

From: Jack Metzler
To: RulesCommittee Secretary
Subject: Suggestion for FRAP 26(a)(1)(B)
Date: Thursday, October 10, 2024 4:52:09 PM

Hi Thomas,

I wanted to follow up on our conversation at the Inn of Court the other night, but I seem to have misplaced your business card so I'm sending this to the public facing email. I found the half-written rules proposal I mentioned, which is as follows (new text in red):

Rule 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

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

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

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays, **starting with the first day that is not a Saturday, Sunday, or legal holiday**; and

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

The intent here is to address the pernicious practice of filing motions at the end of the day on a Friday, especially before a holiday. Under Rule 27(a)(3), the opposing party nominally has 10 days to respond, including weekends and holidays. Since any 10 day period will include at least one weekend, the actual working time to respond is 8 days, but the current rule gives parties the ability to significantly reduce that time by choosing to file on Friday. With no holiday, filing on Friday gives the opposing party 6 business days to work with rather than 8 if the motion were filed earlier in the week. When there is a holiday in the period, filing on Friday reduces the available work days by a whopping 37.5%, from 7 business days to 5. It would be nice if lawyers refrained from such tactics as a matter of professionalism, but experience suggests otherwise. At a minimum, the rules should not enable attorney gamesmanship; the current version of the rule rewards it. If this revision were implemented, attorneys could still file on Friday, but they would not be rewarded for doing so.

The main drawback I foresee is making it slightly more cumbersome to calculate *longer* filing dates, such as for briefs, because one would have to check whether the filing was on a Friday before simply adding 30 days and seeing if the result is a weekend or holiday. That seems like a very minor inconvenience since attorneys are already used to checking whether the last day is a weekend or holiday.

Happy to discuss if you find this interesting.

Best,

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