

**Alert:**

**Important Changes To Federal Rules Deadline Calculations Take Effect  
December 1, 2009**

Earlier this year, the Supreme Court approved a series of amendments aimed at simplifying the method of computing time deadlines in the federal rules. Unless Congress takes measures to block implementation of the amendments before then – which is highly unlikely – on December 1, 2009, time periods in 91 Federal Rules and 28 federal laws will adjust to be consistent with these amendments.<sup>1</sup>

Nearly 22 percent of claims in the most recent American Bar Association review of legal malpractice drivers involved allegations of deadline-related or follow-up problems, including failure to ascertain proper deadlines and failure to calendar properly.<sup>2</sup> Missing a filing deadline by just one day may lead to a professional liability claim. All attorneys operating in federal courts, including those engaged in bankruptcy and administrative practice, should become familiar with the new rules to avoid potentially costly filing errors.

The most significant change will be the universal use of a “days are days” approach, meaning all weekends and most holidays – especially state holidays -- no longer will be excluded from any deadline calculation, except when the final day of a period coincides with a federal holiday. Most response periods and other deadlines will be changed to be multiples of seven to avoid having deadlines fall on weekend days. Additionally, the amendments clarify methods for counting forward and backward when determining deadlines. Changes to FRCP 6 also clarify ambiguity that existed regarding the deadlines for filing papers electronically.

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<sup>1</sup> A partial list of the rules affected includes Federal Rules of Civil Procedure 6, 50, 52, and 59; Appellate Rule 26; Federal Rule of Criminal Procedure 45; and Bankruptcy Rule 9006.

<sup>2</sup> “Profile of Legal Malpractice Claims, 2004-2007,” American Bar Association Standing Committee on Lawyers’ Professional Liability.

While numerous calculation methods and periods are changing, some basic rules will remain the same for civil, bankruptcy, appellate and criminal procedures. For instance, time period countdowns will still begin the day after the event that triggers the count. Also, if the last day of the forward count falls on a weekend or federal holiday, the deadline will extend to the next day that is not a weekend day or federal holiday. The same logic applies to counting backward. If a particular disclosure would be due on a Monday which also is a national holiday, the due date becomes the Friday *before* the holiday and weekend, not the Tuesday after. The one noteworthy difference when counting backward or forward concerns state holidays: if a due date falls on a state holiday which is not a federal holiday, that is the due date; no extension or contraction applies.

Timing is not all that's affected by the amendments. For example, the change to FRCP 56 creates a new, streamlined, process for filing a motion for summary judgment and changes the period during which such a motion may be filed. There are also two new rules. One which allows for a juror poll (Rule 48(c)) and another that creates guidelines regarding a court ruling on a motion for relief that is barred by a pending appeal (Rule 62.1).

This alert only minimally summarizes these extensive amendments. Every attorney should examine the full range of the amendments and adjust any processes and procedures currently used for calculating federal deadlines. This is especially true with respect to docketing software which automatically calculates filing deadlines based on court rules. If the software vendor has not provided an updated download patch that adopts these changes, contact them as soon as possible to obtain, install and test it prior to December 1.

The 2009 Revised Edition of the West's Federal Civil Judicial Procedure and Rules has both pre- and post-December 1, 2009 versions of the rules. The following links include additional examinations and summaries of the rules amendments:

<http://legalweblog.blogspot.com/2009/11/amendments-to-federal-rules-of-civil.html>

<http://blogs.smartrules.com/2009/04/02/computation-of-time-and-calculating-deadlines-changes-to-federal-rules-effective-december-1-2009/>

[http://www.txs.uscourts.gov/news/rulesamend\\_files/sumfedtimecompamend.pdf](http://www.txs.uscourts.gov/news/rulesamend_files/sumfedtimecompamend.pdf)

<http://bankruptcy.cooley.com/2009/11/articles/business-bankruptcy-issues/a-matter-of-time-important-amendments-to-the-bankruptcy-rules-are-coming-december-1st/>

<http://www.ncbusinesslitigationreport.com/2009/10/articles/watching-the-court/making-every-day-count-time-computation-amendments-to-the-federal-rules-of-civil-procedure-take-effect-december-1-2009/>

<http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202433989248>

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