

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

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(c),~~
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~~

¹New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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., 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 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.

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 Limits²

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

² 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.