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Virginia Local Government Law

New Rules for Computing Time Deadlines in the Federal Rules

By: Andrew McRoberts. ***This was posted Wednesday, February 17th, 2010***

Local governments in Virginia get involved in litigation in federal courts from time to time. Some do quite frequently. I am sharing an article by my Sands Anderson associate, Broderick Dunn, to give you an overview of the recent federal rules changes regarding computation of time in filings, responses and discovery. This article is an edited version of Broderick's article appearing in the Virginia Bar Association Young Lawyers Division's *Docket Call Electronic Newsletter*, Winter 2010, available at this link.
http://www.vsb.org/docs/conferences/young-lawyers/DC-Winter-10v4.pdf

Enjoy!

By Broderick Dunn

New Rules for Computing Time Deadlines in the Federal Rules

As young lawyers, we've all dealt with a certain amount of anxiety when faced with the task of computing time deadlines in federal court. For example, 10 days really means 14 days when a weekend or holiday intervenes and business days and court days are only the same sometimes.

Fortunately for us, as well as parties, other lawyers, court staff and even judges who have been confounded by the current rules for years, the Supreme Court approved amendments to Appellate Rule 26, Bankruptcy Rule 9006, Civil Rule 6, and Criminal Rule 45, to simplify the method of computing time deadlines in federal court. As a result of the Supreme Court's amendments, time periods in 91 federal rules and 28 federal laws were also adjusted. The changes, intended to make calculating time periods simpler, clearer, and more consistent, went into effect on December 1, 2009.

The new rules implement the Judicial Conference's "Time-Computation Project." According to Judge Lee H. Rosenthal, chair of the Judicial Conference's Committee on Rules of Practice and Procedure, one difficulty arising from the rules prior to December 1, 2009 was that they excluded intervening weekends and holidays for some short time periods, resulting in inconsistency and unnecessary complication.

"The biggest problem came from excluding weekends and legal holidays when figuring out some deadlines but not others. Now, the amended rules are consistent and simple: count intervening weekends and holidays for all time periods," Judge Rosenthal said.

The most important aspect of the new rules is that intermediate weekend days and holidays count no matter how many days are provided for any given deadline. Accordingly, if a certain rule provides for 7 days to file a brief, a litigant will really only have 7 days, not more. See Fed. R. Civ. P. 6(a); Fed. R. App. P. 26(a). This is significant because under the prior rules, a 7-day time period usually meant at least 9 days because intermediate weekend days were not counted when calculating short time periods.

While the Committee's goal was to simplify time calculations, including weekends and holidays effectively shortens many existing periods of less than 11 days in appellate, civil and criminal proceedings, and 8 days in bankruptcy proceedings. To counteract this, the Committee examined every time period in all the rules and made adjustments to take this into account. Thus, pursuant to the new rules, most 5-day periods became 7-day periods and most 7- to-10 day periods are now 14-day periods.

The Committee also revised periods shorter than 30 days to be multiples of 7 (e.g., 7, 14, 21 or 28 days) to reduce the likelihood of those periods ending on weekends. Accordingly, if an event that triggers a future due date happens on a Thursday, follow-up events will likely also occur on a Thursday.

While the foregoing changes to the federal rules are the most significant, there are a number of changes that are worth noting. Although most of the time, due dates under the federal rules are determined by counting forward from a triggering event, a party must sometimes count backwards (10 days before a trial, 7 days before a motion, etc.). As of December 1, 2009, the rules have been amended to eliminate any ambiguity regarding how to account for holidays and weekends when counting backwards from a triggering event. Thus, if a party were required to file a brief 10 days before a trial, and that 10-day period would fall on a Saturday, the brief would be due the previous Friday. See Fed. R. Civ. P. 6(a)(5); Fed. R. App. P. 26(a)(5).

It is also worth noting that the Committee declined to change one small but particularly salient rule to young lawyers; the revised rules continue to provide that when a party must act within a specified amount of time after being served with a paper, the party receives an additional 3 days to respond if served via any means other than personal service—and importantly, receives an additional 3 days if served electronically. See Fed. R. Civ. P. 6(d); Fed. R. App. P. 26(c). While some argued that this additional period after electronic service via a court's CM/ECF period should be eliminated, the Committee believed that eliminating the extra days would create an incentive for attorneys not to register for electronic service. However, as more and more attorneys opt to use a court's CM/ECF system, it is possible that the Committee will re-visit the possibility of eliminating the extra days as doing so would be consistent with the uniformity sought by the Committee's time-computation project.

The new time-computation rules amendments are available at www.uscourts.gov/rules and a Power Point presentation detailing the amended rules and their use and operation in federal court proceedings is available at www.uscourts.gov/rules/presentations.html.

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