

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

Agenda E-19 (Appendix A)  
Rules  
September 2008

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**TO: Judge Lee H. Rosenthal  
Standing Committee on Rules of Practice and Procedure**

**CC: John K. Rabiej**

**FROM: Judge Marilyn L. Huff  
Catherine T. Struve**

**DATE: May 16, 2008**

**RE: Time-Computation Project**

We write on behalf of the Time-Computation Subcommittee to report on the progress of the Time-Computation Project.

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The Advisory Committees have also compiled a list of statutory periods that are priorities for legislative amendment to offset the effect of the Rules' shift in time-computation approach. That list, too, is now before the Standing Committee for approval.

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**Approval of list of statutory deadlines.** Each of the relevant Advisory Committees voted this spring on a list of statutory periods that are priorities for legislative amendment. The purpose of such amendments will be to ensure that the shift to a days-are-days time-computation approach does not cause hardship or thwart statutory purposes. As you know, we are in the process of securing input from potentially interested groups on the question of the proposed statutory amendments. The goal is to secure passage of legislation that will amend the listed statutory periods, with the same effective date as the proposed Rules amendments. These issues are discussed in Part III.A. below. Subject to any comments received from potentially affected

groups prior to the Standing Committee meeting, we recommend that the Standing Committee consider and approve the list of statutory provisions that are priorities for legislative amendment.

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### III. Statutory deadlines and local rules deadlines

The major outstanding tasks in connection with the time-computation project concern the changes that will be necessary in certain time periods set by statutes or by local rules.

#### A. Statutory deadlines

Current Appellate Rule 26(a), Bankruptcy Rule 9006(a), and Civil Rule 6(a) explicitly apply to statutory time periods. Prior to the 2002 restyling, Criminal Rule 45(a) covered “any period of time”; Rule 45(a) now governs “any period of time specified in these rules, any local rule, or any court order.” Under the template’s proposed approach, Criminal Rule 45(a) would once again apply to statutory periods. There are more than 170 statutory time periods that could theoretically be affected by the proposed shift in the Rules’ time-computation approach. The universe of statutory provisions to which existing caselaw has applied the time-computation Rules, however, is smaller. And within that smaller universe, not all the provisions will necessarily require amendment in order to avoid hardship to the bar. When the time-computation project was published for comment, the AO provided a link where the public could peruse the spreadsheet that contains the full list of statutory provisions of which we are aware. Few comments specifically addressed the time-computation amendments’ likely effect on any particular statutory periods.<sup>1</sup>

At their spring 2008 meetings, the four Advisory Committees each compiled a list of the statutory periods that they consider to be priorities for amendment. The resulting combined list is as follows. The list is roughly ordered by code provision, but that ordering has been altered to group related provisions together. Bankruptcy-related provisions are listed first, followed by provisions relating to criminal practice and then by provisions relating to civil practice.

- In the following bankruptcy-related statutes, the noted **5-day** periods should be changed to **7-day** periods:

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<sup>1</sup> An exception was the comment submitted by Richard J. Osterman, Jr., Acting Deputy General Counsel of the Litigation Branch of the Federal Deposit Insurance Corporation, who, as noted in Part III.D., urges that Congress *not* be asked to amend the time periods set in certain provisions of the Federal Deposit Insurance Act.

More importantly, as noted above, in late March Jonathan Wroblewski provided the Criminal Rules Committee with a memo listing criminal statutory provisions that the DOJ believes are the highest priority for amendment in the light of the new time-computation approach.

- 11 U.S.C. § 109(h)(3)(A)(ii)
  - **Five-day** period concerning debtor's unsuccessful attempt to obtain credit-counseling services.
- 11 U.S.C. § 322(a)
  - **Five-day** period within which trustee must file bond.
- 11 U.S.C. § 332(a)
  - **Five-day** deadline for United States trustee to appoint consumer privacy ombudsman.
- 11 U.S.C. § 342(e)(2)
  - If a creditor specifies an address at which it desires to receive notice in a chapter 7 and 13 case of an individual debtor, that address must be used by the court and the debtor for any notice required to be provided the creditor later than **five days** after the court and debtor receive the creditor's notice of address.
- 11 U.S.C. § 521(e)(3)(B)
  - If a creditor in a Chapter 13 case files a request to receive a copy of the plan filed by the debtor, the court shall make a copy of the plan available to such creditor not later than **5 days** after such request is filed.
- 11 U.S.C. § 521(i)(2)
  - Provides for dismissal, in certain cases, if an individual debtor fails to file required information within 45 days after filing of the petition; and provides that if a party in interest requests such an order of dismissal, the court shall (subject to certain other provisions) enter the order of dismissal not later than **5 days** after such request.
- 11 U.S.C. § 704(b)(1)(B)
  - With respect to individual debtors in cases under Chapter 7, United States trustee shall review debtor's filings and file a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and the court shall provide a copy of the statement to all creditors not later than **5 days** after receiving it.

- 11 U.S.C. § 764(b)
  - With respect to commodity broker liquidations, limits trustee’s ability to avoid certain transfers of commodity contracts made before **five days** after the order for relief.
  
- 11 U.S.C. § 749(b)
  - With respect to stockbroker liquidations, limits trustee’s ability to avoid certain transfers of securities contracts made before **five days** after the order for relief.
  
- Certain timing provisions applicable to the period between a criminal defendant’s initial appearance and the preliminary hearing (and related provisions concerning that phase of a prosecution) should be changed **from 10 to 14 days**:
  - 18 U.S.C. § 3060(b): preliminary examinations, except in certain circumstances, “shall be held . . . no later than the **tenth day** following the date of the initial appearance of the arrested person.”
  - 18 U.S.C. § 983(j)(3): a temporary restraining order with respect to property against which no complaint has yet been filed “shall expire not more than **10 days** after the date on which it is entered.”
  - 18 U.S.C. § 1467(c): a temporary restraining order with respect to property against which no indictment has yet been filed “shall expire not more than **10 days** after the date on which it is entered.”
  - 18 U.S.C. § 1514(a)(2)(C): a temporary restraining order “prohibiting harassment of a victim or witness in a Federal criminal case” shall not remain in effect more than “**10 days** from issuance.”
  - 18 U.S.C. § 1963(d)(2): a restraining order, injunction, or “any other action to preserve the availability of property . . . shall expire not more than **ten days** after the date on which it is entered.”
  - 21 U.S.C. § 853(e)(2): “a temporary restraining order under this subsection . . . shall expire not more than **ten days** after the date on which it is entered.”
  
- The **four-day deadlines** in the Classified Information Procedures Act (“CIPA”) § 7(b) and in the material-support statute, 18 U.S.C. § 2339B(f)(5)(B), should be amended to specify that **intermediate weekends and holidays are excluded**.

- 18 U.S.C. § 2339B(f)(5)(B)(iii)(I): if an appeal is taken under 18 U.S.C. § 2339B (statute against providing material support or resources to designated foreign terrorists), “the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals-- (I) shall hear argument . . . not later than **4 days** after the adjournment of the trial; . . . .”
- 18 U.S.C. § 2339B(f)(5)(B)(iii)(III): if an appeal is taken under 18 U.S.C. § 2339B (statute against providing material support or resources to designated foreign terrorists), “the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals--(III) shall render its decision not later than **4 days** after argument on appeal . . . .”
- 18 U.S.C. App. 3 § 7(b)(1): in an appeal pursuant to the CIPA statute, “the court of appeals shall hear argument . . . within **four days** of the adjournment of the trial.”
- 18 U.S.C. App. 3 § 7(b)(3); in an appeal pursuant to the CIPA statute, the court of appeals “shall render its decision within **four days** of argument on appeal.”
- The deadlines in the material-support statute and in CIPA for taking a pre-trial appeal should be changed **from 10 to 14 days**.
  - 18 U.S.C. § 2339B(f)(5)(B)(ii) provides that “[i]f an appeal is of an order made prior to trial, an appeal shall be taken not later than **10 days** after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.”
  - 18 U.S.C. App. 3 § 7(b) provides that “[p]rior to trial, an appeal shall be taken within **ten days** after the decision or order appealed from and the trial shall not commence until the appeal is resolved.”
- The **two-day** notice provision in 18 U.S.C. § 1514(a)(2)(E) should be amended to **exclude weekends and holidays**.
  - 18 U.S.C. § 1514(a)(2)(E) provides that “if on **two days** notice to the attorney for the Government . . . the adverse party appears and moves to dissolve or modify [a] temporary restraining order, the court shall proceed to hear and determine such motion . . . .”
- The **10-day** notice deadline in 18 U.S.C. § 2252A(c) should be changed to **14 days**.
  - Under 18 U.S.C. § 2252A(c) a defendant seeking to utilize select affirmative defenses against charges of child pornography must notify the court “in no event

later than **10 days** before the commencement of the trial.” Extending the time for notification to 14 days will conform to the times provided for notice of other defenses. The Criminal Rules Committee has proposed extending the period for such notice under Rule 12.1 (alibi defense) and Rule 12.3 (public-authority defense) to 14 days.

- The **three-day** period set by 18 U.S.C. § 3432 should be amended to **exclude weekends and holidays**.
  - Under 18 U.S.C. § 3432 “a person charged with treason or other capital offense shall at least **three entire days** before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial.”
- The **five-day** deadline for applications under 18 U.S.C. § 3509(b)(1)(A) should be changed to **7 days**.
  - 18 U.S.C. § 3509(b)(1)(A) provides that a person seeking an order for a child’s testimony to be taken via 2-way closed circuit video “shall apply for such an order at least **5 days** before the trial date.” Extending this period to 7 days will permit adequate time for the party against whom the child would testify to file any objections, and for the court to rule on the request.
- The **10-day** mandamus petition deadline in the Crime Victims’ Rights Act (“CVRA”), 18 U.S.C. § 3771(d)(5), should be changed to **14 days**.
  - 18 U.S.C. § 3771(d)(5) sets a **10-day** time period for victims to seek mandamus review in the court of appeals for certain purposes. Under the proposed amendment to FRAP 4(b), the defendant’s time to appeal would also be extended from 10 to 14 days, so there would be no conflict between the two periods.
- The **10-day** period in 28 U.S.C. § 636(b)(1) should be changed to **14 days**.
  - Section 636(b)(1) sets the period for objecting to magistrate judge orders and recommendations at **10 days**. Proposed Rules 72(a) and (b) extend the time from 10 days to 14 days, recognizing that under the present computation method 10 days has always meant at least 14 calendar days. Section 636(b) should be amended to allow 14 days so that statute and rule continue to operate in harmony.
- The “**not less than 7”** day period in 28 U.S.C. § 1453(c)(1) should be changed to “**not more than 10”** days.

- This period limits the time for seeking appellate review, under the Class Action Fairness Act, of a district court’s remand order; “not less than” was clearly a drafting error. Section 1453 should be amended to set the time limit at “not more than 10 days” to correct the drafting error and offset the shift in time-computation method.
- The **7-day** deadline in 28 U.S.C. § 2107(c) should be increased to **14 days**.
  - This period, which constitutes one of the time limits on making a motion to reopen the time to appeal in a civil case, should be extended **from 7 to 14 days** in keeping with the proposed amendment to the corresponding time period in Rule 4(a)(6)(B). The Appellate Rules Committee suggests choosing 14 days as opposed to 10 days, in keeping with the time-computation project’s preference for periods that are multiples of 7 days. Lengthening the time period to 14 days would not unduly threaten any principle of repose; a party that wishes to be confident about the expiration of appeal time can protect itself by giving notice of the judgment to other parties.

At this time, we are in the process of seeking comment from potentially affected groups concerning the proposed changes included on this list. Subject to the input received from those groups, we recommend that the Standing Committee consider and approve this list of statutory periods for recommendation to Congress.

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