

FILED

June 20, 2019

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001

**ORDER PROMULGATING AMENDMENTS TO
THE RULES OF CIVIL PROCEDURE**

In a report filed on August 1, 2017, the Advisory Committee on the Rules of Civil Procedure recommended that amendments be made to the timing provisions in those rules. Specifically, the committee recommended that all days, including weekends and holidays, be counted when calculating time periods and deadlines established by the rules, and that appropriate amendments to time periods stated in the rules be made to reflect that counting system. A petition filed by the Minnesota State Bar Association in 2016 also proposed, and supported, amendments to the Rules of Civil Procedure to conform to the time structure used in the Federal Rules of Civil Procedure.

Thus, the advisory committee recommended amendments to several rules to adopt deadlines based “on a 7-, 14-, 21-, and 28-day system,” in place of the existing 5-, 10-, and 20-day deadlines. These proposed rule changes embrace similar changes made in the Federal Rules of Civil Procedure, in 2009, to require the counting of all days—“including intermediate Saturdays, Sundays, and legal holidays” when calculating a rule-imposed deadline. *See* Fed. R. Civ. P. 6, advisory comm. note—2009 Amendments. With this counting system, all days are treated the same (except when the last day of the event falls on Saturday, Sunday, or legal holiday, in which case counting continues forward to the next day that is not a Saturday, Sunday, or legal holiday), and complicated or counterintuitive counting outcomes are eliminated. *See id.* (explaining that under the

former counting rules, a 10-day period “not infrequently ended later than [a] 14-day period” that started at the same time).

We opened a public-comment period and on December 19, 2017, held a public hearing on the recommendation to amend the rules to address time deadlines. No substantial objections to that recommendation were presented. We agreed with that recommendation, as well as the committee’s separate recommendation to have other advisory committees for court rules consider whether to adopt similar adjustments to time deadlines in other procedural rules, in order to achieve uniformity across practice areas and procedural rules if appropriate. We therefore referred this recommendation to the advisory committees for the General Rules of Practice, the Rules of Criminal Procedure, and the Rules of Civil Appellate Procedure. *See Order Promulgating Amendments to the Rules of Civ. Proc.*, No. ADM04-8001, at 2 (Minn. filed Mar. 13, 2018).

The advisory committees for the General Rules of Practice and the Rules of Civil Appellate Procedure recommended amendments to the time deadlines in those rules; the advisory committee for the Rules of Criminal Procedure recommended no amendments to the time deadlines in those rules. Our orders adopting time-calculation amendments to the General Rules of Practice and the Rules of Civil Appellate Procedure are filed today, at the same time as this order.

We acknowledge the thorough work by the Advisory Committee for the Rules of Civil Procedure, as well as the Minnesota State Bar Association, in recommending amendments that simplify the calculation of deadlines and unify time-based procedures in the rules.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Civil Procedure are prescribed and promulgated to be effective as of January 1, 2020. The rules as amended shall apply to all cases filed on or after that date.

2. The recommendation to amend the forms contained in the Appendix of Forms, *see* Minn. R. Civ. P. 84, to conform as appropriate to the rule amendments adopted here, is referred to State Court Administration for implementation.

3. The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

Dated: June 20, 2019

BY THE COURT:



Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

RULE 4. SERVICE

4.042. Service of the Complaint

If the defendant shall appear within ~~ten~~14 days after the completion of service by publication, the plaintiff, within ~~five~~7 days after such appearance, shall serve the complaint, by copy, on the defendant or the defendant's attorney. The defendant shall then have at least ~~ten~~21 days in which to answer the same.

Advisory Committee Comment—2019 Amendments

Rule 4.042 is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule.

The amendment to Rule 4.042 also lengthens the time to respond to a Complaint served following service of the Summons by publication, to 21 days. This is the same period a party has following other forms of service of the Complaint, and there is no reason to require a shorter period. *See* Rule 12.01. This amendment is intended to obviate at least some motions for extension of the time to answer that are encountered under the shorter deadline in the previous rule.

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RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERSDOCUMENTS

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5.05. Filing; Facsimile Transmission

Except where filing is required by electronic means by rule of court, any document may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court and the filed facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the Supreme Court shall be used for filing in accordance with this rule.

Within ~~five~~7 days after the court has received the transmission, the party filing the document shall forward the following to the court:

- (a) a \$25 transmission fee for each 50 pages, or part thereof, of the filing;
- (b) any bulky exhibits or attachments; and

- (c) the applicable filing fee or fees, if any.

If a document is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

Upon failure to comply with the requirements of this rule, the court in which the action is pending may make such orders as are just, including but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

Advisory Committee Comment—2019 Amendments

Rule 5.05 is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule.

* * *

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 a~~
- ~~• Saturday,~~
 - ~~• Sunday,~~
 - ~~• legal holiday, or,~~
 - ~~• 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~~
 - ~~• 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.~~

(a) **Computing Time.** The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit of Time. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Periods Shorter than 7 Days. Only if expressly so provided by any other rule or statute, a time period that is less than 7 days may exclude intermediate Saturdays, Sundays, and legal holidays.

(3) Period Stated in Hours. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours occurring during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(4) Inaccessibility of the Court Administrator's Office. Unless the court orders otherwise, if the court administrator's office is inaccessible:

(A) on the last day for filing or service under Rule 6.01(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6.01(a)(1), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

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

(b) "Last Day" Defined. Unless a different time is set by a statute, local rule, or court order, the last day ends:

(1) for electronic filing, at 11:59 p.m. local Minnesota time; and

(2) for filing by other means, when the Court Administrator's office is scheduled to close.

(c) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(ed) Definition of Legal Holiday. As used in this rule and in Rule 77(c), "legal holiday" includes any holiday designated in Minn. Stat. § 645.44, subd. 5, as a holiday for the

state or any state-wide branch of government and any day that the United States Mail does not operate.

(e) 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 United States Mail, 3 days shall be added to the prescribed period.

If service is made by any means other than United States Mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, 1 additional day shall be added to the prescribed period.

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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. The deadlines for service and filing of motions, as well as affidavits and other documents in support of or responding to motions, are governed by the Minnesota General Rules of Practice.~~

6.05. ~~[Abrogated] 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 United States Mail, three days shall be added to the prescribed period. If service is made by any means other than United States 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.~~

Advisory Committee Comment—2019 Amendments

The amendments to Rule 6.01 are important and are the key to the amendments to several other rules relating to timing. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The most important change is found in Rule 6.01(a)(1)(B), which establishes “a day is a day”—all days during a period under the rules, regardless of length, are included, including weekends and legal holidays. This change mirrors a set of changes made in the Federal Rules of Civil Procedure, and is intended to create substantial similarity between “state days” and “federal days.” Minnesota and the federal government recognize slightly different legal holidays.

Rule 4.06 has for years required that proof of service include the time of service for all forms of service other than service by publication. Compliance with Rule 4.06 is especially important because of the need to know the time of service in order to calculate response deadlines.

Rule 6.01(c) is also an important provision that will affect many deadlines. It establishes an explicit rule for how days are counted when counting “backwards” from a deadline. The rule requires that, when counting backwards from an event, and the last day falls on a weekend or holiday, the counting continues to the next earlier date that is not a weekend or holiday. This rule is modeled on its federal counterpart and is intended to create greater uniformity in timing between state and federal court matters.

Rule 6.01(e) appears as new text, but is the former Rule 6.05 relocated to Rule 6.01 because it addresses the same timing matters.

Rule 6.04 is rewritten because it is superseded by the more specific provisions of Rule 115 of the Minnesota General Rules of Practice. Additionally, Rule 56 of the civil rules establishes a very important deadline for summary judgment motions—“in no event shall the motion be served less than 14 days before the time fixed for the hearing.” Minn. R. Civ. P. 56.02. This limit on shortened notice recognizes the power of the summary judgment motion and its potential to be case or defense-terminating and provides an opportunity for the responding party to prepare a response and be heard.

Rule 6.05 is abrogated only because its text is now incorporated in Rule 6.01(e).

III. PLEADINGS AND MOTIONS

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RULE 12. DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON PLEADINGS

12.01. When Presented

Defendant shall serve an answer within ~~20~~21 days after service of the summons upon that defendant unless the court directs otherwise pursuant to Rule 4.043. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within ~~20~~21 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within ~~20~~21 days after service of the answer or, if a reply is ordered by the court, within ~~20~~21 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ~~ten~~14 days after service of notice of the court’s action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within ~~ten~~14 days after the service of the more definite statement.

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12.05. Motion for More Definite Statement, for Paragraphing and for Separate Statement

If a pleading to which a responsive pleading is permitted violates the provisions of Rule 10.02, or is so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a compliance with Rule 10.02 or for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ~~ten~~14 days after service of notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

12.06. Motion to Strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within ~~20~~21 days after the service of the pleading upon the party, or upon its own initiative at any time, the court may order any pleading not in compliance with Rule 11 stricken as sham and false, or may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

* * *

Advisory Committee Comment—2019 Amendments

Rule 12.01 is amended as part of the amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The changes to this rule change only the time limits, and are not intended to have any other effect.

Rule 12.05 is amended as part of the amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 10-day period to respond to an order under the rule to 14 days. This changes only the time limit, and is not intended to have any other effect.

Rule 12.06 is amended as part of the amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 20-day period to file a motion to strike to 21 days. This changes only the time limit to make it consistent with the deadline to answer contained in Rule 12.01, and is not intended to have any other effect.

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RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

15.01. Amendments

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20-21 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ~~ten~~ 14 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

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Advisory Committee Comment—2019 Amendments

Rule 15.01 is amended as part of the amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only changes to this rule lengthen the 20-day limit to 21 days, and the 10-day limit to 14 days. These changes affect only the time limits, and are not intended to have any other effect.

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V. DEPOSITIONS AND DISCOVERY

RULE 26. DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY

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26.06. Discovery Conference and Discovery Plan.

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(d) **Conference with the Court.** At any time after service of the summons, the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery;
- (3) Any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

- (4) Any issues relating to claims of privilege or of protection as trial-preparation material, including—if the parties agree on a procedure to assert such claims after production—whether to ask the court to include their agreement in an order.
- (5) Any limitations proposed to be placed on discovery;
- (6) Any other proposed orders with respect to discovery; and
- (7) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matter set forth in the motion. All parties and attorneys are under a duty to participate in good faith in the framing of any proposed discovery plan.

Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than ~~ten~~ 14 days after the service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

Advisory Committee Comment—2019 Amendments

Rule 26.06(d) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 10-day limit to 14 days to respond to a motion for a discovery conference. This change affects only the time limit, and is not intended to have any other effect.

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RULE 27. DEPOSITION BEFORE ACTION OR PENDING APPEAL

27.01. Before Action

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- (b) **Notice and Service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least ~~20~~ 21 days before the date of hearing, the notice shall be served either within or outside the state in the manner provided in Rule 4.03 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the

petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4.03, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 17.02 apply.

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Advisory Committee Comment—2019 Amendments

Rule 27.01(b) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 20-day notice requirement before hearing a petition to 21 days. This change affects only the time limit, and is not intended to have any other effect.

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

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32.04. Effect of Errors and Irregularities in Depositions

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(c) As to Taking of Deposition.

- (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.
- (2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.
- (3) Objections to the form of written questions submitted pursuant to Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within ~~five~~7 days after service of the last questions authorized.

Advisory Committee Comment—2019 Amendments

Rule 32.04(c)(3) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 5-day deadline for objections to the form of written questions to 7 days. This change affects only the time limit, and is not intended to have any other effect, and because weekend days and holidays are now included in the counting of days, the old 5-day period will most often be the same as the new 7-day period.

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RULE 35. PHYSICAL, MENTAL, AND BLOOD EXAMINATION OF PERSONS

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35.04. Medical Disclosures and Depositions of Medical Experts

When a party has waived medical privilege pursuant to Rule 35.03, such party within ~~ten~~ 14 days of a written request by any other party,

- (a) shall furnish to the requesting party copies of all medical reports previously or thereafter made by any treating or examining medical expert, and
- (b) shall provide written authority signed by the party of whom request is made to permit the inspection of all hospital and other medical records, concerning the physical, mental, or blood condition of such party as to which privilege has been waived.

Disclosures pursuant to this rule shall include the conclusions of such treating or examining medical expert.

Depositions of treating or examining medical experts shall not be taken except upon order of the court for good cause shown upon motion and notice to the parties and upon such terms as the court may provide.

Advisory Committee Comment—2019 Amendments

Rule 35.04 is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 10-day period to respond to written requests to a 14-day period. This change affects only the time limit, and is not intended to have any other effect.

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VI. TRIALS

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RULE 53. MASTERS

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53.07. Action on Master's Order, Report, or Recommendations

- (a) **Action.** In acting on a master's order, report, or recommendations, the court must afford an opportunity to be heard and may receive evidence, and may: adopt or affirm; modify; wholly or partly reject or reverse; or resubmit to the master with instructions.
- (b) **Time To Object or Move.** A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than ~~20~~21 days from the time the master's order, report, or recommendations are served, unless the court sets a different time.

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Advisory Committee Comment—2019 Amendments

Rule 53.07(b) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule changes the 20-day period to file a response to a master's decision to 21 days. This change affects only the time limit, and is not intended to have any other effect.

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RULE 55. DEFAULT

55.01. Judgment

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party as follows:

- (a) When the plaintiff's claim against a defendant is upon a contract for the payment of money only, or for the payment of taxes and penalties and interest thereon owing to the state, the court administrator, upon request of the plaintiff and upon affidavit of the amount due, which may not exceed the amount demanded in the complaint or in a written notice served on the defendant in accordance with Rule

4 if the complaint seeks an unspecified amount pursuant to Rule 8.01, shall enter judgment for the amount due and costs against the defendant.

- (b) In all other cases, the party entitled to a judgment by default shall apply to the court therefor. If a party against whom judgment is sought has appeared in the action, that party shall be served with written notice of the application for judgment at least ~~three~~ 14 days prior to the hearing on such application. If the action is one for the recovery of money only, the court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor.
- (c) If relief other than the recovery of money is demanded and the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, it may take or hear the same or order a reference for that purpose, and order judgment accordingly.
- (d) When service of the summons has been made by published notice, or by delivery of a copy outside the state, no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make concerning restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving the title to real estate or to foreclose mortgages thereon such bond shall not be required.
- (e) When judgment is entered in an action upon a promissory note, draft or bill of exchange under the provisions of this rule, such promissory note, draft or bill of exchange shall be filed with the court administrator and made a part of the files of the action.

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Advisory Committee Comment—2019 Amendments

Rule 55.01(b) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The change to this rule lengthens the 3-day notice provision of the rule to 14 days because the 3-day notice period has proven too short to allow a meaningful response from the party receiving notice.

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RULE 59. NEW TRIALS

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59.04. Time for Serving Affidavits

When a motion for a new trial is based upon affidavits, they shall be served with the notice of motion. The opposing party shall have ~~ten~~ 14 days after such service in which to serve opposing affidavits, which period may be extended by the court pursuant to Rule 59.03. The court may permit reply affidavits.

59.05. On Initiative of Court

Not later than ~~15~~ 14 days after a general verdict or the filing of the decision or order, the court upon its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

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Advisory Committee Comment—2019 Amendments

Rules 59.04 and 59.05 are amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to Rule 59.04 changes the 10-day period for serving opposing affidavits to 14 days. The only change to Rule 59.05 changes the 15-day period for issuing a court initiated new trial to 14 days. These changes affect only the time limit, and are not intended to have any other effect.

VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

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RULE 68. OFFER OF JUDGMENT OR SETTLEMENT

Rule 68.01. Offer.

(a) **Time of Offer.** At any time more than ~~10~~ 14 days before the trial begins, any party may serve upon an adverse party a written damages-only or total-obligation offer to allow judgment to be entered to the effect specified in the offer, or to settle the case on the terms specified in the offer.

(b) **Applicability of Rule.** An offer does not have the consequences provided in Rules 68.02 and 68.03 unless it expressly refers to Rule 68.

(c) **Damages-only Offers.** An offer made under this rule is a “damages-only” offer unless the offer expressly states that it is a “total-obligation” offer. A damages-only offer does not include then-accrued applicable prejudgment interest, costs and disbursements, or applicable attorney fees, all of which shall be added to the amount stated as provided in Rules 68.02(b)(2) and (c).

(d) **Total-obligation Offers.** The amount stated in an offer that is expressly identified as a “total-obligation” offer includes then-accrued applicable prejudgment interest, costs and disbursements, and applicable attorney fees.

(e) **Offer Following Determination of Liability.** When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ~~10~~14 days before the commencement of a hearing or trial to determine the amount or extent of liability.

(f) **Filing.** Notwithstanding the provisions of Rule 5.04, no offer under this rule need be filed with the court unless the offer is accepted.

Rule 68.02. Acceptance or Rejection of Offer.

(a) **Time for Acceptance.** Acceptance of the offer shall be made by service of written notice of acceptance within ~~10~~14 days after service of the offer. During the ~~10~~14-day period the offer is irrevocable.

(b) **Effect of Acceptance of Offer of Judgment.** If the offer accepted is an offer of judgment, either party may file the offer and the notice of acceptance, together with the proof of service thereof, and the court shall order entry of judgment as follows:

- (1) If the offer is a total-obligation offer as provided in Rule 68.01(d), judgment shall be for the amount of the offer.
- (2) If the offer is a damages-only offer, applicable prejudgment interest, the plaintiff-offeree’s costs and disbursements, and applicable attorney fees, all as accrued to the date of the offer, shall be determined by the court and included in the judgment.

(c) **Effect of Acceptance of Offer of Settlement.** If the offer accepted is an offer of settlement, the settled claim(s) shall be dismissed upon

- (1) the filing of a stipulation of dismissal stating that the terms of the offer, including payment of applicable prejudgment interest, costs and disbursements, and applicable attorney fees, all accrued to the date of the offer, have been satisfied or

(2) order of the court implementing the terms of the agreement.

(d) **Offer Deemed Withdrawn.** If the offer is not accepted within the ~~10~~14-day period, it shall be deemed withdrawn.

(e) **Subsequent Offers.** The fact that an offer is made but not accepted does not preclude a subsequent offer. Any subsequent offer by the same party under this rule supersedes all prior offers by that party.

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Advisory Committee Comment—2019 Amendments

Rules 68.01, 68.02(a) & (d) are amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard “day” for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to Rule 68.01 extends the time to make an offer of judgment from 10 days before trial begins to 14 days before trial begins. The change to Rule 68.02 extends the time to respond to an offer of judgment from 10 days to 14 days. These changes affect only the time limits, and are not intended to have any other effect.