

United States District Court
Eastern District of Texas



Instructions for Calculating Response
Times After Service of a Document

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The following instructions are provided to aid in calculating response times after service of a document under Fed. R. Civ. P. 5 in accordance with Fed. R. Civ. P. 6.

1. Excluding the day of service, count forward the applicable number of days allowed for your document (i.e., 14 days for a motion response or 7 days for a reply or surreply), counting every calendar day, including Saturdays, Sundays and legal holidays.
2. If the last day falls on a Saturday, Sunday or legal holiday, move forward to the next day that is NOT a Saturday, Sunday or legal holiday.
3. THEN, **IF AND ONLY IF** service was made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), add the three additional days allowed by Fed. R. Civ. P. 6(d). This is the due date. Please note, electronic delivery and hand service no longer qualify for the additional three days due to the 12/1/2016 amendments to Fed. R. Civ. P. 6(d) and the deletion of Local Rule CV-6(a). See General Order 16-06.

*NOTE – The additional three days of Fed. R. Civ. P. 6(d) only apply when a party must act within a specified time after service, and service is made under Rule 5. (Compare Fed. R. Civ. P. 59(b), requiring filing of a motion for new trial within 28 days after entry of judgment, not service.)

**NOTE – Local Rule CV-5(d) provides that documents served after 5 PM Central Time are deemed served the following day. Consistent with Fed. R. Civ. P. 6(a)(1)(B), this means the following calendar day, including Saturdays, Sundays or legal holidays.

***NOTE – These instructions are intended simply as an application aid and in no way alter or amend any applicable rule or legal decision interpreting those rules.

Example 1: A motion is served via CM/ECF on Monday, August 21, 2017, at 2 PM Central Time. Local Rule CV-7(e) allows 14 days to file a response. Excluding the day of service and then counting forward 14 calendar days, lands on Monday, September 4, which is Labor Day. Moving forward to the next day that is not a holiday, the response period otherwise expires on Tuesday, September 5. Because of the amendments to Fed. R. Civ. P. 6(d) and deletion of Local Rule CV-6(a), additional days are not added after service by electronic delivery. The due date for the response is, therefore, Tuesday, September 5.

Example 2: A response to a motion is served via CM/ECF on Friday, November 10, 2017, at 7 PM Central Time. Because served after 5 PM Central Time, under Local Rule CV-5(d), the response is deemed served the following day, Saturday November 11. Local Rule CV-7(f) allows 7 days to file a reply. Excluding the day of service (Saturday, November 11) and then counting forward 7

calendar days, the 7th day lands on Saturday, November 18. Moving forward to the next day that is not a Saturday, Sunday or legal holiday, the response period otherwise expires on Monday, November 20. The due date for the reply is, therefore, Monday, November 20.

Example 3: Had either of the documents in Examples 2 or 3 been served only by mail, leaving it with the clerk, or a consented to other means as described in Fed. R. Civ. P. 5(b)(2)(C), (D), or (F), three additional days would be added after the period would otherwise expire. Thus, the due date for the response in Example 2 would be Friday, September 8. The due date for the reply in Example 3 would be Friday, Nov. 24 (the third additional day lands on Thursday, Nov. 23 – Thanksgiving – so you move forward to the next day that is not a holiday or weekend). Practically speaking, the additional three days provided by newly amended Fed. R. Civ. P. 6(d) will rarely be available because of the prevalence of electronic delivery.

Provided by Wesley Hill, Chair, Local Rules Advisory Committee (December 2016)