

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE**

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

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TIME-COMPUTATION PROJECT

In consultation with the Committee's Time-Computation Subcommittee, the Appellate, Bankruptcy, Civil, and Criminal Rules Advisory Committees proposed amendments to Appellate Rule 26, Bankruptcy Rule 9006, Civil Rule 6, and Criminal Rule 45 to make the method of computing time consistent, simpler, and clearer. In tandem with this work, each advisory rules committee also reviewed and proposed changes to the time periods in all the rules to ensure that every deadline is reasonable and that changing the time-computation method did not have the effect of shortening existing time periods.

The time-computation project was launched in response to frequent complaints about the time, energy, and anxiety expended in calculating time periods, the potential for error, and the anomalous results of the current computation provisions.

Proposed Rules Changes

The principal simplifying change in the amended time-computation rules is the adoption of a "days-are-days" approach to computing all time periods. Under some of the current rules, intermediate weekends and holidays are omitted when computing short periods but included when computing longer periods. By contrast, under the proposed rules amendments, intermediate weekends and holidays are counted regardless of the length of the specified period.

Other changes in the amended time-computation rules clarify how to count forward when the period measured is after an event (for example, 21 days after service of a motion) and the

deadline falls on a weekend or holiday; and how to count backward when the period measured is before an event (for example, 14 days before a scheduled hearing) and the deadline falls on a weekend or holiday. The proposed amendments also provide for computing hourly time periods, to address recent legislation affecting court proceedings in which deadlines are expressed in hours (for example, 72 hours for action).

The amended time-computation rules also fill a gap in the present rules by addressing the special timing considerations that accompany electronic filing. Under the proposed amendments, unless a statute, local rule, or court order provides otherwise, the last day of a period for an electronic filing ends at midnight in the court's time zone, while the last day for a paper filing ends when the clerk's office is scheduled to close. (Additional refinements to these principles are made in proposed Appellate Rule 26(a)(4) for reasons specific to appellate practice.) Filing deadlines are extended if the clerk's office is inaccessible. The proposed amendments provide a court with flexibility to define when a deadline should be adjusted or a failure to comply with a deadline should be excused because the clerk's office was "inaccessible." The proposed amendments and the Committee Notes do not specify the meaning of "inaccessibility," which can vary depending on whether a filing is electronic or paper, leaving the definition to local rules and case law development.

The advisory committees also reviewed every rule to ensure that all time periods would be reasonable taking into account the effect of changing the time-computation method. The advisory committees concluded that virtually all short time deadlines should be extended to adjust for the effect of including intermediate weekends and holidays in calculating deadlines. To further simplify time-counting, the advisory committees proposed changing most periods of less than 30 days to multiples of 7 days. The advisory committees adopted 7, 14, 21, and 28-day periods when possible, so that deadlines will usually fall on weekdays. The advisory

committees' comprehensive review of time-computation rules and the rules containing time periods resulted in proposed amendments to a total of 91 rules.

In August 2007, proposed amendments to each set of rules were published for comment from the bench and bar. Scheduled public hearings on the amendments were canceled because no one asked to testify. The specific proposed amendments are discussed later in this report in the respective sections describing the advisory committees' recommendations.

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FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 2016, 4008, 7052, 9006, 9015, 9021, 9023, and new Rule 7058, and proposed revisions to Official Forms 8, 9F, 10, 23, and Exhibit D to Official Form 1, and new Official Form 27 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed changes were circulated to the bench and bar for comment in August 2007. The scheduled public hearings on the proposed changes were canceled because no one requested to testify. Proposed new Rule 1017.1 was also published for public comment, but it was later withdrawn because the advisory committee concluded that it was not necessary.

The proposed amendment to Rule 2016 was not published for public comment because it is a technical conforming change to correct a cross-reference to a subsection of the Bankruptcy Code that was recently changed.

The proposed amendment to Rule 4008 requires an entity filing a reaffirmation agreement also to file a cover sheet that includes sufficient information for the court to determine whether the proposed reaffirmation agreement is presumed to be an undue hardship for the debtor under § 524(m) of the Bankruptcy Code.

The proposed amendments to Rules 7052 and 9021 and new Rule 7058 account for the amendment of Civil Rule 58 in 2002, which clarifies the time when a judgment that is not set forth on a separate document becomes final for appeal purposes. With some exceptions involving posttrial motions, Civil Rule 58 requires that every judgment be set forth on a separate document and provides a 150-day default appeal period if the requirement is not met. Under proposed new Rule 7058 and amendments to Rule 7052, the separate-document requirement and the 150-day default appeal period will apply only to a judgment in an adversary proceeding. They will not apply to a judgment or order in other actions, including contested matters.

The proposed amendment to Rule 7052 clarifies that “entry of judgment” in an adversary proceeding means the entry of a judgment or order under the Bankruptcy Rules, either new Rule 7058 or Rule 9021. The proposed amendment also sets a 14-day deadline to file a postjudgment motion for amended or additional findings, which is different from the proposed increased 28-day deadline in the Civil Rules that would otherwise apply in an adversary proceeding. The proposed revision of the time deadline was not published for public comment because it is a technical conforming change that maintains the current appeal period as modified to account for the change in the time-computation method. New Rule 7058 makes Civil Rule 58, including its separate-document requirement and 150-day default appeal period, applicable only to adversary proceedings. The proposed amendment to Rule 9021 makes clear that the separate-document requirement does not apply outside of adversary proceedings.

The proposed amendment to Rule 9006 was not published for public comment because it is a technical and conforming change to correct the cross-reference to Civil Rule 5(b)(2), which was renumbered as part of the recent restyling project.

The proposed amendments to Rule 9015 and Rule 9023 were not published for public comment because they are technical and conforming changes that maintain the current appeal

period as modified to account for the change in the time-computation method. The proposed amendments set a 14-day deadline to file certain postjudgment motions, which is different from the proposed increased 28-day deadline in the Civil Rules that would otherwise apply in a bankruptcy case.

The proposed revision of Exhibit D to Official Form 1 deletes the requirement that a debtor file a separate motion for an order postponing the debtor's mandatory credit-counseling briefing before the case is filed. The debtor is warned that the court may dismiss the case if it concludes that a postponement is not warranted.

The proposed amendments to Official Form 8 require the debtor to provide additional information indicating the debtor's intentions to use leased personal property and property subject to security interests, consistent with recently enacted § 362(h) and amended § 521(a)(2) of the Bankruptcy Code.

The proposed revisions of Official Forms 9F, 10, and 23 were not published for public comment because they are technical and conforming. The reference to a debtor's telephone number in Official Form 9F would be deleted to protect the debtor's privacy. Official Form 10 would be revised to include information in the instructions about health care-related claims and to revise the definition of "creditor" and "claim" to conform to the definitions in the Bankruptcy Code. The proposed revision of Official Form 23 includes a reference to § 1141(d)(5)(B) of the Bankruptcy Code in the filing deadlines.

Proposed new Official Form 27 implements the proposed amendments to Rule 4008 scheduled to take effect on December 1, 2009. The form requires the disclosure of financial information necessary for the court to determine whether a reaffirmation agreement creates a presumption of undue hardship for the debtor under § 524(m) of the Bankruptcy Code. It also requires the debtor to identify and explain any differences between the income and expenses

reported on schedules I and J and the income and expenses reported in the debtor's statement in support of the reaffirmation agreement.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference —

- a. Approve the proposed amendments to Bankruptcy Rules 2016, 4008, 7052, 9006, 9015, 9021, 9023, and new Rule 7058 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.
- b. Approve the proposed revisions to Bankruptcy Official Forms 8, 9F, 10, 23, and Exhibit D to Form 1 to take effect on December 1, 2008.
- c. Approve the proposed new Bankruptcy Official Form 27 to take effect on December 1, 2009.

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The advisory committee also proposed amendments to Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033 as part of the time-computation project with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendment to Rule 9006 simplifies and clarifies the general time-computation method. The proposed amendments to the other rules adjust time periods consistent with the change to the time-computation method.

The proposed adjustments to the time periods in the rules are minor, accounting for the inclusion of holidays and weekends in the time-computation method and the preference for stating periods in multiples of seven days. The following adjustments are proposed:

- Five days are extended to seven days in Rules 2006, 2007, 2008, 2015.3, 6004, 9006, and 9027.

- Ten days are extended to 14 days in Rules 1007, 2003, 2015.1, 2015.2, 2016, 3020, 4001, 6004, 6006, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9027, and 9033.
- Fifteen days are changed to 14 days in Rules 1007, 1019, 1020, 2015, 2015.1, 2016, 3015, 4001, 4002, 6004, 6007, and 8009.
- Twenty days are extended to 21 days in Rules 1011, 2002, 2003, 2007.2, 2015, 2015.3, 3001, 3015, 3019, 6003, 7012, 8002, 9027, and 9033.
- Twenty-five days are extended to 28 days in Rules 2002, 3017, and 4004.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference —

Approve the proposed amendments to Bankruptcy Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027, and 9033 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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