

Dear AOUSC —

Frequently, parties run into difficulties with filing deadlines. This can be due to inattention; failure to consider applicable holidays; lack of clarity as to the triggering event (such as what constitutes a "judgment"); misinformation by a clerk; etc.¹ This is especially true for *pro se* parties, who are held strictly to deadlines that are often confusing even to lawyers.² The consequences can be fatal³.

The current rules require every party to personally calculate all applicable times anew every time. This is a waste of energy for all parties, clerks, and judges.⁴ It is also totally avoidable. The court knows what the times are, has the authority to define them conclusively. The court could keep a single regularly updated document listing all deadlines by computed time, noticed to all parties upon any update — including optional events such as appeals or motions to extend.⁵

Clerks already have to calculate deadlines regularly, in order to enter "set/reset deadlines" entries in CM/ECF. Many (but not all) versions of CM/ECF itself provide such calculations as part of docket entries. Clerks sometimes make errors, however, and courts have ruled that parties may not rely on a clerk's erroneous docket entry or advice by phone — even if done entirely in good faith. Deadline calculations should therefore be issued as a simple clerk's order.

¹ See e.g. [W. Kelly Stewart & Jeffrey L. Mills \(Jones Day\), *E-Filing or E-Failure: New Risks Every Litigator Should Know, For The Defense* p. 28 \(June 2011\)](#)

² See e.g. [Woodford v. Ngo, 548 US 81, 103 \(2006\)](#) (5-3; "prisoners who litigate in federal court generally proceed *pro se* and are forced to comply with numerous unforgiving deadlines").

³ See e.g. [Jackson v. Crosby, 375 F. 3d 1291 \(11th Cir. 2004\)](#) (denying appeal of capital murder case as untimely; majority of panel, C.JJ. Black and Carnes, concurring specially that result is compelled but unjust).

⁴ Time computation arises not just when there are disputes about timeliness, but also for drafting opinions & orders, determining timeliness of an appeal, and everyday matters like calendaring.

⁵ Rather than ordering e.g. "the deadline for an opposition is extended by 7 days", a court could — with only trivial extra upfront effort — add "the opposition is now due January 1, 2020, at 11:59 pm EST; the reply is now due January 8, 2020 at 11:59 EST; and both deadlines may be modified by motion under [rule] before the deadline (requiring conferral with opposing counsel), or by *post hoc* motion under [rule]."

Therefore, I hereby petition for rulemaking to add the following rule at the end of each rule on computing time, i.e. at FRCP 6(e), FRCrP 45(d), FRBP 9006(h), FRAP 26(d), and Sup. Ct. R. 30(5):

1. For every applicable date or time specified under these Rules, or in any order, the court shall give immediate notice, by order, to all appeared filers, of
 - a. the calculated time⁶ certain, including time zone, of every⁷ event not completed or adjudicated;
 - b. whether and how the time may be modified⁸, and any conditions for such a modification under all applicable rules and orders⁹; and
 - c. whether the event is optional¹⁰ or expired.
2. All filers¹¹ shall be entitled to rely on the court's computed times.

I request to participate remotely at any hearing on the matter, and to receive emailed copies of all relevant agendas, minutes, reports, or other documents.

Respectfully submitted,

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⁶ This includes deadlines expressed in days, e.g. to explicitly differentiate filings due by the close of court from those due by midnight.

⁷ This is deliberately cumulative. The most recent calculation order should be the full calendar of a case, listing all available, pending, or missed events, and their respective deadlines. This includes expiration dates of court orders, deadlines to request or correct transcripts, deadlines under internal operating procedures (such as *en banc* calls), etc. This would also serve as a comprehensive list of all events pending adjudication, and all missed deadlines.

Generally, the clerk should be able to copy the previous calculation order, add new or amended deadlines, mark expired deadlines, and delete completed or adjudicated deadlines — resulting in the new and complete calculation order.

⁸ Modification includes, e.g., extension, acceptance out of time, or *nunc pro tunc* motion.

⁹ Applicable orders include, e.g., any standing orders of the court or judge, or any standing orders in a given case. Conditions include, e.g., a requirement to confer with opposing counsel or with chambers, a deadline for filing for extension that is earlier than the deadline of the filing, or the required showing for an extension to be granted.

¹⁰ Optional events include, e.g., a response or appeal. By implication, such orders shall give notice of whether an appeal may be taken (or requested) — either under the final judgment rule or as a collateral appeal, e.g. under *Cohen*.

¹¹ Filers includes not just current parties, but also e.g. amici who have not yet filed an appearance,

¹² Sai is my full legal name; I am mononymous. I am agender; please use gender-neutral pronouns. I am partially blind. Please send all communications, in § 508 accessible format, by email.