

Rule 6. Time

6.01 Computation

(a) **Computation of Time Periods.** In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is

(1) Saturday,

(2) Sunday,

(3) a legal holiday,

(4) when the act to be done is the filing of a document in court, 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

(5) where filing or service is either permitted or required to be made electronically, 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 event the period runs until the end of the next day that is not one of the aforementioned days.

(b) **Periods Shorter Than 7 Days.** When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(c) **Definition of Legal Holiday.** As used in this rule and in Rule 77(c), "legal holiday" includes any holiday designated in Minnesota Statutes, section 645.44, subdivision 5, as a holiday for the state or any statewide branch of government and any day that the U.S. mail does not operate.

(Amended effective January 1, 1997; amended effective July 1, 2007; amended effective September 1, 2012.)

6.02 Enlargement

When by statute, by these rules, by a notice given thereunder, or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 4.043, 59.03, 59.05, and 60.02 except to the extent and under the conditions stated in them.

6.03 Unaffected by Expiration of Term

The continued existence or the expiration of a term of court does not affect or limit the period of time provided for the taking of any action or proceeding, or affect the power of the court to act or take any proceeding in any action which has been pending before it.

6.04 For Motions; Affidavits

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served no later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made

on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59.04, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

(Amended effective January 1, 1997.)

6.05 Additional Time After Service by Mail or Service Late in Day

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 document upon the party, and the notice or document is served upon the party by U.S. mail, three days shall be added to the prescribed period. If service is made by any means other than U.S. mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, one additional day shall be added to the prescribed period.

(Amended effective January 1, 1997; amended effective July 1, 2007; amended effective September 1, 2012; amended effective July 1, 2015.)

Advisory Committee Comment - 1996 Amendment

The amendment to Rule 6.01 conforms the rule to its federal counterpart. The committee believes it is desirable to define explicitly what constitutes a "legal holiday." Given the nature of Minnesota's weather, the committee believes specific provision for dealing with inclement weather should be made in the rules. The federal rule enumerates specific holidays. That drafting approach is not feasible in Minnesota because Minnesota Statutes, section 645.44, subdivision 5, defines legal holidays, but allows the judiciary to pick either Columbus Day or the Friday after Thanksgiving as a holiday. Whichever is selected is defined to be a holiday under the rule.

The amendment to Rule 6.05 conforms the rule to the federal rule except for the last sentence which is new and has no federal counterpart. This provision is intended to discourage the unseemly practices of sliding a "service" under the door of opposing counsel or sending a facsimile transmission after the close of business and asserting timely service. Such service will be timely under the rules, but will add a day to the time to respond. If the paper is due to be served a fixed number of days before an event, that number should be increased by one as well, making it necessary to serve late in the day before the deadline.

Advisory Committee Comment - 2007 Amendment

Rule 6.01 is amended to remove potential ambiguity in the existing rule. The rule is ambiguous because of the odd definition of "holiday" in Minnesota Statutes, section 645.44, subdivision 5, and its ambiguity over how Columbus Day is treated. Additionally, because the rules explicitly provide for service by mail, the court recognized that a "mail holiday" should be a "legal holiday" for the purpose of this rule.

The rule excuses filing on the last day of a time period if the court administrator's office is inaccessible. The amended rule replaces an indefinite concept of the court administrator's office being "inaccessible" with a more definite formulation: the office of the administrator of the court where the action is pending must actually be closed.

Rule 6.05 is amended to make the rule definite as to what forms of service qualify as "service by mail." The rule as amended explicitly allows three additional days only for service by U.S. mail; the use of any other delivery or courier service does not constitute "U.S. mail," and therefore does not qualify for additional time. This rule is now consistent with Minn. R. Civ. P. 4.05, which specifies "first-class mail" as the means for service by mail.

Advisory Committee Comment - 2012 Amendment

Rule 6.01 is amended to add unavailability of the court-authorized e-filing and e-service system as a circumstance that would result in the extension of the time period. This extension applies only where the system problem occurs on the last day of the period and should only apply where the problem is not momentary. The rule requires that unavailability of the E-Filing System actually prevent compliance with the service or filing requirements. This certainly eliminates use of a short-lived shutdown from extending the deadline except, possibly, where it occurs right at the end of the day. Where the shutdown occurs for a substantial part of the day and where it continues through the close of business, then the additional day would be automatically applied.

Advisory Committee Comments - 2015 Amendments

Rule 6.05 is amended to remove a potential ambiguity in the existing rule--the 5:00 p.m. deadline for service to be accomplished without allowing an additional day for response is defined to be Minnesota time. This provision will be especially important for service using the court's E-Filing System, by which service could be effected from anywhere in the world.