Rule 34. Time

Rule 34.01 Computation

Time must be computed as follows except as provided by Rules 3.02, subd. 2; 4.02, subd. 5(1); 4.02, subd. 5(3); and 4.03.

The day of the act or event from which the designated period of time begins to run must not be included. The last day of the period must be included, unless it is a Saturday, a Sunday, a legal holiday, a day on which weather or other conditions result in the closing of the office of the court administrator of the court where the action is pending or where filing or service is either permitted or required to be made electronically, or a day on which unavailability of the computer system used by the court for electronic filing and service makes it impossible to accomplish service or filing, in which case the period runs until the end of the next day that is not one of the aforementioned days. When a period of time prescribed or allowed is seven or fewer days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation. As used in these rules, "legal holiday" includes any holiday defined or designated by statute, any other day appointed as a holiday by the President or the Congress of the United States or by the State, and a day that the United States Mail does not operate.

(Amended effective July 1, 2015.)

Rule 34.02 Extension

When an act is required or allowed to be done within a specified time, the court may for cause:

(a) within the time allowed, extend the time, with or without motion or notice, if a party requests the extension before the original time, or the previously extended time, expires;

(b) after the time allowed has expired, permit the act to be done, upon motion, if failure to act was the result of excusable neglect.

The court may not extend the time for taking any action under Rule 26.03, subd. 18(3); 26.04, subd. 1(3); or 26.04, subd. 3, or extend the time to appeal except as provided by Rules 28.02, subd. 4(3)(g); 29.03, subd. 3(f); and 29.04, subd. 2.

Rule 34.03 For Motions; Affidavits; Statements Under Penalty of Perjury

A written notice of motion and motion, other than one that may be heard ex parte, must be served at least five days before the time specified for the hearing, unless a rule or court order fixes a different time. For cause, an order fixing a different time may be granted on ex parte application.

When a party supports a motion by affidavit or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, the supporting document must be served at least one day before the hearing, unless the court permits it to be served later.

(Amended effective July 1, 2015.)

Rule 34.04 Additional Time After Service by Mail or Electronic Service Late in the Day

When a party is served with a notice or other document by mail, three days must be added to the time the party has the right, or is required, to act. If service is made by electronic means and accomplished after 5:00 p.m. Minnesota time on the day of service, one additional day must be added to the time the party has the right, or is required, to act.

(Amended effective July 1, 2015; October 1, 2016.)

Rule 34.05 Unaffected by Expiration

The expiration of a term of court does not affect the time-period for doing any act or taking any proceeding, or affect the court's power to do any act or take any proceeding in any pending action.

Comment - Rule 34

Rule 34.01 (Computation) adopts Minn. R. Civ. P. 6.01 except that it excludes Saturdays, Sundays, and legal holidays from computation when the period of time allowed is "seven days or less" rather than "less than seven days." Minnesota Statutes, section 645.44, subdivision 5, sets forth the legal holidays for the State of Minnesota.

In State v. Hugger, 640 N.W.2d 619 (Minn. 2002), the Supreme Court held that when calculating the five-day period within which an appeal must be taken under Rule 28.04, subd. 2(8), intermediate Saturdays, Sundays, and legal holidays must be excluded from the computation of the period allowed under Rule 34.01 before the additional three days by mail are added under Rule 34.04.