

APPENDIX F

COMPUTATION OF TIME

[this page intentionally left blank]

COMPUTATION OF TIME

Effective December 1, 2009, the computation of time is being standardized across the federal rules for bankruptcy, civil, and appellate procedure. As amended, subdivisions (a) and (f) of Fed. R. Bankr. P. 9006 read:

Rule 9006. Computing and Extending Time

- (a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, 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; 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.
 - (2) *Period Stated in Hours.* When the period is stated in hours:
 - (A) begin counting immediately on the occurrence of the event that triggers the period;
 - (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and
 - (C) if the period would end on a Saturday, Sunday, or legal holiday, then continue the period until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
 - (3) *Inaccessibility of Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:
 - (A) on the last day for filing under Rule 9006(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or
 - (B) during the last hour for filing under Rule 9006(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

- (4) *“Last Day” Defined.* Unless a different time is set by a statute, local rule, or order in the case, the last day ends:
 - (A) for electronic filing, at midnight in the court’s time zone; and
 - (B) for filing by other means, when the clerk’s office is scheduled to close.
- (5) *“Next Day” Defined.* The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
- (6) *“Legal Holiday” Defined.* “Legal holiday” means:
 - (A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;
 - (B) any day declared a holiday by the President or Congress; and
 - (C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located. (In this rule, “state” includes the District of Columbia and any United States commonwealth or territory.)

* * * * *

- (f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER RULE 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)(D), (E), or (F) F.R.Civ.P., three days are added after the prescribed period would otherwise expire under Rule 9006(a).

* * * * *

PRACTICE POINTERS

1. **“Days-are-Days”.** The principal simplifying change in the amended time-computation rule is the adoption of a “days-are-days” approach. The bankruptcy rule no longer makes the distinction of whether a prescribed time is less than 8 days. Intermediate weekends and holidays are counted, although the overall time-computation project has modified most rules to use 7-day periods (7, 14, 21, and 28 days) to avoid deadlines falling on weekends.
2. **Counting Forward and Backward.** The amended rule clarifies how to count forward when the period measured is after an event, e.g., 14 days after the filing of a motion. It also clarifies how to count backward when the period measured is before an event, e.g., 14 days before a scheduled hearing.

3. **State Holidays.** The amended rule continues to take into account state holidays (which are now identified in amended LBR 9006-1(a)). Note that a state holiday affects computation of time even though the court may not observe the holiday by closing. For example, the court does not observe Good Friday although it is an official state holiday. However, a deadline falling on that day would be extended to the next day that is not a weekend day or holiday. Note also that state holidays are used for computing periods that are measured **after** an event, but not for counting backward.
4. **“After Hours Filing”.** The amended rule provides that the deadline for the electronic filing of a document is midnight local time (Hawaiian Standard Time for the District of Hawaii). However, documents not filed electronically in CM/ECF are now due under the amended rule by the scheduled closing time of the Clerk’s Office, which currently is **4:00 p.m.** In other words, a paper document submitted to the court after 4:00 p.m. would be untimely if due that calendar day. (Note: This varies from the procedure in the district court where amended LR6.1 provides that the “last day” for filing a paper document ends at 11:59 p.m.)
5. **Additional Time After Service.** Subdivision (f) of the rule provides an additional 3 days to be added to a deadline if service is by mail. The rule has been amended to include documents served under Fed. R. Civ. P. 5(b)(2)(E) and (F), respectively, service by electronic means if consented to in writing, and delivering it by any other means if consented to in writing. Note, however, that the provision for an additional 3 days only applies to a prescribed period after **service**. A period measured after **filing** or any event other than service is not governed by this provision. Most, but not all, local rules do not set deadlines using time after service.