

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

Amendments to Federal Rules, Statutes, and Forms
Effective December 1, 2009
Clerk's Notice 2009-23, published November 18, 2009

Unless Congress acts to the contrary, effective December 1, 2009, a number of Federal Rules of Bankruptcy Procedure, related statutes, and forms are amended.

Time-Computation Bankruptcy Rules Amendments

The following Bankruptcy Rules are amended to reflect a new method of computing time. For an explanation of the new time-computation methods and changes, please read the attached November 16, 2009, memorandum from the Honorable Lee H. Rosenthal, Chair, Committee on Rules of Practice and Procedure, and the Honorable Laura Taylor Swain, Chair, Advisory Committee on Bankruptcy Rules.

The text of the amended rules is available at http://www.uscourts.gov/rules/Supreme Court 2008/2008-BK-Clean_Rules.pdf.

Time-Computation Bankruptcy Rules Amendments, December 1, 2009			
Rule	Subject	Rule	Subject
1007 (a)(2) and (3); (c); (f)	Lists, Schedules, Statements, and Other Documents; Time Limits	1011 (b)	Responsive Pleading or Motion in Involuntary and Cross-Border Cases
1019 (5) (a)(i) and (b)(i)	Conversion of a Ch 11 Reorganization Case, Ch 12 Family Farmer's Debt Adjustment Case, or Ch 13 Individual's Debt Adjustment Case to a Ch 7 Liquidation Case	1020 (a)	Small Business Ch 11 Reorganization Case
2002 (a), (b), and (q)(1)	Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee	2003 (a) and (d)(2)	Meeting of Creditors or Equity Security Holders
2006 (c)(1)	Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases	2007 (b)(1)	Review of Appointment of Creditors' Committee Organized Before Commencement of the Case

Time-Computation Bankruptcy Rules Amendments, December 1, 2009			
Rule	Subject	Rule	Subject
2007.2 (a)	Appointment of Patient Care Ombudsman in a Health Care Business Case	2008	Notice to Trustee of Selection
2015 (a)(6) and (d)	Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status	2015.1 (a) and (b)	Patient Care Ombudsman
2015.2	Transfer of Patient in Health Care Business Case	2015.3 (b)	Reports of Financial Information on Entities in Which a Ch 11 Estate Holds a Controlling or Substantial Interest
2016 (b) and (c)	Compensation for Services Rendered and Reimbursement of Expenses	3001 (e)(2) and (4)	Proof of Claim
3015 (b) and (g)	Filing, Objection to Confirmation, and Modification of a Plan in a Ch 12 Family Farmer's Debt Adjustment or a Ch 13 Individual's Debt Adjustment Case	3017 (a) and (f)	Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case
3019 (b)	Modification of Accepted Plan in a Ch 9 Municipality or Ch 11 Reorganization Case	3020 (e)	Deposit; Confirmation of Plan in a Ch 9 Municipality or Ch 11 Reorganization Case
4001 (a)(3); (b)(2); (c)(2)	Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements	4002 (b)(4)	Duties of Debtor
4004 (a)	Grant or Denial of Discharge	6003	Interim and Final Relief Immediately Following the Commencement of the Case - Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts
6004 (b)(d) and (h)	Use, Sale, or Lease of Property	6006 (d)	Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease
6007 (a)	Abandonment or Disposition of Property	7004 (e)	Process; Service of Summons, Complaint
7012 (a)	Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on the Pleadings	8001 (f)(3) (D)	Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals

Time-Computation Bankruptcy Rules Amendments, December 1, 2009			
Rule	Subject	Rule	Subject
8002 (a); (b)(4); (c)(2)	Time for Filing Notice of Appeal	8003 (a) and (c)	Leave to Appeal
8006	Record and Issues on Appeal	8009 (a)(1) and (3)	Briefs and Appendix; Filing and Service
8015	Motion for Rehearing	8017 (a)	Stay of Judgment of District Court or Bankruptcy Appellate Panel
9006 (a); (d); and (e)	Computing and Extending Time	9027 (g)	Removal
9033 (b) and (c)	Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings		

Time-Computation Statutes Amendments

The following sections of the Bankruptcy Code (Title 11 United States Code) are amended to be consistent with the new method of computing time. These amendments were enacted in Pub. L. 111-16, signed by the President on May 7, 2009.

Time-Computation Amendments to 11 U. S. C. Sections, December 1, 2009			
Section	Subject	Section	Subject
109(h)(3) (A)(ii)	Who may be a debtor - requirement for individual debtor to obtain budget and credit counseling	322(a)	Qualification of trustee
332(a)	Consumer privacy ombudsman	342(e)(2)	Notice - provided to creditor who files notice of address to be used to provide notice
521(e)(3) (B)	Debtor's duties - Court to provide copy of plan to requesting creditor in ch 13 case	521(i)(2)	Debtor's duties - Court enter order of dismissal for failure of debtor to file schedules and statements
704(b)(1) (B)	Duties of trustee - Court to provide copy of trustee's statement re presumption of abuse to all creditors	749(b)	Voidable transfers - stockbroker liquidation
764(b)	Voidable transfers - commodity broker liquidation		

Time-Computation Official and Director's Procedural Forms Amended

The following Official and Director's Procedural forms are also amended effective December 1 to reflect the changes in time periods:

Time-Computation Amended Official and Director's Procedural Forms, December 1, 2009	
Form Number	Form Name
Exhibit D to Voluntary Petition	Exhibit D - Individual Debtor's Statement of Compliance with Credit Counseling Requirement
B200	Required Lists, Schedules, Statements and Fees
B201A	Notice to Individual Consumer Debtors (now two parts - see 201B below)
B210A	Notice of Transfer of Claim Other Than for Security
B231A	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan
B231B	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 13 Plan
B250E	Summons to Debtor in Involuntary Case

Summary of Time-Computation Amendments.

Deadlines of less than 30 days are changed to multiples of seven days so that the expiration of the deadline ordinarily would occur on a weekday. In the amended rules

- 5-day deadlines become 7 days;
- 10- and 15-day deadlines become 14 days;
- 20-day deadlines become 21 days; and
- 25-day deadlines become 28 days.

Please carefully read the **Important Note** below regarding the twelve rules in which the 15-day deadline has been reduced to a 14-day deadline. Again, we recommend reading the attached memorandum of Judges Rosenthal and Swain dated November 16, 2009.

Changes Not Related to Time Computation.

Several Bankruptcy Rules and forms are amended and one new rule and five new forms are adopted effective December 1, 2009, to make technical, conforming, and other changes not related to time computation as follows:

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses. In addition to the change in time period, the rule is amended to correct a cross-reference to a subsection of the Bankruptcy Code that was recently changed.

Rule 4008. Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement. The rule is amended to require an entity filing a reaffirmation agreement to file a cover sheet (new Official Form 27) that includes sufficient information for the court to determine whether the proposed reaffirmation agreement is presumed to be an undue hardship for the debtor.

Rule 7052. Findings by the Court. The rule is amended to conform to the “separate judgment rule” of Civil Rule 58.

Rule 7058. Entering Judgment in Adversary Proceeding. This *new* rule makes the separate-document requirement applicable only to a judgment in an adversary proceeding and not to a judgment or order in other actions, including contested matters.

Rule 9006(f). Computing and Extending Time. The amendment to Rule 9006(f) is a technical change to correct the cross-reference to Civil Rule 5(b)(2), which was renumbered as part of the recent restyling of the Civil Rules.

Rule 9015(a) and (c). Jury Trials. The amendment sets a 14-day deadline to file certain post-judgment motions.

Rule 9021. Entry of Judgment. The amendment to Rule 9021 removes any reference to Civil Rules.

Rule 9023. New Trials; Amendment of Judgments. The amendment sets a 14-day deadline to file certain post-judgment motions.

The new forms not related to time computation are

Official Form 27, Reaffirmation Agreement Cover Sheet - **now required by Rule 4008**
B201B, Certification of Notice to Individual Consumer Debtors
B250F, Summons in a Foreign Nonmain Proceeding
B18RI, Discharge in Individual Chapter 11 Case
B261C, Judgment in an Adversary Proceeding

The amended forms not related to time computation are five forms of summonses amended to conform the Certificates of Service to the service of process provisions of Fed. R. Bankr. P. 7004. The certification regarding age and non-party status was limited to instances in which service of the summons is accomplished by one of the methods permitted under Federal Rule of Civil Procedure 4:

B250A, Summons in an Adversary Proceeding
B250B, Summons and Notice of Pretrial Conference in an Adversary Proceeding
B250C, Summons and Notice of Trial in an Adversary Proceeding
B250D, Third-Party Summons
B250E, Summons to Debtor in Involuntary Case

Please note that in the District of New Mexico, each judge issues his own form of summons, in lieu of these forms. The Clerk's Office will amend the Court's local generic Certificate of Service accordingly. We will post the amended court form to our website prior to December 1.

We have been advised by the Bankruptcy Court Administration Division of the Administrative Office of the United States Courts that the Reaffirmation Agreement, Form B240, is in the process of being amended, along with the motion and order forms. As soon as they become available, the Clerk's Office will let practitioners know.

All forms referenced above are *or will soon be* available at

<http://www.uscourts.gov/bankform/index.html>.

IMPORTANT NOTE - SIX MONTH TRANSITION PERIOD.

The memorandum of Judges Rosenthal and Swain noted above not only explains the thinking behind the new time-computation method but also highlights the twelve Bankruptcy Rules where the time-computation method reduces the deadlines by one day, changing 15-day periods to 14-day periods.

The affected rules are Bankruptcy Rules 1007, 1019, 1020, 2015, 2015.1, 2016, 3015, 4001, 4002, 6004, 6007, and 8009. Of special note are the deadlines in Rule 1007(c) for filing schedules, statements, and other documents after the filing of a petition; in Rule 3015(b) for filing a chapter 13 plan after the filing of a petition; and in Rule 8009(a) for filing appellate briefs.

The Advisory Committee on Bankruptcy Rules has concluded that for these twelve rules, a filing that would have been timely before December 1 should be considered timely under the time-computation amendment for a six-month transition period. Although the Clerk's Office will modify notices, self-represented debtor materials, and all applicable materials published on our website to conform to the amended rules, the judges will follow the recommendation of the Advisory Committee on Bankruptcy Rules.

Amendments to Other Federal Rules

Amendments to the Federal Rules of Appellate Procedure, the Federal Rules of Civil Procedure, and Federal Rules of Criminal Procedure also effective December 1, 2009, can be found at <http://www.uscourts.gov/rules/supct1208.html>.

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November 16, 2009

MEMORANDUM

To: Chief Judges, United States District Courts
Chief Judges, United States Bankruptcy Courts

From: Honorable Lee H. Rosenthal 
Chair, Committee on Rules of Practice and Procedure

Honorable Laura Taylor Swain 
Chair, Advisory Committee on Bankruptcy Rules

RE: TRANSITION TO SHORTENED DEADLINES UNDER CERTAIN OF THE AMENDED
TIME-COMPUTATION RULES (**IMPORTANT INFORMATION**)

As you are aware, the time-computation amendments to the Federal Rules of Bankruptcy Procedure, Civil Procedure, Criminal Procedure, and Appellate Procedure go into effect on December 1, 2009. These amendments implement a consistent method of calculating time periods throughout the federal rules. This consistent method is to count every day, instead of the current method of excluding weekends and holidays for some periods but not others. Congress has enacted changes to 28 statutory time periods affecting court proceedings to be consistent with this new, simplified computation approach. Courts across the country have revised their local rules effective December 1 to be consistent with the national rule and statutory changes. We now write to ask your further assistance in ensuring a smooth transition to the amended rules.

Most of the amendments lengthen time periods by a few days, to offset the effect of counting weekends and holidays and to express time periods of less than 30 days in 7-day multiples, for simplicity and ease of application. The result of these two changes in most of the rules is either to maintain the status quo or lengthen periods: 5-day periods will become 7-day periods, and 10-day periods will become 14-day periods. There are twelve Bankruptcy Rules that are an exception to the general lengthening in the rules.¹ These twelve rules have time periods that will be *shortened* by one day. These twelve rules now have 15-day periods; as amended, these rules will have 14-day periods, consistent with all the other rules that are set out in 7, 14, 21, or 28-day increments. Of special note are the deadlines in Rule 1007(c) for filing schedules, statements, and other documents; in Rule 3015(b) for filing a chapter 13 plan; and in Rule 8009(a) for filing appellate briefs.

¹ The affected rules are Bankruptcy Rules 1007, 1019, 1020, 2015, 2015.1, 2016, 3015, 4001, 4002, 6004, 6007, and 8009.

Despite the extensive notification and education efforts that have been undertaken in advance of the time-computation national and local rule changes, it is possible that some attorneys and parties will be unaware after December 1 of the one-day reduction in the time for taking action under these twelve Bankruptcy Rules. It is also possible that attorneys and others assisting debtors may not have fully conformed their office paperwork and procedures to accommodate the shortened deadlines by the December 1 effective date. Relying on past experience with a 15-day time period, and assuming mistakenly that all the time-computation amendments lengthen existing time periods, lawyers or litigants may unwittingly take action that is one day late.

In light of the potential consequences of noncompliance with the shortened deadlines, the Advisory Committee on Bankruptcy Rules has concluded that for these twelve rules, a filing that would have been timely before December 1 should be considered timely under the time-computation amendment for a six-month transition period. It is the position of the Advisory Committee that for these twelve rules, during the six-month transition period after December 1, a filing that was timely under the prior rule but late under the amended rule should be treated as the product of “excusable neglect” within the Rule 9006(b)(1) provision authorizing an enlargement of time requested after the deadline has expired. Similarly, timely applications for extensions to obtain the full 15-day period should also suffice to demonstrate “cause” warranting the grant of an extension request under Rule 9006(b)(1) during the six-month transition period.

To further reduce the likelihood of untimely filings and the need for extensions of time, we also request that your court continue its efforts to publicize the upcoming time-computation changes. In particular, we ask that you post on your court’s website, on the initial screen displayed on the CM/ECF system for persons filing electronically, and in the clerk’s office a conspicuous notice that specifically points out the rules for which time periods will be reduced by one day. The attachment contains suggested language that can be posted alone or added to existing notices about the upcoming time-computation changes.

We thank you for your continued support of the orderly implementation of these important rule amendments. If you have any questions or comments, please do not hesitate to let us know.

Attachment

cc: Judges, United States Courts of Appeals
Judges, United States District Courts
Judges, United States Bankruptcy Courts
Clerks, United States Courts

**Important Notice Regarding Time Period Changes Effective December 1, 2009,
Including 14-Day Deadlines for Filing Schedules, Statements, Chapter 13 Plans, and
Bankruptcy Appellate Briefs**

Among the time-computation amendments to the Federal Rules of Bankruptcy Procedure that will take effect on December 1, 2009, are changes to 12 rules that will result in a reduction by one day (from 15 to 14 days) of the time to take action. The affected rules are Bankruptcy Rules 1007, 1019, 1020, 2015, 2015.1, 2016, 3015, 4001, 4002, 6004, 6007, and 8009. Please take note of these changes and particularly of the new 14-day deadline for filing schedules, statements, and other documents under Rule 1007(c); for filing a chapter 13 plan under Rule 3015(b); and for filing appellate briefs under Rule 8009(a).