

Eleni Apostolakis
CompuLaw LLC
10277 W. Olympic Blvd.
Los Angeles, CA 90067
(310) 553-3355
CA Bar No.: 237402

IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION)
TO AMEND RULE 6(e),) Supreme Court No. R- _____
ARIZONA RULES OF)
CIVIL PROCEDURE)
) Petition to Amend Rule 6(e), Arizona Rules
) of Civil Procedure

I. SUMMARY OF PROPOSED CHANGES

We propose that Rule 6(e) of the Arizona Rules of Civil Procedure (“Rule 6(e)”) be amended to follow the same method for the calculation of extra time after service by mail as set forth in Rule 6(d) of the Federal Rules of Civil Procedure (“FRCP 6(d)”).

Pursuant to Rule 6(e), when service is by mail, five days are added directly to the prescribed period of time. The rule provides:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by a method authorized by Rule 5(c)(2)(C), (D), or (E), five calendar days shall be added to the prescribed period. (Emphasis added.)

Currently, FRCP 6(d) provides that 3 days are added to account for service by mail, electronic or other means after the prescribed period would otherwise expire under FRCP 6(a). FRCP 6(d) now states:

Whenever a party must or may act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the prescribed period would otherwise expire under Rule 6(a). (Emphasis added.)

Prior to 2005, the language of Rule 6(e) mirrored that of FRCP 6. In 2005, FRCP 6 was amended to its current form "to remove any doubt as to the method for extending time to respond after service by mail, leaving with the clerk of court, electronic means, or other means consented to by the party served." *See* FRCP 6, 2005 Notes of Advisory Committee, paragraph 1.¹ However, despite the change to FRCP 6(d), Rule 6(e) was not amended.


¹ FRCP 6, 2005 Notes of Advisory Committee provides:

Historically, the Arizona Rules of Civil Procedure have incorporated most of the provisions of the Federal Rules of Civil Procedure. There has always been a conscious effort to maintain uniformity between the rules. Daniel J. McAuliffe and Shirley J. Wahl, 2 Ariz. Prac., Civil Trial Practice § 2.4 (2d ed. 2001); *Edwards v. Young*, 107 Ariz. 283, 284 (1971). Uniformity between the rules is useful as it can reduce any unnecessary ambiguities created by different rules and requirements. Here, the proposed amendments would further the goal of promoting procedural uniformity between the Arizona state and federal courts.

II. TEXT OF PROPOSED CHANGE TO RULE 6(e)

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by a method authorized by Rule 5(c)(2)(C), (D), or (E), five calendar days ~~shall be~~ are added to after the prescribed period; would otherwise expire under Rule 6(a).

DATED this 19th day of August, 2009.



Eleni Apostolakis, on behalf of
CompuLaw LLC

Rule 6(e) is amended to remove any doubt as to the method for extending the time to respond after service by mail, leaving the clerk of court, electronic means, or other means consented to by the party served. Three days are added after the prescribed period otherwise expires under Rule 6(a). Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday. The effect of invoking the day when the prescribed period would otherwise expire under Rule 6(a) can be illustrated by assuming that the thirtieth day of a thirty-day period is a Saturday. Under Rule 6(a) the period expires on the next day that is not a Sunday or legal holiday. If the following Monday is a legal holiday, under Rule 6(a) the period expires on Tuesday. Three days are then added – Wednesday, Thursday, and Friday as the third and final day to act. If the period prescribed expires on a Friday, the three added days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the third and final day to act.

Application of Rule 6(e) to a period that is less than eleven days can be illustrated by a paper that is served by mailing on a Friday. If ten days are allowed to respond, intermediate Saturdays, Sundays, and legal holidays are excluded in determining when the period expires under Rule 6(a). If there is no legal holiday, the period expires on the Friday two weeks after the paper was mailed. The three added Rule 6(e) days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the final day to act.