket shall be read as a reference to the docket
- 4 maintained by the clerk under Rule 5003(a).

**COMMITTEE NOTE**

This rule makes Rule 58 F. R. Civ. P. applicable in adversary proceedings and is added in connection with the amendments to Rule 9021.

---

Changes Made After Publication:

No changes since publication.

**Rule 9021. Entry of Judgment**

1           ~~Except as otherwise provided herein, Rule 58~~  
2           ~~F. R. Civ. P. applies in cases under the Code. Every judgment~~  
3           ~~entered in an adversary proceeding or contested matter shall~~  
4           ~~be set forth on a separate document. A judgment or order is~~  
5           ~~effective when entered as provided in under Rule 5003. The~~  
6           ~~reference in Rule 58 F. R. Civ. P. to Rule 79(a) F. R. Civ. P.~~  
7           ~~shall be read as a reference to Rule 5003 of these rules.~~

**COMMITTEE NOTE**

The rule is amended in connection with the amendment that adds Rule 7058. The entry of judgment in adversary proceedings is governed by Rule 7058, and the entry of a judgment or order in all other proceedings is governed by this rule.

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Changes Made After Publication:

No changes since publication.

- C. Proposed Amendments to Official Forms 1 and 8, and Proposed New Official Form 27 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

**The Advisory Committee on Bankruptcy Rules recommends that the Standing Committee approve the proposed amendments to Official Forms 1 and 8, and Proposed New Official Form 27 for submission to the Judicial Conference. The amendments to Official Forms 1 and 8 are to become effective on December 1, 2008. Proposed new Official Form 27 is to become effective on December 1, 2009, in conjunction with a proposed amendment to Bankruptcy Rule 4008.**

1. *Synopsis of Proposed Amendments to Exhibit D of Official Form 1 and Official Form 8, and Proposed New Official Form 27.*
  - (a) **Exhibit D to Official Form 1** is amended to delete any reference to a requirement that the debtor file a motion to obtain an order to permit the debtor to complete the required credit counseling briefing after the commencement of the case. It is also amended to clarify that the debtor still must complete the briefing even if the request is granted. It also warns the debtor that the case may be dismissed if the court concludes that no postponement of the obligation is warranted.
  - (b) **Official Form 8** is amended to resolve ambiguities in the form and to implement changes to the Code in 2005 by adding a section covering personal property subject to an unexpired lease.
  - (c) **New Official Form 27** requires the disclosure and certification of information necessary for the court to make its determination under §524(m) as to whether the reaffirmation agreement creates a presumption of undue hardship.
2. Text of Proposed Amendments to Exhibit D of Official Form 1 and Official Form 8, and Proposed New Official Form 27.

# UNITED STATES BANKRUPTCY COURT

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(if known)

## EXHIBIT D - INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT

**Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.**

*Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.*

1. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

2. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 15 days after your bankruptcy case is filed.*

3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the five days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now.

*[Summarize exigent circumstances here.]* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If your certification is satisfactory to the court, you must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling, together with a copy of any debt management plan developed through the agency. Failure to fulfill these requirements may result in dismissal of your case. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. Your case may also be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing.**

4. I am not required to receive a credit counseling briefing because of: *[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]*

Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.);

Active military duty in a military combat zone.

5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district.

**I certify under penalty of perjury that the information provided above is true and correct.**

Signature of Debtor: \_\_\_\_\_

Date: \_\_\_\_\_

COMMITTEE NOTE

Paragraph 3 of Exhibit D is amended to delete any reference to a requirement that a debtor file a motion with the court to obtain an order approving a request for the postponement of the debtor's obligation to obtain a credit counseling briefing prior to the commencement of the case. The paragraph immediately following numbered paragraph 3 is also amended to reflect the deletion of the need for a separate motion beyond the completion of the certification itself. That paragraph continues to warn the debtor that the case may be dismissed if the court does not find that a postponement is warranted. It also advises the debtor that, even if the court concludes that postponement of the obligation is appropriate, the debtor still must complete the briefing within the time allowed under the Code.

## United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
Chapter 7

### CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

**PART A** – Debts secured by property of the estate. (Part A must be fully completed for **EACH** debt which is secured by property of the estate. Attach additional pages if necessary.)

Property No. 1	
<b>Creditor's Name:</b>	<b>Describe Property Securing Debt:</b>
Property will be (check one): <input type="checkbox"/> Surrendered <input type="checkbox"/> Retained	
If retaining the property, I intend to (check at least one): <input type="checkbox"/> Redeem the property <input type="checkbox"/> Reaffirm the debt <input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)).	
Property is (check one): <input type="checkbox"/> Claimed as exempt <input type="checkbox"/> Not claimed as exempt	

Property No. 2 (if necessary)	
<b>Creditor's Name:</b>	<b>Describe Property Securing Debt:</b>
Property will be (check one): <input type="checkbox"/> Surrendered <input type="checkbox"/> Retained	
If retaining the property, I intend to (check at least one): <input type="checkbox"/> Redeem the property <input type="checkbox"/> Reaffirm the debt <input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)).	
Property is (check one): <input type="checkbox"/> Claimed as exempt <input type="checkbox"/> Not claimed as exempt	

**PART B** – Personal property subject to unexpired leases. (All three columns of Part B must be completed for each unexpired lease. Attach additional pages if necessary.)

Property No. 1		
<b>Lessor's Name:</b>	<b>Describe Leased Property:</b>	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES _____ NO _____

Property No. 2 (if necessary)		
<b>Lessor's Name:</b>	<b>Describe Leased Property:</b>	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES _____ NO _____

Property No. 3 (if necessary)		
<b>Lessor's Name:</b>	<b>Describe Leased Property:</b>	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES _____ NO _____

\_\_\_\_\_ continuation sheets attached (if any)

**I declare under penalty of perjury that the above indicates my intention as to any property of my estate securing a debt and/or personal property subject to an unexpired lease.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_  
Signature of Joint Debtor





## FORM 8

### COMMITTEE NOTE

The form is amended to conform to § 362(h), which was added to the Code, and § 521(a)(2), which was amended, by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), by expanding the questions directed to the debtor regarding leased personal property and property subject to security interests. The form is also amended and reformatted to require the debtor to complete a series of statements describing the property and setting out what actions the debtor intends to take for each listed asset. The amended form is intended to elicit more complete information about the debtor's intentions with regard to property subject to security interests and personal property leases than has been obtained under the current version of the form.

In addition, the form is amended to specify that the debtor's signature is a declaration under penalty of perjury, as required by Rule 1008, and to provide space for the co-debtor's signature. A continuation page has been provided for use if necessary. The Declaration of Non-Attorney Bankruptcy Petition Preparer has been deleted from the form as duplicative of Form 19, Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer. Form 19 contains both the petition preparer's declaration and signature and the notice the petition preparer is required to give to the debtor under § 110 of the Code.

United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,
Debtor

Case No. \_\_\_\_\_
Chapter \_\_\_\_\_

REAFFIRMATION AGREEMENT COVER SHEET

This form must be completed in its entirety and filed, with the reaffirmation agreement attached, within the time set under Rule 4008. It may be filed by any party to the reaffirmation agreement.

- 1. Creditor's Name: \_\_\_\_\_
2. Amount of the debt subject to this reaffirmation agreement: \$ \_\_\_\_\_ on the date of bankruptcy \$ \_\_\_\_\_ to be paid under reaffirmation agreement
3. Annual percentage rate of interest: \_\_\_\_\_ % prior to bankruptcy \_\_\_\_\_ % under reaffirmation agreement ( \_\_\_\_\_ Fixed Rate \_\_\_\_\_ Adjustable Rate)
4. Repayment terms (if fixed rate): \$ \_\_\_\_\_ per month for \_\_\_\_\_ months
5. Collateral, if any, securing the debt: Current market value: \$ \_\_\_\_\_ Description: \_\_\_\_\_
6. Does the creditor assert that the debt is nondischargeable? \_\_\_ Yes \_\_\_ No (If yes, attach a declaration setting forth the nature of the debt and basis for the contention that the debt is nondischargeable.)

Debtor's Schedule I and J Entries

Debtor's Income and Expenses as Stated on Reaffirmation Agreement

- 7A. Total monthly income from \$ \_\_\_\_\_ Schedule I, line 16
7B. Monthly income from all \$ \_\_\_\_\_ sources after payroll deductions
8A. Total monthly expenses \$ \_\_\_\_\_ from Schedule J, line 18
8B. Monthly expenses \$ \_\_\_\_\_
9A. Total monthly payments on \$ \_\_\_\_\_ reaffirmed debts not listed on Schedule J
9B. Total monthly payments on \$ \_\_\_\_\_ reaffirmed debts not included in monthly expenses
10B. Net monthly income \$ \_\_\_\_\_ (Subtract sum of lines 8B and 9B from line 7B. If total is less than zero, put the number in brackets.)

11. Explain with specificity any difference between the income amounts (7A and 7B):

\_\_\_\_\_  
\_\_\_\_\_

12. Explain with specificity any difference between the expense amounts (8A and 8B):

\_\_\_\_\_  
\_\_\_\_\_

If line 11 or 12 is completed, the undersigned debtor, and joint debtor if applicable, certifies that any explanation contained on those lines is true and correct.

\_\_\_\_\_  
Signature of Debtor (only required if  
line 11 or 12 is completed)

\_\_\_\_\_  
Signature of Joint Debtor (if applicable, and only  
required if line 11 or 12 is completed)

Other Information

Check this box if the total on line 10B is less than zero. If that number is less than zero, a presumption of undue hardship arises (unless the creditor is a credit union) and you must explain with specificity the sources of funds available to the Debtor to make the monthly payments on the reaffirmed debt: \_\_\_\_\_  
\_\_\_\_\_

Was debtor represented by counsel during the course of negotiating this reaffirmation agreement?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If debtor was represented by counsel during the course of negotiating this reaffirmation agreement, has counsel executed a certification (affidavit or declaration) in support of the reaffirmation agreement?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

**FILER'S CERTIFICATION**

I hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print/Type Name & Signer's Relation to Case

COMMITTEE NOTE

This form is new. It gathers certain financial information, including information necessary for the court to determine whether a reaffirmation agreement creates a presumption of undue hardship under § 524(m) of the Code, and it allows the debtor to provide additional information that may rebut such a presumption.

To implement the requirements of Bankruptcy Rule 4008(b), the form also provides for a disclosure of any differences between the income and expenses reported on schedules I and J and the income and expenses reported in the debtor's statement in support of the reaffirmation agreement, together with an explanation of any such differences.

Finally, the form requires a certification that the information supplied is true and correct.

D. Proposed Amendments to Bankruptcy Rules 2016, 7052, 9006(f), 9015, and 9023 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference Without Publication.

**The Advisory Committee recommends that the following amendments be approved and submitted to the Judicial Conference without publication. The amendments to Rules 2016 and 9006(f) are technical amendments necessary to correct cross references in the rules to provisions of the Bankruptcy Code and to the Federal Rules of Civil Procedure that were amended and renumbered. The amendments to Rules 7052, 9015, and 9023 are necessary to implement the new 14-day deadline for the filing of a notice of appeal. The Advisory Committee recommends that these amendments become effective on December 1, 2009.**

1. *Synopsis of Proposed Amendments to Rules 2016, 7052, 9006(f), 9015, and 9023.*
  - (a) **Rule 2016** is amended to correct a cross reference in the rule to a subsection of the Code that was changed by a 2005 amendment to the Code. The amendment also changes the deadline for filing a supplemental statement to conform to the time computation amendments that change all 10 day periods to 14 day periods.
  - (b) **Rule 7052** is amended by limiting the time for filing post judgment motions for amended or additional findings. The deadline is set at 14 days in contrast to the 28-day deadline included in the Federal Rules of Civil Procedure. This is necessary because the deadline for filing a notice of appeal under Bankruptcy Rule 8002 is 14 days rather than the 30 days allowed under Rule 4(a)(1)(A) F. R. App. P.
  - (c) **Rule 9006** is amended to correct a cross reference to subparagraphs of Rule 5(b)(2) F. R. Civ. P. Those subparagraphs were renumbered as a part of the civil rules restyling project.
  - (d) **Rule 9015** is amended by deleting the reference to Rule 50 F. R. Civ. P. from the list of civil rules that are applicable in cases and proceedings. Subdivision (c) is added to make Rule 50 applicable in cases and proceedings, but it limits the time for filing certain post judgment motions to 14 days rather than 28 days as set out in the civil rules.
  - (e) **Rule 9023** is amended to limit the time for filing a post judgment motion for a new trial or for the court to order sua sponte a new trial to 14 days after entry of judgment. This is necessary because the deadline for filing a notice of appeal under Rule 8002 is 14 days.
2. *Text of Proposed Amendments to Rules 2016, 7052, 9006(f), 9015, and 9023 (on next page).*

**Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses\***

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13  
14

\* \* \* \* \*

(c) DISCLOSURE OF COMPENSATION PAID OR PROMISED TO BANKRUPTCY PETITION PREPARER. Before a petition is filed, every Every bankruptcy petition preparer for a debtor shall ~~file~~ deliver to the debtor, a the declaration under penalty of perjury ~~and transmit the declaration to the United States trustee within 10 days after the date of the filing of the petition, or at another time as the court may direct, as required by § 110(h)(1)(2).~~ The declaration shall ~~must~~ disclose any fee, and the source of any fee, received from or on behalf of the debtor within 12 months of the filing of the case and all unpaid fees charged to the debtor. The declaration shall also ~~must~~ describe the services performed and documents prepared or caused to be

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\*Additional proposed amendments to Rule 2016 are on pages 38-40.

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15 prepared by the bankruptcy petition preparer. The declaration  
16 shall be filed with the petition. The petition preparer shall file  
17 a ~~A~~ supplemental statement ~~shall be filed~~ within ~~10~~ 14 days  
18 after any payment or agreement not previously disclosed.

**COMMITTEE NOTE**

Subdivision (c) is amended to reflect the 2005 amendment to § 110(h)(1) of the Bankruptcy Code which now requires that the declaration be filed with the petition. The statute previously required that the petition preparer file the declaration within 10 days after the filing of the petition. The amendment to the rule also corrects the cross reference to § 110(h)(1), which was redesignated as subparagraph (h)(2) of § 110 by the 2005 amendment to the Code.

Other changes are stylistic.

**Rule 7052. Findings by the Court\*\***

1 Rule 52 F. R. Civ. P. applies in adversary proceedings,  
2 except that any motion under subdivision (b) of that rule for  
3 amended or additional findings shall be filed no later than 14  
4 days after entry of judgment.

**COMMITTEE NOTE**

The rule is amended by limiting the time for filing post judgment motions for amended or additional findings. In 2009, Rule 52 F. R. Civ. P. was amended to extend the deadline for filing those post judgment motions to no later than 28 days after entry of the judgment. That deadline corresponds to the 30-day deadline for filing a notice of appeal in a civil case under Rule 4(a)(1)(A) F. R. App. P. In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 28-day deadline for filing a motion for amended or additional findings would effectively override the notice of appeal deadline under Rule 8002(a) but for this amendment.

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\*\* In addition, the Advisory Committee on Bankruptcy Rules has recommended approval of a substantive amendment to Rule 7052 on page 90, which also would take effect on December 1, 2009, if the Judicial Conference and the Supreme Court approve and if Congress takes no action to the contrary. The rule as amended provides that: "Rule 52 F. R. Civ. P. applies in adversary proceedings, except that any motion under subdivision (b) of that rule for amended or additional findings shall be filed no later than 14 days after entry of judgment. In these proceedings, the reference in Rule 52 F. R. Civ. P. to the entry of judgment under Rule 58 F. R. Civ. P. shall be read as a reference to the entry of a judgment or order under Rule 5003(a)."



**Rule 9006. Time<sup>\*\*\*</sup>**

1  
2  
3  
4  
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9  
10

\* \* \* \* \*

(f) ADDITIONAL TIME AFTER SERVICE BY MAIL  
OR UNDER RULE ~~5(b)(2)(C) or (D)~~ 5(b)(2)(D), (E), or (F)  
F. R. Civ. P. When there is a right or requirement to act or  
undertake some proceedings within a prescribed period after  
service and that service is by mail or under Rule 5 ~~(b)(2)(C)~~  
~~or (D)~~ (b)(2)(D), (E), or (F) F.R.Civ.P., three days are added  
after the prescribed period would otherwise expire under Rule  
9006(a).

\* \* \* \* \*

**COMMITTEE NOTE**

Subdivision (f) is amended to conform to the changes made to Rule 5(b)(2) of the Federal Rules of Civil Procedure as a part of the Civil Rules Restyling Project. As a part of that project, subparagraphs (b)(2)(C) and (D) of that rule were rewritten as subparagraphs (b)(2)(D), (E), and (F). The cross reference to those rules contained in subdivision (f) of this rule is corrected by this amendment.

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<sup>\*\*\*</sup>Additional proposed amendments to Rule 9006(d) are on page 80.



FEDERAL RULES OF BANKRUPTCY PROCEDURE 101

certain post judgment motions to 14 days after the entry of judgment. The amendment is necessary because Rule 50 F. R. Civ. P. was amended in 2009 to extend the deadline for the filing of these post judgment motions to 28 days. That deadline corresponds to the 30-day deadline for filing a notice of appeal in a civil case under Rule 4(a)(1)(A) F. R. App. P. In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 28-day deadline for filing these post judgment motions would effectively override the notice of appeal deadline under Rule 8002(a) but for this amendment.

Other amendments are stylistic.

**Rule 9023. New Trials; Amendment of Judgments**

1            Except as provided in this rule and Rule 3008, Rule 59  
2            F. R. Civ. P. applies in cases under the Code, ~~except as~~  
3            ~~provided in Rule 3008~~ A motion for a new trial or to alter or  
4            amend a judgment shall be filed, and a court may on its own  
5            order a new trial, no later than 14 days after entry of  
6            judgment.

**COMMITTEE NOTE**

The rule is amended to limit to 14 days the time for a party to file a post judgment motion for a new trial and for the court to order sua sponte a new trial. In 2009, Rule 59 F. R. Civ. P. was amended

to extend the deadline for these actions to 28 days after the entry of judgment. That deadline corresponds to the 30-day deadline for filing a notice of appeal in a civil case under Rule 4(a)(1)(A) F. R. App. P. In a bankruptcy case, however, the deadline for filing a notice of appeal is 14 days. Therefore, the 28-day deadline for filing a motion for a new trial or a motion to alter or amend a judgment would effectively override the notice of appeal deadline under Rule 8002(a) but for this amendment.

- E. Proposed Amendments to Official Forms 9F, 10, and 23 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference Without Publication.

**The Advisory Committee recommends that the amendments to Official Forms 9F, 10, and 23 be approved and submitted to the Judicial Conference without publication. These changes are largely technical in nature and are made to conform to the language of the Bankruptcy Code.**

**Official Form 9F is amended to delete inclusion of the debtor's phone number. Official Form 10 is amended to include a reference to instruction seven in the parenthetical at the end of numbered paragraph seven on page one, to include information about health care-related claims in instructions two and seven, and to revise the definitions of "creditor" and "claim" to conform to those definitions in the Bankruptcy Code. Official Form 23 is amended to include a reference to § 1141(d)(5)(B) in the filing deadlines note at the bottom of the page. The Advisory Committee recommends that these amendments become effective on December 1, 2008.**

*Text of Proposed Amendments to Official Forms 9F, 10, and 23.*



EXPLANATIONS

B9F (Official Form 9F) (12/08)

<p>Filing of Chapter 11 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.</p>
<p>Legal Advice</p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Creditor with a Foreign Address</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p>Refer To Other Side For Important Deadlines and Notices</p>	

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		<b>PROOF OF CLAIM</b>
Name of Debtor: _____		Case Number: _____
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): _____		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ (If known)  Filed on: _____
Name and address where notices should be sent:  Telephone number: _____		
Name and address where payment should be sent (if different from above):  Telephone number: _____		
<b>1. Amount of Claim as of Date Case Filed:</b> \$ _____  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  <b>Amount entitled to priority:</b>  \$ _____
<b>2. Basis for Claim:</b> _____ (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> ____ %  <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>if any:</b> \$ _____ <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
<b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain: _____		
<b>Date:</b> _____	<b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.	
		<b>FOR COURT USE ONLY</b>



**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.*

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor’s name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

**Creditor’s Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor’s account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Use this space to report a change in the creditor’s name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**4. Secured Claim:**

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

**Date and Signature:**

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer’s address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

**DEFINITIONS**

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor’s right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. §506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. §507(a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual’s tax-identification, or financial-account number, all but the initials of a minor’s name and only the year of any person’s date of birth.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**INFORMATION**

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court’s PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

COMMITTEE NOTE

The form is amended at box seven on page one, and instructions two and seven on page two, to instruct the claimant that the information contained in or attached to a claim based on the delivery of health care goods or services should be limited so as to avoid embarrassment or the unnecessary disclosure of confidential information. The claimant is informed that additional disclosure may be required if the trustee or another party in interest objects to the claim.

Page two of the form is also amended to revise slightly the definitions of “creditor” and “claim” to conform more closely to the definitions of those terms in the Code.

# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## DEBTOR'S CERTIFICATION OF COMPLETION OF POSTPETITION INSTRUCTIONAL COURSE CONCERNING PERSONAL FINANCIAL MANAGEMENT

*Every individual debtor in a chapter 7, chapter 11 in which § 1141(d)(3) applies, or chapter 13 case must file this certification. If a joint petition is filed, each spouse must complete and file a separate certification. Complete one of the following statements and file by the deadline stated below:*

I, \_\_\_\_\_, the debtor in the above-styled case, hereby  
(Printed Name of Debtor)  
certify that on \_\_\_\_\_ (Date), I completed an instructional course in personal financial management provided by \_\_\_\_\_, an approved personal financial  
(Name of Provider)  
management provider.

Certificate No. (if any): \_\_\_\_\_.

I, \_\_\_\_\_, the debtor in the above-styled case, hereby  
(Printed Name of Debtor)  
certify that no personal financial management course is required because of [Check the appropriate box.]:

- Incapacity or disability, as defined in 11 U.S.C. § 109(h);
- Active military duty in a military combat zone; or
- Residence in a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses are not adequate at this time to serve the additional individuals who would otherwise be required to complete such courses.

Signature of Debtor: \_\_\_\_\_

Date: \_\_\_\_\_

---

*Instructions:* Use this form only to certify whether you completed a course in personal financial management. (Fed. R. Bankr. P. 1007(b)(7).) Do NOT use this form to file the certificate given to you by your prepetition credit counseling provider and do NOT include with the petition when filing your case.

*Filing Deadlines:* In a chapter 7 case, file within 45 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 11 or 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)

### III. Information Items

\* \* \* \* \*

#### (2) Backward Counting Deadlines

The Advisory Committee discussed at length the computation of backward counting deadlines under the proposed time-computation amendments. In particular, significant concern was expressed about the Time-Computation Committee's recommendation that state holidays be included in the computation method. Under subdivision (a)(5), a backward counting deadline that ends on a Saturday, Sunday, or holiday would continue to the "next day" that is not a Saturday, Sunday, or holiday. Since it is a "backward" counting deadline, if the last day of a backward counting period is a Saturday, the "next day" would be Friday, and the action or filing would have to be completed on or before that Friday. If the last day is a holiday, the same rule applies. That is, the next day that is before the holiday (and that is not also a Saturday, Sunday, or holiday) is the day on which the action or filing must occur.

The Advisory Committee is concerned that parties will be unaware of many state holidays and will suffer the loss of rights for failure to act timely under the backward counting system as it applies to lesser known state holidays. Many of these holidays are not well known, and they pass without any other recognition by the federal courts. Nonetheless, a backward counting deadline that ends on Victory Day in Rhode Island (the second Monday in August), would not end on that day, but would end on the Friday before that day. This would shorten the time for a party to act, even though the federal court is open and operating on the day of the state holiday.

To the extent that the decision not to exclude state holidays from the backward counting method was based on the assumption that there are relatively few of these deadlines, that assumption may not be appropriate for the Bankruptcy Code. The Code includes 80 backward counting deadlines. Attached is a spreadsheet that sets out these deadlines. Also attached is a spreadsheet that sets out the 18 backward counting deadlines included in the Bankruptcy Rules. The Advisory Committee recognizes the interest in and need for uniformity in the adoption of a time computation rule, but it also believes that an exclusion from the backward counting method for state holidays might be appropriate.

\* \* \* \* \*

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

Agenda E-19 (Appendix D)  
Rules  
September 2008

LEE H. ROSENTHAL  
CHAIR

PETER G. McCABE  
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

CARL E. STEWART  
APPELLATE RULES

LAURA TAYLOR SWAIN  
BANKRUPTCY RULES

MARK R. KRAVITZ  
CIVIL RULES

RICHARD C. TALLMAN  
CRIMINAL RULES

ROBERT L. HINKLE  
EVIDENCE RULES

**To:** Honorable Lee H. Rosenthal, Chair, Standing Committee on Rules of Practice and Procedure

**From:** Honorable Mark R. Kravitz, Chair, Advisory Committee on Federal Rules of Civil Procedure

**Date:** May 9, 2008 (Revised June 17, 2008)

**Re:** Report of the Civil Rules Advisory Committee

*Introduction*

The Civil Rules Advisory Committee met in Half Moon Bay, California, on April 7 and 8, 2008.

\* \* \* \* \*

Several Civil Rules amendments were published for comment in August 2007, including the Civil Rules part of the Time-Computation Project. The comments were useful but not numerous. All of the proposals, except for Rule 8(c), are recommended for adoption with a few modest revisions. The Time-Computation Project proposals will be separated from the other proposals to facilitate discussion in conjunction with the Time-Computation Project proposals for other sets of rules.

Parts I and II of this Report present the action items. Part I.A presents the Time-Computation Project proposals for adoption. Part I.B presents for adoption the other proposals published in August 2007, except for Rule 8(c).

\* \* \* \* \*

**I ACTION ITEMS**

*A. Time-Computation Project*

**(1) “Template” — Civil Rule 6(a)** — Civil Rule 6(a) was chosen as the vehicle for the “template” provisions that are adopted in as nearly uniform terms as possible by each of the different sets of rules that have time-computation provisions. The Civil Rules Committee recommends Rule 6(a) for adoption as set out below.

**PROPOSED AMENDMENT TO THE FEDERAL  
RULES OF CIVIL PROCEDURE<sup>1</sup>**

**Rule 6. Computing and Extending Time; Time for  
Motion Papers<sup>2</sup>**

- 1     ~~(a) **Computing Time.** The following rules apply in~~  
2             ~~computing any time period specified in these rules or in~~  
3             ~~any local rule, court order, or statute:~~
- 4             ~~(1) ***Day of the Event Excluded.*** Exclude the day of the~~  
5                 ~~act, event, or default that begins the period.~~
- 6             ~~(2) ***Exclusions from Brief Periods.*** Exclude~~  
7                 ~~intermediate Saturdays, Sundays, and legal~~  
8                 ~~holidays when the period is less than 11 days.~~
- 9             ~~(3) ***Last Day.*** Include the last day of the period unless~~  
10                 ~~it is a Saturday, Sunday, legal holiday, or — if the~~  
11                 ~~act to be done is filing a paper in court — a day on~~  
12                 ~~which weather or other conditions make the clerk's~~  
13                 ~~office inaccessible. When the last day is excluded,~~  
14                 ~~the period runs until the end of the next day that is~~  
15                 ~~not a Saturday, Sunday, legal holiday, or day when~~  
16                 ~~the clerk's office is inaccessible.~~

---

<sup>1</sup>New material is underlined; matter to be omitted is lined through.

<sup>2</sup>Additional proposed amendments to Rule 6(b) and (c) are on page 12.

2 FEDERAL RULES OF CIVIL PROCEDURE

17 ~~(4) “Legal Holiday” Defined.~~ As used in these rules,

18 “legal holiday” means:

19 ~~(A) the day set aside by statute for observing New~~

20 ~~Year’s Day, Martin Luther King Jr.’s~~

21 ~~Birthday, Washington’s Birthday, Memorial~~

22 ~~Day, Independence Day, Labor Day,~~

23 ~~Columbus Day, Veterans’ Day, Thanksgiving~~

24 ~~Day, or Christmas Day, and~~

25 ~~(B) any other day declared a holiday by the~~

26 ~~President, Congress, or the state where the~~

27 ~~district court is located.~~

28 **(a) Computing Time.** The following rules apply in

29 computing any time period specified in these rules, in

30 any local rule or court order, or in any statute that does

31 not specify a method of computing time.

32 **(1) Period Stated in Days or a Longer Unit.** When

33 the period is stated in days or a longer unit of time:

34 **(A) exclude the day of the event that triggers the**

35 period;

- 36                    **(B)** count every day, including intermediate  
37                    Saturdays, Sundays, and legal holidays; and
- 38                    **(C)** include the last day of the period, but if the  
39                    last day is a Saturday, Sunday, or legal  
40                    holiday, the period continues to run until the  
41                    end of the next day that is not a Saturday,  
42                    Sunday, or legal holiday.
- 43                    **(2)** *Period Stated in Hours.* When the period is stated  
44                    in hours:
- 45                    **(A)** begin counting immediately on the  
46                    occurrence of the event that triggers the  
47                    period;
- 48                    **(B)** count every hour, including hours during  
49                    intermediate Saturdays, Sundays, and legal  
50                    holidays; and
- 51                    **(C)** if the period would end on a Saturday,  
52                    Sunday, or legal holiday, the period continues  
53                    to run until the same time on the next day that  
54                    is not a Saturday, Sunday, or legal holiday.



4 FEDERAL RULES OF CIVIL PROCEDURE

55 **(3) Inaccessibility of the Clerk’s Office.** Unless the  
56 court orders otherwise, if the clerk’s office is  
57 inaccessible:

58 **(A)** on the last day for filing under Rule 6(a)(1),  
59 then the time for filing is extended to the first  
60 accessible day that is not a Saturday, Sunday,  
61 or legal holiday; or

62 **(B)** during the last hour for filing under Rule  
63 6(a)(2), then the time for filing is extended to  
64 the same time on the first accessible day that  
65 is not a Saturday, Sunday, or legal holiday.

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

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

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

73 **(5) “Next Day” Defined.** The “next day” is  
74 determined by continuing to count forward when

75 the period is measured after an event and backward  
76 when measured before an event.

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

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

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

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

89 \* \* \* \* \*

#### Committee Note

**Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time. In accordance with Rule 83(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) “does not apply to situations where the court has established a specific calendar day as a deadline”), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is “no later than November 1, 2007,” subdivision (a) does not govern. But if a filing is required to be made “within 10 days” or “within 72 hours,” subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 2 U.S.C. § 394 (specifying method for computing time periods prescribed by certain statutory provisions relating to contested elections to the House of Representatives).

**Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. *See, e.g.*, Rule 60(c)(1). Subdivision (a)(1)(B)’s directive to “count every day” is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 6(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day — and the 10-day period not infrequently ended later than the 14-day period. *See Miltimore Sales, Inc. v. Int’l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the “act, event, or default” that triggers the deadline, new subdivision (a) refers simply to the “event” that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. *See, e.g.*, Rule 14(a)(1).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method — two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods. Thirty-day and longer periods, however, were generally retained without change.

**Subdivision (a)(2).** New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Civil Procedure.

But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be “rounded up” to the next whole hour. Subdivision (a)(3) addresses situations when the clerk’s office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

**Subdivision (a)(3).** When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk’s office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk’s office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday, or day when the clerk’s office is inaccessible.

Subdivision (a)(3)’s extensions apply “[u]nless the court orders otherwise.” In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to “weather or other conditions” as the reason for the inaccessibility of the clerk’s office. The reference to “weather” was deleted from the text to underscore

that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, *see, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing, *see, e.g.*, D. Kan. Rule 5.4.11 ("A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.").

**Subdivision (a)(4).** New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may, for example, address the problems that might arise if a single district has clerk's offices in different time zones, or provide that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." A corresponding provision exists in Rule 77(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g., Casaldue v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

**Subdivision (a)(5).** New subdivision (a)(5) defines the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Civil Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time

period requires something to be done within a period of time *after* an event. *See, e.g.*, Rule 59(b) (motion for new trial “must be filed no later than 28 days after entry of the judgment”). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rule 26(f) (parties must hold Rule 26(f) conference “as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)”). In determining what is the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 30 days *after* an event, and the thirtieth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 21 days *before* an event, and the twenty-first day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk’s office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday, or legal holiday — no later than Tuesday, September 4.

**Subdivision (a)(6).** New subdivision (a)(6) defines “legal holiday” for purposes of the Federal Rules of Civil Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of “legal holiday” days that are declared a holiday by the President or Congress.

For forward-counted periods — *i.e.*, periods that are measured after an event — subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment

of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot's Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21; the fact that April 21 is a state holiday does not make April 21 a legal holiday for purposes of computing this backward-counted deadline. But note that if the clerk's office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday — no earlier than Tuesday, April 22.

---

### **Changes Made after Publication and Comment**

The Standing Committee changed Rule 6(a)(6) to exclude state holidays from the definition of “legal holiday” for purposes of computing backward-counted periods; conforming changes were made to the Committee Note.

### **(2) Civil Rules Time Provisions**

Many Civil Rules containing specific time periods shorter than 11 days were published for comment on amendments extending the time periods to account for the impact of changing to a computation method that includes every day, abandoning the former practice of excluding intermediate Saturdays, Sundays, and legal holidays. As set out below, it is recommended that all of the proposals be adopted as published except for Rules 50, 52, and 59. The proposals to extend the time for motions under Rules 50, 52, and 59 from 10 days to 30 days have been scaled back to a 28-day period. The 28-day period was chosen in coordination with the Appellate Rules Committee to recognize the inconveniences that would arise from adopting the same 30-day period as the deadline for filing notices of appeal in most civil actions.



**Rule 6. Computing and Extending Time; Time for Motion Papers<sup>3</sup>**

1 \* \* \* \* \*

2 **(b) Extending Time.**

3 \* \* \* \* \*

4 **(2) *Exceptions.*** A court must not extend the time to act  
5 under Rules 50(b) and (d), 52(b), 59(b), (d), and (e),  
6 and 60(b), ~~except as those rules allow.~~

7 **(c) Motions, Notices of Hearing, and Affidavits.**

8 **(1) *In General.*** A written motion and notice of the  
9 hearing must be served at least ~~5~~ 14 days before the  
10 time specified for the hearing, with the following  
11 exceptions:

12 **(A)** when the motion may be heard ex parte;

13 **(B)** when these rules set a different time; or

14 **(C)** when a court order — which a party may, for  
15 good cause, apply for ex parte — sets a  
16 different time.

---

<sup>3</sup>Additional proposed amendments to Rule 6(a) are on page 1.



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- 6 (i) within ~~20~~ 21 days after being served with  
7 the summons and complaint; or  
8 (ii) if it has timely waived service under Rule  
9 4(d), within 60 days after the request for  
10 a waiver was sent, or within 90 days after  
11 it was sent to the defendant outside any  
12 judicial district of the United States.

13 (B) A party must serve an answer to a counterclaim  
14 or crossclaim within ~~20~~ 21 days after being  
15 served with the pleading that states the  
16 counterclaim or crossclaim.

17 (C) A party must serve a reply to an answer within  
18 ~~20~~ 21 days after being served with an order to  
19 reply, unless the order specifies a different  
20 time.

21 \* \* \* \* \*

22 (4) *Effect of a Motion.* Unless the court sets a different  
23 time, serving a motion under this rule alters these  
24 periods as follows:

- 25                   (A) if the court denies the motion or postpones its  
26                   disposition until trial, the responsive pleading  
27                   must be served within ~~10~~ 14 days after notice  
28                   of the court's action; or
- 29                   (B) if the court grants a motion for a more definite  
30                   statement, the responsive pleading must be  
31                   served within ~~10~~ 14 days after the more  
32                   definite statement is served.

33                   \* \* \* \* \*

- 34                   (e) **Motion for a More Definite Statement.** A party may  
35                   move for a more definite statement of a pleading to which  
36                   a responsive pleading is allowed but which is so vague or  
37                   ambiguous that the party cannot reasonably prepare a  
38                   response. The motion must be made before filing a  
39                   responsive pleading and must point out the defects  
40                   complained of and the details desired. If the court orders  
41                   a more definite statement and the order is not obeyed  
42                   within ~~10~~ 14 days after notice of the order or within the  
43                   time the court sets, the court may strike the pleading or  
44                   issue any other appropriate order.



8 complaint more than ~~10~~ 14 days after serving its  
9 original answer.

10 \* \* \* \* \*

#### Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

### Rule 15. Amended and Supplemental Pleadings<sup>4</sup>

1 (a) Amendments Before Trial.

2 (1) *Amending as a Matter of Course.* A party may  
3 amend its pleading once as a matter of course:

4 (A) before being served with a responsive  
5 pleading; or

6 (B) within ~~20~~ 21 days after serving the pleading if  
7 a responsive pleading is not allowed and the  
8 action is not yet on the trial calendar.

9 (2) *Other Amendments.* In all other cases, a party may  
10 amend its pleading only with the opposing party's

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<sup>4</sup>The proposed amendment to Rule 15(a)(1), which modifies the time period, is incorporated with other changes to Rule 15(a)(1) on page 54.

18 FEDERAL RULES OF CIVIL PROCEDURE

11 written consent or the court's leave. The court  
12 should freely give leave when justice so requires.

13 (3) ***Time to Respond.*** Unless the court orders  
14 otherwise, any required response to an amended  
15 pleading must be made within the time remaining to  
16 respond to the original pleading or within ~~10~~ 14  
17 days after service of the amended pleading,  
18 whichever is later.

19 \* \* \* \* \*

**Committee Note**

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6.

\* \* \* \* \*

**Rule 23. Class Actions**

1 \* \* \* \* \*

2 (f) **Appeals.** A court of appeals may permit an appeal from  
3 an order granting or denying class-action certification  
4 under this rule if a petition for permission to appeal is  
5 filed with the circuit clerk within ~~10~~ 14 days after the  
6 order is entered. An appeal does not stay proceedings in

7 the district court unless the district judge or the court of  
8 appeals so orders.

9 \* \* \* \* \*

**Committee Note**

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

**Rule 27. Depositions to Perpetuate Testimony**

1 **(a) Before an Action Is Filed.**

2 \* \* \* \* \*

3 **(2) *Notice and Service.*** At least ~~20~~ 21 days before the  
4 hearing date, the petitioner must serve each  
5 expected adverse party with a copy of the petition  
6 and a notice stating the time and place of the  
7 hearing. The notice may be served either inside or  
8 outside the district or state in the manner provided  
9 in Rule 4. If that service cannot be made with  
10 reasonable diligence on an expected adverse party,  
11 the court may order service by publication or  
12 otherwise. The court must appoint an attorney to



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13 represent persons not served in the manner  
14 provided in Rule 4 and to cross-examine the  
15 deponent if an unserved person is not otherwise  
16 represented. If any expected adverse party is a  
17 minor or is incompetent, Rule 17(c) applies.

18 \* \* \* \* \*

**Committee Note**

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

**Rule 32. Using Depositions in Court Proceedings**

1 **(a) Using Depositions.**

2 \* \* \* \* \*

3 **(5) *Limitations on Use.***

4 **(A) *Deposition Taken on Short Notice.*** A  
5 deposition must not be used against a party  
6 who, having received less than ~~14~~ 14 days'  
7 notice of the deposition, promptly moved for  
8 a protective order under Rule 26(c)(1)(B)  
9 requesting that it not be taken or be taken at

10 a different time or place — and this motion  
11 was still pending when the deposition was  
12 taken.

13 \* \* \* \* \*

14 **(d) Waiver of Objections.**

15 \* \* \* \* \*

16 **(3) *To the Taking of the Deposition.***

17 \* \* \* \* \*

18 **(C) *Objection to a Written Question.*** An  
19 objection to the form of a written question  
20 under Rule 31 is waived if not served in  
21 writing on the party submitting the question  
22 within the time for serving responsive  
23 questions or, if the question is a  
24 recross-question, within 5 7 days after being  
25 served with it.

26 \* \* \* \* \*

### Committee Note

The times set in the former rule at less than 11 days and within 5 days have been revised to 14 days and 7 days. See the Note to Rule 6.

### Rule 38. Right to a Jury Trial; Demand

1

\* \* \* \* \*

2

**(b) Demand.** On any issue triable of right by a jury, a party may demand a jury trial by:

3

4

**(1)** serving the other parties with a written demand — which may be included in a pleading — no later than ~~10~~ 14 days after the last pleading directed to the issue is served; and

5

6

7

8

**(2)** filing the demand in accordance with Rule 5(d).

9

10

11

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15

**(c) Specifying Issues.** In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may — within ~~10~~ 14 days after being served with the demand or within a shorter time ordered by the court — serve a

16 demand for a jury trial on any other or all factual issues  
17 triable by jury.

18 \* \* \* \* \*

**Committee Note**

The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 6.

**Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling**

1 \* \* \* \* \*

2 **(b) Renewing the Motion After Trial; Alternative**  
3 **Motion for a New Trial.** If the court does not grant a  
4 motion for judgment as a matter of law made under Rule  
5 50(a), the court is considered to have submitted the  
6 action to the jury subject to the court’s later deciding the  
7 legal questions raised by the motion. No later than ~~10~~  
8 28 days after the entry of judgment — or if the motion  
9 addresses a jury issue not decided by a verdict, no later  
10 than ~~10~~ 28 days after the jury was discharged — the  
11 movant may file a renewed motion for judgment as a

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12 matter of law and may include an alternative or joint  
13 request for a new trial under Rule 59. In ruling on the  
14 renewed motion, the court may:

15 \* \* \* \* \*

16 **(d) Time for a Losing Party's New-Trial Motion.** Any  
17 motion for a new trial under Rule 59 by a party against  
18 whom judgment as a matter of law is rendered must be  
19 filed no later than ~~10~~ 28 days after the entry of the  
20 judgment.

21 \* \* \* \* \*

**Committee Note**

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.

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**Changes Made after Publication and Comment**

The 30-day period proposed in the August 2007 publication is shortened to 28 days.

**Rule 52. Findings and Conclusions by the Court;  
Judgment on Partial Findings**

1

\* \* \* \* \*

2

**(b) Amended or Additional Findings.** On a party's

3

motion filed no later than ~~10~~ 28 days after the entry of

4

judgment, the court may amend its findings — or make

5

additional findings — and may amend the judgment

6

accordingly. The motion may accompany a motion for

7

a new trial under Rule 59.

8

\* \* \* \* \*

**Committee Note**

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit

additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.

---

### Changes Made after Publication and Comment

The 30-day period proposed in the August 2007 publication is shortened to 28 days.

#### Rule 53. Masters

1

\* \* \* \* \*

2

**(f) Action on the Master's Order, Report, or Recommendations.**

3

4

\* \* \* \* \*

5

**(2) *Time to Object or Move to Adopt or Modify.*** A

6

party may file objections to — or a motion to adopt

7

or modify — the master's order, report, or

8

recommendations no later than ~~20~~ 21 days after a

9

copy is served, unless the court sets a different

10

time.

11

\* \* \* \* \*

#### Committee Note

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

**Rule 54. Judgment; Costs**

\* \* \* \* \*

**(d) Costs; Attorney's Fees.**

**(1) *Costs Other Than Attorney's Fees.*** Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney's fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on ~~1~~ day's 14 days' notice. On motion served within the next ~~5~~ 7 days, the court may review the clerk's action.

\* \* \* \* \*

**Committee Note**

Former Rule 54(d)(1) provided that the clerk may tax costs on 1 day's notice. That period was unrealistically short. The new 14-day period provides a better opportunity to prepare and present a response. The former 5-day period to serve a motion to review the clerk's action is extended to 7 days to reflect the change in the Rule 6(a) method for computing periods of less than 11 days.



**Rule 55. Default; Default Judgment**

1 \* \* \* \* \*

2 **(b) Entering a Default Judgment.**

3 \* \* \* \* \*

4 **(2) *By the Court.*** In all other cases, the party must  
5 apply to the court for a default judgment. A  
6 default judgment may be entered against a minor  
7 or incompetent person only if represented by a  
8 general guardian, conservator, or other like  
9 fiduciary who has appeared. If the party against  
10 whom a default judgment is sought has appeared  
11 personally or by a representative, that party or its  
12 representative must be served with written notice  
13 of the application at least 3 7 days before the  
14 hearing. The court may conduct hearings or make  
15 referrals — preserving any federal statutory right to  
16 a jury trial — when, to enter or effectuate  
17 judgment, it needs to:

18 \* \* \* \* \*

**Committee Note**

The time set in the former rule at 3 days has been revised to 7 days. See the Note to Rule 6.

**Rule 56. Summary Judgment**

- 1       **(a) By a Claiming Party.** A party claiming relief may move,  
2           with or without supporting affidavits, for summary  
3           judgment on all or part of the claim. ~~The motion may be~~  
4           ~~filed at any time after:~~
- 5           ~~(1) 20 days have passed from commencement of the~~  
6           ~~action; or~~
- 7           ~~(2) the opposing party serves a motion for summary~~  
8           ~~judgment.~~
- 9       **(b) By a Defending Party.** A party against whom relief is  
10           sought may move ~~at any time~~, with or without supporting  
11           affidavits, for summary judgment on all or part of the  
12           claim.
- 13       **(c) Serving the Time for a Motion, Response, and Reply;**  
14       **Proceedings.** ~~The motion must be served at least 10~~  
15       ~~days before the day set for the hearing. An opposing~~

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16 ~~party may serve opposing affidavits before the hearing~~  
17 ~~day:~~

18 **(1)** These times apply unless a different time is set by  
19 local rule or the court orders otherwise:

20 **(A)** a party may move for summary judgment at  
21 any time until 30 days after the close of all  
22 discovery;

23 **(B)** a party opposing the motion must file a  
24 response within 21 days after the motion is  
25 served or a responsive pleading is due,  
26 whichever is later; and

27 **(C)** the movant may file a reply within 14 days  
28 after the response is served.

29 **(2)** The judgment sought should be rendered if the  
30 pleadings, the discovery and disclosure materials on  
31 file, and any affidavits show that there is no genuine  
32 issue as to any material fact and that the movant is  
33 entitled to judgment as a matter of law.

34 \* \* \* \* \*

### **Committee Note**

The timing provisions for summary judgment are outmoded. They are consolidated and substantially revised in new subdivision (c)(1). The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action. If the motion seems premature both subdivision (c)(1) and Rule 6(b) allow the court to extend the time to respond. The rule does set a presumptive deadline at 30 days after the close of all discovery.

The presumptive timing rules are default provisions that may be altered by an order in the case or by local rule. Scheduling orders are likely to supersede the rule provisions in most cases, deferring summary-judgment motions until a stated time or establishing different deadlines. Scheduling orders tailored to the needs of the specific case, perhaps adjusted as it progresses, are likely to work better than default rules. A scheduling order may be adjusted to adopt the parties' agreement on timing, or may require that discovery and motions occur in stages — including separation of expert-witness discovery from other discovery.

Local rules may prove useful when local docket conditions or practices are incompatible with the general Rule 56 timing provisions.

If a motion for summary judgment is filed before a responsive pleading is due from a party affected by the motion, the time for responding to the motion is 21 days after the responsive pleading is due.

**Rule 59. New Trial; Altering or Amending a Judgment**

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**(b) Time to File a Motion for a New Trial.** A motion for a new trial must be filed no later than ~~10~~ 28 days after the entry of judgment.

**(c) Time to Serve Affidavits.** When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has ~~10~~ 14 days after being served to file opposing affidavits; ~~but that period may be extended for up to 20 days, either by the court for good cause or by the parties' stipulation.~~ The court may permit reply affidavits.

**(d) New Trial on the Court's Initiative or for Reasons Not in the Motion.** No later than ~~10~~ 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the

19 motion. In either event, the court must specify the  
20 reasons in its order.

21 **(e) Motion to Alter or Amend a Judgment.** A motion to  
22 alter or amend a judgment must be filed no later than ~~10~~  
23 28 days after the entry of the judgment.

#### Committee Note

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.

Former Rule 59(c) set a 10-day period after being served with a motion for new trial to file opposing affidavits. It also provided that the period could be extended for up to 20 days for good cause or by stipulation. The apparent 20-day limit on extending the time to file opposing affidavits seemed to conflict with the Rule 6(b) authority to extend time without any specific limit. This tension between the two rules may have been inadvertent. It is resolved by deleting the former Rule 59(c) limit. Rule 6(b) governs. The underlying 10-day period was extended to 14 days to reflect the change in the Rule 6(a) method for computing periods of less than 11 days.

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**Changes Made after Publication and Comment**

The 30-day period proposed in the August 2007 publication is shortened to 28 days.

**Rule 62. Stay of Proceedings to Enforce a Judgment**

- 1       **(a) Automatic Stay; Exceptions for Injunctions,**  
2               **Receiverships, and Patent Accountings.** Except as  
3               stated in this rule, no execution may issue on a  
4               judgment, nor may proceedings be taken to enforce it,  
5               until ~~10~~ 14 days have passed after its entry. But unless  
6               the court orders otherwise, the following are not stayed  
7               after being entered, even if an appeal is taken:

8                               \* \* \* \* \*

**Committee Note**

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

**Rule 65. Injunctions and Restraining Orders**

- 1                               \* \* \* \* \*
- 2       **(b) Temporary Restraining Order.**
- 3                               \* \* \* \* \*





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3 trial ~~begins~~, a party defending against a claim may serve  
4 on an opposing party an offer to allow judgment on  
5 specified terms, with the costs then accrued. If, within  
6 ~~10~~ 14 days after being served, the opposing party serves  
7 written notice accepting the offer, either party may then  
8 file the offer and notice of acceptance, plus proof of  
9 service. The clerk must then enter judgment.

10 \* \* \* \* \*

11 **(c) Offer After Liability is Determined.** When one  
12 party's liability to another has been determined but the  
13 extent of liability remains to be determined by further  
14 proceedings, the party held liable may make an offer of  
15 judgment. It must be served within a reasonable time —  
16 but at least ~~10~~ 14 days — before the date set for a  
17 hearing to determine the extent of liability.

18 \* \* \* \* \*

**Committee Note**

Former Rule 68 allowed service of an offer of judgment more than 10 days before the trial begins, or — if liability has been determined — at least 10 days before a hearing to determine the extent of liability. It may be difficult to know in advance when trial

will begin or when a hearing will be held. The time is now measured from the date set for trial or hearing; resetting the date establishes a new time for serving the offer.

The former 10-day periods are extended to 14 days to reflect the change in the Rule 6(a) method for computing periods less than 11 days.

\* \* \* \* \*

**Rule 71.1. Condemning Real or Personal Property**

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\* \* \* \* \*

**(d) Process.**

\* \* \* \* \*

**(2) Contents of the Notice.**

- (A) Main Contents.** Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:
  - (i)** that the action is to condemn property;
  - (ii)** the interest to be taken;
  - (iii)** the authority for the taking;

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- 15 (iv) the uses for which the property is to be  
16 taken;  
17 (v) that the defendant may serve an answer  
18 on the plaintiff's attorney within ~~20~~ 21  
19 days after being served with the notice;  
20 (vi) that the failure to so serve an answer  
21 constitutes consent to the taking and to  
22 the court's authority to proceed with the  
23 action and fix the compensation; and  
24 (vii) that a defendant who does not serve an  
25 answer may file a notice of appearance.

26 \* \* \* \* \*

27 (e) **Appearance or Answer.**

28 \* \* \* \* \*

- 29 (2) *Answer.* A defendant that has an objection or  
30 defense to the taking must serve an answer within  
31 ~~20~~ 21 days after being served with the notice. The  
32 answer must:

33 \* \* \* \* \*

**Committee Note**

The times set in the former rule at 20 days have been revised to 21 days. See the Note to Rule 6.

**Rule 72. Magistrate Judges: Pretrial Order**

1       **(a) Nondispositive Matters.** When a pretrial matter not  
2           dispositive of a party's claim or defense is referred to  
3           a magistrate judge to hear and decide, the magistrate  
4           judge must promptly conduct the required proceedings  
5           and, when appropriate, issue a written order stating the  
6           decision. A party may serve and file objections to the  
7           order within ~~10~~ 14 days after being served with a copy.  
8           A party may not assign as error a defect in the order not  
9           timely objected to. The district judge in the case must  
10          consider timely objections and modify or set aside any  
11          part of the order that is clearly erroneous or is contrary  
12          to law.

13       **(b) Dispositive Motions and Prisoner Petitions.**

14                                   \* \* \* \* \*

15       **(2) Objections.** Within ~~10~~ 14 days after being served  
16           with a copy of the recommended disposition, a

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17 party may serve and file specific written  
18 objections to the proposed findings and  
19 recommendations. A party may respond to  
20 another party's objections within ~~10~~ 14 days after  
21 being served with a copy. Unless the district  
22 judge orders otherwise, the objecting party must  
23 promptly arrange for transcribing the record, or  
24 whatever portions of it the parties agree to or the  
25 magistrate judge considers sufficient.

26 \* \* \* \* \*

**Committee Note**

The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 6.

\* \* \* \* \*

**Rule 81. Applicability of the Rules in General; Removed Actions**

1 \* \* \* \* \*

2 (c) **Removed Actions.**

3 \* \* \* \* \*



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24 (ii) it is served with a notice of removal  
25 filed by another party.

26 \* \* \* \* \*

**Committee Note**

The times set in the former rule at 5, 10, and 20 days have been revised to 7, 14, and 21 days, respectively. See the Note to Rule 6.





**Committee Note**

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

**Rule C. In Rem Actions: Special Provisions**

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**(4) Notice.** No notice other than execution of process is required when the property that is the subject of the action has been released under Rule E(5). If the property is not released within ~~10~~ 14 days after execution, the plaintiff must promptly — or within the time that the court allows — give public notice of the action and arrest in a newspaper designated by court order and having general circulation in the district, but publication may be terminated if the property is released before publication is completed. The notice must specify the time under Rule C(6) to file a statement of interest in or right against the seized property and to answer. This rule does not affect the notice requirements in an action to foreclose a preferred ship mortgage under 46 U.S.C. §§ 31301 et seq., as amended.

\* \* \* \* \*

17           **(6) Responsive Pleading; Interrogatories.**

18           **(a) Statement of Interest; Answer.** In an action in rem:<sup>5</sup>

19                   **(i)** a person who asserts a right of possession or any  
20                   ownership interest in the property that is the  
21                   subject of the action must file a verified  
22                   statement of right or interest:

23                           **(A)** within ~~10~~ 14 days after the execution of  
24                           process, or

25                           **(B)** within the time that the court allows;

26                   **(ii)** the statement of right or interest must describe  
27                   the interest in the property that supports the  
28                   person's demand for its restitution or right to  
29                   defend the action;

30                   **(iii)** an agent, bailee, or attorney must state the  
31                   authority to file a statement of right or interest on  
32                   behalf of another; and

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<sup>5</sup>Incorporates technical revision of Supplemental Rule C(6)(a) that will take effect on December 1, 2008, unless Congress takes action otherwise. The revision has no effect on the proposal to amend subparagraph (A) to extend the time to file from 10 days to 14 days.



- 11                   (ii) **Content of the Notice.** The notice must state:
- 12                   (A) the date when the notice is sent;
- 13                   (B) a deadline for filing a claim, at least 35
- 14                   days after the notice is sent;
- 15                   (C) that an answer or a motion under Rule 12
- 16                   must be filed no later than ~~20~~ 21 days after
- 17                   filing the claim; and
- 18                   (D) the name of the government attorney to be
- 19                   served with the claim and answer.

20                   \* \* \* \* \*

21                   (5) **Responsive Pleadings.**

22                   \* \* \* \* \*

- 23                   (b) **Answer.** A claimant must serve and file an answer to
- 24                   the complaint or a motion under Rule 12 within ~~20~~ 21
- 25                   days after filing the claim. A claimant waives an
- 26                   objection to in rem jurisdiction or to venue if the
- 27                   objection is not made by motion or stated in the
- 28                   answer.

29                   (6) **Special Interrogatories.**



**Form 3. Summons.**

(Caption — See Form 1.)

To *name the defendant*:

A lawsuit has been filed against you.

Within ~~20~~ 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.

\* \* \* \* \*

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**Form 4. Summons on a Third-Party Complaint.**

(Caption — See Form 1.)

To *name the third-party defendant*:

A lawsuit has been filed against defendant \_\_\_\_\_, who as third-party plaintiff is making this claim against you to pay part or all of what [he] may owe to the plaintiff \_\_\_\_\_.

Within ~~20~~ 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff and on the defendant an answer to the attached third-party complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.

\* \* \* \* \*

**Form 60. Notice of Condemnation.**

(Caption — See Form 1.)

\* \* \* \* \*

4. If you want to object or present any defense to the taking you must serve an answer on the plaintiff's attorney within ~~20~~ 21 days [after being served with this notice][from (insert the date of the last publication of notice)]. Send your answer to this address: \_\_\_\_\_.

\* \* \* \* \*



**RULE 30(d)(1): 1 DAY OF 7 HOURS**

07-CV-018: The Seventh Circuit Bar Association Committee on Rules of Practice & Procedure suggests that some means should be found to state clearly whether the “hours-are-hours” approach supersedes the Committee Note to Rule 30(d)(1), which states that the 7 hours for a deposition is calculated by actual time taken, not including breaks. Some members suggested that if break time continues to be excluded, the Committee should consider revising Rule 30(d)(1) because it is difficult to fit 7 hours of actual deposition time into one day when breaks are excluded.

**Discussion:** The Committee concluded that there is no need to address this question by adding a comment to the Rule 6 Committee Note. The common-sense advice in the 2000 Committee Note should be sufficiently ingrained in practice to prevail without difficulty.

**(3) Statutory Time Periods**

Civil Rule 6(a) applies in calculating statutory time periods. The Time-Computation Subcommittee has coordinated the work of identifying statutory time periods that should be increased to offset the de facto reduction that will result from changing to a days-are-days computation method. Professor Struve compiled a long list of statutes that set periods less than eleven days. After studying the statutes that bear on civil actions, the Committee concluded that only one statute should be recommended for amendment. 28 U.S.C. § 636(b) sets the period for objecting to magistrate judge orders and recommendations at 10 days. Proposed Rules 72(a) and (b) extend the time from 10 days to 14 days, recognizing that under the present computation method 10 days has always meant at least 14 calendar days. It is essential that § 636(b) be amended to allow 14 days so that statute and rule continue to operate in harmony as they always have.

The reasons for concluding that no other statutes need be recommended for amendment are summarized in the draft Minutes for the April Committee meeting.

*B. Amended Rules Published in August 2007*

Proposed amendments to Rule 8(c), 13(f), 15(a), 48(c), and 81(d) were published for comment in August 2007. All but Rule 8(c) are recommended for adoption as published, apart from deleting references to “possession” from Rule 81(d)(2) and its Committee Note. Rule 8(c) will be held for further study in the Advisory Committee. Bankruptcy Judges have repeatedly advised that deleting “discharge in bankruptcy” from the Rule 8(c) list of affirmative defenses is both appropriate and long overdue. The Department of Justice has expressed reservations that require further attention.

**AUGUST 2007 PUBLISHED PROPOSALS TO AMEND  
RULES . . . 13(F), 15(A), 48(C), 81(D)**

Proposals to amend Rules . . . 13(f), 15(a), 48(c), and 81(d) were published for comment in August 2007. Comments were received on all but Rule 48(c). The proposals, summaries of comments, and recommendations are set out separately for each rule.

\* \* \* \* \*

**Rule 13. Counterclaim and Crossclaim**

1

\* \* \* \* \*

2

~~(f) **Omitted Counterclaim.** The court may permit a party to~~

3

~~amend a pleading to add a counterclaim if it was omitted~~

4

~~through oversight, inadvertence, or excusable neglect or~~

5

~~if justice so requires.~~

6

\* \* \* \* \*

**Committee Note**

Rule 13(f) is deleted as largely redundant and potentially misleading. An amendment to add a counterclaim will be governed

by Rule 15. Rule 15(a)(1) permits some amendments to be made as a matter of course or with the opposing party's written consent. When the court's leave is required, the reasons described in Rule 13(f) for permitting amendment of a pleading to add an omitted counterclaim sound different from the general amendment standard in Rule 15(a)(2), but seem to be administered — as they should be — according to the same standard directing that leave should be freely given when justice so requires. The independent existence of Rule 13(f) has, however, created some uncertainty as to the availability of relation back of the amendment under Rule 15(c). *See 6 C. Wright, A. Miller & M. Kane, Federal Practice & Procedure: Civil 2d, § 1430 (1990)*. Deletion of Rule 13(f) ensures that relation back is governed by the tests that apply to all other pleading amendments.

\* \* \* \* \*

### Rule 15. Amended and Supplemental Pleadings<sup>6</sup>

1        **(a) Amendments Before Trial.**

2            **(1) *Amending as a Matter of Course.*** A party may  
3            amend its pleading once as a matter of course  
4            within:

5            ~~(A) before being served with a responsive~~  
6            ~~pleading; 21 days after serving it, or~~

7            ~~(B) within 20 days after serving the pleading if a~~  
8            ~~responsive pleading is not allowed and the~~

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<sup>6</sup>Proposed amendments modifying the time period in Rule 15(a)(1) on pages 17-18 are incorporated in and superseded by these amendments, if approved by the Judicial Conference.

9                    ~~action is not yet on the trial calendar if the~~  
10                    pleading is one to which a responsive pleading  
11                    is required, 21 days after service of a  
12                    responsive pleading or 21 days after service of  
13                    a motion under Rule 12(b), (e), or (f),  
14                    whichever is earlier.

15                    \* \* \* \* \*

#### Committee Note

Rule 15(a)(1) is amended to make three changes in the time allowed to make one amendment as a matter of course.

Former Rule 15(a) addressed amendment of a pleading to which a responsive pleading is required by distinguishing between the means used to challenge the pleading. Serving a responsive pleading terminated the right to amend. Serving a motion attacking the pleading did not terminate the right to amend, because a motion is not a “pleading” as defined in Rule 7. The right to amend survived beyond decision of the motion unless the decision expressly cut off the right to amend.

The distinction drawn in former Rule 15(a) is changed in two ways. First, the right to amend once as a matter of course terminates 21 days after service of a motion under Rule 12(b), (e), or (f). This provision will force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion. A responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.

Second, the right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The responsive pleading may point out issues that the original pleader had not considered and persuade the pleader that amendment is wise. Just as amendment was permitted by former Rule 15(a) in response to a motion, so the amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21-day limit as the right to amend in response to a motion.

The 21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.

Finally, amended Rule 15(a)(1) extends from 20 to 21 days the period to amend a pleading to which no responsive pleading is allowed and omits the provision that cuts off the right if the action is on the trial calendar. Rule 40 no longer refers to a trial calendar, and many courts have abandoned formal trial calendars. It is more effective to rely on scheduling orders or other pretrial directions to establish time limits for amendment in the few situations that otherwise might allow one amendment as a matter of course at a time that would disrupt trial preparations. Leave to amend still can be sought under Rule 15(a)(2), or at and after trial under Rule 15(b).<sup>7</sup>

Abrogation of Rule 13(f) establishes Rule 15 as the sole rule governing amendment of a pleading to add a counterclaim.

\* \* \* \* \*

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<sup>7</sup>If the proposed amendment to Rule 15(a)(3) on pages 17-18 changing the time period is approved by the Judicial Conference, the following additional sentence will be added to the Committee Note: "Amended Rule 15(a)(3) extends from 10 to 14 days the period to respond to an amended pleading."

**Rule 48. Number of Jurors; Verdict; Polling**

1     **(a) Number of Jurors.** A jury must ~~initially have~~ begin  
2         with at least 6 and no more than 12 members, and each  
3         juror must participate in the verdict unless excused under  
4         Rule 47(c).

5     **(b) Verdict.** Unless the parties stipulate otherwise, the  
6         verdict must be unanimous and must be returned by a  
7         jury of at least 6 members.

8     **(c) Polling.** After a verdict is returned but before the jury is  
9         discharged, the court must on a party's request, or may  
10        on its own, poll the jurors individually. If the poll  
11        reveals a lack of unanimity or lack of assent by the  
12        number of jurors that the parties stipulated to, the court  
13        may direct the jury to deliberate further or may order a  
14        new trial.

**Committee Note**

Jury polling is added as new subdivision (c), which is drawn from Criminal Rule 31(d) with minor revisions to reflect Civil Rules Style and the parties' opportunity to stipulate to a nonunanimous verdict.

**Rule 81. Applicability of the Rules in General; Removed Actions**

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**(d) Law Applicable.**

(1) ***“State Law” Defined.*** When these rules refer to state law, the term “law” includes the state’s statutes and the state’s judicial decisions.

(2) ***District of Columbia “State” Defined.*** The term “state” includes, where appropriate, the District of Columbia and any United States commonwealth. ~~When these rules provide for state law to apply, in the District Court for the District of Columbia:~~

~~———— (A) the law applied in the District governs; and~~

(3) ***“Federal Statute” Defined in the District of Columbia.*** ~~(B) In the United States District Court for the District of Columbia,~~ the term “federal statute” includes any Act of Congress that applies locally to the District.

### Committee Note

Several Rules incorporate local state practice. Rule 81(d) now provides that “the term ‘state’ includes, where appropriate, the District of Columbia.” The definition is expanded to include any commonwealth or territory of the United States. As before, these entities are included only “where appropriate.” They are included for the reasons that counsel incorporation of state practice. For example, state holidays are recognized in computing time under Rule 6(a). Other, quite different, examples are Rules 64(a), invoking state law for prejudgment remedies, and 69(a)(1), relying on state law for the procedure on execution. Including commonwealths and territories in these and other rules avoids the gaps that otherwise would result when the federal rule relies on local practice rather than provide a uniform federal approach. Including them also establishes uniformity between federal courts and local courts in areas that may involve strong local interests, little need for uniformity among federal courts, or difficulty in defining a uniform federal practice that integrates effectively with local practice.

Adherence to a local practice may be refused as not “appropriate” when the local practice would impair a significant federal interest.

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### Changes Made after Publication and Comment

The reference to a “possession” was deleted in deference to the concerns expressed by the Department of Justice.



*C. New Rule 62.1 Published in August 2007*

The “indicative rulings” provisions of new Civil Rule 62.1 and new Appellate Rule 12.1 were worked out over a period of several years, culminating in parallel proposals published for comment in August 2007. It is recommended that Rule 62.1 be approved for adoption with modest wording changes.

Rule text: Rule 62.1 is recommended for adoption as published with one change. An accidental slip in transmission resulted in publication without a change in subdivision (c) that was submitted to the Standing Committee and approved for publication. As published, subdivision (c) refers to remand “for further proceedings.” The version approved for publication refers to remand “for that purpose.” This version is better for at least two reasons. It tracks the language of subdivision (a)(3). And it clearly limits (c) to a remand to act on the motion pending in the district court. The published reference to a remand for further proceedings could include remand after the court of appeals has decided not to remand for proceedings on the pending motion and has decided the appeal on grounds that both moot the motion and require further proceedings on other issues.

This recommendation is compatible with proposed Appellate Rule 12.1(b), which refers to remand “for further proceedings.” The focus of Rule 12.1(b) and its Committee Note is on the scope of the remand, a question that concerns the court of appeals in the first instance.

Committee Note: The Committee Note should be revised to more accurately reflect the language of Rule 62.1(a)(3) and the distinction between limited and full remand. Rather than refer to remand of the “case” or “action,” the Note should refer to remand “for that purpose.” As shown below, the third sentence of the first paragraph would read: “But it can entertain the motion and deny it, defer consideration, or state that it would grant the motion if the ~~action is remanded~~ court of appeals remands for that purpose or state that the motion raises a substantial issue.” The first sentence of the fourth paragraph would read: “Often it will be wise for the district court to determine whether it in fact would grant the motion if the ~~case is remanded~~ court of appeals remands for that purpose.”

Other changes are made in the Committee Note to conform to the Committee Note for proposed Appellate Rule 12.1. The lengthiest change is the addition of two new sentences in parentheses at the end of the first paragraph. These new sentences address a fine-point aspect of Appellate Rule 4: filing a notice of appeal does not establish a “pending” appeal if a timely post-judgment motion suspends the effect of the notice.

New Rule 62.1 is recommended for adoption:

**Rule 62.1**      **Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal**

- 1      **(a) Relief Pending Appeal.** If a timely motion is made for  
2      relief that the court lacks authority to grant because of an  
3      appeal that has been docketed and is pending, the court  
4      may:
- 5      **(1) defer considering the motion;**  
6      **(2) deny the motion; or**  
7      **(3) state either that it would grant the motion if the**  
8      **court of appeals remands for that purpose or that**  
9      **the motion raises a substantial issue.**
- 10     **(b) Notice to the Court of Appeals.** The movant must  
11     promptly notify the circuit clerk under Federal Rule of  
12     Appellate Procedure 12.1 if the district court states that

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13 it would grant the motion or that the motion raises a  
14 substantial issue.

15 **(c) Remand.** The district court may decide the motion if  
16 the court of appeals remands for that purpose.

**Committee Note**

This new rule adopts for any motion that the district court cannot grant because of a pending appeal the practice that most courts follow when a party makes a Rule 60(b) motion to vacate a judgment that is pending on appeal. After an appeal has been docketed and while it remains pending, the district court cannot grant a Rule 60(b) motion without a remand. But it can entertain the motion and deny it, defer consideration, or state that it would grant the motion if the court of appeals remands for that purpose or state that the motion raises a substantial issue. Experienced lawyers often refer to the suggestion for remand as an “indicative ruling.” (Appellate Rule 4(a)(4) lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of. The district court has authority to grant the motion without resorting to the indicative ruling procedure.)

This clear procedure is helpful whenever relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal. Rule 62.1 does not attempt to define the circumstances in which an appeal limits or defeats the district court’s authority to act in the face of a pending appeal. The rules that govern the relationship between trial courts and appellate courts may be complex, depending in part on the nature of the order and the source of appeal jurisdiction. Rule 62.1 applies only when those rules deprive the district court of authority to grant relief without appellate permission. If the district court concludes that it has authority to grant relief without appellate permission, it can act without falling back on the indicative ruling procedure.

To ensure proper coordination of proceedings in the district court and in the appellate court, the movant must notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue. Remand is in the court of appeals' discretion under Appellate Rule 12.1.

Often it will be wise for the district court to determine whether it in fact would grant the motion if the court of appeals remands for that purpose. But a motion may present complex issues that require extensive litigation and that may either be mooted or be presented in a different context by decision of the issues raised on appeal. In such circumstances the district court may prefer to state that the motion raises a substantial issue, and to state the reasons why it prefers to decide only if the court of appeals agrees that it would be useful to decide the motion before decision of the pending appeal. The district court is not bound to grant the motion after stating that the motion raises a substantial issue; further proceedings on remand may show that the motion ought not be granted.

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### **Changes Made After Publication and Comment**

The rule text is changed by substituting "for that purpose" for "further proceedings"; the reason is discussed above.

Minor changes are made in the Committee Note to make it conform to the Committee Note for proposed Appellate Rule 12.1.

\* \* \* \* \*

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

Agenda E-19 (Appendix E)  
Rules  
September 2008

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CHAIR

PETER G. McCABE  
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

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RICHARD C. TALLMAN  
CRIMINAL RULES

ROBERT L. HINKLE  
EVIDENCE RULES

**To:** Hon. Lee H. Rosenthal, Chair  
Standing Committee on Rules of Practice and Procedure

**From:** Hon. Richard C. Tallman, Chair  
Advisory Committee on Federal Rules of Criminal Procedure

**Subject:** Report of the Advisory Committee on Criminal Rules

**Date:** May 12, 2008 (Revised July 6, 2008)

**I. Introduction**

The Advisory Committee on Federal Rules of Criminal Procedure (“the Committee”) met on April 27–28, 2008, in Washington, D.C., and took action on a number of proposed amendments to the Rules of Criminal Procedure.

\* \* \* \* \*

This report addresses a number of action items:

(1) approval for transmission to the Judicial Conference of published amendments to time computation Rule 45(a) and related amendments to Rules 5.1, 7, 12.1, 12.3, 29, 33, 34, 35, 41, 47, 58, 59, and Rule 8 of the Rules Governing §§ 2254 and 2255 Cases;

(2) approval for transmission to the Judicial Conference of published amendments to Rules 7, 32, 32.2, 41, and Rule 11 of the Rules Governing §§ 2254 and 2255 Cases; and

\* \* \* \* \*

## **II. Action Items—Recommendations to Forward Amendments to the Judicial Conference**

### **A. Time Computation Rules**

The first group of amendments the Committee recommends for transmission to the Judicial Conference are part of the time computation project. No comments specific to the Criminal Rules affected by the time computation project were received during the period for notice and public comment, and the Committee voted unanimously in favor of each of the proposed amendments described below.

#### **1. ACTION ITEM—Rule 45(a)**

The Advisory Committee voted unanimously to recommend that Rule 45(a) be amended as part of the time computation project. Only one aspect of the proposed rule deserves special mention. Following the template, proposed Rule 45(a) applies to statutory time periods as well as to periods stated in the rules, with the exception of statutes that provide for a different time counting rule (such as “business days” or “excluding Saturdays, Sundays, and holidays”). At present, it is not clear whether Rule 45(a) applies to statutory time periods. Unlike the comparable provisions in the other rules (such as Fed. R. Civ. P. 6(a)), Rule 45(a) currently contains no reference to statutory time periods, nor did it retain the general language “any time period” used prior to restyling. Accordingly, the proposed Committee Note recognizes that the new language may broaden the applicability of Rule 45. It states that the general time computations do not apply to Rule 46(h), because that rule is based upon a statute that provides for a different time-counting method.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 45(a) be approved as published and forwarded to the Judicial Conference.***

The Committee was also unanimous in recommending the following amendments to time periods that are intended to compensate for the change to a “days are days” method of counting time.

#### **2. ACTION ITEM—Rule 5.1**

Rule 5.1 requires a preliminary hearing to be held within 10 days after a defendant’s initial appearance if the defendant is in custody or 20 days if the defendant is not in custody. The Committee recommends extending these periods to 14 and 21 days if proposed Rule 45(a) is adopted, but notes that the statutory periods are based upon 18 U.S.C. § 3060(b). Because of the statutory basis of the time periods in the current rule, this proposal is contingent upon the adoption of a statutory amendment. If the statute can be amended, conversion to 14 and 21 days would be the rough equivalent of the times under the current rule.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 5.1 be approved as published and forwarded to the Judicial Conference.***

**3. ACTION ITEM—Rule 7**

The Committee unanimously concluded that the time for motions for a bill of particulars should be increased from 10 to 14 days if proposed Rule 45(a) is adopted.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 7 be approved as published and forwarded to the Judicial Conference.***

**4. ACTION ITEM—Rule 12.1**

Rule 12.1 (alibi defense) establishes time periods for responses and disclosure. The Committee concluded that if proposed Rule 45(a) is adopted, the 10 day periods for the defendant's response and the government's disclosure under Rule 12.1(a)(2) and (b)(2) should be increased from 10 to 14 days.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 12.1 be approved as published and forwarded to the Judicial Conference.***

**5. ACTION ITEM—Rule 12.3**

Rule 12.3 (public-authority defense) establishes time periods for responses, requests, and replies. The Committee concluded that if proposed Rule 45(a) is adopted, the 10 day periods in Rule 12.3 should be increased to 14 days, and the 20 day periods should be increased to 21 days.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 12.3 be approved as published and forwarded to the Judicial Conference.***

**6. ACTION ITEM—Rule 29**

Rule 29(c)(1) requires motions for post-verdict acquittal to be filed within 7 days after a verdict or the discharge of the jury. The Committee recommends increasing the time to 14 days if proposed Rule 45(a) is adopted. At present, excluding weekends and holidays from the 7 day period means that the defense has at least 9 days for such motions. Requests for continuances are frequent, and often the motions are filed in a bare bones fashion requiring later supplementation. Rather than

increasing the need for continuances, it would be preferable to set the general time at 14 days (a multiple of 7).

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 29 be approved as published and forwarded to the Judicial Conference.***

**7. ACTION ITEM—Rule 33**

The Committee concluded that the considerations that support extending Rule 29(c)(1)'s 7 day period to 14 days apply equally to motions for a new trial under Rule 33(b)(2).

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 33 be approved as published and forwarded to the Judicial Conference.***

**8. ACTION ITEM—Rule 34**

The Committee concluded that the considerations that support extending Rule 29(c)(1)'s 7 day period to 14 days apply equally to motions for arrest of judgment under Rule 34.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 34 be approved as published and forwarded to the Judicial Conference.***

**9. ACTION ITEM—Rule 35**

Rule 35(a) currently allows the court to correct a sentence for arithmetic, technical, or other clear error within 7 days after sentencing (which is, in practical terms, approximately 9 days under the current counting rules). The Committee concluded that this period should be increased to 14 days if proposed Rule 45(a) is adopted. Sentencing is now so complex that minor technical errors are not uncommon. Extension of the period to 14 days will not cause any jurisdictional problems if an appeal has been filed because Fed. R. App. P. 4(b)(5) expressly provides that the filing of a notice of appeal does not divest the district court of jurisdiction to correct a sentence under Rule 35(a).

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 35 be approved as published and forwarded to the Judicial Conference.***



**10. ACTION ITEM—Rule 41**

Rule 41(e)(2)(A)(i) now states that a warrant must command that it be executed within a specified time no longer than 10 days (which can be up to 14 days under the current time computation rules). The Committee recommends that the period be increased to 14 days, although it notes that the considerations here are significantly different than those pertinent to many of the other rules. First, warrants can and often are executed on nights and weekends. Second, there is a real concern that warrants not be executed on the basis of stale evidence. For that reason, the courts often set a time for execution that is shorter than 10 days. On the other hand, there are situations in which more time may be needed for the proper execution of a highly complex warrant. After weighing these various considerations, the Committee concluded that designating a 14 day period was appropriate because it was the rough equivalent of the present period, followed the multiples of 7 rule of thumb, and still left the court with discretion to set a shorter time period in individual cases, as is frequently done at present.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 41 be approved as published and forwarded to the Judicial Conference.***

**11. ACTION ITEM—Rule 47**

The Committee recommends that the current requirement under Rule 47(c) that motions be served 5 days before the hearing date be increased to 7 days if proposed Rule 45(a) is adopted.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 47 be approved as published and forwarded to the Judicial Conference.***

**12. ACTION ITEM—Rule 58**

Rule 58(g)(2) governs appeals from a magistrate judge's order or judgment in cases involving petty offenses and misdemeanors. The Committee recommends that the time under Rule 58(g)(2) for interlocutory appeals and appeals from a sentence or conviction of a misdemeanor be increased from 10 to 14 days if proposed Rule 45(a) is adopted.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 45(a) be approved as published and forwarded to the Judicial Conference.***

**13. ACTION ITEM—Rule 59**

The Committee concluded that the 10 day period for objections to dispositive and nondispositive determinations, findings, and recommendations by a magistrate judge under Rule 59(a) and (b) should be increased to 14 days if proposed Rule 45(a) is adopted.

*Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 59 be approved as published and forwarded to the Judicial Conference.*

**14. ACTION ITEM—Rule 8 of the Rules Governing § 2254 Proceedings**

The Committee recommends that the 10 day period for filing objections under Rule 8(b) be increased to 14 days if proposed Rule 45(a) is adopted.

*Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 8 of the Rules Governing § 2254 Proceedings be approved as published and forwarded to the Judicial Conference.*

**15. ACTION ITEM—Rule 8 of the Rules Governing § 2255 Proceedings**

The Committee recommends that the 10 day period for filing objections under Rule 8(b) be increased to 14 days if proposed Rule 45(a) is adopted.

*Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 8 of the Rules Governing § 2255 Proceedings be approved as published and forwarded to the Judicial Conference.*

**B. Forfeiture Rules**

Three of the published amendments—Rule 7 (indictment and information), Rule 32 (sentencing), and Rule 32.2 (forfeiture)—concern criminal forfeiture. They were drafted with the assistance of specialists from both the Department of Justice and the private defense bar, and are intended to incorporate current practice as it has developed since the revision of the forfeiture rules in 2000. The Committee recommends approval of each of the rules as published.

**1. ACTION ITEM—Rule 7**

The amendment removes a provision that duplicates the same language in Rule 32.2, which was intended to consolidate the forfeiture related provisions. No comments were received, and the Committee voted unanimously in favor of recommending the approval of the proposed amendment to Rule 7.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 7 be approved as published and forwarded to the Judicial Conference.***

**2. ACTION ITEM—Rule 32**

The proposed amendment provides that the presentence report should state whether the government is seeking forfeiture. This is intended to promote timely consideration of issues concerning forfeiture as part of the sentencing process.

No comments were received, and the Committee voted unanimously in favor of recommending the approval of the proposed amendment to Rule 32.

***Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 32 be approved as published and forwarded to the Judicial Conference.***

**3. ACTION ITEM—Rule 32.2**

Several changes to Rule 32.2 are proposed. In subdivision (a) the Committee proposes new language to respond to uncertainty regarding the form of the required notice that the government is seeking forfeiture. The amendment states that the notice should not be designated as a count in an indictment or information, and that it need not identify the specific property or money judgment that is sought. Where additional detail is needed, it is generally provided in a bill of particulars. After extensive consideration in the subcommittee of language that would provide more detail about the use of bills of particulars, the Committee determined that the better course at this point is to leave the matter to further judicial development guided by general comments in the Committee Note.

In subdivision (b)(1) the Committee proposes to add language clarifying the point that the court's forfeiture determination may be based on additional evidence or information accepted by the court in the forfeiture phase of the trial. The amendment also states that the court must conduct a hearing when requested to do so by either party, and notes that in some instances live testimony will be needed. The Committee noted that the present rule, which refers to "evidence or information," does not limit the court to considering evidence that would be admissible under the Rules of Evidence (which themselves provide that they are not applicable to sentencing). Whether this is a

good policy can be debated, but it reflects a decision made in 2000 and the Committee did not seek to reopen the matter.

Proposed subdivision (b)(2) makes two changes. First, it requires the court to enter a preliminary order of forfeiture sufficiently in advance of sentencing to permit the parties to suggest modifications before the order becomes final as to the defendant. Second, it expressly authorizes the court to enter a forfeiture order that is general in nature in cases where it is not possible to identify all of the property subject to forfeiture at the time of sentencing. Recognizing the authority to issue a general order reconciles the requirement that the court make the forfeiture order part of the sentence with Rule 32.2(e)(1)(A), which allows the court on motion of the government to amend the forfeiture order to include property “located and identified” after the forfeiture order was entered. The Committee Note cautions that the authority to enter a general order should be used only in unusual circumstances, and not as a matter of course.

The proposed amendments to subdivisions (b)(3) and (4) clarify when the forfeiture order becomes final as to the defendant (as opposed to third parties whose interests may be affected), what the district court is required to do at sentencing, and how to deal with clerical errors.

Proposed subdivision (b)(5) clarifies the procedure for requesting a jury determination of forfeiture, and requires the government to submit a special verdict form.

Proposed subdivisions (b)(6) and (7) govern technical issues of notice, publication, and interlocutory sale. They are based upon the civil forfeiture provisions in Supplemental Rule G of the Federal Rules of Civil Procedure.

The only comment received concerned proposed subdivision (b)(2), which provides for the entry of a preliminary order of forfeiture in advance of sentencing. Judge Lawrence Piersol expressed concern that this might delay sentencing because the necessary information may not be available in advance. The Committee concluded that the rule as published provided a mechanism for dealing with such cases, because it provides that a court must enter a preliminary order in advance of sentencing “[u]nless doing so is impractical.” Accordingly, the Committee voted unanimously to recommend the approval of the proposed amendment to Rule 32.2.

***Recommendation—The Advisory Committee recommends that the proposed amendments to Rule 32.2 be approved as published and forwarded to the Judicial Conference.***

### **C. Other Rules**

The Committee also recommends that two other rules which were published for public notice and comment be approved and forwarded to the Judicial Conference.

#### **1. ACTION ITEM—Rule 41**

The proposed amendment adapts federal warrant procedures to electronically stored information, which is an increasingly important part of criminal cases. The amendment makes two key changes. First, it acknowledges that the very large volume of information which can be stored on computers and other electronic storage media generally requires a two-step process in which the government first seizes the storage medium and then reviews it to determine what information within it falls within the scope of the warrant. In light of the enormous quantities of information that are often involved, as well as the difficulties often encountered involving encryption and booby traps, it is impractical to set a definite time period during which the offsite review must be completed. The Committee Note emphasizes, however, that the court may impose a deadline for the return of the medium or access to the electronically stored information.

The second change relates to the inventory. The amendment provides that in a case involving the seizure of electronic storage media or the seizure or copying of electronically stored information, the inventory may be limited to a description of the physical storage media seized or copied. Similarly, when business papers or other documents are seized, the inventory will often refer to a file cabinet or file drawer, rather than seeking to list each document.

The Committee voted, with one member dissenting, to recommend that Rule 41 be approved as amended and forwarded to the Judicial Conference.

***Recommendation—The Advisory Committee recommends that the proposed amendments to Rule 41 be approved as amended following publication and forwarded to the Judicial Conference.***

#### **2. ACTION ITEM—Rule 11 of the Rules Governing §§ 2254 and 2255 Proceedings**

The parallel amendments to Rule 11 are intended to make the requirements concerning certificates of appealability more prominent by adding and consolidating them in the Rules Governing § 2254 and § 2255 Proceedings in the District Courts. The amendments also require the district judge to grant or deny the certificate at the time a final order is issued, as now required in the

Third Circuit, *see* 3d Cir. R. 22.2, 111.3, rather than after a notice of appeal is filed.<sup>1</sup> This will ensure prompt decision-making when the issues are fresh. It will also expedite proceedings, avoid unnecessary remands, and inform the moving party's decision whether to file a notice of appeal.

Several public comments were received urging the Committee to consider bifurcating the issuance of the final order and the ruling on the certificate of appealability in order to permit a party requesting a certificate in the district court to respond to the specific reasons given in the final order as well as the specific standards for issuing a certificate. The Committee considered a proposed modification that would accomplish this, but rejected it after much deliberation. The Committee concluded that a single date for the ruling on the certificate and the final order is essential to simplify and expedite appellate review. Bifurcation also increases the risk of confusion among pro se petitioners. In courts where rulings on certificates are not issued at the time of the final order, some pro se petitioners reportedly delay filing a notice of appeal believing that the time period for filing that notice does not begin until the judge rules on the certificate or a motion for reconsideration of a denial of a certificate. Moreover, even without bifurcation in the district court, a petitioner has an opportunity to brief the question whether a certificate of appealability should issue when applying for a certificate in the court of appeals.

Although the Committee rejected bifurcation, it made several changes in the rules as published to respond to the concerns raised in the public comments. First, the Committee recognized that there are some complex cases, such as death penalty cases with numerous claims, in which the district court might benefit from briefing specifically directed to the issuance of a certificate, to assist in narrowing or focusing claims for appeal. The Committee addressed this point by adding a sentence stating that before entering the order the court may direct the parties to submit arguments on whether a certificate should be issued. The Committee also added two sentences at the end of the new section to address points frequently misunderstood by pro se petitioners. The addition states that (1) the district court's denial of a certificate is not separately appealable, but a certificate may be sought in the court of appeals, and (2) a motion for reconsideration of a denial of a certificate does not extend the time to appeal.

During the Committee's deliberations, there was a great deal of discussion of the confusion among pro se petitioners regarding the relationship between the notice of appeal and the certificate of appealability. The Committee concluded that it would also be desirable to address this issue in the text of the rules with a statement that a notice of appeal must be filed even if the district court issues a certificate of appealability. The Committee proposes to add this language to subdivision (b) of Rule 11 of the Rules Governing § 2255 Proceedings. In the case of Rule 11 of the Rules Governing § 2254 Proceedings, there is currently no subdivision addressing appeals. The

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<sup>1</sup>Cases filed under § 2254 are governed by Fed. R. App. P. 4(a)(1)(A)'s general 30 day period for filing a notice of appeal in civil cases, but the 60 day period under Fed. R. App. P. 4(a)(1)(B) applies to actions under § 2255 because the United States is a party.

Committee, therefore, proposes adding a subdivision that mirrors subdivision (b) in the Rules Governing § 2255 Proceedings. In the Committee's view, it is desirable to address this point in the text where it is most likely to be seen by pro se petitioners. This specific point was not, however, included in the text published for public comment.

The Committee voted to recommend that the published amendments be approved as amended and forwarded to the Judicial Conference. Although a number of changes were made to address issues raised by the public comments and in further deliberations regarding these issues, the Committee did not believe these changes required republication of the proposed amendments.

When the Advisory Committee initially proposed these rules for publication, each rule included another subdivision creating an exclusive procedure for seeking reconsideration in the district court of a final order in §§ 2254 and 2255 cases. This aspect of the proposal was intended to replace motions under Fed. R. Civ. P. 60(b) and incorporate the distinction drawn in *Gonzalez v. Crosby*, 545 U.S. 524 (2005), between Rule 60(b) motions that must be treated as second or successive habeas petitions subject to AEDPA's limitations on successive petitions, and Rule 60(b) motions that did not trigger AEDPA's limits. At its June meeting in 2007, the Standing Committee approved publication of the proposed Rule 11 provisions related to certificates of appealability, but remanded the relief-from-final-order portions for further consideration by the Advisory Committee. After extensive discussion, the Advisory Committee voted at its April meeting not to proceed with this aspect of its original proposal, leaving the issues for further development in the courts. Accordingly, the provisions dealing with the procedures for seeking reconsideration in §§ 2254 and 2255 proceedings are not part of the rules being recommended at this time.

***Recommendation—The Advisory Committee recommends that the proposed amendments to Rule 11 of the Rules Governing §§ 2254 and 2255 Proceedings be approved as amended following publication and forwarded to the Judicial Conference.***

\* \* \* \* \*

#### **IV. Information Items**

##### **A. Statutory Provisions Affected By Time Computation**

As part of the time computation project, the Advisory Committee worked to evaluate statutes with short time periods that would be affected by the new time computation rules, in order to determine which statutes would be the highest priority for legislative amendment to offset the effect of the changes.

All members of the committee received a complete listing of the statutes identified by Professor Struve, and each member was asked to rate the importance of amending the statutes on a three point scale. The results of the balloting process were compiled and studied by the time

computation subcommittee, which produced a draft list of 17 statutes that it recommended for inclusion on the list.

The Advisory Committee endorsed that list at its April meeting. It recommends that most of these statutes be amended to provide for periods of 7 or 14 days. There are, however, a group of statutes that presently provide for very short periods of 3 or 4 days for interlocutory appeals involving the Classified Information Procedure Act and the material support statute. Since those time periods reflected a precise policy-based calibration that might be disturbed by a change to 7 days, the Committee recommends that legislation be sought that would exclude weekends and holidays from the calculation; this would leave the periods precisely as they are now. The Committee also recommends the same approach be applied to 18 U.S.C. § 3432, which provides that a person charged with treason or another capital offense shall be furnished with a list of veniremen and witnesses “at least three entire days” before trial.

Subsequent to the Advisory Committee meeting, Professor Struve brought to the attention of the reporter and chair the fact that one statute similar to others proposed for amendment was not on the Committee’s list. After determining that this had been an oversight, and that the justification for amending the 10 day period to 14 days was the same as that for another closely related statute that was being recommended for legislative action, we requested this statute’s inclusion on the list.

The list compiled by the Advisory Committee (including the statute noted above) is now being circulated to representatives of the appropriate committees of the American Bar and the National Association of Criminal Defense Lawyers.

\* \* \* \* \*



**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF CRIMINAL PROCEDURE<sup>1</sup>**

**Rule 45. Computing and Extending Time<sup>2</sup>**

1     ~~(a) **Computing Time.** The following rules apply in~~  
2             ~~computing any period of time specified in these rules,~~  
3             ~~any local rule, or any court order:~~

4             ~~(1) ***Day of the Event Excluded.*** Exclude the day of~~  
5             ~~the act, event, or default that begins the period.~~

6             ~~(2) ***Exclusion from Brief Periods.*** Exclude~~  
7             ~~intermediate Saturdays, Sundays, and legal~~  
8             ~~holidays when the period is less than 11 days.~~

9             ~~(3) ***Last Day.*** Include the last day of the period unless~~  
10            ~~it is a Saturday, Sunday, legal holiday, or day on~~  
11            ~~which weather or other conditions make the clerk's~~

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<sup>1</sup> New material is underlined; matter to be omitted is lined through.

<sup>2</sup>Incorporates amendments approved by the Supreme Court that are scheduled to take effect on December 1, 2008, unless Congress acts otherwise.

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12 office inaccessible. When the last day is excluded,  
13 the period runs until the end of the next day that is  
14 not a Saturday, Sunday, legal holiday, or day when  
15 the clerk's office is inaccessible.

16 ~~(4) "Legal Holiday" Defined.~~ As used in this rule,

17 "legal holiday" means:

18 ~~(A) the day set aside by statute for observing:~~

19 ~~(i) New Year's Day;~~

20 ~~(ii) Martin Luther King, Jr.'s Birthday;~~

21 ~~(iii) Washington's Birthday;~~

22 ~~(iv) Memorial Day;~~

23 ~~(v) Independence Day;~~

24 ~~(vi) Labor Day;~~

25 ~~(vii) Columbus Day;~~

26 ~~(viii) Veterans' Day;~~

27 ~~(ix) Thanksgiving Day;~~

28 ~~(x) Christmas Day; and~~

29 ~~(B) any other day declared a holiday by the~~  
30 ~~President, the Congress, or the state where~~  
31 ~~the district court is held.~~

32 \* \* \* \* \*

33 **(a) Computing Time.** The following rules apply in  
34 computing any time period specified in these rules, in  
35 any local rule or court order, or in any statute that does  
36 not specify a method of computing time.

37 **(1) Period Stated in Days or a Longer Unit.** When  
38 the period is stated in days or a longer unit of time:

39 (A) exclude the day of the event that triggers the  
40 period;

41 (B) count every day, including intermediate  
42 Saturdays, Sundays, and legal holidays; and

43 (C) include the last day of the period, but if the  
44 last day is a Saturday, Sunday, or legal  
45 holiday, the period continues to run until the

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46 end of the next day that is not a Saturday,

47 Sunday, or legal holiday.

48 **(2) *Period Stated in Hours.*** When the period is stated

49 in hours:

50 (A) begin counting immediately on the

51 occurrence of the event that triggers the

52 period;

53 (B) count every hour, including hours during

54 intermediate Saturdays, Sundays, and legal

55 holidays; and

56 (C) if the period would end on a Saturday,

57 Sunday, or legal holiday, the period continues

58 to run until the same time on the next day that

59 is not a Saturday, Sunday, or legal holiday.

60 **(3) *Inaccessibility of the Clerk's Office.*** Unless the

61 court orders otherwise, if the clerk's office is

62 inaccessible:

63                   (A) on the last day for filing under Rule 45(a)(1),  
64                           then the time for filing is extended to the first  
65                           accessible day that is not a Saturday, Sunday,  
66                           or legal holiday; or

67                   (B) during the last hour for filing under Rule  
68                           45(a)(2), then the time for filing is extended  
69                           to the same time on the first accessible day  
70                           that is not a Saturday, Sunday, or legal  
71                           holiday.

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

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

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

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

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

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

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

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

95   \* \* \* \* \*

### Committee Note

**Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a statute that does not specify a method of computing time, a Federal Rule of Criminal Procedure, a local rule, or a court order. In accordance with Rule 57(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a). In making these time computation rules applicable to statutory time periods, subdivision (a) is consistent with Civil Rule 6(a). It is also consistent with the language of Rule 45 prior to restyling, when the rule applied to “computing any period of time.” Although the restyled Rule 45(a) referred only to time periods “specified in these rules, any local rule, or any court order,” some courts nonetheless applied the restyled Rule 45(a) when computing various statutory periods.

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) “does not apply to situations where the court has established a specific calendar day as a deadline”), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of a date-certain deadline set by court order). If, for example, the date for filing is “no later than November 1, 2007,” subdivision (a) does not govern. But if a filing is required to be made “within 10 days” or “within 72 hours,” subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 18 U.S.C. § 3142(d) (excluding Saturdays, Sundays, and holidays from 10 day period). In addition, because the time period in Rule 46(h) is derived from 18 U.S.C. §§ 3142(d) and 3144, the Committee concluded that Rule 45(a) should not be applied to Rule 46(h).

**Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. *See, e.g.*, Rule 35(b)(1). Subdivision (a)(1)(B)'s directive to “count every day” is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 45(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 45(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day — and the 10-day period not infrequently ended later than the 14-day period. *See Miltimore Sales, Inc. v. Int'l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: if the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is



provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, the new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change the meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. *See, e.g.*, Rules 29(c)(1), 33(b)(2), 34, and 35(a).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method — two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods. Thirty-day and longer periods, however, were generally retained without change.

**Subdivision (a)(2).** New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Criminal

Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be “rounded up” to the next whole hour. Subdivision (a)(3) addresses situations when the clerk’s office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

**Subdivision (a)(3).** When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk’s office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk’s office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday or day when the clerk’s office is inaccessible.

Subdivision (a)(3)’s extensions apply “[u]nless the court orders otherwise.” In some circumstances, the court might not wish a period

of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to “weather or other conditions” as the reason for the inaccessibility of the clerk’s office. The reference to “weather” was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk’s office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, *see, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing, *see, e.g.*, D. Kan. Rule CR49.11 (“A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.”).

**Subdivision (a)(4).** New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may, for example, address the problems that might arise if a single district has clerk’s offices in different time zones, or provide that papers filed in a drop box after the normal hours of the clerk’s office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that “[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.” A corresponding provision exists in Rule 56(a). Some courts have held

that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g., Casaldue v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

**Subdivision (a)(5).** New subdivision (a)(5) defines the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Criminal Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.,* Rule 35(a) (stating that a court may correct an arithmetic or technical error in a sentence “[w]ithin 14 days after sentencing”). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.,* Rule 47(c) (stating that a party must serve a written motion “at least 7 days before the hearing date”). In determining what is the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk’s office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday, or legal holiday — no earlier than Tuesday, September 4.

**Subdivision (a)(6).** New subdivision (a)(6) defines “legal holiday” for purposes of the Federal Rules of Criminal Procedure,

including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of “legal holiday” days that are declared a holiday by the President or Congress.

For forward-counted periods — *i.e.*, periods that are measured after an event — subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot’s Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21; the fact that April 21 is a state holiday does not make April 21 a legal holiday for purposes of computing this backward-counted deadline. But note that if the clerk’s office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday — no earlier than Tuesday, April 22.

---

**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

The Standing Committee changed Rule 45(a)(6) to exclude state holidays from the definition of “legal holiday” for purposes of computing backward-counted periods; conforming changes were made to the Committee Note to subdivision (a)(6).

**Rule 5.1. Preliminary Hearing**

33

\* \* \* \* \*

34

**(c) Scheduling.** The magistrate judge must hold the preliminary hearing within a reasonable time, but no later than ~~10~~ 14 days after the initial appearance if the defendant is in custody and no later than ~~20~~ 21 days if not in custody.

35

36

37

38

39

\* \* \* \* \*

**Committee Note**

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Committee Note to Rule 45(a).

**Rule 7. The Indictment and the Information<sup>3</sup>**

33

\* \* \* \* \*

34

**(f) Bill of Particulars.** The court may direct the

35

government to file a bill of particulars. The defendant

36

may move for a bill of particulars before or within ~~10~~ 14

37

days after arraignment or at a later time if the court

38

permits. The government may amend a bill of particulars

39

subject to such conditions as justice requires.

**Committee Note**

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Rule 45(a).

**Rule 12.1. Notice of an Alibi Defense**

1

**(a) Government's Request for Notice and Defendant's**

2

**Response.**

3

\* \* \* \* \*

---

<sup>3</sup>Additional proposed amendments to Rule 7(c) are on page 33.





21 intended alibi defense under Rule 12.1(a)(2), but  
22 no later than ~~10~~ 14 days before trial.

23 \* \* \* \* \*

**Committee Note**

The times set in the former rule at 10 days have been revised to 14 days. See the Committee Note to Rule 45(a).

**Rule 12.3. Notice of a Public-Authority Defense**

1 **(a) Notice of the Defense and Disclosure of Witnesses.**

2 \* \* \* \* \*

3 **(3) *Response to the Notice.*** An attorney for the  
4 government must serve a written response on the  
5 defendant or the defendant's attorney within ~~10~~ 14  
6 days after receiving the defendant's notice, but no  
7 later than ~~20~~ 21 days before trial. The response  
8 must admit or deny that the defendant exercised  
9 the public authority identified in the defendant's  
10 notice.

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11           **(4) *Disclosing Witnesses.***

12           (A) *Government's Request.* An attorney for the  
13           government may request in writing that the  
14           defendant disclose the name, address, and  
15           telephone number of each witness the  
16           defendant intends to rely on to establish a  
17           public-authority defense. An attorney for the  
18           government may serve the request when the  
19           government serves its response to the  
20           defendant's notice under Rule 12.3(a)(3), or  
21           later, but must serve the request no later than  
22           ~~20~~ 21 days before trial.

23           (B) *Defendant's Response.* Within ~~7~~ 14 days after  
24           receiving the government's request, the  
25           defendant must serve on an attorney for the  
26           government a written statement of the name,

27 address, and telephone number of each  
28 witness.

29 (C) *Government's Reply.* Within 7 14 days after  
30 receiving the defendant's statement, an  
31 attorney for the government must serve on  
32 the defendant or the defendant's attorney a  
33 written statement of the name, address, and  
34 telephone number of each witness the  
35 government intends to rely on to oppose the  
36 defendant's public-authority defense.

37 \* \* \* \* \*

**Committee Note**

The times set in the former rule at 7, 10, or 20 days have been revised to 14 or 21 days. See the Committee Note to Rule 45(a).

20 FEDERAL RULES OF CRIMINAL PROCEDURE

**Rule 29. Motion for a Judgment of Acquittal**

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2  
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4  
5  
6

\* \* \* \* \*

**(c) After Jury Verdict or Discharge.**

**(1) *Time for a Motion.*** A defendant may move for a judgment of acquittal, or renew such a motion, within 7 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

\* \* \* \* \*

**Committee Note**

Former Rules 29, 33, and 34 adopted 7-day periods for their respective motions. This period has been expanded to 14 days. Experience has proved that in many cases it is not possible to prepare a satisfactory motion in 7 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. This led to frequent requests for continuances, and the filing of bare bones motions that required later supplementation. The 14-day period — including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a) — sets a more realistic time for the filing of these motions.

**Rule 33. New Trial**

1 \* \* \* \* \*

2 **(b) Time to File.**

3 \* \* \* \* \*

4 **(2) Other Grounds.** Any motion for a new trial  
5 grounded on any reason other than newly  
6 discovered evidence must be filed within ~~7~~ 14 days  
7 after the verdict or finding of guilty.

**Committee Note**

Former Rules 29, 33, and 34 adopted 7-day periods for their respective motions. This period has been expanded to 14 days. Experience has proved that in many cases it is not possible to prepare a satisfactory motion in 7 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. This led to frequent requests for continuances, and the filing of bare bones motions that required later supplementation. The 14-day period — including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a) — sets a more realistic time for the filing of these motions.

22 FEDERAL RULES OF CRIMINAL PROCEDURE

**Rule 34. Arresting Judgment**

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2  
3  
4  
5

\* \* \* \* \*

**(b) Time to File.** The defendant must move to arrest judgment within ~~7~~ 14 days after the court accepts a verdict or finding of guilty, or after a plea of guilty or nolo contendere.

**Committee Note**

Former Rules 29, 33, and 34 adopted 7-day periods for their respective motions. This period has been expanded to 14 days. Experience has proved that in many cases it is not possible to prepare a satisfactory motion in 7 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. This led to frequent requests for continuances, and the filing of bare bones motions that required later supplementation. The 14-day period — including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a) — sets a more realistic time for the filing of these motions.

**Rule 35. Correcting or Reducing a Sentence**

1  
2  
3

**(a) Correcting Clear Error.** Within ~~7~~ 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

4

\* \* \* \* \*

**Committee Note**

Former Rule 35 permitted the correction of arithmetic, technical, or clear errors within 7 days of sentencing. In light of the increased complexity of the sentencing process, the Committee concluded it would be beneficial to expand this period to 14 days, including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a). Extension of the period in this fashion will cause no jurisdictional problems if an appeal has been filed, because Federal Rule of Appellate Procedure 4(b)(5) expressly provides that the filing of a notice of appeal does not divest the district court of jurisdiction to correct a sentence under Rule 35(a).

**Rule 41. Search and Seizure<sup>4</sup>**

1

\* \* \* \* \*

2

**(e) Issuing the Warrant.**

3

\* \* \* \* \*

4

**(2) Contents of the Warrant.**

5

*(A) Warrant to Search for and Seize a Person or*

6

*Property. Except for a tracking-device*

---

<sup>4</sup>Additional proposed amendments to Rule 41(e) and (f) are on pages 53-56.

24 FEDERAL RULES OF CRIMINAL PROCEDURE

7 warrant, the warrant must identify the person  
8 or property to be searched, identify any  
9 person or property to be seized, and designate  
10 the magistrate judge to whom it must be  
11 returned. The warrant must command the  
12 officer to:

13 (i) execute the warrant within a specified  
14 time no longer than ~~10~~ 14 days;

15 \* \* \* \* \*

**Committee Note**

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Rule 45(a).

**Rule 47. Motions and Supporting Affidavits**

1 \* \* \* \* \*

2 **(c) Timing of a Motion.** A party must serve a written  
3 motion — other than one that the court may hear ex  
4 parte — and any hearing notice at least 5 7 days before



5 the hearing date, unless a rule or court order sets a  
6 different period. For good cause, the court may set a  
7 different period upon ex parte application.

8 \* \* \* \* \*

**Committee Note**

The time set in the former rule at 5 days, which excluded intermediate Saturdays, Sundays, and legal holidays, has been expanded to 7 days. See the Committee Note to Rule 45(a).

**Rule 58. Petty Offenses and Other Misdemeanors**

1 \* \* \* \* \*

2 **(g) Appeal.**

3 \* \* \* \* \*

4 **(2) *From a Magistrate Judge's Order or Judgment.***

5 (A) *Interlocutory Appeal.* Either party may appeal  
6 an order of a magistrate judge to a district  
7 judge within ~~10~~ 14 days of its entry if a  
8 district judge's order could similarly be







**PROPOSED AMENDMENT TO RULES  
GOVERNING SECTION 2254 CASES IN THE  
UNITED STATES DISTRICT COURTS**

**Rule 8. Evidentiary Hearing**

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\* \* \* \* \*

**(b) Reference to a Magistrate Judge.** A judge may, under 28 U.S.C. § 636(b), refer the petition to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within ~~10~~ 14 days after being served, a party may file objections as provided by local court rule. The judge must determine de novo any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

\* \* \* \* \*

**Committee Note**

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Federal Rules of Criminal Procedure 45(a).

**PROPOSED AMENDMENT TO RULES  
GOVERNING SECTION 2255 PROCEEDINGS  
FOR THE UNITED STATES DISTRICT COURTS**

**Rule 8. Evidentiary Hearing**

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\* \* \* \* \*

**(b) Reference to a Magistrate Judge.** A judge may, under 28 U.S.C. § 636(b), refer the motion to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within ~~10~~ 14 days after being served, a party may file objections as provided by local court rule. The judge must determine de novo any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

\* \* \* \* \*

**Committee Note**

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Federal Rules of Criminal Procedure 45(a).



**Rule 7. The Indictment and the Information<sup>5</sup>**

1 \* \* \* \* \*

2 **(c) Nature and Contents.**

3 \* \* \* \* \*

4 ~~**(2) Criminal Forfeiture.** No judgment of forfeiture~~  
5 ~~may be entered in a criminal proceeding unless the~~  
6 ~~indictment or the information provides notice that~~  
7 ~~the defendant has an interest in property that is~~  
8 ~~subject to forfeiture in accordance with the~~  
9 ~~applicable statute.~~

10 ~~—**(3)(2) Citation Error.** Unless the defendant was misled~~  
11 ~~and thereby prejudiced, neither an error in a~~  
12 ~~citation nor a citation’s omission is a ground to~~  
13 ~~dismiss the indictment or information or to reverse~~  
14 ~~a conviction.~~

15 \* \* \* \* \*

---

<sup>5</sup>Additional proposed amendments to Rule 7(f) are on page 15.

**Committee Note**

**Subdivision (c).** The provision regarding forfeiture is obsolete. In 2000 the same language was repeated in subdivision (a) of Rule 32.2, which was intended to consolidate the rules dealing with forfeiture.

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**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

No changes were made to the proposed amendment to Rule 7.

**Rule 32. Sentencing and Judgment<sup>6</sup>**

1

\* \* \* \* \*

2

**(d) Presentence Report.**

3

\* \* \* \* \*

4

**(2) *Additional Information.*** The presentence report

5

must also contain the following:

6

(A) the defendant's history and characteristics,

---

<sup>6</sup>Incorporates amendments approved by the Supreme Court that are scheduled to take effect on December 1, 2008, unless Congress acts otherwise.

- 7 including:
- 8 (i) any prior criminal record;
- 9 (ii) the defendant's financial condition; and
- 10 (iii) any circumstances affecting the
- 11 defendant's behavior that may be
- 12 helpful in imposing sentence or in
- 13 correctional treatment;
- 14 (B) information that assesses any financial,
- 15 social, psychological, and medical impact on
- 16 any victim;
- 17 (C) when appropriate, the nature and extent of
- 18 nonprison programs and resources available
- 19 to the defendant;
- 20 (D) when the law provides for restitution,
- 21 information sufficient for a restitution order;
- 22 (E) if the court orders a study under 18 U.S.C.
- 23 § 3552(b), any resulting report and

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24 recommendation; ~~and~~  
25 (F) any other information that the court requires,  
26 including information relevant to the factors  
27 under 18 U.S.C. § 3553(a); and  
28 (G) specify whether the government seeks  
29 forfeiture under Rule 32.2 and any other  
30 provision of law.  
31 \* \* \* \* \*

**Committee Note**

**Subdivision (d)(2)(G).** Rule 32.2 (a) requires that the indictment or information provide notice to the defendant of the government’s intent to seek forfeiture as part of the sentence. The amendment provides that the same notice be provided as part of the presentence report to the court. This will ensure timely consideration of the issues concerning forfeiture as part of the sentencing process.

---

**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

No changes were made to the proposed amendment to Rule 32.

\* \* \* \* \*

**Rule 32.2. Criminal Forfeiture**

1       **(a) Notice to the Defendant.** A court must not enter a  
 2       judgment of forfeiture in a criminal proceeding unless  
 3       the indictment or information contains notice to the  
 4       defendant that the government will seek the forfeiture of  
 5       property as part of any sentence in accordance with the  
 6       applicable statute. The notice should not be designated  
 7       as a count of the indictment or information. The  
 8       indictment or information need not identify the property  
 9       subject to forfeiture or specify the amount of any  
 10      forfeiture money judgment that the government seeks.

11      **(b) Entering a Preliminary Order of Forfeiture.**

12      **(1) *In-General: Forfeiture Phase of the Trial.***

13              **(A) *Forfeiture Determinations.*** As soon as  
 14              practical after a verdict or finding of guilty, or  
 15              after a plea of guilty or nolo contendere is  
 16              accepted, on any count in an indictment or

38 FEDERAL RULES OF CRIMINAL PROCEDURE

17 information regarding which criminal  
18 forfeiture is sought, the court must determine  
19 what property is subject to forfeiture under  
20 the applicable statute. If the government  
21 seeks forfeiture of specific property, the court  
22 must determine whether the government has  
23 established the requisite nexus between the  
24 property and the offense. If the government  
25 seeks a personal money judgment, the court  
26 must determine the amount of money that the  
27 defendant will be ordered to pay.

28 (B) Evidence and Hearing. The court's  
29 determination may be based on evidence  
30 already in the record, including any written  
31 plea agreement, ~~or~~ and on any additional  
32 evidence or information submitted by the  
33 parties and accepted by the court as relevant

34 and reliable. ~~If if~~ the forfeiture is contested,  
 35 on either party's request the court must  
 36 conduct a hearing on evidence or information  
 37 ~~presented by the parties at a hearing~~ after the  
 38 verdict or finding of guilt.

39 **(2) *Preliminary Order.***

40 **(A) *Contents of a Specific Order.*** If the court  
 41 finds that property is subject to forfeiture, it  
 42 must promptly enter a preliminary order of  
 43 forfeiture setting forth the amount of any  
 44 money judgment, ~~or directing the forfeiture of~~  
 45 specific property, and directing the forfeiture  
 46 of any substitute property if the government  
 47 has met the statutory criteria ~~without regard~~  
 48 ~~to any third party's interest in all or part of it.~~  
 49 The court must enter the order without regard  
 50 to any third party's interest in the property.

40 FEDERAL RULES OF CRIMINAL PROCEDURE

51 Determining whether a third party has such  
52 an interest must be deferred until any third  
53 party files a claim in an ancillary proceeding  
54 under Rule 32.2(c).

55 (B) Timing. Unless doing so is impractical, the  
56 court must enter the preliminary order  
57 sufficiently in advance of sentencing to allow  
58 the parties to suggest revisions or  
59 modifications before the order becomes final  
60 as to the defendant under Rule 32.2(b)(4).

61 (C) General Order. If, before sentencing, the  
62 court cannot identify all the specific property  
63 subject to forfeiture or calculate the total  
64 amount of the money judgment, the court  
65 may enter a forfeiture order that:

66 (i) lists any identified property;

67 (ii) describes other property in general



68 terms; and  
69 (iii) states that the order will be  
70 amended under Rule 32.2(e)(1)  
71 when additional specific property  
72 is identified or the amount of the  
73 money judgment has been  
74 calculated.

75 (3) ***Seizing Property.*** The entry of a preliminary order  
76 of forfeiture authorizes the Attorney General (or a  
77 designee) to seize the specific property subject to  
78 forfeiture; to conduct any discovery the court  
79 considers proper in identifying, locating, or  
80 disposing of the property; and to commence  
81 proceedings that comply with any statutes  
82 governing third-party rights. ~~At sentencing—~~ or  
83 ~~at any time before sentencing if the defendant~~  
84 ~~consents—the order of forfeiture becomes final as~~

42 FEDERAL RULES OF CRIMINAL PROCEDURE

85 ~~to the defendant and must be made a part of the~~  
86 ~~sentence and be included in the judgment.~~—The  
87 court may include in the order of forfeiture  
88 conditions reasonably necessary to preserve the  
89 property’s value pending any appeal.

90 **(4) Sentence and Judgment.**

91 **(A) When Final.** At sentencing — or at any time  
92 before sentencing if the defendant consents  
93 — the preliminary forfeiture order becomes  
94 final as to the defendant. If the order directs  
95 the defendant to forfeit specific property, it  
96 remains preliminary as to third parties until  
97 the ancillary proceeding is concluded under  
98 Rule 32.2 (c).

99 **(B) Notice and Inclusion in the Judgment.** The  
100 court must include the forfeiture when orally  
101 announcing the sentence or must otherwise

102 ensure that the defendant knows of the  
103 forfeiture at sentencing. The court must also  
104 include the forfeiture order, directly or by  
105 reference, in the judgment, but the court's  
106 failure to do so may be corrected at any time  
107 under Rule 36.

108 (C) Time to Appeal. The time for the defendant  
109 or the government to file an appeal from the  
110 forfeiture order, or from the court's failure to  
111 enter an order, begins to run when judgment  
112 is entered. If the court later amends or  
113 declines to amend a forfeiture order to  
114 include additional property under Rule  
115 32.2(e), the defendant or the government may  
116 file an appeal regarding that property under  
117 Federal Rule of Appellate Procedure 4(b).  
118 The time for that appeal runs from the date

44 FEDERAL RULES OF CRIMINAL PROCEDURE

119 when the order granting or denying the  
120 amendment becomes final.

121 **(4 5) *Jury Determination.***

122 (A) *Retaining the Jury.* Upon a party's request in  
123 a case in which a jury returns a verdict of  
124 guilty, the jury must In any case tried before  
125 a jury, if the indictment or information states  
126 that the government is seeking forfeiture, the  
127 court must determine before the jury begins  
128 deliberating whether either party requests that  
129 the jury be retained to determine the  
130 forfeitability of specific property if it returns  
131 a guilty verdict.

132 (B) *Special Verdict Form.* If a party timely  
133 requests to have the jury determine forfeiture,  
134 the government must submit a proposed  
135 Special Verdict Form listing each property

136 subject to forfeiture and asking the jury to  
137 determine whether the government has  
138 established the requisite nexus between the  
139 property and the offense committed by the  
140 defendant.

141 **(6) Notice of the Forfeiture Order.**

142 **(A) Publishing and Sending Notice.** If the court  
143 orders the forfeiture of specific property, the  
144 government must publish notice of the order  
145 and send notice to any person who reasonably  
146 appears to be a potential claimant with  
147 standing to contest the forfeiture in the  
148 ancillary proceeding.

149 **(B) Content of the Notice.** The notice must  
150 describe the forfeited property, state the times  
151 under the applicable statute when a petition  
152 contesting the forfeiture must be filed, and

46 FEDERAL RULES OF CRIMINAL PROCEDURE

153 state the name and contact information for the  
154 government attorney to be served with the  
155 petition.

156 (C) Means of Publication; Exceptions to  
157 Publication Requirement. Publication must  
158 take place as described in Supplemental Rule  
159 G(4)(a)(iii) of the Federal Rules of Civil  
160 Procedure, and may be by any means  
161 described in Supplemental Rule G(4)(a)(iv).  
162 Publication is unnecessary if any exception in  
163 Supplemental Rule G(4)(a)(i) applies.

164 (D) Means of Sending the Notice. The notice  
165 may be sent in accordance with Supplemental  
166 Rules G(4)(b)(iii)-(v) of the Federal Rules of  
167 Civil Procedure.

168 (7) Interlocutory Sale. At any time before entry of a  
169 final forfeiture order, the court, in accordance with

170                    Supplemental Rule G(7) of the Federal Rules of  
171                    Civil Procedure, may order the interlocutory sale of  
172                    property alleged to be forfeitable.

173                    \* \* \* \* \*

#### Committee Note

**Subdivision (a).** The amendment responds to some uncertainty regarding the form of the required notice that the government will seek forfeiture as part of the sentence, making it clear that the notice should not be designated as a separate count in an indictment or information. The amendment also makes it clear that the indictment or information need only provide general notice that the government is seeking forfeiture, without identifying the specific property being sought. This is consistent with the 2000 Committee Note, as well as many lower court decisions.

Although forfeitures are not charged as counts, the federal judiciary's Case Management and Electronic Case Files system should note that forfeiture has been alleged so as to assist the parties and the court in tracking the subsequent status of forfeiture allegations.

The court may direct the government to file a bill of particulars to inform the defendant of the identity of the property that the government is seeking to forfeit or the amount of any money judgment sought if necessary to enable the defendant to prepare a defense or to avoid unfair surprise. *See, e.g., United States v. Moffitt, Zwerdling, & Kemler, P.C.*, 83 F.3d 660, 665 (4th Cir. 1996) (holding that the government need not list each asset subject to forfeiture in the

indictment because notice can be provided in a bill of particulars); *United States v. Vasquez-Ruiz*, 136 F. Supp. 2d 941, 944 (N.D. Ill. 2001) (directing the government to identify in a bill of particulars, at least 30 days before trial, the specific items of property, including substitute assets, that it claims are subject to forfeiture); *United States v. Best*, 657 F. Supp. 1179, 1182 (N.D. Ill. 1987) (directing the government to provide a bill of particulars apprising the defendants as to the time periods during which they obtained the specified classes of property through their alleged racketeering activity and the interest in each of these properties that was allegedly obtained unlawfully). *See also United States v. Columbo*, 2006 WL 2012511 \* 5 & n.13 (S.D. N.Y. 2006) (denying motion for bill of particulars and noting that government proposed sending letter detailing basis for forfeiture allegations).

**Subdivision (b)(1).** Rule 32.2(b)(1) sets forth the procedure for determining if property is subject to forfeiture. Subparagraph (A) is carried forward from the current Rule without change.

Subparagraph (B) clarifies that the parties may submit additional evidence relating to the forfeiture in the forfeiture phase of the trial, which may be necessary even if the forfeiture is not contested. Subparagraph (B) makes it clear that in determining what evidence or information should be accepted, the court should consider relevance and reliability. Finally, subparagraph (B) requires the court to hold a hearing when forfeiture is contested. The Committee foresees that in some instances live testimony will be needed to determine the reliability of proffered information. *Cf.* Rule 32.1(b)(1)(B)(iii) (providing the defendant in a proceeding for revocation of probation or supervised release with the opportunity, upon request, to question any adverse witness unless the judge determines this is not in the interest of justice).



**Subdivision (b)(2)(A).** Current Rule 32.2(b) provides the procedure for issuing a preliminary forfeiture order once the court finds that the government has established the nexus between the property and the offense (or the amount of the money judgment). The amendment makes clear that the preliminary order may include substitute assets if the government has met the statutory criteria.

**Subdivision (b)(2)(B).** This new subparagraph focuses on the timing of the preliminary forfeiture order, stating that the court should issue the order “sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final.” Many courts have delayed entry of the preliminary order until the time of sentencing. This is undesirable because the parties have no opportunity to advise the court of omissions or errors in the order before it becomes final as to the defendant (which occurs upon oral announcement of the sentence and the entry of the criminal judgment). Once the sentence has been announced, the rules give the sentencing court only very limited authority to correct errors or omissions in the preliminary forfeiture order. Pursuant to Rule 35(a), the district court may correct a sentence, including an incorporated forfeiture order, within seven days after oral announcement of the sentence. During the seven-day period, corrections are limited to those necessary to correct “arithmetical, technical, or other clear error.” *See United States v. King*, 368 F. Supp. 2d 509, 512-13 (D. S.C. 2005). Corrections of clerical errors may also be made pursuant to Rule 36. If the order contains errors or omissions that do not fall within Rules 35(a) or 36, and the court delays entry of the preliminary forfeiture order until the time of sentencing, the parties may be left with no alternative to an appeal, which is a waste of judicial resources. The amendment requires the court to enter the preliminary order in advance of sentencing to permit time for corrections, unless it is not practical to do so in an individual case.

**Subdivision (b)(2)(C).** The amendment explains how the court is to reconcile the requirement that it make the forfeiture order part of the sentence with the fact that in some cases the government will not have completed its post-conviction investigation to locate the forfeitable property by the time of sentencing. In that case the court is authorized to issue a forfeiture order describing the property in “general” terms, which order may be amended pursuant to Rule 32.2(e)(1) when additional specific property is identified.

The authority to issue a general forfeiture order should be used only in unusual circumstances and not as a matter of course. For cases in which a general order was properly employed, see *United States v. BCCI Holdings (Luxembourg)*, 69 F. Supp. 2d 36 (D.D.C. 1999) (ordering forfeiture of all of a large, complex corporation’s assets in the United States, permitting the government to continue discovery necessary to identify and trace those assets); *United States v. Saccoccia*, 898 F. Supp. 53 (D.R.I. 1995) (ordering forfeiture of up to a specified amount of laundered drug proceeds so that the government could continue investigation which led to the discovery and forfeiture of gold bars buried by the defendant in his mother’s back yard).

**Subdivisions (b)(3) and (4).** The amendment moves the language explaining when the forfeiture order becomes final as to the defendant to new subparagraph (b)(4)(A), where it is coupled with new language explaining that the order is not final as to third parties until the completion of the ancillary proceedings provided for in Rule 32.2(c).

New subparagraphs (B) and (C) are intended to clarify what the district court is required to do at sentencing, and to respond to conflicting decisions in the courts regarding the application of Rule 36 to correct clerical errors. The new subparagraphs add considerable

detail regarding the oral announcement of the forfeiture at sentencing, the reference to the forfeiture order in the judgment and commitment order, the availability of Rule 36 to correct the failure to include the forfeiture order in the judgment and commitment order, and the time to appeal.

New subparagraph (C) clarifies the time for appeals concerning forfeiture by the defendant or government from two kinds of orders: the original judgment of conviction and later orders amending or refusing to amend the judgment under Rule 32.2(e) to add additional property. This provision does not address appeals by the government or a third party from orders in ancillary proceedings under Rule 32.2(c).

**Subdivision (b)(5)(A).** The amendment clarifies the procedure for requesting a jury determination of forfeiture. The goal is to avoid an inadvertent waiver of the right to a jury determination, while also providing timely notice to the court and to the jurors themselves if they will be asked to make the forfeiture determination. The amendment requires that the court determine whether either party requests a jury determination of forfeiture in cases where the government has given notice that it is seeking forfeiture and a jury has been empaneled to determine guilt or innocence. The rule requires the court to make this determination before the jury retires. Jurors who know that they may face an additional task after they return their verdict will be more accepting of the additional responsibility in the forfeiture proceeding, and the court will be better able to plan as well.

Although the rule permits a party to make this request just before the jury retires, it is desirable, when possible, to make the request earlier, at the time when the jury is empaneled. This allows the court to plan, and also allows the court to tell potential jurors what to expect in terms of their service.

**Subdivision (b)(5)(B)** explains that “the government must submit a proposed Special Verdict Form listing each property subject to forfeiture.” Use of such a form is desirable, and the government is in the best position to draft the form.

**Subdivisions (b)(6) and (7).** These provisions are based upon the civil forfeiture provisions in Supplemental Rule G of the Federal Rules of Civil Procedure, which are also incorporated by cross reference. The amendment governs such mechanical and technical issues as the manner of publishing notice of forfeiture to third parties and the interlocutory sale of property, bringing practice under the Criminal Rules into conformity with the Civil Rules.

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#### **CHANGES MADE TO PROPOSED AMENDMENT RELEASED FOR PUBLIC COMMENT**

The proposed amendment to Rule 32.2 was modified to use the term “property” throughout. As published, the proposed amendment used the terms property and asset(s) interchangeably. No difference in meaning was intended, and in order to avoid confusion, a single term was used consistently throughout. The term “forfeiture order” was substituted, where possible, for the wordier “order of forfeiture.” Other small stylistic changes (such as the insertion of “the” in subpart titles) were also made to conform to the style conventions.

In new subpart (b)(4)(C), dealing with the time for appeals, the words “the defendant or the government” were substituted for the phrase “a party.” This portion of the rule addresses only appeals from the original judgment of conviction and later orders amending or refusing to amend the judgment under Rule 32.2(e) to add additional property. Only the defendant and the government are parties at this stage of the proceedings. This portion of the rule does not address

appeals by the government or a third party from orders in ancillary proceedings under Rule 32.2(c). This point was also clarified in the Committee note.

Additionally, two other changes were made to the Committee Note: a reference to the use of the ECF system to aid the court and parties in tracking the status of forfeiture allegations, and an additional illustrative case.

**Rule 41. Search and Seizure<sup>7</sup>**

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\* \* \* \* \*

**(e) Issuing the Warrant.**

\* \* \* \* \*

**(2) Contents of the Warrant.**

\* \* \* \* \*

**(B) Warrant Seeking Electronically Stored Information.** A warrant under Rule 41(e)(2)(A) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information.

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<sup>7</sup>Additional proposed amendments to Rule 41(e) are on page 23.

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11 Unless otherwise specified, the warrant  
12 authorizes a later review of the media or  
13 information consistent with the warrant. The  
14 time for executing the warrant in Rule  
15 41(e)(2)(A) and (f)(1)(A) refers to the seizure  
16 or on-site copying of the media or  
17 information, and not to any later off-site  
18 copying or review.

19 (BC) *Warrant for a Tracking Device.* A tracking-  
20 device warrant must identify the person or  
21 property to be tracked, designate the  
22 magistrate judge to whom it must be  
23 returned, and specify a reasonable length of  
24 time that the device may be used. The time  
25 must not exceed 45 days from the date the  
26 warrant was issued. The court may, for good  
27 cause, grant one or more extensions for a

28 reasonable period not to exceed 45 days each.

29 The warrant must command the officer to:

30 \* \* \* \* \*

31 **(f) Executing and Returning the Warrant.**

32 **(1) *Warrant to Search for and Seize a Person or***  
33 ***Property.***

34 \* \* \* \* \*

35 (B) *Inventory.* An officer present during the

36 execution of the warrant must prepare and

37 verify an inventory of any property seized.

38 The officer must do so in the presence of

39 another officer and the person from whom, or

40 from whose premises, the property was taken.

41 If either one is not present, the officer must

42 prepare and verify the inventory in the

43 presence of at least one other credible person.

44 In a case involving the seizure of electronic

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45 storage media or the seizure or copying of  
46 electronically stored information, the  
47 inventory may be limited to describing the  
48 physical storage media that were seized or  
49 copied. The officer may retain a copy of the  
50 electronically stored information that was  
51 seized or copied.

52 \* \* \* \* \*

**Committee Note**

**Subdivision (e)(2).** Computers and other electronic storage media commonly contain such large amounts of information that it is often impractical for law enforcement to review all of the information during execution of the warrant at the search location. This rule acknowledges the need for a two-step process: officers may seize or copy the entire storage medium and review it later to determine what electronically stored information falls within the scope of the warrant.

The term “electronically stored information” is drawn from Rule 34(a) of the Federal Rules of Civil Procedure, which states that it includes “writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained.” The 2006 Committee Note to Rule 34(a) explains that the description is intended to cover all current types of computer-based information and



to encompass future changes and developments. The same broad and flexible description is intended under Rule 41.

In addition to addressing the two-step process inherent in searches for electronically stored information, the Rule limits the 10 [14]<sup>8</sup> day execution period to the actual execution of the warrant and the on-site activity. While consideration was given to a presumptive national or uniform time period within which any subsequent off-site copying or review of the media or electronically stored information would take place, the practical reality is that there is no basis for a “one size fits all” presumptive period. A substantial amount of time can be involved in the forensic imaging and review of information. This is due to the sheer size of the storage capacity of media, difficulties created by encryption and booby traps, and the workload of the computer labs. The rule does not prevent a judge from imposing a deadline for the return of the storage media or access to the electronically stored information at the time the warrant is issued. However, to arbitrarily set a presumptive time period for the return could result in frequent petitions to the court for additional time.

It was not the intent of the amendment to leave the property owner without an expectation of the timing for return of the property, excluding contraband or instrumentalities of crime, or a remedy. Current Rule 41(g) already provides a process for the “person aggrieved” to seek an order from the court for a return of the property, including storage media or electronically stored information, under reasonable circumstances.

Where the “person aggrieved” requires access to the storage media or the electronically stored information earlier than anticipated by law enforcement or ordered by the court, the court on a case by

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<sup>8</sup>The 10 day period under Rule 41(e) may change to 14 days under the current proposals associated with the time computation amendments to Rule 45.

case basis can fashion an appropriate remedy, taking into account the time needed to image and search the data and any prejudice to the aggrieved party.

The amended rule does not address the specificity of description that the Fourth Amendment may require in a warrant for electronically stored information, leaving the application of this and other constitutional standards concerning both the seizure and the search to ongoing case law development.

**Subdivision (f)(1).** Current Rule 41(f)(1) does not address the question of whether the inventory should include a description of the electronically stored information contained in the media seized. Where it is impractical to record a description of the electronically stored information at the scene, the inventory may list the physical storage media seized. Recording a description of the electronically stored information at the scene is likely to be the exception, and not the rule, given the large amounts of information contained on electronic storage media and the impracticality for law enforcement to image and review all of the information during the execution of the warrant. This is consistent with practice in the “paper world.” In circumstances where filing cabinets of documents are seized, routine practice is to list the storage devices, i.e., the cabinets, on the inventory, as opposed to making a document by document list of the contents.

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#### **CHANGES MADE TO PROPOSED AMENDMENT RELEASED FOR PUBLIC COMMENT**

The words “copying or” were added to the last line of Rule 41(e)(2)(B) to clarify that copying as well as review may take place off-site.

The Committee Note was amended to reflect the change to the text and to clarify that the amended Rule does not speak to constitutional questions concerning warrants for electronic information. Issues of particularity and search protocol are presently working their way through the courts. *Compare United States v. Carey*, 172 F.3d 1268 (10th Cir. 1999) (finding warrant authorizing search for “documentary evidence pertaining to the sale and distribution of controlled substances” to prohibit opening of files with a .jpg suffix) and *United States v. Fleet Management Ltd.*, 521 F. Supp. 2d 436 (E.D. Pa. 2007) (warrant invalid when it “did not even attempt to differentiate between data that there was probable cause to seize and data that was completely unrelated to any relevant criminal activity”) with *United States v. Comprehensive Drug Testing, Inc.*, 513 F.3d 1085 (9th Cir. 2008) (the government had no reason to confine its search to key words; “computer files are easy to disguise or rename, and were we to limit the warrant to such a specific search protocol, much evidence could escape discovery simply because of [the defendants’] labeling of the files”); *United States v. Brooks*, 427 F.3d 1246 (10th Cir. 2005) (rejecting requirement that warrant describe specific search methodology).

Minor changes were also made to conform to style conventions.

**PROPOSED AMENDMENTS TO RULES  
GOVERNING SECTION 2254 CASES IN THE  
UNITED STATES DISTRICT COURTS**

**Rule 11. Certificate of Appealability; Time to Appeal**

1 **(a) Certificate of Appealability.** The district court must  
2 issue or deny a certificate of appealability when it enters a  
3 final order adverse to the applicant. Before entering the final  
4 order, the court may direct the parties to submit arguments on  
5 whether a certificate should issue. If the court issues a  
6 certificate, the court must state the specific issue or issues that  
7 satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the  
8 court denies a certificate, the parties may not appeal the denial  
9 but may seek a certificate from the court of appeals under  
10 Federal Rule of Appellate Procedure 22. A motion to  
11 reconsider a denial does not extend the time to appeal.

12 **(b) Time to Appeal.** Federal Rule of Appellate Procedure  
13 4(a) governs the time to appeal an order entered under these  
14 rules. A timely notice of appeal must be filed even if the  
15 district court issues a certificate of appealability.

**Committee Note**

**Subdivision (a).** As provided in 28 U.S.C. § 2253(c), an applicant may not appeal to the court of appeals from a final order in a proceeding under § 2254 unless a judge issues a certificate of appealability (COA), identifying the specific issues for which the applicant has made a substantial showing of a denial of constitutional right. New Rule 11(a) makes the requirements concerning COAs more prominent by adding and consolidating them in the appropriate rule of the Rules Governing § 2254 Cases in the United States District Courts. Rule 11(a) also requires the district judge to grant or deny the certificate at the time a final order is issued. *See* 3d Cir. R. 22.2, 111.3. This will ensure prompt decision making when the issues are fresh, rather than postponing consideration of the certificate until after a notice of appeal is filed. These changes will expedite proceedings, avoid unnecessary remands, and help inform the applicant's decision whether to file a notice of appeal.

**Subdivision (b).** The new subdivision is designed to direct parties to the appropriate rule governing the timing of the notice of appeal and make it clear that the district court's grant of a COA does not eliminate the need to file a notice of appeal.

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**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

In response to public comments, a sentence was added stating that prior to the entry of the final order the district court may direct the parties to submit arguments on whether or not a certificate should issue. This allows a court in complex cases (such as death penalty cases with numerous claims) to solicit briefing that might narrow the issues for appeal. For purposes of clarification, two sentences were

added at the end of subdivision (a) stating that (1) although the district court's denial of a certificate is not appealable, a certificate may be sought in the court of appeals, and (2) a motion for reconsideration of a denial of a certificate does not extend the time to appeal.

Finally, a new subdivision (b) was added to mirror the information provided in subdivision (b) of Rule 11 of the Rules Governing § 2255 Proceedings, directing petitioners to Rule 4 of the appellate rules and indicating that notice of appeal must be filed even if a COA is issued.

Minor changes were also made to conform to style conventions.

**Rule ~~11~~ 12. Applicability of the Federal Rules of Civil Procedure**

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\* \* \* \* \*

**Committee Note**

The amendment renumbers current Rule 11 to accommodate the new rule on certificates of appealability.

**PROPOSED AMENDMENT TO RULES  
GOVERNING SECTION 2255 PROCEEDINGS FOR  
THE UNITED STATES DISTRICT COURTS**

**Rule 11. Certificate of Appealability; Time to Appeal**

1 **(a) Certificate of Appealability.** The district court must  
2 issue or deny a certificate of appealability when it enters a  
3 final order adverse to the applicant. Before entering the final  
4 order, the court may direct the parties to submit arguments on  
5 whether a certificate should issue. If the court issues a  
6 certificate, the court must state the specific issue or issues that  
7 satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the  
8 court denies a certificate, a party may not appeal the denial  
9 but may seek a certificate from the court of appeals under  
10 Federal Rule of Appellate Procedure 22. A motion to  
11 reconsider a denial does not extend the time to appeal.  
12 **(b) Time to Appeal.** Federal Rule of Appellate Procedure  
13 4(a) governs the time to appeal an order entered under these  
14 rules. A timely notice of appeal must be filed even if the

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15 district court issues a certificate of appealability. These rules  
16 do not extend the time to appeal the original judgment of  
17 conviction.

**Committee Note**

**Subdivision (a).** As provided in 28 U.S.C. § 2253(c), an applicant may not appeal to the court of appeals from a final order in a proceeding under § 2255 unless a judge issues a COA, identifying the specific issues for which the applicant has made a substantial showing of a denial of constitutional right. New Rule 11(a) makes the requirements concerning certificates of appealability more prominent by adding and consolidating them in the appropriate rule of the Rules Governing § 2255 Proceedings for the United States District Courts. Rule 11(a) also requires the district judge to grant or deny the certificate at the time a final order is issued. *See* 3d Cir. R. 22.2, 111.3. This will ensure prompt decision making when the issues are fresh, rather than postponing consideration of the certificate until after a notice of appeal is filed. These changes will expedite proceedings, avoid unnecessary remands, and help to inform the applicant's decision whether to file a notice of appeal.

**Subdivision (b).** The amendment is designed to make it clear that the district court's grant of a COA does not eliminate the need to file a notice of appeal.

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**CHANGES MADE TO PROPOSED AMENDMENT  
RELEASED FOR PUBLIC COMMENT**

In response to public comments, a sentence was added stating that prior to the entry of the final order the district court may direct the parties to submit arguments on whether or not a certificate should issue. This allows a court in complex cases (such as death penalty cases with numerous claims) to solicit briefing that might narrow the issues for appeal. For purposes of clarification, two sentences were added at the end of subdivision (a) stating that (1) although the district court's denial of a certificate is not appealable, a certificate may be sought in the court of appeals, and (2) a motion for reconsideration of a denial of a certificate does not extend the time to appeal. Finally, a sentence indicating that notice of appeal must be filed even if a COA is issued was added to subdivision (b).

Minor changes were also made to conform to style conventions.

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