

**THE NEW  
FEDERAL  
TIME-  
COMPUTATION  
RULES**

# Amendments to the Federal Time-Computation Rules

- A Day Is a Day
- An Hour Is an Hour
- Dual-Track Time Rules Are Eliminated
- No Longer Separate Time Periods of Less Than or More Than 11 Days
- Except in the Colorado Rules of Civil Procedure

# Current Time-Computation Rules

- Counting Forward
- Less Than 11 Days -- Eliminate Intervening Saturdays, Sundays, and Holidays
- 11 Days or More -- Count All Days, Including Saturdays, Sundays, and Holidays
- Continues to Be the Counting Procedure Under the Colorado Rules of Civil Procedure
- Creates Anomalous Situations -- 10-day and 14-day Periods Beginning on the Same Day May End on the Same Day
- 10-day Periods Always Last at Least 14 days
- And Will Last 15 Days 8 times a Year and Will Last 16 Days Once Each Year

# Example: Counting Forward

Current Federal Rules (Fed. R. Civ. P. 12(a)(4)(A))

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
2	3	4 Notice of Order Received (Excluded)	5 Day 1	6 Day 2	7 Day 3	8 Weekend (excluded)
9 Weekend (excluded)	10 Day 4	11 Day 5	12 Day 6	13 Day 7	14 Day 8	15 Weekend (excluded)
16 Weekend (excluded)	17 Day 9	18 Day 10	19	20	21	22

# Current Time-Computation Rules

- Counting Backwards
- Fed. R. Civ. P. 6(a)(3): If last day falls on a Saturday, Sunday, or holiday, that day is excluded and the period runs “until the end of the next day that is not a Saturday, Sunday, or legal holiday”
- “Next Day” is not defined in the current rules
- If the last day of a backward-counted period ends on a Saturday, Sunday, or legal holiday, then the “next day” could be the day before or after the Saturday, Sunday, or holiday
- Can count backwards until the Saturday, Sunday, or holiday, then reverse and count forward
- Or, count backwards until reaching the day before the Saturday, Sunday, or holiday
- Compounding the problem: Linking two or more backward-counted periods

# Example: Counting Backward

Current Federal Rules (Action Required 30 days before trial)

**September 2009**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					4 <i>Day 30?</i>	5 <b>Weekend (excluded)</b>
6 <b>Weekend (excluded)</b>	7 <b>Labor Day Holiday (excluded)</b>	8 <i>Day 29 Day 30?</i>	9 Day 28	10 Day 27	11 Day 26	12 Day 25
13 Day 24	14 Day 23	15 Day 22	16 Day 21	17 Day 20	18 Day 19	19 Day 18
20 Day 17	21 Day 16	22 Day 15	23 Day 14	24 Day 13	25 Day 12	26 Day 11
27 Day 10	28 Day 9	29 Day 8	30 Day 7			

**October 2009**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 Day 6	2 Day 5	3 Day 4
4 Day 3	5 Day 2	6 Day 1	7 <b>Trial Begins (excluded)</b>	8	9	10

# The New Time-Computation Rules

- Every day in a period is counted
- If a period ends on a Saturday, Sunday, or holiday, then the counting continues forward or backward to the next day that is not a Saturday, Sunday, or holiday
- Most time periods have been extended
- Post-trial motion periods -- now 10 days -- are extended to 28 days
- Most time periods are stated as multiples of 7
- Results in time periods ending on the same day on which they began
- “Next Day” is determined by counting forward if the period is measured after an event and backward when measured before an event

# Example: Counting Forward

New Federal Rules (Fed. R. Civ. P. 12(a)(4)(A))

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
2	3	4 Notice of Order Received (Excluded)	5 Day 1	6 Day 2	7 Day 3	8 Day 4
9 Day 5	10 Day 6	11 Day 7	12 Day 8	13 Day 9	14 Day 10	15 Day 11
16 Day 12	17 Day 13	18 Day 14	19	20	21	22

# Example: Counting Backward

New Federal Rules (Filing required 10 days before trial/hearing)

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
2	3	4	5	6	7 <b>Filing Due</b>	8 Day 10 (Weekend, go to “next day”)
9 Day 9	10 Day 8	11 Day 7	12 Day 6	13 Day 5	14 Day 4	15 Day 3
16 Day 2	17 Day 1	18 <b>Trial</b>	19	20	21	22

# The New Time-Computation Rules

- Time periods stated in hours
- Begins to run immediately with the event triggering the deadline
- Ends when the time expires
- Every hour is counted
- Changes resulting from the shift to or from Daylight Savings Time considered
- If the period ends on a weekend or holiday, the deadline extends to the same hour on the next day that is not a weekend day or holiday
- Effect on service of subpoenas: Different results under federal and state rules
- **Federal:** A day is a day  
**State:** Dual-track forces exclusion of weekends and holidays

# The New Time-Computation Rules

- Changes to Summary Judgment Timing
- John Walsh will cover in detail
- New rule eliminates Fed. R. Civ. P. 56(a) and (b)
- Adds new Fed. R. Civ. P. 56(c)(1): Any party can move for summary judgment at any time in a case
- Even as early as the commencement of the action
- Will likely result in modifications to the Local Rules for the U.S. District Court for Colorado
- Magistrate Judge Boland will cover in detail
- Amended Local Rules to be posted on USDC website in October 2009

# New Federal Time-Computation Rules and the Practitioner

- The Colorado time-computation rules remain unchanged
- Still have dual-track time periods -- 11 days or more and less than 11 days -- in state court
- In some cases, similar federal and state time periods -- but different results
- Federal subpoenas produce results in 48 hours -- Colorado subpoenas exclude weekends and holidays
- Federal subpoena served at 9 a.m. on Friday or Saturday -- appearance on following Monday at 9 a.m. is permitted
- But Colorado subpoena served at same times -- Tuesday is the earliest permissible date for appearance

# Example: Counting Backward

Current Colorado Rules (Compound Deadline)

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
26	27	28	29	30	31	Aug 1
2	3	4	5 Day 30	6 Day 29	7 Day 28/30	8 Day 27/--
9 Day 26/--	10 Day 25/29/30?	11 Day 24/28	12 Day 23/27	13 Day 22/26	14 Day 21/25	15 Day 20/24
16 Day 19/23	17 Day 18/22	18 Day 17/21	19 Day 16/20	20 Day 15/19	21 Day 14/18	22 Day 13/17
23 Day 12/16	24 Day 11/15	25 Day 10/14	26 Day 9 / 13	27 Day 8 / 12	28 Day 7 / 11	29 Day 6 / 10
30 Day 5 / 9	31 Day 4 / 8	Sept 1 Day 3 / 7	2 Day 2 / 6	3 Day 1 / 5	4 Day 50?	5 Weekend (excluded)
6 Weekend (excluded)	7 Labor Day (excluded)	8 Day 49 50?	9 Day 48	10 Day 47	11 Day 46	12 Day 45
13 Day 44	14 Day 43	15 Day 42	16 Day 41	17 Day 40	18 Day 39	19 Day 38
20 Day 37	21 Day 36	22 Day 35	23 Day 34	24 Day 33	25 Day 32	26 Day 31
27 Day 30	28 Day 29	29 Day 28	30 Day 27	Oct 1 Day 26	2 Day 25	3 Day 24
4 Day 23	5 Day 22	6 Day 21	7 Day 20	8 Day 19	9 Day 18	10 Day 17
11 Day 16	12 Columbus Day Day 15	13 Day 14	14 Day 13	15 Day 12	16 Day 11	17 Day 10
18 Day 9	19 Day 8	20 Day 7	21 Day 6	22 Day 5	23 Day 4	24 Day 3
25 Day 2	26 Day 1	27 TRIAL	28	29	30	31

# New Federal Time-Computation Rules and the Practitioner

- Fed. R. Civ. P. 6(d) and C.R.C.P. 6(e) issues: Adding 3 days for service
- Colorado dual-track periods create potential for confusion: Adding service days before computing time period versus after computing time period
- No longer an issue with the new federal time-computation rules

# New Federal Time-Computation Rules and the Practitioner

- Statutory time-computation changes tracking the new federal rules
- New claims permitted after responsive pleading filed
- Other changes to the federal rules -- not related to time-computation
- Tim Odil will cover all of these and more

# Statutory Changes

- Statutory Time-Periods Technical Amendments Act of 2009, Public Law 111-16 (effective December 1, 2009)
- Changes track the new federal rules
- “Commonsense deadlines”  
“Less confusing and less complex than current deadlines”  
“Ensures existing deadlines are not shortened”
- 5 day periods → 7 day periods
- 10 day periods → 14 day periods
- Retains current weekend/holiday exclusion for certain short (2, 3, and 4 day) deadlines

# Statutory Changes

- Five categories of amendment
- Bankruptcy, Title 11 U.S.C.
  - 9 changes extending 5 day periods to 7 days
- Crimes and Criminal Procedure, Title 18 U.S.C.
  - 1 change extending 5 day period to 7 days
  - 7 changes extending 10 day periods to 14 days
  - 4 changes retaining exclusion of weekend/holidays for calculation of short deadlines

# Statutory Changes

- Classified Information Procedures Act (CIPA), Title 18 Appendix, U.S.C.
  - 1 change extending 10 day period to 14 days
  - 2 changes retaining exclusion of weekend/holidays for calculation of short deadlines
- Controlled Substances Act, 21 U.S.C. § 853(e)(2)
  - 1 change extending 10 day period to 14 days
- Judiciary and Judicial Procedure, Title 28 U.S.C.
  - 1 change extending 7 day period to 10 days
  - 1 change extending 7 day period to 14 days
  - 1 change extending 10 day period to 14 days (*see also* Fed. R. Civ. P. 72(b)(2))