



Office of the Deputy Attorney General
Washington, D.C. 20530

February 15, 2008

Mr. Peter G. McCabe
Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, DC 20544

Re: Justice Department Comments on Time-Computation Rules Proposal

Dear Mr. McCabe:

The Department appreciates the opportunity to submit comments on the proposed revisions to the time-computation provisions found in the Appellate, Bankruptcy, Civil, and Criminal Rules. The Department fully supports the Committee's intention to simplify these provisions and eliminate inconsistencies among them found throughout the federal rules, and appreciates the considerable effort expended by the Committee in this proposal. The Department recognizes that this effort has been part of a broader initiative by the Committee to make the rules more accessible to practitioners and to reduce the time, energy, and anxiety expended in interpreting and applying the rules to practice.

We support the Committee's goals in simplifying the time-computation provisions; however, the Department is very concerned about the interplay of the proposed amendment with both existing statutory time periods and local rules. We are especially concerned that moving to a "days are days" approach, if applied to statutes whose statutorily prescribed time periods remain the same, would effectively shorten the time periods now allowed. This suggests that, just as the Committee is proposing to lengthen many time periods in the rules to compensate for the proposed change in the time-computation provisions, similar changes should be addressed in relevant statutory and local rule provisions before a new time-computation rule is made applicable. If the proposed amendment to the Rules is enacted without first securing the necessary adjustments to relevant statutory time periods, we fear that the purposes and policies underlying at least some of the relevant statutes may be frustrated. Moreover, were statutory deadlines simply exempted from the new time-computation provisions, the interplay from retaining two different operative regimes for time computation would create greater confusion and uncertainty, contrary to the Committee's good intentions in proposing these changes.

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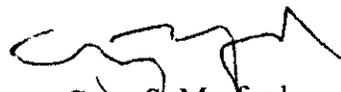
We ultimately would hope that any change in the Rules is conditioned on first securing Congressional action that adjusts statutory time periods. In the absence of such Congressional action, we have some doubt that it would be wise to proceed with the Rule change and we are skeptical that it would be wise to proceed with a Rule change trusting that the necessary statutory changes would be secured at some future point, after the time-computation changes become operative. In this regard, we note that the Committee has done prodigious work in identifying at least some 168 statutes, so far, that contain deadlines that would require lengthening. The Department is concerned that were the proposed changes to the time-computation provisions to take effect in the near future there would not be adequate time to ensure appropriate changes to these statutory time periods. Thus, before undertaking the proposed changes, the Department would urge the Committee to work with the appropriate congressional committees in an effort to ensure that, in the future, the necessary statutory revisions would come on-line in conjunction with any changes to the time-computation provisions. Absent such harmonization, the Department fears that the proposed time-computation revisions could prove unworkable. In sum, we support the Committee's goals but we believe that the time-computation provisions should not be amended absent corresponding legislation. Absent corresponding legislation, we would likely favor retaining the status quo.

Similarly, as to the local rules, it will be important to inform the District and Circuit courts around the country of the new time-computation rule under consideration and to alert them to the necessity of beginning the process to change existing time periods under their local rules, to take effect with the adoption of any new national rule. It would be appropriate for the Committee to make clear that individual courts may not impose, by local rule or general order, time periods that conflict with those in the federal rules.

Finally, the Department believes that the adoption of new time-computation provisions should be preceded by ample time for education of the bar. Although we agree that the Committee's proposal will result in new rules that are clearer for future generations of lawyers, this will work a substantial change in a practice dating back some 60 years. Lawyers and Judges alike will need to be educated on this change so that deadlines are not missed and unduly short deadlines are not inadvertently imposed.

The Department appreciates the opportunity to share these comments with the Committee, and looks forward to continuing to work with the Committee on this and other proposals.

Sincerely,



Craig S. Morford
Acting Deputy Attorney General