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OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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

**From: Hon. Susan C. Bucklew, Chair
Advisory Committee on Federal Rules of Criminal Procedure**

Subject: Report of the Advisory Committee on Criminal Rules

Date: May 19, 2007 (revised July 2007)

I. Introduction

The Advisory Committee on Federal Rules of Criminal Procedure (“the Committee”) met on April 16-17, 2007 in Brooklyn, N.Y. and took action on a number of proposed amendments to the Rules of Criminal Procedure.

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This report addresses a number of action items:

* * * * *

(2) approval for publication and comment of a proposed amendment to time computation Rule 45(a) and related amendments to Rules 5.1, 7, 12.1, 12.3, 29, 33, 34, 35, 41, 47, 58, 59, and Rule 8 of the Rules Governing §§ 2254 and 2255 Cases;

* * * * *

III. Action Items—Recommendations to Publish Amendments to the Rules

A. Time Computation Rules

1. ACTION ITEM-Rule 45(a)

The Advisory Committee recommends that Rule 45(a) be amended to track the time computation template developed by Judge Kravitz’s committee. Only minor changes (such as the substitution of references to criminal rather than civil rules in the committee note) were needed to adapt the template to the Criminal Rules.

Only one aspect of the proposed rule deserves special mention. Following the template, proposed Rule 45(a) applies to statutory time periods as well as to periods stated in the rules, with the exception of statutes that provide for a different time counting rule (such as “business days” or “excluding Saturdays, Sundays, and holidays”). At present it is not clear that Rule 45(a) has any application to statutory time periods. Unlike the comparable provisions in the other rules (such as Civil Rule 6(a)), Rule 45(a) currently contains no reference to statutory time periods, nor did it retain the general language “any time period” used prior to restyling. Accordingly, the proposed committee note recognizes that the new language may broaden the applicability of Rule 45. It states that the general time computations do not apply to Rule 46(h), because that rule is based upon a statute that provides for a different time-counting method.

The Committee discussed the need for legislative action in tandem with the rulemaking process, and noted that the need for legislative action is particularly acute in several instances where statutory time periods underlie the time periods specified in the Criminal Rules. For example, the time specified in Rule 5.1(c) for preliminary hearings is based upon the requirements of 18 U.S.C. § 3060(b). If the new “days are days” time computation rule is not applicable to statutory periods, it would leave open the argument that actions that would be timely under particular rules would not meet statutory requirements like those in § 3060(b). The Committee is working to develop a list of statutory provisions where legislative action is most needed.

The Committee also discussed the need to develop a process for revising local rules to accommodate the new time counting rules, and urged Judge Kravitz and his committee to make this part of the implementation process.

The Committee voted unanimously to forward the Rule 45(a) amendment to the Standing Committee for publication. After the meeting changes were circulated and approved by e-mail to bring Rule 45(a) and the committee note into conformity with the most recent draft of the time computation template and accompanying rule, so that all of the rules would be as consistent as possible.

Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 45(a) be published for public comment.

The Committee was also unanimous in recommending the following amendments to time periods that are intended to compensate for the change to a “days are days” method of counting time. Subsequent to the meeting, committee notes were drafted—paralleling those adopted by the Civil Rules Committee—to accompany these amendments. The Committee approved the addition of these notes by e-mail.

2. ACTION ITEM-Rule 5.1

Rule 5.1 requires a preliminary hearing to be held within 10 days after a defendant's initial appearance if the defendant is in custody or 20 days if the defendant is not in custody. The Committee recommends extending these periods to 14 and 21 days if proposed Rule 45(a) is adopted, but notes that these periods are based upon 18 U.S.C. § 3060(b). Because of the statutory basis of the time periods in the current rule, this proposal is contingent upon the adoption of a statutory amendment. If the statute can be amended, conversion to 14 and 21 days would be the rough equivalent of the times under the current rule.

Recommendation--The Advisory Committee recommends that the proposed amendment to Rule 5.1 be published for public comment.

3. ACTION ITEM-Rule 7

The Committee unanimously concluded that the time for motions for a bill of particulars should be increased from 10 to 14 days if proposed Rule 45(a) is adopted.

Recommendation--The Advisory Committee recommends that the proposed amendment to Rule 7 be published for public comment.

4. ACTION ITEM-Rule 12.1

Rule 12.1 (alibi defense) establishes time periods for responses and disclosure. The Committee concluded that if proposed Rule 45(a) is adopted the 10 day periods for the defendant's response and the government's disclosure under Rule 12.1(a)(2) and (b)(2) should be increased from 10 to 14 days.

Recommendation--The Advisory Committee recommends that the proposed amendment to Rule 12.1 be published for public comment.

5. ACTION ITEM-Rule 12.3

Rule 12.3 (public authority defense) establishes time periods for responses, requests, and replies. The Committee concluded that if proposed Rule 45(a) is adopted the 10 days periods in Rule 12.3 should be increased to 14 days, and the 20 day period be increased to 21 days.

Recommendation--The Advisory Committee recommends that the proposed amendment to Rule 12.3 be published for public comment.

6. ACTION ITEM-Rule 29

Rule 29(c)(1) requires motions for post-verdict acquittal to be filed within 7 days after a verdict or the discharge of the jury. The Committee recommends increasing the time to 14 days if proposed Rule 45(a) is adopted. At present, excluding weekends and holidays from the 7 day period means that the defense has at least 9 days for such motions. Requests for continuances are frequent, and often the motions are filed in a bare bones fashion requiring later supplementation. Rather than increasing the need for continuances, it would be preferable to set the general time at 14 days (a multiple of 7).

Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 29 be published for public comment.

7. ACTION ITEM-Rule 33

The Committee concluded that the considerations that support extending Rule 29(c)(1)'s 7 day period to 14 days apply equally to motions for a new trial under Rule 33(b)(2).

Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 33 be published for public comment.

8. ACTION ITEM-Rule 34

The Committee concluded that the considerations that support extending Rule 29(c)(1)'s 7 day period to 14 days apply equally to motions for arrest of judgment under Rule 34.

Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 34 be published for public comment.

9. ACTION ITEM-Rule 35

Rule 35(a) currently allows the court to correct a sentence for arithmetic, technical, or other clear error within 7 days after sentencing (which is, in practical terms, approximately 9 days under the current counting rules). The Committee concluded that this period should be increased to 14 days if proposed Rule 45(a) is adopted. Sentencing is now so complex that minor technical errors are not uncommon. Extension of the period to 14 days will not cause any jurisdictional problems if an appeal has been filed because FRAP 4(b)(5) expressly provides that the filing of a notice of appeal does not divest the district court of jurisdiction to correct a sentence under Rule 35(a). There was some sentiment on the committee for a rule that would allow the court to correct such errors at

any time, but the Committee did not pursue this line of thought because it falls beyond the scope of the current computation project.

Recommendation--The Advisory Committee recommends that the proposed amendment to Rule 35 be published for public comment.

10. ACTION ITEM-Rule 41

Rule 41(e)(2)(A)(i) now states that a warrant must command that it be executed within a specified time no longer than 10 days (which can be up to 14 days under the current time computation rules). The Committee recommends that the period be increased to 14 days, although it noted that the considerations here are significantly different than those pertinent to many of the other rules. First, warrants can and often are executed on nights and weekends. Second, there is a real concern that warrants not be executed on the basis of stale evidence. For that reason, the courts often set a time for execution that is shorter than 10 days. On the other hand, there are situations in which more time may be needed for the proper execution of a highly complex warrant. After weighing these various considerations, the Committee concluded that designating a 14 day period was appropriate because it was the rough equivalent of the present period, followed the multiples of 7 rule of thumb, and still left the court with discretion to set a shorter time period in individual cases, as is frequently done at present.

Recommendation--The Advisory Committee recommends that the proposed amendment to Rule 41 be published for public comment.

11. ACTION ITEM-Rule 47

The Committee recommends that the current requirement under Rule 47(c) that motions be served 5 days before the hearing date be increased to 7 days if proposed Rule 45(a) is adopted.

Recommendation--The Advisory Committee recommends that the proposed amendment to Rule 47 be published for public comment.

12. ACTION ITEM-Rule 58

Rule 58(g) governs appeals from a magistrate judge's order or judgment in cases involving petty offenses and misdemeanors. The Committee recommends that the time under Rule 58(g)(2) for interlocutory appeals and appeals from a sentence or conviction of a misdemeanor be increased from 10 to 14 days if proposed Rule 45(a) is adopted.

Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 58(a) be published for public comment.

13. ACTION ITEM-Rule 59

The Committee concluded that the 10 day period for objections to nondispositive determinations, findings, and recommendations by a magistrate judge under Rule 59(a) and dispositive matters under 59(b) should be increased to 14 days if proposed Rule 45(a) is adopted.

Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 59 be published for public comment.

14. ACTION ITEM-Rule 8 of the Rules Governing § 2254 Proceedings

The Committee recommends that the 10 day period for filing objections under Rule 8(b) be increased to 14 days if proposed Rule 45(a) is adopted.

Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 8 of the Rules Governing § 2254 Proceedings be published for public comment.

15. ACTION ITEM-Rule 8 of the Rules Governing § 2255 Proceedings

The Committee recommends that the 10 day period for filing objections under Rule 8(b) be increased to 14 days if proposed Rule 45(a) is adopted.

Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 8 of the Rules Governing § 2255 Proceedings be published for public comment.

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**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF CRIMINAL PROCEDURE***

Rule 45. Computing and Extending Time

- 1 ~~(a) Computing Time.~~ The following rules apply in
2 computing any period of time specified in these rules,
3 any local rule, or any court order:
- 4 ~~(1) Day of the Event Excluded.~~ Exclude the day of
5 the act, event, or default that begins the period.
- 6 ~~(2) Exclusion from Brief Periods.~~ Exclude
7 intermediate Saturdays, Sundays, and legal
8 holidays when the period is less than 11 days.
- 9 ~~(3) Last Day.~~ Include the last day of the period unless
10 it is a Saturday, Sunday, legal holiday, or day on
11 which weather or other conditions make the clerk's
12 office inaccessible. When the last day is excluded,
13 the period runs until the end of the next day that is

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

2 FEDERAL RULES OF CRIMINAL PROCEDURE

14 not a Saturday, Sunday, legal holiday, or day when
15 the clerk's office is inaccessible.

16 ~~(4) "Legal Holiday" Defined.~~ As used in this rule,
17 "legal holiday" means:

18 (A) ~~the day set aside by statute for observing:~~

19 (i) ~~New Year's Day;~~

20 (ii) ~~Martin Luther King, Jr.'s Birthday;~~

21 (iii) ~~Washington's Birthday;~~

22 (iv) ~~Memorial Day;~~

23 (v) ~~Independence Day;~~

24 (vi) ~~Labor Day;~~

25 (vii) ~~Columbus Day;~~

26 (viii) ~~Veterans' Day;~~

27 (ix) ~~Thanksgiving Day;~~

28 (x) ~~Christmas Day; and~~

29 ~~(B) any other day declared a holiday by the~~
30 ~~President, the Congress, or the state where~~
31 ~~the district court is held.~~

32 ~~(b) Extending Time.~~

33 ~~(1) In General.~~ When an act must or may be done
34 within a specified period, the court on its own may
35 extend the time, or for good cause may do so on a
36 party's motion made:

37 ~~(A) before the originally prescribed or previously~~
38 ~~extended time expires; or~~

39 ~~(B) after the time expires if the party failed to act~~
40 ~~because of excusable neglect.~~

41 ~~(2) Exception.~~ The court may not extend the time to
42 take any action under Rule 35, except as stated in
43 that rule.

44 ~~(c) Additional Time After Service.~~ When these rules
45 permit or require a party to act within a specified period

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46 after a notice or a paper has been served on that party, 3
47 days are added to the period if service occurs in the
48 manner provided under Federal Rule of Civil Procedure
49 5(b)(2)(B), (C), or (D).

50 * * * * *

Rule 45. Computing and Extending Time

1 **(a) Computing Time.** The following rules apply in
2 computing any time period specified in these rules, in
3 any local rule or court order, or in any statute that does
4 not specify a method of computing time.

5 **(1) Period Stated in Days or a Longer Unit.** When
6 the period is stated in days or a longer unit of time:

7 **(A) exclude the day of the event that triggers the**
8 **period;**

9 **(B) count every day, including intermediate**
10 **Saturdays, Sundays, and legal holidays; and**

11 (C) include the last day of the period, but if the
12 last day is a Saturday, Sunday, or legal
13 holiday, the period continues to run until the
14 end of the next day that is not a Saturday,
15 Sunday, or legal holiday.

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

18 (A) begin counting immediately on the
19 occurrence of the event that triggers the
20 period;

21 (B) count every hour, including hours during
22 intermediate Saturdays, Sundays, and legal
23 holidays; and

24 (C) if the period would end on a Saturday,
25 Sunday, or legal holiday, the period continues
26 to run until the same time on the next day that
27 is not a Saturday, Sunday, or legal holiday.

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28 (3) ***Inaccessibility of the Clerk's Office.*** Unless the
29 court orders otherwise, if the clerk's office is
30 inaccessible:

31 (A) on the last day for filing under Rule 45(a)(1),
32 then the time for filing is extended to the first
33 accessible day that is not a Saturday, Sunday,
34 or legal holiday; or

35 (B) during the last hour for filing under Rule
36 45(a)(2), then the time for filing is extended
37 to the same time on the first accessible day
38 that is not a Saturday, Sunday, or legal
39 holiday.

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

43 (A) for electronic filing, at midnight in the court's
44 time zone; and

45 (B) for filing by other means, when the clerk's
46 office is scheduled to close.

47 **(5) "Next Day" Defined.** The "next day" is
48 determined by continuing to count forward when
49 the period is measured after an event and backward
50 when measured before an event.

51 **(6) "Legal Holiday" Defined.** "Legal holiday" means:

52 (A) the day set aside by statute for observing New
53 Year's Day, Martin Luther King Jr.'s
54 Birthday, Washington's Birthday, Memorial
55 Day, Independence Day, Labor Day,
56 Columbus Day, Veterans' Day, Thanksgiving
57 Day, or Christmas Day; and

58 (B) any other day declared a holiday by the
59 President, Congress, or the state where the
60 district court is located.

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 Criminal Procedure, a local rule, or a court order. In accordance with Rule 57(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a). In making these time computation rules applicable to statutory time periods, subdivision (a) is consistent with Civil Rule 6(a). It is also consistent with the language of Rule 45 prior to restyling, when the rule applied to “computing any period of time.” Although the restyled Rule 45(a) referred only to time periods “specified in these rules, any local rule, or any court order,” some courts nonetheless applied the restyled Rule 45(a) when computing various statutory periods.

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 a 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.*, 18 U.S.C. § 3142(d) (excluding Saturdays, Sundays, and holidays from 10 day period). In addition, because the time period in Rule 46(h) is derived from 18 U.S.C. §§ 3142(d) and 3144, the Committee concluded that Rule 45(a) should not be applied to Rule 46(h).

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. *See, e.g.*, Rule 35(b)(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 45(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 45(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.

Where subdivision (a) formerly referred to the “act, event, or default” that triggers the deadline, the 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 the 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 29(c)(1), 33(b)(2), 34, and 35(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 generally 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 Criminal

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 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 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.*, 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, many local provisions address inaccessibility for purposes of electronic filing, *see, e.g.*, D. Kan. Rule CR49.11 (“A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.”).

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 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 56(a). 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)(5). New subdivision (a)(5) defines the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Criminal 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 59(b) (stating that a court may correct an arithmetic or technical error in a sentence “[w]ithin 7 days after sentencing”). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.,* Rule 47(c) (stating that a party must serve a written motion “at least 5 days before the hearing date”). 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 Criminal 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 (7th 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.2d 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”).

Rule 5.1. Preliminary Hearing

1 * * * * *

2 (c) **Scheduling.** The magistrate judge must hold the
 3 preliminary hearing within a reasonable time, but no
 4 later than ~~10~~ 14 days after the initial appearance if the
 5 defendant is in custody and no later than ~~20~~ 21 days if
 6 not in custody.

7 * * * * *

Committee Note

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Committee Note to Rule 45(a).

Rule 7. The Indictment and the Information

1 * * * * *

2 (f) **Bill of Particulars.** The court may direct the
3 government to file a bill of particulars. The defendant
4 may move for a bill of particulars before or within ~~10~~ 14
5 days after arraignment or at a later time if the court
6 permits. The government may amend a bill of particulars
7 subject to such conditions as justice requires.

Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Rule 45(a).

Rule 12.1. Notice of an Alibi Defense

1 (a) **Government’s Request for Notice and Defendant’s**
2 **Response.**

3 * * * * *

21 intended alibi defense under Rule 12.1(a)(2), but
22 no later than ~~10~~ 14 days before trial.

23 * * * * *

Committee Note

The times set in the former rule at 10 days have been revised to 14 days. See the Committee Note to Rule 45(a).

Rule 12.3. Notice of a Public-Authority Defense

1 **(a) Notice of the Defense and Disclosure of Witnesses.**

2 * * * * *

3 **(3) *Response to the Notice.*** An attorney for the
4 government must serve a written response on the
5 defendant or the defendant's attorney within ~~10~~ 14
6 days after receiving the defendant's notice, but no
7 later than ~~20~~ 21 days before trial. The response
8 must admit or deny that the defendant exercised
9 the public authority identified in the defendant's
10 notice.

11 (4) *Disclosing Witnesses.*

12 (A) *Government's Request.* An attorney for the
13 government may request in writing that the
14 defendant disclose the name, address, and
15 telephone number of each witness the
16 defendant intends to rely on to establish a
17 public-authority defense. An attorney for the
18 government may serve the request when the
19 government serves its response to the
20 defendant's notice under Rule 12.3(a)(3), or
21 later, but must serve the request no later than
22 ~~20~~ 21 days before trial.

23 (B) *Defendant's Response.* Within ~~7~~ 14 days after
24 receiving the government's request, the
25 defendant must serve on an attorney for the
26 government a written statement of the name,

27 address, and telephone number of each
28 witness.

29 (C) *Government's Reply*. Within ~~7~~ 14 days after
30 receiving the defendant's statement, an
31 attorney for the government must serve on
32 the defendant or the defendant's attorney a
33 written statement of the name, address, and
34 telephone number of each witness the
35 government intends to rely on to oppose the
36 defendant's public-authority defense.

37 * * * * *

Committee Note

The times set in the former rule at 7, 10, or 20 days have been revised to 14 or 21 days. See the Committee Note to Rule 45(a).

Rule 29. Motion for a Judgment of Acquittal

1 * * * * *

2 (c) **After Jury Verdict or Discharge.**

the filing of a notice of appeal does not divest the district court of jurisdiction to correct a sentence under Rule 35(a).

Rule 41. Search and Seizure

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2 **(e) Issuing the Warrant.**

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4 **(2) Contents of the Warrant.**

5 (A) *Warrant to Search for and Seize a Person or*
6 *Property.* Except for a tracking-device
7 warrant, the warrant must identify the person
8 or property to be searched, identify any
9 person or property to be seized, and designate
10 the magistrate judge to whom it must be
11 returned. The warrant must command the
12 officer to:

- 13 (i) execute the warrant within a specified
14 time no longer than ~~10~~ 14 days;

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Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Rule 45(a).

Rule 47. Motions and Supporting Affidavits

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2 **(c) Timing of a Motion.** A party must serve a written
3 motion — other than one that the court may hear ex
4 parte — and any hearing notice at least 5 7 days before
5 the hearing date, unless a rule or court order sets a
6 different period. For good cause, the court may set a
7 different period upon ex parte application.

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Committee Note

The time set in the former rule at 5 days, which excluded intermediate Saturdays, Sundays, and legal holidays, has been expanded to 7 days. See the Committee Note to Rule 45(a).

17 To appeal, the defendant must file a notice
18 with the clerk specifying the judgment being
19 appealed and must serve a copy on an
20 attorney for the government.

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Committee Note

The times set in the former rule at 10 days have been revised to 14 days. See the Committee Note to Rule 45(a).

Rule 59. Matters Before a Magistrate Judge

1 **(a) Nondispositive Matters.** A district judge may refer to
2 a magistrate judge for determination any matter that
3 does not dispose of a charge or defense. The magistrate
4 judge must promptly conduct the required proceedings
5 and, when appropriate, enter on the record an oral or
6 written order stating the determination. A party may
7 serve and file objections to the order within ~~10~~ 14 days
8 after being served with a copy of a written order or after

9 the oral order is stated on the record, or at some other
10 time the court sets. The district judge must consider
11 timely objections and modify or set aside any part of the
12 order that is contrary to law or clearly erroneous.
13 Failure to object in accordance with this rule waives a
14 party's right to review.

15 **(b) Dispositive Matters.**

16 * * * * *

17 **(2) Objections to Findings and Recommendations.**

18 Within ~~10~~ 14 days after being served with a copy
19 of the recommended disposition, or at some other
20 time the court sets, a party may serve and file
21 specific written objections to the proposed findings
22 and recommendations. Unless the district judge
23 directs otherwise, the objecting party must
24 promptly arrange for transcribing the record, or
25 whatever portions of it the parties agree to or the

28 FEDERAL RULES OF CRIMINAL PROCEDURE

26 magistrate judge considers sufficient. Failure to
27 object in accordance with this rule waives a party's
28 right to review.

29 * * * * *

Committee Note

The times set in the former rule at 10 days have been revised to 14 days. See the Committee Note to Rule 45(a).

**PROPOSED AMENDMENT TO RULES
GOVERNING SECTION 2254 CASES IN THE
UNITED STATES DISTRICT COURTS**

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Rule 8. Evidentiary Hearing

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(b) Reference to a Magistrate Judge. A judge may, under 28 U.S.C. § 636(b), refer the petition to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within ~~10~~ 14 days after being served, a party may file objections as provided by local court rule. The judge must determine de novo any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

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Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Federal Rules of Criminal Procedure 45(a).

**PROPOSED AMENDMENT TO RULES
GOVERNING SECTION 2255 PROCEEDINGS
FOR THE UNITED STATES DISTRICT COURTS**

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Rule 8. Evidentiary Hearing

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(b) Reference to a Magistrate Judge. A judge may, under 28 U.S.C. § 636(b), refer the motion to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within ~~10~~ 14 days after being served, a party may file objections as provided by local court rule. The judge must determine de novo any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

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Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Federal Rules of Criminal Procedure 45(a).