

The Days of Our Bankruptcy Court Lives

Lunch & Learn

Wednesday, October 14, 2009

The Days of Our Bankruptcy Court Lives

Excluding intermediate
Saturdays, Sundays, and legal
holidays when the period is
less than 8 days, but otherwise
we count every day

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Why?

- Fed. Rule Bank. P. 9006(a)

Less than 8 days, exclude intermediate
Saturdays, Sundays, and legal
holidays in counting when something
must be done

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Is This a Problem?

- If a seven-day period and a ten-day period start on the same day, which one ends first under the current rules?

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Which is longer: 7 or 10 days?

| October 2009 | | | | | | |
|--------------|--------|---------|-----------|----------|-----------------------|----------|
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 Order Entered | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

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It's Relative!

- Under Current Rules
 - 10 days usually last 10 days
 - But not always
 - 7 days NEVER last just 7 days
 - 7 days always last at least 9 days
 - 7 days often lasts longer than 10 days

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Time Computation Project “Days are Days”

- To simplify time computation provisions and to eliminate the inconsistencies found in the Appellate, Bankruptcy, Civil, & Criminal Rules
- Approved by Supreme Court March 26, 2009
- New Rules Effective December 1, 2009

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Application?

- Apply to all pending actions unless infeasible or would work injustice
- If infeasible or unjust, apply the former rule

Rules Enabling Act, 28 U.S.C. § 2074

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Intent

- New Time Computation Rules, so no <8 day distinction
- Adopt multiples of 7 as a deadline numbering convention for periods shorter than 30 days
 - (e.g., 7, 14, 21, & 28)
- Establish rules for counting backwards

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General Guidelines

- 5 days becomes 7 days
- 10 days becomes 14 days
- 15 days becomes 14 days
- 20 days becomes 21 days
- 25 days becomes 28 days

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Current Rule vs. December 1

- | | |
|--|--|
| ■ Bank. Rule 1007(a)(2) • 15 days to file list | ■ Bank. Rule 1007(a)(2) • 14 days to file list |
| ■ Bank. Rule 8002(a) • 10 days to file notice of appeal | ■ Bank. Rule 8002(a) • 14 days to file notice of appeal |

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Current Rule vs. December 1

- | | |
|--|--|
| ■ Bank. Rule 2007 (b)(1) • 5 days' notice | ■ Bank. Rule 2007 (b)(1) • 7 days' notice |
| ■ Bank. Rule 3017 (f)(1) • 25 days' notice | ■ Bank. Rule 3017 (f)(1) • 28 days' notice |

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**Under New Rule 9006(a)
Effective 12/1/09**

In computing time in any Bankruptcy Rule, local rule, or court order, or in any statute *that does not specify a method of computing time*

- *Exclude the day that triggers the period, and*
- *Count every day thereafter, including intermediate Saturdays, Sundays, and legal holidays*

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Final Day on a Weekend or Holiday

The period continues to run until the "next day that is not a Saturday, Sunday or legal holiday"

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"Next Day" Calculated by

- Continuing to count forward-when period measured after an event
- Continuing to count backward-when period measured before an event
 - e.g., "at least 14 days before trial"

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Legal Holidays

- Rule is largely unchanged
 - Enumerated legal holidays in Rule 9006(a)(6)(A), or
 - Days declared by President, Congress or, for forward-counted periods only, the state in which the court sits

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What About Hours?

Same basic concept applies:

- Begin counting immediately
- Count every hour thereafter, including intermediate Saturdays, Sundays, and legal holidays

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Final Hour on a Weekend or Holiday

- The period continues to run until the same time on the next "day that is not a Saturday, Sunday or legal holiday "

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Clerk's Office Inaccessible?

- Last Day of Filing:
 - Time extended to first accessible day that's not a weekend or legal holiday

- Last Hour of Filing:
 - Time extended to same time on first accessible day that's not a weekend or legal holiday

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"Last Day" Ends

- Electronic Filing
 - for e-filing in the court, at midnight in court's time zone
 - for e-filing in court of appeals, at midnight in time zone of circuit Clerk's principal office (i.e., Denver)

- Other (Paper) Filing - when Clerk's office is scheduled to close

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Implications

- Does not affect deadlines in judicial orders that set a date certain
- Even if that date falls on a Saturday, Sunday, or legal holiday.
 - E.g., Report or Response due on Sunday, November 15, 2009
 - Rules do NOT extend deadline to Monday, November 16, 2009

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Bankr. N.D. Oklahoma

- General Order No. 09-GO-05
 - Supersedes 09-GO-02
 - Updates Interim Bankr. Rule 1007-I (regarding exclusion from Means Test for military personnel)
- General Order No. 09-GO-06
 - Amendments to Local Rules
 - New Time Computation Rules
 - Other technical amendments

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Exceptions

- LR 2003-2 (file corporate ownership statement)
 - 10 days becomes 7 days
- LR 4001-1(E) (motions for relief from automatic stay)
 - Discovery responses deadline unchanged
 - 12 days

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Exceptions

- LR 9006-1(B) and LR 9070-1
 - Deadline for submitting motions or exhibits before hearing or trial

 - Trial set for Monday, Tuesday, or Wednesday
 - Deadline is preceding Friday at noon

 - Trial set for Thursday or Friday
 - Deadline is preceding Monday at noon

Other Changes

- LR 4008-1(B) is removed
- Local Form 4008-1(B) is removed
- Replaced by Official Form 27 (B27)
 - Reaffirmation Agreement Cover Sheet
- Amended Rule 4008(a)
 - Cover sheet *shall* accompany all Reaffirmation Agreements

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Effective Date:

December 1, 2009
