

89-R-99001

FILED

FEB 07 2020

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN RE: AMENDMENT OF M.R.C.P. 6

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

MOTION TO AMEND M.R.C.P. 6

Comes now the Supreme Court Advisory Committee on Rules, pursuant to M.R.A.P. 27(f), and moves the Mississippi Supreme Court to amend M.R.C.P. 6 as follows:

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, 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, a Sunday, or a legal holiday, as defined by statute, or any other day when the courthouse or the clerk's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the courthouse or the clerk's office is closed. 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. In the event any legal holiday falls on a Sunday, the next following day shall be a legal holiday.

(b) Enlargement. When by these rules or by 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 ~~therefore~~ 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 failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), 59(d), 59(e), 60(b), and 60(c) except to the extent and under the conditions therein stated.

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in a civil action consistent with these rules.

(d) Motions. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time fixed 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(c), opposing affidavits may be served not later than ~~one~~ two days before the hearing, unless the court permits them to be served at some other time.

MOTION#

2020

404

(e) Additional Time After Service by Mail. 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 paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period. This subdivision does not apply to responses to service of summons under Rule 4.

[Amended effective March 1, 1989; amended effective June 24, 1992; amended effective July 1, 2008; amended effective _____.]

Advisory Committee Historical Note

Effective _____, Rule 6(d) was amended to require that opposing affidavits be served no later than two days before the hearing date. XX So. 3d XX (Miss. 20__).

Effective June 24, 1992, Rule 6(a) was amended to provide that the legal holidays which cause a period of time to be enlarged are those defined by statute. 598-602 So. 2d XXII-XXIII (West Miss. Cas. 1992).

Effective March 1, 1989, Rule 6(a) was amended to abrogate the inclusion of time periods established by local court rules. 536-538 So. 2d XXI (West Miss. Cas. 1989).

Advisory Committee Notes

It is not uncommon for clerks' offices and courthouses to be closed occasionally during what are normal working periods, whether by local custom or for a special purpose, such as attendance at a funeral. Rule 6(a) was drafted to obviate any harsh result that may otherwise ensue when an attorney, faced with an important filing deadline, discovers that the courthouse or the clerk's office is unexpectedly closed.

Rule 6(b) gives the court wide discretion to enlarge the various time periods both before and after the actual termination of the allotted time, certain enumerated cases being excepted. A court cannot extend the time: (1) for filing of a motion for judgment notwithstanding the verdict pursuant to Rule 50(b); (ii) for filing a motion to amend the court's findings pursuant to Rule 52(b); (iii) for filing a motion for new trial pursuant to Rule 59(b); (iv) for filing a motion to alter or amend the judgment pursuant to Rule 60(b); (vi) for filing a motion to reconsider a court order transferring a case to another court pursuant to Rule 60(c); or (vii) for entering a sua sponte order requiring a new trial pursuant to Rule 59(d).

Importantly, such enlargement is to be made only for cause shown. If the application for additional time is made before the period expires, the request may be made ex parte; if it is made after the expiration of the period, notice of the motion must be given to other parties and the only cause for which extra time can be allowed is "excusable neglect."

Rule 6(c) does not abolish court terms; it merely provides greater flexibility to the courts in attending the myriad functions they must perform, many of which were heretofore possible only

during term time. The rule is also consistent with the provisions elsewhere herein that prescribe a specific number of days for taking certain actions rather than linking time expirations to the opening day, or final day, or any other day of a term of court; e.g., Rule 6(d) (motions and notices of hearings thereon to be served not less than five days before time fixed for hearing), and Rule 12(a) (defendant to answer within thirty days after service of summons and complaint).

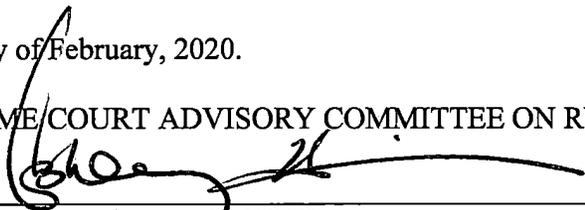
[Advisory Committee Note adopted effective July 1, 2014.]

The proposed amendment to Rule 6(d) requires that opposing affidavits be served at least two days, rather than one day, prior to the hearing in order to give the moving party sufficient time to review the affidavit prior to the hearing. The proposed amendment to Rule 6(b) corrects a typographical error and changes “therefore” to “therefor.” The motion to amend M.R.C.P. 6 was approved by the Committee on April 6, 2018.

The Supreme Court Advisory Committee on Rules therefore moves that the above proposed amendment to M.R.C.P. 6 be considered by the Mississippi Supreme Court.

SO MOVED, this the 22 day of February, 2020.

SUPREME COURT ADVISORY COMMITTEE ON RULES



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