

1 **Rule 6. Computing and Extending Time; Time for**
2 **Motion Papers**

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4 **(d) Additional Time After Certain Kinds of Service.**

5 When a party may or must act within a specified time
6 after ~~service being served~~ and service is made under
7 Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk),
8 ~~(E)~~, or (F) (other means consented to), 3 days are
9 added after the period would otherwise expire under
10 Rule 6(a).

Committee Note

Rule 6(d) is amended to remove service by electronic means under Rule 5(b)(2)(E) from the modes of service that allow 3 added days to act after being served.

Rule 5(b)(2) was amended in 2001 to provide for service by electronic means. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow 3 added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems

might make it difficult or impossible to open attachments. Those concerns have been substantially alleviated by advances in technology and in widespread skill in using electronic transmission.

A parallel reason for allowing the 3 added days was that electronic service was authorized only with the consent of the person to be served. Concerns about the reliability of electronic transmission might have led to refusals of consent; the 3 added days were calculated to alleviate these concerns.

Diminution of the concerns that prompted the decision to allow the 3 added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting 7-, 14-, 21-, and 28-day periods that allow “day-of-the-week” counting. Adding 3 days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

Electronic service after business hours, or just before or during a weekend or holiday, may result in a practical reduction in the time available to respond. Extensions of time may be warranted to prevent prejudice.

Eliminating Rule 5(b) subparagraph (2)(E) from the modes of service that allow 3 added days means that the 3 added days cannot be retained by consenting to service by electronic means. Consent to electronic service in registering for electronic case filing, for example, does not

count as consent to service “by any other means” of delivery under subparagraph (F).

What is now Rule 6(d) was amended in 2005 “to remove any doubt as to the method for calculating the time to respond after service by mail, leaving with the clerk of court, electronic means, or by other means consented to by the party served.” A potential ambiguity was created by substituting “after service” for the earlier references to acting after service “upon the party” if a paper or notice “is served upon the party” by the specified means. “[A]fter service” could be read to refer not only to a party that has been served but also to a party that has made service. That reading would mean that a party who is allowed a specified time to act after making service can extend the time by choosing one of the means of service specified in the rule, something that was never intended by the original rule or the amendment. Rules setting a time to act after making service include Rules 14(a)(1), 15(a)(1)(A), and 38(b)(1). “[A]fter being served” is substituted for “after service” to dispel any possible misreading.

1 **Rule 45. Computing and Extending Time**

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3 **(c) Additional Time After Certain Kinds of Service.**

4 Whenever a party must or may act within a specified
5 ~~period~~time after ~~service~~being served and service is
6 made ~~in the manner provided~~ under Federal Rule of
7 Civil Procedure 5(b)(2)(C) (mailing), (D) (leaving
8 with the clerk), ~~(E)~~, or (F) (other means consented to),
9 3 days are added after the period would
10 otherwise expire under subdivision (a).

Committee Note

Subdivision (c). Rule 45(c) and Rule 6(d) of the Federal Rules of Civil Procedure contain parallel provisions providing additional time for actions after certain modes of service, identifying those modes by reference to Civil Rule 5(b)(2). Rule 45(c)—like Civil Rule 6(d)—is amended to remove service by electronic means under Rule 5(b)(2)(E) from the forms of service that allow 3 added days to act after being served. The amendment also adds clarifying parentheticals identifying the forms of service for which 3 days will still be added.

Civil Rule 5 was amended in 2001 to allow service by electronic means with the consent of the person served, and a parallel amendment to Rule 45(c) was adopted in 2002. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow 3 added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. Those concerns have been substantially alleviated by advances in technology and widespread skill in using electronic transmission.

A parallel reason for allowing the 3 added days was that electronic service was authorized only with the consent of the person to be served. Concerns about the reliability of electronic transmission might have led to refusals of consent; the 3 added days were calculated to alleviate these concerns.

Diminution of the concerns that prompted the decision to allow the 3 added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting 7-, 14-, 21-, and 28-day periods that allow “day-of-the-week” counting. Adding 3 days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

Eliminating Rule 5(b) subparagraph (2)(E) from the modes of service that allow 3 added days means that the 3

added days cannot be retained by consenting to service by electronic means. Consent to electronic service in registering for electronic case filing, for example, does not count as consent to service “by any other means of delivery” under subparagraph (F).

Electronic service after business hours, or just before or during a weekend or holiday, may result in a practical reduction in the time available to respond. Extensions of time may be warranted to prevent prejudice.