

Summary of Time-Computation Amendments to the Federal Rules

- The time-computation amendments to the federal rules, scheduled to go into effect December 1, 2009,¹ address two related matters: (1) the method for calculating or counting time periods set out in the rules, such as deadlines for actions; and (2) the specific time periods set out in the various federal rules. The amendments respond to years of complaints by practitioners and judges that the present rules are confusing and can lead to missing deadlines and losing important rights.
- The current rules exclude intermediate weekends and holidays for some short time periods, resulting in inconsistency and unnecessary complication. The existing rules exclude intermediate weekends and holidays for time periods that are less than 11 days under the civil and criminal rules and less than 8 days under the bankruptcy rules, but include weekends and holidays for longer periods. This has made calculating time periods unnecessarily complex.²
- The amended rules are consistent and simple: they count every day, including intermediate weekends and holidays for all time periods.
- The directive in the amended rules to count every day is relevant only if the time period is stated in days (not weeks, months, or years).
- Under all the amended federal rules, the most basic counting rule remains the same as under the current version of the rules. In calculating or counting any time period, the “first” day, the day of the act or event that starts the period running, is not counted. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday. If the “last” day falls on a Saturday, Sunday, or legal holiday, the last day of the period extends to the next day that is not a Saturday, Sunday, or legal holiday. The amendments clarify the basic counting rule in two significant ways. Under the current rules, a time period is extended to the next day when the “last” day falls on a day when the clerk’s office is “inaccessible.” The current provision applies expressly to filing a paper. The amendments expand the provision to address electronic filings. The rule amendments do not define “inaccessible.” The drafters recognized that a national rule could not address all conceivable situations, which could be subject to unique local conditions and practice. For this reason, the amendments authorize

¹ The amendments will go into effect December 1, 2009 unless Congress affirmatively acts to prevent or delay the changes. Congress has passed legislation that amends certain statutory deadlines in accordance with the proposed rule amendments. As a result, affirmative congressional action to disapprove the proposed rule amendments is unlikely.

² As one judge has put it: “If a ten-day period and a fourteen-day period start on the same day, which one ends first? Most sane people would suggest the ten-day period. But, under the Federal Rules of Civil Procedure, time is relative. Fourteen days usually lasts fourteen days. Ten days, however, never lasts just ten days; ten days always lasts at least fourteen days. Eight times per year ten days can last fifteen days. And, once per year, ten days can last sixteen days. And this does not even take into account inclement weather. As we sometimes say in Kentucky, there’s eight ways to Sunday.” *Miltimore Sales, Inc. v. Int’l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

each court to adopt local rules defining “inaccessible” and providing for shorter or different time-period extensions in such circumstances. The amendments also explain how to determine the “next day” for both forward-looking and backward-looking time periods. The definition of “next day” comes into play when a deadline falls on a weekend or holiday, because the amendments then direct that the deadline continue to run until the “next day” that is not a weekend or holiday. Under the amendments, if the deadline is measured after an event and the deadline falls on a weekend or holiday, the “next day” is determined by continuing to count forward. But if the deadline is measured before an event and the deadline falls on a weekend or holiday, the “next day” is determined by continuing to count backward—*e.g.*, from Saturday the 31st to Friday the 30th. For forward-counted periods, the rule includes state holidays within the definition of legal holidays. But for backward-counting periods, state holidays are not recognized. The reason for this difference is that the rules protect those who may be unaware of the effect of a state holiday, some of which may be arcane and little known.

- The amendments also define the “last day” of a period. For paper filing, the last day of a time period expires “when the clerk’s office is scheduled to close.” For electronic filing in district court, the last day of a time period expires “at midnight in the court’s time zone.”
- The amendments also contain new provisions for calculating time periods or deadlines stated in hours rather than in days, weeks, months, or years. The time period for a deadline stated in hours starts to run “immediately” on the occurrence of the event that triggers the period. All hours are counted, including those during “intermediate” Saturdays, Sundays, and legal holidays. If the last hour of the period or deadline falls on a Saturday, Sunday, or legal holiday, the period extends until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
- The simple “days-are-days” approach can have the effect of shortening current time periods. As a result, the drafters of the federal rules reviewed the rules for areas where the time-computation changes would have the effect of shortening the time period and made appropriate adjustments. The drafters also attempted to make the periods in the rules more convenient by setting them in multiples of 7 days when the periods were less than 30 days.
- In addition to changes to the federal rules, related legislation will result in changes to some statutory time periods. The Statutory Time-Periods Technical Amendments Act of 2009 amends 28 statutory provisions affecting court proceedings in cases litigated in federal courts, including 9 bankruptcy provisions, to coincide with the changes to the method of computing time in the rules in two important ways. First, the legislation changes certain statutory deadlines to offset any shortening of the time periods resulting from the rules changes that count every day, in effect maintaining the same time period in the statutes. Second, the legislation changes some statutory deadlines that would otherwise be inconsistent with the amended rules deadlines and lead to confusion. The changes, like the rule amendments, take effect on December 1, 2009. Although a large number of statutory time periods could theoretically be affected by the shift in the rules’ method of computing

time, the number of statutes actually amended is modest. The legislation focuses on statutes with short deadlines that are frequently used.