

Best Practices: When Is It Due? A Cautionary Tale for Business and Legal Professionals

by Michael Traison

Few take more seriously the importance of being on time than the federal courts. When something is due, it must be done by that time, with no excuses.

Only in the most exceptional circumstances will courts veer away from the strict construction of deadlines set forth in the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and elsewhere. The bottom line is when a court sets a specific date for something to be done, it must be done by that date, with no extensions just because that date may be a Saturday, Sunday, or legal holiday.

However, if the date by which something must be done requires computation by counting days, and no specific date has otherwise been set, then and only then does Federal Rule of Bankruptcy Procedure 9006(a)(1) apply. If the final day so computed is a Saturday, Sunday, or federal holiday, the deadline is deemed extended to the next regular business day.

In his well-written decision, Bankruptcy Judge H. Christopher Mott of the Western District of Texas explains all this in the context of a creditor who wished to file non-dischargeability actions against a Chapter 7 debtor. The rules apply broadly in all actions in the federal court system, and should also be considered when state court rules apply.

In *Smart-Fill Management Group, Inc. v. Froiland*, the creditor had a certain number of days by which to file its actions. The creditor twice requested an extension of time within the deadline. The court finally ordered it to file its complaints by a date certain, January 15, that did not require it to count days. January 15 happened to be a federal holiday.

The creditor's lawyers apparently assumed that since the courts were closed on January 15 for the federal holiday it could file the very next day, January 16. That assumption was based on the general idea that dates are extended if the due date is a federal holiday.

In the *Smart-Fill* case, the court relied on a Fifth Circuit decision, found no decisions to the contrary elsewhere, read the language of the Rule, compared it to the previous version of the same rule, and took note of the advisory committee comments.

Why parties ever wait for the last day is beyond the scope of this note. It is a given that one should be very careful when deadlines are set. The court granted the debtor's motion to dismiss and the creditor was out of luck. The court did not even address what harm, if any, was done because of the one-day delay.

Michael Traison is a Partner at Cullen and Dykman LLP