

16.800, 16.810, 16.850, 16.860, 16.870.

COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The language used was adapted from Rhode Island Rule of Civil Procedure 5. The major variation from Oregon practice is section 9 D. which eliminates the need for proof of service of papers subsequent to the original complaint and summons unless a question is raised as to service. ORS 16.810, 16.850 and 16.870 are eliminated.

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RULE 10

TIME

A. Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any 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, or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. 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. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

B. 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 continued existence or expiration of a term of court in no way affects the power of a court

For purposes of this rule, 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, or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. 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. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

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* B. Enlargement. When by these rules or 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 do so was the result of excusable neglect, but it may not extend the time for taking any action to file, object or hear and determine findings of fact or to vacate, set aside, amend or otherwise change a judgment which has been entered, beyond the time specified for taking such action in the applicable rule or statute.

B. 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 continued

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 any civil action which has been pending before it.

C. For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 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, opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

D. 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, 3 days shall be added to the prescribed period.

Rule 10

Background

^{sections}
ORS Chapters ~~Superseded~~:

174.120

COMMENT

This rule is ~~XXXXXX~~ based upon Federal Rule 6. The only substantial difference from the time computation provided in Ors 174.120 is the next to the last ~~XXXXXXXX~~ sentence of section A relating to intermediate Saturdays, Sundays and holidays for periods of less than 7 days. Section B was eliminated from the Federal Rule in 1968 because Federal Courts no longer have terms. Since Oregon Courts do have terms, it was included in this rule.

Rule 11 = Reserved

RULE 10

TIME

A. Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any 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, or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. 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. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

B. 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 continued 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 any civil action which has been pending before it.

C. For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 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, opposing affidavits may be served not later

than 1 day before the hearing, unless the court permits them to be served at some other time.

BACKGROUND NOTE

ORS section superseded: 174.120.

COMMENT

This rule is based upon Federal Rule 6. The only substantial difference from the time computation provided in ORS 174.120 is the next to the last sentence of section ¹²A., relating to intermediate Saturdays, Sundays and holidays for periods of less than 7 days. Section ¹⁰B. was eliminated from the federal rule in 1968 because federal courts no longer have terms. Since Oregon courts do have terms, it was included in this rule.

RULE 11 (RESERVED)

to do any act or take any proceeding in any civil action which
has ^{is} been pending before it.

BACKGROUND NOTE

ORS section superseded: 174.120.

COMMENT

Section 10 A. is based upon Federal Rule 6 (a). The only substantial difference from the time computation provided in ORS 174.120 is the next to the last sentence of section 10 A. relating to intermediate Saturdays, Sundays and holidays for periods of less than 7 days. Section 10 B. was eliminated from the federal rule in 1968 because federal courts no longer have terms. Since Oregon courts do have terms, it was included in this rule.

RULE 11 (RESERVED)

RULE 12

PLEADINGS LIBERALLY CONSTRUED
DISREGARD OF ERROR

A. Liberal Construction. All pleadings shall be liberally construed with a view of substantial justice between the parties.

B. Disregard of error or defect not affecting substantial right. The court shall, in every stage of an action or proceeding, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

BACKGROUND NOTE

ORS sections superseded: 16.120, 16.660.

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RULE 10

TIME

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B. 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 continued 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 any civil action which has been pending before it.

C. For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 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, opposing affidavits may be served not later

than 1 day before the hearing, unless the court permits them to be served at some other time..

BACKGROUND NOTE

ORS section superseded: 174.120.

COMMENT

This rule is based upon Federal Rule 6. The only substantial difference from the time computation provided in ORS 174.120 is the next to the last sentence of section 10 A., relating to intermediate Saturdays, Sundays and holidays for periods of less than 7 days. Section 10 B. was eliminated from the federal rule in 1968 because federal courts no longer have terms. Since Oregon courts do have terms, it was included in this rule.

RULE 11 (RESERVED)

16.800, 16.810, 16.850, 16.860, 16.870.

COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The language used was adapted from Rhode Island Rule of Civil Procedure 5. The major variation from Oregon practice is section 9 D. which eliminates the need for proof of service of papers subsequent to the original complaint and summons unless a question is raised as to service. ORS 16.810, 16.850 and 16.870 are eliminated.

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TIME

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B. 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 continued 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 any civil action which has been pending before it.

BACKGROUND NOTE

ORS section superseded: 174.120.

COMMENT

Section 10 A. is based upon Federal Rule 6 (a). The only substantial difference from the time computation provided in ORS 174.120 is the next to the last sentence of section 10 A. relating to intermediate Saturdays, Sundays and holidays for periods of less than 7 days. Section 10 B. was eliminated from the federal rule in 1968 because federal courts no longer have terms. Since Oregon courts do have terms, it was included in this rule.

RULE 11 (RESERVED)

RULE 12

PLEADINGS LIBERALLY CONSTRUED
DISREGARD OF ERROR

A. Liberal Construction. All pleadings shall be liberally construed with a view of substantial justice between the parties.

B. Disregard of error or defect not affecting substantial right. The court shall, in every stage of an action or proceeding, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

BACKGROUND NOTE

ORS sections superseded: 16.120, 16.660.

~~F. Effect of failure to file. If any party to an action or proceeding fails to file within five (5) days after the service any of the papers required by this rule to be filed, the court, on motion of any party or of its own motion, may order the papers to be filed forthwith, and if the order is not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.~~

COMMENT

This rule replaces the existing statutory provisions relating to serving and filing of papers subsequent to the summons and original complaint. The language used was adapted from Rhode Island Rule of Civil Procedure 5. Note, the rule requires service of orders. ORS 16.810, 16.850 and 16.870 are eliminated.

RULE 10

TIME

A. Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any 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[✓] or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. 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. As used in ^{this} ~~the~~ rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

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B. 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 continued 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 any civil action which ^{is} ~~has been~~ pending before it.

C. 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 such party and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

COMMENT

Section 10 A. is based upon Federal Rule 6 (a). The only substantial difference from the time computation provided in ORS 174.120 is the next to the last sentence of section 10 A. relating to intermediate Saturdays, Sundays and holidays for periods of less than 7 days. Section 10 B. was eliminated from the federal rule in 1968 because federal courts no longer have terms. Since Oregon courts do have terms, it was included in this rule.

RULE 11 (RESERVED)

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DISREGARD OF ERROR

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RULE 10

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C. 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 such party and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

COMMENT

Section 10 A. is based upon Federal Rule 6(a). The only substantial difference from the time computation provided in ORS 174.120 is the next to the last sentence of section 10 A. relating to intermediate Saturdays, Sundays, and holidays for periods of less than 7 days. Section 10 B. was eliminated from the federal rule in 1968 because federal courts no longer have terms. Since Oregon courts do have terms, it was included in this rule. Section 10 C. is based on Federal Rule 6(e).

RULE 11 (RESERVED)