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

From: Honorable Lee H. Rosenthal, Chair
Advisory Committee on Federal Rules of Civil Procedure

Date: May 25, 2007 (Revised June 29, 2007)

Re: Report of the Civil Rules Advisory Committee

Introduction

The Civil Rules Advisory Committee met at the Brooklyn Law School on April 19-20, 2007.

* * * * *

Part I of this report presents three sets of proposed amendments recommended for approval for publication in August 2007. The first set is amendments that result from or relate to the Time-Computation Project. Proposed Rule 6(a) implements for the Civil Rules the time-computation methods template developed by the Time-Computation Subcommittee for parallel provisions in the Civil, Appellate, Bankruptcy, and Criminal Rules. Revisions of other Civil Rules are also proposed, most adjusting for elimination of the former rule that excluded intermediate Saturdays, Sundays, and legal holidays in computing periods shorter than 11 days. A final amendment related to the Time-Computation Project adds commonwealths, territories, and possessions to the Rule 81 definition of "state."

* * * * *

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

**Rule 6. Computing and Extending Time; Time for
Motion Papers**

1 ~~(a) **Computing Time.** The following rules apply in~~
2 ~~computing any time period specified in these rules or in~~
3 ~~any local rule, court order, or statute:~~

4 ~~(1) ***Day of the Event Excluded.*** Exclude the day of the~~
5 ~~act, event, or default that begins the period:~~

6 ~~(2) ***Exclusions 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 — if the~~
11 ~~act to be done is filing a paper in court — a day on~~
12 ~~which weather or other conditions make the clerk's~~
13 ~~office inaccessible. When the last day is excluded;~~

*New material is underlined; matter to be omitted is lined through. Includes amendments to rules that will take effect on December 1, 2007.

2 FEDERAL RULES OF CIVIL PROCEDURE

14 the period runs until the end of the next day that is
15 not a Saturday, Sunday, legal holiday, or day when
16 the clerk's office is inaccessible.

17 ~~(4) "Legal Holiday" Defined.~~ As used in these rules,
18 "legal holiday" means:

19 ~~(A) the day set aside by statute for observing New~~
20 ~~Year's Day, Martin Luther King Jr.'s~~
21 ~~Birthday, Washington's Birthday, Memorial~~
22 ~~Day, Independence Day, Labor Day,~~
23 ~~Columbus Day, Veterans' Day, Thanksgiving~~
24 ~~Day, or Christmas Day, and~~

25 ~~(B) any other day declared a holiday by the~~
26 ~~President, Congress, or the state where the~~
27 ~~district court is located.~~

28 **(a) Computing Time.** The following rules apply in
29 computing any time period specified in these rules, in

30 any local rule or court order, or in any statute that does
31 not specify a method of computing time.

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

34 **(A)** exclude the day of the event that triggers the
35 period;

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

38 **(C)** include the last day of the period, but if the
39 last day is a Saturday, Sunday, or legal
40 holiday, the period continues to run until the
41 end of the next day that is not a Saturday,
42 Sunday, or legal holiday.

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

45 (A) begin counting immediately on the
46 occurrence of the event that triggers the
47 period;

48 (B) count every hour, including hours during
49 intermediate Saturdays, Sundays, and legal
50 holidays; and

51 (C) if the period would end on a Saturday,
52 Sunday, or legal holiday, the period continues
53 to run until the same time on the next day that
54 is not a Saturday, Sunday, or legal holiday.

55 **(3) *Inaccessibility of the Clerk's Office.*** Unless the
56 court orders otherwise, if the clerk's office is
57 inaccessible:

58 (A) on the last day for filing under Rule 6(a)(1),
59 then the time for filing is extended to the first
60 accessible day that is not a Saturday, Sunday,
61 or legal holiday; or

62 **(B)** during the last hour for filing under Rule
63 6(a)(2), then the time for filing is extended to
64 the same time on the first accessible day that
65 is not a Saturday, Sunday, or legal holiday.

66 **(4)** “*Last Day*” Defined. Unless a different time is set
67 by a statute, local rule, or court order, the last day
68 ends:

69 **(A)** for electronic filing, at midnight in the court’s
70 time zone; and

71 **(B)** for filing by other means, when the clerk’s
72 office is scheduled to close.

73 **(5)** “*Next Day*” Defined. The “next day” is
74 determined by continuing to count forward when
75 the period is measured after an event and backward
76 when measured before an event.

77 **(6)** “*Legal Holiday*” Defined. “Legal holiday” means:

92 **(2) *Exceptions.*** A court must not extend the time to
93 act under Rules 50(b) and (d), 52(b), 59(b), (d), and
94 (e), and 60(b), ~~except as those rules allow.~~

95 **(c) Motions, Notices of Hearing, and Affidavits.**

96 **(1) *In General.*** A written motion and notice of the
97 hearing must be served at least ~~5~~ 14 days before the
98 time specified for the hearing, with the following
99 exceptions:

- 100 **(A)** when the motion may be heard ex parte;
101 **(B)** when these rules set a different time; or
102 **(C)** when a court order — which a party may, for
103 good cause, apply for ex parte — sets a
104 different time.

105 **(2) *Supporting Affidavit.*** Any affidavit supporting a
106 motion must be served with the motion. Except as
107 Rule 59(c) provides otherwise, any opposing
108 affidavit must be served at least ~~1~~ 7 days before the

109 hearing, unless the court permits service at another
110 time.

111 * * * * *

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 these rules, in any local rule or court order, or in any statute that does not specify a method of computing time. In accordance with Rule 83(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., 2 U.S.C. § 394 (specifying method for computing time periods prescribed by certain statutory provisions relating to contested elections to the House of Representatives).

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 60(b). 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 6(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 6(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, 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.*, Rule 14(a)(1).

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 Civil 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 5.4.11 (“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 77(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 Civil 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) (motion for new trial “must be filed no later than 30 days after entry of the judgment”). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rule 26(f) (parties must hold Rule 26(f) conference “as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)”). 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 30 days *after* an event, and the thirtieth 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 21 days *before* an event, and the twenty-first 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 later than Tuesday, September 4.

Subdivision (a)(6). New subdivision (a)(6) defines “legal holiday” for purposes of the Federal Rules of Civil 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.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.

Subdivision (b). None of the rules listed in former Rule 6(b) allow the court to extend the times to act set in those rules. The purported exception for extensions allowed by those rules is deleted as meaningless. The times allowed for motions under Rules 50, 52, and 59, however, are extended to 30 days.

Subdivision (c). The time provided by former Rule 6(c) to serve a motion and notice of hearing has been expanded from 5 days to 14 days before the time specified for the hearing, without changing the exceptions. The 14-day period sets a more realistic time for other parties to respond and for the court to consider the motion. The time to serve an opposing affidavit is expanded from 1 day before the hearing to 7 days before the hearing. Even if actual delivery is

accomplished 1 day before the hearing, a single day is not sufficient time to consider and prepare a response.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

1 **(a) Time to Serve a Responsive Pleading.**

2 **(1) *In General.*** Unless another time is specified by
3 this rule or a federal statute, the time for serving a
4 responsive pleading is as follows:

5 **(A)** A defendant must serve an answer:

6 **(i)** within ~~20~~ 21 days after being served with
7 the summons and complaint; or

8 **(ii)** if it has timely waived service under
9 Rule 4(d), within 60 days after the
10 request for a waiver was sent, or within
11 90 days after it was sent to the defendant

12 outside any judicial district of the United
13 States.

14 **(B)** A party must serve an answer to a
15 counterclaim or crossclaim within ~~20~~ 21 days
16 after being served with the pleading that states
17 the counterclaim or crossclaim.

18 **(C)** A party must serve a reply to an answer within
19 ~~20~~ 21 days after being served with an order to
20 reply, unless the order specifies a different
21 time.

22 * * * * *

23 **(4) *Effect of a Motion.*** Unless the court sets a
24 different time, serving a motion under this rule
25 alters these periods as follows:

26 **(A)** if the court denies the motion or postpones its
27 disposition until trial, the responsive pleading

28 must be served within ~~10~~ 14 days after notice
29 of the court's action; or

30 **(B)** if the court grants a motion for a more definite
31 statement, the responsive pleading must be
32 served within ~~10~~ 14 days after the more
33 definite statement is served.

34 * * * * *

35 **(e) Motion for a More Definite Statement.** A party may
36 move for a more definite statement of a pleading to
37 which a responsive pleading is allowed but which is so
38 vague or ambiguous that the party cannot reasonably
39 prepare a response. The motion must be made before
40 filing a responsive pleading and must point out the
41 defects complained of and the details desired. If the
42 court orders a more definite statement and the order is
43 not obeyed within ~~10~~ 14 days after notice of the order or

44 within the time the court sets, the court may strike the
45 pleading or issue any other appropriate order.

46 **(f) Motion to Strike.** The court may strike from a pleading
47 an insufficient defense or any redundant, immaterial,
48 impertinent, or scandalous matter. The court may act:

49 **(1)** on its own; or

50 **(2)** on motion made by a party either before responding
51 to the pleading or, if a response is not allowed,
52 within ~~20~~ 21 days after being served with the
53 pleading.

54 * * * * *

Committee Note

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6.

Rule 14. Third-Party Practice

1 **(a) When a Defending Party May Bring in a Third Party.**

4 (A) before being served with a responsive
5 pleading; or

6 (B) within ~~20~~ 21 days after serving the pleading
7 if a responsive pleading is not allowed and
8 the action is not yet on the trial calendar.

9 (2) *Other Amendments.* In all other cases, a party
10 may amend its pleading only with the opposing
11 party's written consent or the court's leave. The
12 court should freely give leave when justice so
13 requires.

14 (3) *Time to Respond.* Unless the court orders
15 otherwise, any required response to an amended
16 pleading must be made within the time remaining
17 to respond to the original pleading or within ~~10~~ 14
18 days after service of the amended pleading,
19 whichever is later.

20 * * * * *

Committee Note

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6.

Rule 23. Class Actions

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(f) **Appeals.** A court of appeals may permit an appeal from

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an order granting or denying class-action certification

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under this rule if a petition for permission to appeal is

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filed with the circuit clerk within ~~10~~ 14 days after the

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order is entered. An appeal does not stay proceedings in

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the district court unless the district judge or the court of

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appeals so orders.

9

* * * * *

Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

Rule 27. Depositions to Perpetuate Testimony

1 **(a) Before an Action Is Filed.**

2 * * * * *

3 **(2) *Notice and Service.*** At least ~~20~~ 21 days before the
4 hearing date, the petitioner must serve each
5 expected adverse party with a copy of the petition
6 and a notice stating the time and place of the
7 hearing. The notice may be served either inside or
8 outside the district or state in the manner provided
9 in Rule 4. If that service cannot be made with
10 reasonable diligence on an expected adverse party,
11 the court may order service by publication or
12 otherwise. The court must appoint an attorney to
13 represent persons not served in the manner
14 provided in Rule 4 and to cross-examine the
15 deponent if an unserved person is not otherwise

16 represented. If any expected adverse party is a
17 minor or is incompetent, Rule 17(c) applies.

18 * * * * *

Committee Note

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

Rule 32. Using Depositions in Court Proceedings

1 (a) Using Depositions.

2 * * * * *

3 (5) *Limitations on Use.*

4 (A) *Deposition Taken on Short Notice.* A
5 deposition must not be used against a party
6 who, having received less than ~~14~~ 14 days'
7 notice of the deposition, promptly moved for
8 a protective order under Rule 26(c)(1)(B)
9 requesting that it not be taken or be taken at

10 a different time or place — and this motion
11 was still pending when the deposition was
12 taken.

13 * * * * *

14 **(d) Waiver of Objections.**

15 * * * * *

16 **(3) *To the Taking of the Deposition.***

17 * * * * *

18 **(C) *Objection to a Written Question.*** An
19 objection to the form of a written question
20 under Rule 31 is waived if not served in
21 writing on the party submitting the question
22 within the time for serving responsive
23 questions or, if the question is a
24 recross-question, within 5 7 days after being
25 served with it.

26 * * * * *

Committee Note

The times set in the former rule at less than 11 days and within 5 days have been revised to 14 days and 7 days. See the Note to Rule 6.

Rule 38. Right to a Jury Trial; Demand

* * * * *

1

2 **(b) Demand.** On any issue triable of right by a jury, a party
3 may demand a jury trial by:

4 **(1)** serving the other parties with a written demand —
5 which may be included in a pleading — no later
6 than ~~10~~ 14 days after the last pleading directed to
7 the issue is served; and

8 **(2)** filing the demand in accordance with Rule 5(d).

9 **(c) Specifying Issues.** In its demand, a party may specify
10 the issues that it wishes to have tried by a jury;
11 otherwise, it is considered to have demanded a jury trial
12 on all the issues so triable. If the party has demanded a

13 jury trial on only some issues, any other party may —
14 within ~~10~~ 14 days after being served with the demand or
15 within a shorter time ordered by the court — serve a
16 demand for a jury trial on any other or all factual issues
17 triable by jury.

18 * * * * *

Committee Note

The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 6.

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

1 * * * * *

2 **(b) Renewing the Motion After Trial; Alternative**
3 **Motion for a New Trial.** If the court does not grant a
4 motion for judgment as a matter of law made under Rule
5 50(a), the court is considered to have submitted the

6 action to the jury subject to the court's later deciding the
7 legal questions raised by the motion. No later than ~~10~~
8 30 days after the entry of judgment — or if the motion
9 addresses a jury issue not decided by a verdict, no later
10 than ~~10~~ 30 days after the jury was discharged — the
11 movant may file a renewed motion for judgment as a
12 matter of law and may include an alternative or joint
13 request for a new trial under Rule 59. In ruling on the
14 renewed motion, the court may:

15 * * * * *

16 **(d) Time for a Losing Party's New-Trial Motion.** Any
17 motion for a new trial under Rule 59 by a party against
18 whom judgment as a matter of law is rendered must be
19 filed no later than ~~10~~ 30 days after the entry of the
20 judgment.

21 * * * * *

Committee Note

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 30 days. Rule 6(b) continues to prohibit expansion of the 30-day period.

**Rule 52. Findings and Conclusions by the Court;
Judgment on Partial Findings**

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* * * * *

2

(b) Amended or Additional Findings. On a party's

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motion filed no later than ~~10~~ 30 days after the entry of

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judgment, the court may amend its findings — or make

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additional findings — and may amend the judgment

6

accordingly. The motion may accompany a motion for

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a new trial under Rule 59.

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* * * * *

Committee Note

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 30 days. Rule 6(b) continues to prohibit expansion of the 30-day period.

Rule 53. Masters

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* * * * *

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(f) Action on the Master's Order, Report, or

3

Recommendations.

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* * * * *

5

(2) *Time to Object or Move to Adopt or Modify.* A

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party may file objections to — or a motion to adopt

7

or modify — the master's order, report, or

8

recommendations no later than ~~20~~ 21 days after a

9 copy is served, unless the court sets a different
10 time.

11 * * * * *

Committee Note

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

Rule 54. Judgment; Costs

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2 **(d) Costs; Attorney's Fees.**

3 **(1) *Costs Other Than Attorney's Fees.*** Unless a
4 federal statute, these rules, or a court order
5 provides otherwise, costs — other than attorney's
6 fees — should be allowed to the prevailing party.
7 But costs against the United States, its officers, and
8 its agencies may be imposed only to the extent
9 allowed by law. The clerk may tax costs on a
10 day's 14 days' notice. On motion served within

11 the next 5 7 days, the court may review the clerk's
12 action.

13 * * * * *

Committee Note

Former Rule 54(d)(1) provided that the clerk may tax costs on 1 day's notice. That period was unrealistically short. The new 14-day period provides a better opportunity to prepare and present a response. The former 5-day period to serve a motion to review the clerk's action is extended to 7 days to reflect the change in the Rule 6(a) method for computing periods of less than 11 days.

Rule 55. Default; Default Judgment

1 * * * * *

(b) Entering a Default Judgment.

3 * * * * *

4 **(2) *By the Court.*** In all other cases, the party must
5 apply to the court for a default judgment. A
6 default judgment may be entered against a minor
7 or incompetent person only if represented by a
8 general guardian, conservator, or other like

3 judgment on all or part of the claim. ~~The motion may be~~
4 ~~filed at any time after:~~

5 ~~(1) 20 days have passed from commencement of the~~
6 ~~action; or~~

7 ~~(2) the opposing party serves a motion for summary~~
8 ~~judgment.~~

9 **(b) By a Defending Party.** A party against whom relief is
10 sought may move ~~at any time~~, with or without supporting
11 affidavits, for summary judgment on all or part of the
12 claim.

13 **(c) Serving the Time for a Motion, Response, and Reply;**
14 **Proceedings.** ~~The motion must be served at least 10~~
15 ~~days before the day set for the hearing. An opposing~~
16 ~~party may serve opposing affidavits before the hearing~~
17 ~~day.~~

18 **(1) These times apply unless a different time is set by**
19 **local rule or the court orders otherwise:**

20 (A) a party may move for summary judgment at
21 any time until 30 days after the close of all
22 discovery;

23 (B) a party opposing the motion must file a
24 response within 21 days after the motion is
25 served or a responsive pleading is due,
26 whichever is later; and

27 (C) the movant may file a reply within 14 days
28 after the response is served.

29 **(2)** The judgment sought should be rendered if the
30 pleadings, the discovery and disclosure materials on
31 file, and any affidavits show that there is no genuine
32 issue as to any material fact and that the movant is
33 entitled to judgment as a matter of law.

34 * * * * *

Committee Note

The timing provisions for summary judgment are outmoded. They are consolidated and substantially revised in new subdivision (c)(1). The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action. If the motion seems premature both subdivision (c)(1) and Rule 6(b) allow the court to extend the time to respond. The rule does set a presumptive deadline at 30 days after the close of all discovery.

The presumptive timing rules are default provisions that may be altered by an order in the case or by local rule. Scheduling orders are likely to supersede the rule provisions in most cases, deferring summary-judgment motions until a stated time or establishing different deadlines. Scheduling orders tailored to the needs of the specific case, perhaps adjusted as it progresses, are likely to work better than default rules. A scheduling order may be adjusted to adopt the parties' agreement on timing, or may require that discovery and motions occur in stages — including separation of expert-witness discovery from other discovery.

Local rules may prove useful when local docket conditions or practices are incompatible with the general Rule 56 timing provisions.

If a motion for summary judgment is filed before a responsive pleading is due from a party affected by the motion, the time for responding to the motion is 21 days after the responsive pleading is due.

Rule 59. New Trial; Altering or Amending a Judgment

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* * * * *

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than ~~10~~ 30 days after the entry of judgment.

(c) Time to Serve Affidavits. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has ~~10~~ 14 days after being served to file opposing affidavits; ~~but that period may be extended for up to 20 days, either by the court for good cause or by the parties' stipulation.~~ The court may permit reply affidavits.

(d) New Trial on the Court's Initiative or for Reasons Not in the Motion. No later than ~~10~~ 30 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one

16 on a party's motion. After giving the parties notice and
17 an opportunity to be heard, the court may grant a timely
18 motion for a new trial for a reason not stated in the
19 motion. In either event, the court must specify the
20 reasons in its order.

21 **(e) Motion to Alter or Amend a Judgment.** A motion to
22 alter or amend a judgment must be filed no later than ~~10~~
23 30 days after the entry of the judgment.

Committee Note

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 30 days. Rule 6(b) continues to prohibit expansion of the 30-day period.

Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

Rule 65. Injunctions and Restraining Orders

1

* * * * *

2

(b) Temporary Restraining Order.

3

* * * * *

4

(2) Contents; Expiration. Every temporary

5

restraining order issued without notice must state

6

the date and hour it was issued; describe the injury

7

and state why it is irreparable; state why the order

8

was issued without notice; and be promptly filed in

9

the clerk's office and entered in the record. The

10

order expires at the time after entry — not to

11

exceed ~~10~~ 14 days — that the court sets, unless

12

before that time the court, for good cause, extends

13

it for a like period or the adverse party consents to

14 a longer extension. The reasons for an extension
15 must be entered in the record.

16 * * * * *

Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

Rule 68. Offer of Judgment

1 **(a) Making an Offer; Judgment on an Accepted Offer.**

2 ~~More than 10~~ At least 14 days before the date set for
3 trial ~~begins~~, a party defending against a claim may serve
4 on an opposing party an offer to allow judgment on
5 specified terms, with the costs then accrued. If, within
6 ~~10~~ 14 days after being served, the opposing party serves
7 written notice accepting the offer, either party may then
8 file the offer and notice of acceptance, plus proof of
9 service. The clerk must then enter judgment.

10 * * * * *

Rule 71.1. Condemning Real or Personal Property

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16

* * * * *

(d) Process.

* * * * *

(2) Contents of the Notice.

(A) Main Contents. Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

- (i)** that the action is to condemn property;
- (ii)** the interest to be taken;
- (iii)** the authority for the taking;
- (iv)** the uses for which the property is to be taken;

- 17 (v) that the defendant may serve an answer
18 on the plaintiff's attorney within ~~20~~ 21
19 days after being served with the notice;
- 20 (vi) that the failure to so serve an answer
21 constitutes consent to the taking and to
22 the court's authority to proceed with the
23 action and fix the compensation; and
- 24 (vii) that a defendant who does not serve an
25 answer may file a notice of appearance.

26 * * * * *

27 **(e) Appearance or Answer.**

28 * * * * *

- 29 **(2) Answer.** A defendant that has an objection or
30 defense to the taking must serve an answer within
31 ~~20~~ 21 days after being served with the notice. The
32 answer must:

33 * * * * *

Committee Note

The times set in the former rule at 20 days have been revised to 21 days. See the Note to Rule 6.

Rule 72. Magistrate Judges: Pretrial Order

- 1 **(a) Nondispositive Matters.** When a pretrial matter not
2 dispositive of a party's claim or defense is referred to a
3 magistrate judge to hear and decide, the magistrate judge
4 must promptly conduct the required proceedings and,
5 when appropriate, issue a written order stating the
6 decision. A party may serve and file objections to the
7 order within ~~10~~ 14 days after being served with a copy.
8 A party may not assign as error a defect in the order not
9 timely objected to. The district judge in the case must
10 consider timely objections and modify or set aside any
11 part of the order that is clearly erroneous or is contrary
12 to law.
- 13 **(b) Dispositive Motions and Prisoner Petitions.**

14

* * * * *

15

(2) **Objections.** Within ~~10~~ 14 days after being served

16

with a copy of the recommended disposition, a

17

party may serve and file specific written objections

18

to the proposed findings and recommendations. A

19

party may respond to another party's objections

20

within ~~10~~ 14 days after being served with a copy.

21

Unless the district judge orders otherwise, the

22

objecting party must promptly arrange for

23

transcribing the record, or whatever portions of it

24

the parties agree to or the magistrate judge

25

considers sufficient.

26

* * * * *

Committee Note

The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 6.

**Rule 81. Applicability of the Rules in General;
Removed Actions**

1 * * * * *

2 **(c) Removed Actions.**

3 * * * * *

4 **(2) Further Pleading.** After removal, repleading is
5 unnecessary unless the court orders it. A defendant
6 who did not answer before removal must answer or
7 present other defenses or objections under these
8 rules within the longest of these periods:

9 **(A)** ~~20~~ 21 days after receiving — through service
10 or otherwise — a copy of the initial pleading
11 stating the claim for relief;

12 **(B)** ~~20~~ 21 days after being served with the
13 summons for an initial pleading on file at the
14 time of service; or

15 **(C)** ~~5~~ 7 days after the notice of removal is filed.

16 **(3) Demand for a Jury Trial.**

17 * * * * *

18 **(B)** *Under Rule 38.* If all necessary pleadings
19 have been served at the time of removal, a
20 party entitled to a jury trial under Rule 38
21 must be given one if the party serves a
22 demand within ~~10~~ 14 days after:

23 **(i)** it files a notice of removal; or24 **(ii)** it is served with a notice of removal
25 filed by another party.

26 * * * * *

Committee Note

The times set in the former rule at 5, 10, and 20 days have been revised to 7, 14, and 21 days, respectively. See the Note to Rule 6.

**SUPPLEMENTAL RULES FOR
ADMIRALTY OR MARITIME CLAIMS
AND ASSET FORFEITURE ACTIONS**

**Rule B. In Personam Actions: Attachment and
Garnishment**

1 * * * * *

2 **(3) Answer.**

3 **(a) By Garnishee.** The garnishee shall serve an
4 answer, together with answers to any
5 interrogatories served with the complaint, within
6 ~~20~~ 21 days after service of process upon the
7 garnishee. Interrogatories to the garnishee may be
8 served with the complaint without leave of court.
9 If the garnishee refuses or neglects to answer on
10 oath as to the debts, credits, or effects of the
11 defendant in the garnishee's hands, or any
12 interrogatories concerning such debts, credits, and
13 effects that may be propounded by the plaintiff, the

14 court may award compulsory process against the
15 garnishee. If the garnishee admits any debts,
16 credits, or effects, they shall be held in the
17 garnishee's hands or paid into the registry of the
18 court, and shall be held in either case subject to the
19 further order of the court.

20

* * * * *

Committee Note

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

Rule C. In Rem Actions: Special Provisions

1

* * * * *

2 **(4) Notice.** No notice other than execution of process is
3 required when the property that is the subject of the
4 action has been released under Rule E(5). If the property
5 is not released within ~~10~~ 14 days after execution, the
6 plaintiff must promptly — or within the time that the

7 court allows — give public notice of the action and arrest
8 in a newspaper designated by court order and having
9 general circulation in the district, but publication may be
10 terminated if the property is released before publication
11 is completed. The notice must specify the time under
12 Rule C(6) to file a statement of interest in or right against
13 the seized property and to answer. This rule does not
14 affect the notice requirements in an action to foreclose a
15 preferred ship mortgage under 46 U.S.C. §§ 31301 et
16 seq., as amended.

17 * * * * *

18 **(6) Responsive Pleading; Interrogatories.**

19 **(a) Maritime Arrests and Other Proceedings.*****

***A technical revision of Supplemental Rule C(6)(a) has been proposed for adoption without publication to take effect on December 1, 2008. That revision has no effect on the proposal to amend subparagraph (A) to extend the time to file from 10 days to 14 days.

- 20 **(i)** a person who asserts a right of possession or
21 any ownership interest in the property that is
22 the subject of the action must file a verified
23 statement of right or interest:
- 24 **(A)** within ~~10~~ 14 days after the execution of
25 process, or
- 26 **(B)** within the time that the court allows;
- 27 **(ii)** the statement of right or interest must describe
28 the interest in the property that supports the
29 person's demand for its restitution or right to
30 defend the action;
- 31 **(iii)** an agent, bailee, or attorney must state the
32 authority to file a statement of right or interest
33 on behalf of another; and
- 34 **(iv)** a person who asserts a right of possession or
35 any ownership interest must serve an answer

36 within ~~20~~ 21 days after filing the statement of
37 interest or right.

38 * * * * *

Committee Note

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6.

Rule G. Forfeiture Actions In Rem

1 * * * * *

2 **(4) Notice.**

3 * * * * *

4 **(b) Notice to Known Potential Claimants.**

5 **(i) Direct Notice Required.** The government
6 must send notice of the action and a copy of
7 the complaint to any person who reasonably
8 appears to be a potential claimant on the facts
9 known to the government before the end of

10 the time for filing a claim under Rule
11 G(5)(a)(ii)(B).

12 **(ii) Content of the Notice.** The notice must state:

13 **(A)** the date when the notice is sent;

14 **(B)** a deadline for filing a claim, at least 35
15 days after the notice is sent;

16 **(C)** that an answer or a motion under Rule
17 12 must be filed no later than ~~20~~ 21
18 days after filing the claim; and

19 **(D)** the name of the government attorney to
20 be served with the claim and answer.

21 * * * * *

22 **(5) Responsive Pleadings.**

23 * * * * *

24 **(b) Answer.** A claimant must serve and file an answer
25 to the complaint or a motion under Rule 12 within
26 ~~20~~ 21 days after filing the claim. A claimant

27 waives an objection to in rem jurisdiction or to
28 venue if the objection is not made by motion or
29 stated in the answer.

30 **(6) Special Interrogatories.**

31 **(a) Time and Scope.** The government may serve
32 special interrogatories limited to the claimant's
33 identity and relationship to the defendant property
34 without the court's leave at any time after the claim
35 is filed and before discovery is closed. But if the
36 claimant serves a motion to dismiss the action, the
37 government must serve the interrogatories within
38 ~~20~~ 21 days after the motion is served.

39 **(b) Answers or Objections.** Answers or objections to
40 these interrogatories must be served within ~~20~~ 21
41 days after the interrogatories are served.

42 **(c) Government's Response Deferred.** The
43 government need not respond to a claimant's

44 motion to dismiss the action under Rule G(8)(b)
45 until ~~20~~ 21 days after the claimant has answered
46 these interrogatories.

47 * * * * *

Committee Note

The times set in the former rule at 20 days have been revised to 21 days. See the Note to Rule 6.

Form 3. Summons.

(Caption — See Form 1.)

To *name the defendant*:

A lawsuit has been filed against you.

Within ~~20~~ 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.

* * * * *

Form 4. Summons on a Third-Party Complaint.

(Caption — See Form 1.)

To *name the third-party defendant*:

A lawsuit has been filed against defendant _____, who as third-party plaintiff is making this claim against you to pay part or all of what [he] may owe to the plaintiff _____.

Within ~~20~~ 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff and on the defendant an answer to the attached third-party complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.

* * * * *

Form 60. Notice of Condemnation.

(Caption — See Form 1.)

* * * * *

4. If you want to object or present any defense to the taking you must serve an answer on the plaintiff's attorney within ~~20~~ 21 days [after being served with this notice][from (insert the date of the last publication of notice)]. Send your answer to this address _____.

* * * * *