

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

DAVID F. LEVI  
CHAIR

PETER G. McCABE  
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

CARL E. STEWART  
APPELLATE RULES

THOMAS S. ZILLY  
BANKRUPTCY RULES

LEE H. ROSENTHAL  
CIVIL RULES

SUSAN C. BUCKLEW  
CRIMINAL RULES

JERRY E. SMITH  
EVIDENCE RULES

MEMORANDUM

**DATE:** May 25, 2007 (revised June 22, 2007)

**TO:** Judge David F. Levi, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Judge Carl E. Stewart, Chair  
Advisory Committee on Appellate Rules

**RE:** Report of Advisory Committee on Appellate Rules

**I. Introduction**

The Advisory Committee on Appellate Rules met on April 26 and 27, in Santa Fe, New Mexico. The Committee approved for publication a number of proposed amendments and a proposed new Rule.

Part II.A. of this report describes the Committee's proposed amendments relating to the Time-Computation Project.

\* \* \* \* \*

**II. Action Items**

The Advisory Committee seeks the Standing Committee's permission to publish the following proposed amendments and new rule in August 2007.

**A. Time Computation package: Amendments to Rule 26(a) and to certain Rules containing time periods**

**1. Adoption of time-computation template as Rule 26(a)**

At our April 2007 meeting, the Advisory Committee unanimously approved a proposed amendment that adopts as Appellate Rule 26(a) the template developed by the Time-Computation Subcommittee. The template is discussed in more detail in the Time-Computation Subcommittee's materials.

Due to issues peculiar to the Appellate Rules, proposed subdivisions (a)(4) and (a)(6)(B) diverge from the template. Instead of referring to a "day declared a holiday by ... the state where the district court is located," proposed subdivision (a)(6)(B) carries forward the formulation in current Appellate Rule 26(a)(4) by referring to a "day declared a holiday by ... the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk's principal office." Proposed Rule 26(a)(6)(B) defines the term "state" because the Appellate Rules (unlike the Criminal Rules) do not contain a global definition of that term. (The Advisory Committee is considering a proposed amendment that would provide such a global definition, but has not fully evaluated that proposal at this time.)

At our spring meeting, the Committee decided that because some circuits span more than one time zone, Rule 26(a)(4)(A) should read: "for electronic filing, at midnight in the time zone of the circuit clerk's principal office." Subsequent to the meeting, it was pointed out that Rule 26(a) covers a number of deadlines for filings in the district court, including the deadlines for filing a notice of appeal. The language adopted at the meeting would have meant that a litigant filing a notice of appeal electronically in the district court for the District of Hawaii must file it some hours before midnight, Hawaii time. Because this would not be the result that lawyers would intuitively expect, it was suggested that Rule 26(a)(4) should contain separate subsections to deal with electronic filings in the district court and the court of appeals. During the course of these discussions, a member pointed out that the Appellate Rules have special rules for filing by mail, third-party commercial carriers, and prison mail systems. Because it makes more intuitive sense – when considering those filing methods – to think of the filer's time zone than to think of the court's time zone, it was proposed that those methods be treated in a separate subdivision of Rule 26(a)(4). The Committee then discussed – by email – the wording of what had become subdivision (a)(4)(D). An initial proposal suggested that this subdivision should read "for filing by other means, when the relevant clerk's office is scheduled to close." A member suggested that it would be clearer to say "when the clerk's office in which the filing is made is scheduled to close." A couple of members suggested that brevity was preferable, and it was suggested that "relevant" was superfluous. The proposed language shown below deletes "relevant" and thus tracks the template's language: "for filing by other means, when the clerk's office is scheduled to close." The Note to subdivision (a)(4)(D) explains that the subdivision refers to the clerk's office in which the filing is made. The language of subdivision (a)(4) was circulated to the Committee by email, and as of the date of this writing, no members had voiced disapproval of it.

The Committee Note tracks the template's Note, but is customized in several places to reflect the issues discussed above and to provide citations that are relevant to the Appellate Rules.

\* \* \* \* \*

**2. Changes to certain Appellate Rules time periods**

At our April 2007 meeting, the Advisory Committee unanimously approved proposed amendments that lengthen deadlines set by the Appellate Rules so as to offset the proposed change in time-computation approach. The changes can be summarized as follows. References to "calendar days" in Rules 25, 26 and 41 become simply references to "days." Three-day periods in Rules 28.1(f) and 31(a) become seven-day periods. The five-day period in Rule 27(a)(4) becomes a seven-day period. The seven-day period in Rule 4(a)(6) lengthens to 14 days. The seven-day periods in Rules 5(b)(2) and 19 become ten days. The eight-day period in Rule 27(a)(3)(A) becomes ten days. The ten-day period in Rule 4(a)(4)(A)(vi) becomes 30 days to correspond with changes in the Civil Rules. The ten-day periods in Rules 4(a)(5)(C), 4(b), 5, 6, 10, 12, 30 and 39 become 14 days. The 20-day period in Rule 15(b) becomes 21 days.

\* \* \* \* \*

**3. Proposals concerning certain statutory deadlines**

At our April 2007 meeting, the Committee unanimously voted to recommend that the following statutes be considered for amendment by Congress in the light of the proposed shift in time-computation approach: 28 U.S.C. § 2107(c); 18 U.S.C. § 3771(d); Classified Information Procedures Act § 7(b); and 28 U.S.C. § 1453(c).

\* \* \* \* \*

**PROPOSED AMENDMENT TO FRAP 26(A)**

**TIME COMPUTATION RULE**

**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF APPELLATE PROCEDURE\***

**Rule 26. Computing and Extending Time**

- 1     **(a) Computing Time.**    ~~The following rules apply in~~  
2            ~~computing any period of time specified in these rules or~~  
3            ~~in any local rule, court order, or applicable statute:~~
- 4     ~~— (1) Exclude the day of the act, event, or default that~~  
5            ~~begins the period.~~
- 6     ~~— (2) Exclude intermediate Saturdays, Sundays, and legal~~  
7            ~~holidays when the period is less than 11 days, unless~~  
8            ~~stated in calendar days.~~
- 9     ~~— (3) Include the last day of the period unless it is a~~  
10           ~~Saturday, Sunday, legal holiday, or--if the act to be done~~  
11           ~~is filing a paper in court--a day on which the weather or~~  
12           ~~other conditions make the clerk's office inaccessible.~~

---

\*New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF APPELLATE PROCEDURE

13 ~~(4) As used in this rule, "legal holiday" means New~~  
14 ~~Year's Day, Martin Luther King, Jr.'s Birthday,~~  
15 ~~Washington's Birthday, Memorial Day, Independence~~  
16 ~~Day, Labor Day, Columbus Day, Veterans' Day,~~  
17 ~~Thanksgiving Day, Christmas Day, and any other day~~  
18 ~~declared a holiday by the President, Congress, or the~~  
19 ~~state in which is located either the district court that~~  
20 ~~rendered the challenged judgment or order, or the circuit~~  
21 ~~clerk's principal office. The following rules apply in~~  
22 ~~computing any time period specified in these rules, in~~  
23 ~~any local rule or court order, or in any statute that does~~  
24 ~~not specify a method of computing time.~~

25 (1) *Period Stated in Days or a Longer Unit.* When  
26 the period is stated in days or a longer unit of time:  
27 (A) exclude the day of the event that triggers the  
28 period;

29           (B) count every day, including intermediate  
30                   Saturdays, Sundays, and legal holidays; and

31           (C) include the last day of the period, but if the  
32                   last day is a Saturday, Sunday, or legal  
33                   holiday, the period continues to run until the  
34                   end of the next day that is not a Saturday,  
35                   Sunday, or legal holiday.

36           (2) ***Period Stated in Hours.*** When the period is stated  
37                   in hours:

38           (A) begin counting immediately on the  
39                   occurrence of the event that triggers the  
40                   period;

41           (B) count every hour, including hours during  
42                   intermediate Saturdays, Sundays, and legal  
43                   holidays; and

44           (C) if the period would end on a Saturday,  
45                   Sunday, or legal holiday, the period continues

4 FEDERAL RULES OF APPELLATE PROCEDURE

46 to run until the same time on the next day that  
47 is not a Saturday, Sunday, or legal holiday.

48 (3) ***Inaccessibility of the Clerk's Office.*** Unless the  
49 court orders otherwise, if the clerk's office is  
50 inaccessible:

51 (A) on the last day for filing under Rule 26(a)(1),  
52 then the time for filing is extended to the first  
53 accessible day that is not a Saturday, Sunday,  
54 or legal holiday; or

55 (B) during the last hour for filing under Rule  
56 26(a)(2), then the time for filing is extended  
57 to the same time on the first accessible day  
58 that is not a Saturday, Sunday, or legal  
59 holiday.

60 (4) ***"Last Day" Defined.*** Unless a different time is set  
61 by a statute, local rule, or court order, the last day  
62 ends:







**Committee Note**

**Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a statute that does not specify a method of computing time, a Federal Rule of Appellate Procedure, a local rule, or a court order. In accordance with Rule 47(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) “does not apply to situations where the court has established a specific calendar day as a deadline”), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is “no later than November 1, 2007,” subdivision (a) does not govern. But if a filing is required to be made “within 10 days” or “within 72 hours,” subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 20 U.S.C. § 7711(b)(1) (requiring certain petitions for review by a local educational agency or a state to be filed “within 30 working days (as determined by the local educational agency or State) after receiving notice of” federal agency decision).

**Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years; though no such time period currently appears in the Federal Rules of Appellate Procedure, such periods may be set by other covered provisions such as a local rule. *See, e.g.*, Third Circuit Local Appellate Rule 46.3(c)(1). Subdivision (a)(1)(B)'s directive to "count every day" is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 26(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 26(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day — and the 10-day period not infrequently ended later than the 14-day period. *See Miltimore Sales, Inc. v. Int'l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

FEDERAL RULES OF APPELLATE PROCEDURE 9

Where subdivision (a) formerly referred to the “act, event, or default” that triggers the deadline, new subdivision (a) refers simply to the “event” that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. *See, e.g.*, Rules 5(b)(2), 5(d)(1), 28.1(f), & 31(a).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method — two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods. Thirty-day and longer periods, however, were retained without change.

**Subdivision (a)(2).** New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Appellate Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline.

The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be “rounded up” to the next whole hour. Subdivision (a)(3) addresses situations when the clerk’s office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:00 a.m. on Friday, November 2, 2007, will run until 9:00 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

**Subdivision (a)(3).** When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk’s office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk’s office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday or day when the clerk’s office is inaccessible.

Subdivision (a)(3)’s extensions apply “[u]nless the court orders otherwise.” In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to “weather or other conditions” as the reason for the inaccessibility of the clerk’s office.

The reference to “weather” was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk’s office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, *see, e.g., Tchakmakjian v. Department of Defense*, 57 Fed. Appx. 438, 441 (Fed. Cir. 2003) (unpublished per curiam opinion) (inaccessibility “due to anthrax concerns”); *cf. William G. Phelps, When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, local provisions may address inaccessibility for purposes of electronic filing.

**Subdivision (a)(4).** New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may, for example, address the problems that might arise under subdivision (a)(4)(A) if a single district has clerk’s offices in different time zones, or provide that papers filed in a drop box after the normal hours of the clerk’s office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that “[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.” A corresponding provision exists in Rule 45(a)(2). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g., Casaldue v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the

effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

Subdivision (a)(4)(A) addresses electronic filings in the district court. For example, subdivision (a)(4)(A) would apply to an electronically-filed notice of appeal. Subdivision (a)(4)(B) addresses electronic filings in the court of appeals.

Subdivision (a)(4)(C) addresses filings by mail under Rules 25(a)(2)(B)(i) and 13(b), filings by third-party commercial carrier under Rule 25(a)(2)(B)(ii), and inmate filings under Rules 4(c)(1) and 25(a)(2)(C). For such filings, subdivision (a)(4)(C) provides that the “last day” ends at the latest time (prior to midnight in the filer’s time zone) that the filer can properly submit the filing to the post office, third-party commercial carrier, or prison mail system (as applicable) using the filer’s chosen method of submission. For example, if a correctional institution’s legal mail system’s rules of operation provide that items may only be placed in the mail system between 9:00 a.m. and 5:00 p.m., then the “last day” for filings under Rules 4(c)(1) and 25(a)(2)(C) by inmates in that institution ends at 5:00 p.m. As another example, if a filer uses a drop box maintained by a third-party commercial carrier, the “last day” ends at the time of that drop box’s last scheduled pickup. Filings by mail under Rule 13(b) continue to be subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

Subdivision (a)(4)(D) addresses all other non-electronic filings; for such filings, the last day ends under (a)(4)(D) when the clerk’s office in which the filing is made is scheduled to close.

**Subdivision (a)(5).** New subdivision (a)(5) defines the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal



Rules of Appellate Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.*, Rule 4(a)(1)(A) (subject to certain exceptions, notice of appeal in a civil case must be filed “within 30 days after the judgment or order appealed from is entered”). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rule 31(a)(1) (“[A] reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.”). In determining what is the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk’s office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday—no earlier than Tuesday, September 4.

**Subdivision (a)(6).** New subdivision (a)(6) defines “legal holiday” for purposes of the Federal Rules of Appellate Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of “legal holiday” days that are “declared a holiday by the President.” For two cases that applied this provision to find a legal holiday on days when the President ordered the government closed for purposes of celebration or commemoration, *see Hart v. Sheahan*, 396 F.3d 887, 891 (7<sup>th</sup> Cir. 2005) (President included December 26, 2003 within scope of executive order specifying pay for executive department and

independent agency employees on legal holidays), and *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1098 (D.C. Cir. 2003) (executive order provided that “[a]ll executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty on Monday, December 24, 2001”). Subdivision (a)(6)(B) includes certain state holidays within the definition of legal holidays, and defines the term “state” – for purposes of subdivision (a)(6) – to include the District of Columbia and any commonwealth, territory or possession of the United States. Thus, for purposes of subdivision (a)(6)’s definition of “legal holiday,” “state” includes the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

---

**TIME COMPUTATION AMENDMENTS**

**FEDERAL RULES OF APPELLATE PROCEDURE**



2 FEDERAL RULES OF APPELLATE PROCEDURE

13 not granting the motion would alter the  
14 judgment;

15 (iii) for attorney's fees under Rule 54 if the  
16 district court extends the time to appeal  
17 under Rule 58;

18 (iv) to alter or amend the judgment under  
19 Rule 59;

20 (v) for a new trial under Rule 59; or

21 (vi) for relief under Rule 60 if the motion is  
22 filed no later than ~~10~~ 30 days after the  
23 judgment is entered.

24 \* \* \* \* \*

25 (5) **Motion for Extension of Time.**

26 \* \* \* \* \*

27 (C) No extension under this Rule 4(a)(5)  
28 may exceed 30 days after the prescribed  
29 time or ~~10~~ 14 days after the date when

30 the order granting the motion is entered,  
31 whichever is later.

32 **(6) Reopening the Time to File an Appeal.** The  
33 district court may reopen the time to file an  
34 appeal for a period of 14 days after the date  
35 when its order to reopen is entered, but only  
36 if all the following conditions are satisfied:

37 \* \* \* \* \*

38 (B) the motion is filed within 180 days after  
39 the judgment or order is entered or  
40 within 7 14 days after the moving party  
41 receives notice under Federal Rule of  
42 Civil Procedure 77(d) of the entry,  
43 whichever is earlier; and

44 \* \* \* \* \*

45 **(b) Appeal in a Criminal Case.**

46 **(1) Time for Filing a Notice of Appeal.**

4 FEDERAL RULES OF APPELLATE PROCEDURE

47 (A) In a criminal case, a defendant's notice  
48 of appeal must be filed in the district  
49 court within ~~10~~ 14 days after the later  
50 of:

51 (i) the entry of either the judgment or  
52 the order being appealed; or

53 (ii) the filing of the government's  
54 notice of appeal.

55 \* \* \* \* \*

56 (3) **Effect of a Motion on a Notice of Appeal.**

57 (A) If a defendant timely makes any of the  
58 following motions under the Federal Rules of  
59 Criminal Procedure, the notice of appeal from  
60 a judgment of conviction must be filed within  
61 ~~10~~ 14 days after the entry of the order  
62 disposing of the last such remaining motion,  
63 or within ~~10~~ 14 days after the entry of the

64 judgment of conviction, whichever period  
65 ends later. This provision applies to a timely  
66 motion:

67 (i) for judgment of acquittal under Rule 29;

68 (ii) for a new trial under Rule 33, but if  
69 based on newly discovered evidence,  
70 only if the motion is made no later than  
71 ~~10~~ 14 days after the entry of the  
72 judgment; or

73 (iii) for arrest of judgment under Rule 34.

74 \* \* \* \* \*

**Committee Note**

**Subdivision (a)(4)(A)(vi).** Subdivision (a)(4) provides that certain timely post-trial motions extend the time for filing an appeal. Lawyers sometimes move under Civil Rule 60 for relief that is still available under another rule such as Civil Rule 59. Subdivision (a)(4)(A)(vi) provides for such eventualities by extending the time for filing an appeal so long as the Rule 60 motion is filed within a limited



time. Formerly, the time limit under subdivision (a)(4)(A)(vi) was 10 days, reflecting the 10-day limits for making motions under Civil Rules 50(b), 52(b), and 59. Subdivision (a)(4)(A)(vi) now contains a 30-day limit to match the revisions to the time limits in the Civil Rules.

**Subdivision (a)(5)(C).** The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

**Subdivision (a)(6)(B).** The time set in the former rule at 7 days has been revised to 14 days. Under the time-computation approach set by former Rule 26(a), “7 days” always meant at least 9 days and could mean as many as 11 or even 13 days. Under current Rule 26(a), intermediate weekends and holidays are counted. Changing the period from 7 to 14 days offsets the change in computation approach. See the Note to Rule 26.

**Subdivisions (b)(1)(A) and (b)(3)(A).** The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

### **Rule 5. Appeal by Permission**

1

\* \* \* \* \*

2

**(b) Contents of the Petition; Answer or Cross-Petition;**

3

**Oral Argument.**

4

\* \* \* \* \*

5 (2) A party may file an answer in opposition or a  
6 cross-petition within ~~7~~ 10 days after the petition is  
7 served.

8 \* \* \* \* \*

9 **(d) Grant of Permission; Fees; Cost Bond; Filing the**  
10 **Record.**

11 (1) Within ~~10~~ 14 days after the entry of the order  
12 granting permission to appeal, the appellant must:

- 13 (A) pay the district clerk all required fees; and  
14 (B) file a cost bond if required under Rule 7.

15 \* \* \* \* \*

**Committee Note**

**Subdivision (b)(2).** Subdivision (b)(2) is amended in the light of the change in Rule 26(a)'s time computation rules. Subdivision (b)(2) formerly required that an answer in opposition to a petition for permission to appeal, or a cross-petition for permission to appeal, be filed "within 7 days after the petition is served." Under former Rule 26(a), "7 days" always meant at least 9 days and could mean as many as 11 or even 13 days. Under current Rule 26(a), intermediate weekends and holidays are counted. Changing the period from 7 to

10 days offsets the change in computation approach. See the Note to Rule 26.

**Subdivision (d)(1).** The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

**Rule 6. Appeal in a Bankruptcy Case From a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel**

\* \* \* \* \*

**(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.**

\* \* \* \* \*

**(2) Additional Rules.** In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

\* \* \* \* \*

**(B) The record on appeal.**

- (i) Within ~~10~~ 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006 — and serve on the appellee — a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk.
- (ii) An appellee who believes that other parts of the record are necessary must, within ~~10~~ 14 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

\* \* \* \* \*

**Committee Note**

**Subdivision (b)(2)(B).** The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

**Rule 10. The Record on Appeal**

1

\* \* \* \* \*

2

**(b) The Transcript of Proceedings.**

3

**(1) Appellant's Duty to Order.** Within ~~10~~ 14 days

4

after filing the notice of appeal or entry of an order

5

disposing of the last timely remaining motion of a

6

type specified in Rule 4(a)(4)(A), whichever is

7

later, the appellant must do either of the following:

8

\* \* \* \* \*

9

**(3) Partial Transcript.** Unless the entire transcript is

10

ordered:

11

**(A)** the appellant must — within the ~~10~~ 14 days

12

provided in Rule 10(b)(1) — file a statement

13

of the issues that the appellant intends to

14 present on the appeal and must serve on the  
15 appellee a copy of both the order or  
16 certificate and the statement;

17 (B) if the appellee considers it necessary to have  
18 a transcript of other parts of the proceedings,  
19 the appellee must, within ~~10~~ 14 days after the  
20 service of the order or certificate and the  
21 statement of the issues, file and serve on the  
22 appellant a designation of additional parts to  
23 be ordered; and

24 (C) unless within ~~10~~ 14 days after service of that  
25 designation the appellant has ordered all such  
26 parts, and has so notified the appellee, the  
27 appellee may within the following ~~10~~ 14 days  
28 either order the parts or move in the district  
29 court for an order requiring the appellant to  
30 do so.

12 FEDERAL RULES OF APPELLATE PROCEDURE

31

\* \* \* \* \*

32

**(c) Statement of the Evidence When the Proceedings**

33

**Were Not Recorded or When a Transcript Is**

34

**Unavailable.** If the transcript of a hearing or trial is

35

unavailable, the appellant may prepare a statement of the

36

evidence or proceedings from the best available means,

37

including the appellant's recollection. The statement

38

must be served on the appellee, who may serve

39

objections or proposed amendments within ~~10~~ 14 days

40

after being served. The statement and any objections or

41

proposed amendments must then be submitted to the

42

district court for settlement and approval. As settled and

43

approved, the statement must be included by the district

44

clerk in the record on appeal.

45

\* \* \* \* \*

**Committee Note**

**Subdivisions (b)(1), (b)(3) and (c).** The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

**Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record**

1  
2  
3  
4  
5  
6  
7

\* \* \* \* \*

**(b) Filing a Representation Statement.** Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within ~~10~~ 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

\* \* \* \* \*

**Committee Note**

**Subdivision (b).** The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

**Rule 15. Review or Enforcement of an Agency Order—How Obtained; Intervention**

1

\* \* \* \* \*



14 FEDERAL RULES OF APPELLATE PROCEDURE

2           **(b) Application or Cross-Application to Enforce an**  
3           **Order; Answer; Default.**

4                                   \*\*\*\*\*

5           (2) Within ~~20~~ 21 days after the application for  
6                                   enforcement is filed, the respondent must serve on  
7                                   the applicant an answer to the application and file  
8                                   it with the clerk. If the respondent fails to answer  
9                                   in time, the court will enter judgment for the relief  
10                                  requested.

11                                  \*\*\*\*\*

**Committee Note**

**Subdivision (b)(2).** The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 26.

**Rule 19. Settlement of a Judgment Enforcing an Agency Order in Part**

1                                  When the court files an opinion directing entry of  
2                                  judgment enforcing the agency's order in part, the agency

3 must within 14 days file with the clerk and serve on each  
4 other party a proposed judgment conforming to the opinion.  
5 A party who disagrees with the agency's proposed judgment  
6 must within ~~7~~ 10 days file with the clerk and serve the agency  
7 with a proposed judgment that the party believes conforms to  
8 the opinion. The court will settle the judgment and direct  
9 entry without further hearing or argument.

**Committee Note**

Rule 19 formerly required a party who disagreed with the agency's proposed judgment to file a proposed judgment "within 7 days." Under former Rule 26(a), "7 days" always meant at least 9 days and could mean as many as 11 or even 13 days. Under current Rule 26(a), intermediate weekends and holidays are counted. Changing the period from 7 to 10 days offsets the change in computation approach. See the Note to Rule 26.

**Rule 25. Filing and Service**

1 **(a) Filing.**

2 \* \* \* \* \*

3 **(2) Filing: Method and Timeliness.**

16 FEDERAL RULES OF APPELLATE PROCEDURE

4

\* \* \* \* \*

5

(B) **A brief or appendix.** A brief or appendix is

6

timely filed, however, if on or before the last

7

day for filing, it is:

8

(i) mailed to the clerk by First-Class Mail,

9

or other class of mail that is at least as

10

expeditious, postage prepaid; or

11

(ii) dispatched to a third-party commercial

12

carrier for delivery to the clerk within 3

13

calendar days.

14

\* \* \* \* \*

15

(c) **Manner of Service.**

16

(1) Service may be any of the following:

17

\* \* \* \* \*

18

(C) by third-party commercial carrier for delivery

19

within 3 calendar days; or

20

\* \* \* \* \*

**Committee Note**

Under former Rule 26(a), short periods that span weekends or holidays were computed without counting those weekends or holidays. To specify that a period should be calculated by counting all intermediate days, including weekends or holidays, the Rules used the term “calendar days.” Rule 26(a) now takes a “days-are-days” approach under which all intermediate days are counted, no matter how short the period. Accordingly, “3 calendar days” in subdivisions (a)(2)(B)(ii) and (c)(1)(C) is amended to read simply “3 days.”

**Rule 26. Computing and Extending Time**

1

\* \* \* \* \*

2     **(c) Additional Time after Service.** When a party is required  
3     or permitted to act within a prescribed period after a paper is  
4     served on that party, 3 calendar days are added to the  
5     prescribed period unless the paper is delivered on the date of  
6     service stated in the proof of service. For purposes of this  
7     Rule 26(c), a paper that is served electronically is not treated  
8     as delivered on the date of service stated in the proof of  
9     service.

**Committee Note**



13

\* \* \* \* \*

14

(4) **Reply to Response.** Any reply to a response must

15

be filed within 5 7 days after service of the

16

response. A reply must not present matters that do

17

not relate to the response.

18

\* \* \* \* \*

#### Committee Note

**Subdivision (a)(3)(A).** Subdivision (a)(3)(A) formerly required that a response to a motion be filed “within 8 days after service of the motion unless the court shortens or extends the time.” Prior to the 2002 amendments to Rule 27, subdivision (a)(3)(A) set this period at 10 days rather than 8 days. The period was changed in 2002 to reflect the change from a time-computation approach that counted intermediate weekends and holidays to an approach that did not. (Prior to the 2002 amendments, intermediate weekends and holidays were excluded only if the period was less than 7 days; after those amendments, such days were excluded if the period was less than 11 days.) Under current Rule 26(a), intermediate weekends and holidays are counted for all periods. Accordingly, revised subdivision (a)(3)(A) once again sets the period at 10 days.

**Subdivision (a)(4).** Subdivision (a)(4) formerly required that a reply to a response be filed “within 5 days after service of the response.” Prior to the 2002 amendments, this period was set at 7 days; in 2002 it was shortened in the light of the 2002 change in time-

computation approach (discussed above). Under current Rule 26(a), intermediate weekends and holidays are counted for all periods, and revised subdivision (a)(4) once again sets the period at 7 days.

### Rule 28.1. Cross-Appeals

1

\* \* \* \* \*

2

**(f) Time to Serve and File a Brief.** Briefs must be served

3

and filed as follows:

4

\* \* \* \* \*

5

(4) the appellee's reply brief, within 14 days after the

6

appellant's response and reply brief is served, but

7

at least 3 7 days before argument unless the court,

8

for good cause, allows a later filing.

### Committee Note

**Subdivision (f)(4).** Subdivision (f)(4) formerly required that the appellee's reply brief be served "at least 3 days before argument unless the court, for good cause, allows a later filing." Under former Rule 26(a), "3 days" could mean as many as 5 or even 6 days. See the Note to Rule 26. Under revised Rule 26(a), intermediate weekends and holidays are counted. Changing "3 days" to "7 days" alters the period accordingly. Under revised Rule 26(a), when a

period ends on a weekend or holiday, one must continue to count in the same direction until the next day that is not a weekend or holiday; the choice of the 7-day period for subdivision (f)(4) will minimize such occurrences.

**Rule 30. Appendix to the Briefs**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

\* \* \* \* \*

**(b) All Parties' Responsibilities.**

**(1) Determining the Contents of the Appendix.** The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within ~~10~~ 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within ~~10~~ 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the



22 FEDERAL RULES OF APPELLATE PROCEDURE

14 court's attention. The appellant must include the  
15 designated parts in the appendix. The parties must  
16 not engage in unnecessary designation of parts of  
17 the record, because the entire record is available to  
18 the court. This paragraph applies also to a  
19 cross-appellant and a cross-appellee.

20 \* \* \* \* \*

**Committee Note**

**Subdivision (b)(1).** The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

**Rule 31. Serving and Filing Briefs**

1 **(a) Time to Serve and File a Brief.**

2 (1) The appellant must serve and file a brief within 40  
3 days after the record is filed. The appellee must  
4 serve and file a brief within 30 days after the  
5 appellant's brief is served. The appellant may serve



24 FEDERAL RULES OF APPELLATE PROCEDURE

4           (2) Objections must be filed within ~~10~~ 14 days after  
5           service of the bill of costs, unless the court extends  
6           the time.

7                                   \* \* \* \* \*

**Committee Note**

**Subdivision (d)(2).** The time set in the former rule at 10 days  
has been revised to 14 days. See the Note to Rule 26.

**Rule 41. Mandate: Contents; Issuance and Effective  
Date; Stay**

1                                   \* \* \* \* \*

2           **(b) When Issued.** The court's mandate must issue 7  
3           calendar days after the time to file a petition for  
4           rehearing expires, or 7 calendar days after entry of an  
5           order denying a timely petition for panel rehearing,  
6           petition for rehearing en banc, or motion for stay of  
7           mandate, whichever is later. The court may shorten or  
8           extend the time.

**Committee Note**

Under former Rule 26(a), short periods that span weekends or holidays were computed without counting those weekends or holidays. To specify that a period should be calculated by counting all intermediate days, including weekends or holidays, the Rules used the term "calendar days." Rule 26(a) now takes a "days-are-days" approach under which all intermediate days are counted, no matter how short the period. Accordingly, "7 calendar days" in subdivision (b) is amended to read simply "7 days."

---