

AMENDMENTS
TO ORCP 15
promulgated by
COUNCIL ON COURT PROCEDURES
1980 to 2024

RULE 15

TIME FOR FILING PLEADINGS OR MOTIONS

A. Time for filing motions and pleadings. A motion or answer to the complaint or third party complaint or the reply to a counterclaim of a party summoned under the provisions of Rule 22 D. shall be filed with the clerk by the time required by Rule 7 C.(2) to appear and defend. Any other motion or responsive pleading shall be filed not later than 10 days after service of the pleading moved against or to which the responsive pleading is directed.

B. Pleading after motion.

B.(1) If the court denies a motion, any responsive pleading required shall be filed within 10 days after service of the order, unless the order otherwise directs.

B.(2) If the court grants a motion and an amended pleading is allowed or required, such pleading shall be filed within 10 days after service of the order, unless the order otherwise directs.

C. Responding to amended pleading. A party shall respond to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise directs.

D. Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just,

allow an answer or reply to be made, or allow any other pleading or motion after the time limited by the procedural rules, or by an order enlarge such time.

COMMENT

For provisions relating to amended pleadings and responding to amended pleadings, see ORCP 23. For motion to make more definite and certain, see ORCP 21 D.

This rule brings all time requirements for responding to pleadings together in one rule. Section 15 A. provides the same time for response to pleadings as ORS 16.040. Subsections 15 B.(1) and (2) are new. Section 15 C. was covered by ORS 16.420. Section 15 D. is based on ORS 16.050.

**TIME FOR FILING PLEADINGS OR MOTIONS
RULE 15**

A. Time for filing motions and pleadings. A motion or answer to the complaint or third party complaint and the reply to a counterclaim or answer to a crossclaim [~~of a party summoned under the provisions of Rule 22-D~~] shall be filed with the clerk by the time required by Rule 7 C(2) to appear and defend. Any other motion or responsive pleading shall be filed not later than 10 days after service of the pleading moved against or to which the responsive pleading is directed.

B. Pleading after motion.

B(1) If the court denies a motion, any responsive pleading required shall be filed within 10 days after service of the order, unless the order otherwise directs.

B(2) If the court grants a motion and an amended pleading is allowed or required, such pleading shall be filed within 10 days after service of the order, unless the court otherwise directs.

C. Responding to amended pleading. A party shall respond to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise directs.

D. Enlarging time to plead or do other act. The court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or allow any other pleading or motion

after the time limited by the procedural rules, or by an order to enlarge such time.

COMMENT

15 A is amended at the suggestion of the OSB Practice and Procedure Committee to clarify that pleadings or motions responsive to any counterclaims or cross-claims, not merely those by a party joined under ORCP 22 D, must be filed with the clerk within 30 days after service of a pleading containing a counterclaim or cross-claim to which the pleading or motion responds, rather than 10 days after such service as might have been inferred from the prior language of this section. While this section speaks only of filing with the clerk, pleadings and motions responding to counterclaims and cross-claims must, pursuant to ORCP 9 A, also be served upon all other parties who have appeared in the action and not in default.

TIME FOR FILING PLEADINGS OR MOTIONS

RULE 15

A Time for filing motions and pleadings. *[A motion or answer to the complaint or third party complaint and the reply to a counterclaim or answer to a cross-claim shall]* **An answer to a complaint or to a third-party complaint, or a motion responsive to either pleading, must be** filed with the clerk *[by]* **within** the time required by Rule 7 C(2) to appear and defend. **If the summons is served by publication, the defendant must appear and defend within 30 days of the date of first publication. A reply to a counterclaim, a reply to assert affirmative allegations in avoidance of defenses alleged in an answer, or a motion responsive to either of those pleadings must be filed within 30 days from the date of service of the counterclaim or answer. An answer to a cross-claim or a motion responsive to a cross-claim must be filed within 30 days from the date of service of the cross-claim.** *[Any other motion or responsive pleading shall be filed not later than 10 days after service of the pleading moved against or to which the responsive pleading is directed.]*

B Pleading after motion.

B(1) If the court denies a motion, any responsive pleading required *[shall]* **must** be filed within 10 days after service of the order, unless the order otherwise directs.

B(2) If the court grants a motion and an amended pleading is allowed or required, *[such]* **that** pleading *[shall]* **must** be filed within 10 days after service of the order, unless the order otherwise directs.

C Responding to amended pleading. A party *[shall]* **must** respond to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise directs.

D Enlarging time to plead or do other act. The court may, in its discretion, and upon *[such]* **any** terms as may be just, allow an answer or reply to be made, or allow any other

pleading or motion after the time limited by the procedural rules, or by an order enlarge such
time.

2017-2019 BIENNIUM STAFF COMMENT TO RULE 15

Note: This staff comment is provided as a convenience to those who read the Oregon Rules of Civil Procedure and have a general question as to the impetus for a particular amendment during the 2017-2019 biennium. Language in this comment was circulated to members of the Council on Court Procedures, but was not voted on or approved by the Council. This comment is neither legislative history for purposes of construction, as in statutory construction, to determine the intent of the Council in making any amendment, nor does it establish the meaning of any rule that has been amended. For the purpose of construing the Oregon Rules of Civil Procedure, the only authoritative legislative history is found in the Council's minutes of its deliberations. The Council's minutes can be found at www.counciloncourtprocedures.org. If the Legislative Assembly amended a rule, the legislative history for the Legislature's amendment can be found at www.oregonlegislature.gov.

The primary impetus for an amendment to Rule 15 was to clarify and to correct the previous version of the rule's deadline [at section 15 A] for filing an answer to a cross-claim. That previous language was expressed as the time to respond to a summons. As a cross-claim is not accompanied by a summons, it seemed appropriate to specify the deadline for an answer to a cross-claim as 30 days from the date of service. The clarification was suggested by the Oregon State Bar's Procedure and Practice Committee.

In revising the deadline for responding to pleadings, the time specified for filing a motion or an answer to a complaint or to a third-party complaint is 30 days as specified in the accompanying summons. Rule 7 C(2)'s deadline for responding when the summons is served by publication is restated in section 15 A.

An answer to a cross-claim or motion directed against a cross-claim is required within 30 days of service of the cross-claim. The same is true for a reply to (or a motion responsive to) a counterclaim.

The section's last amendment [the 1994 promulgation] intended to clarify that replies to counterclaims were due within 30 days, not 10 days as the then-existing section seemed to specify. However, the 10-day deadline remained in the section for "any other motion or responsive pleading." In light of Rule 13, that would by default apply only to a "reply to assert any affirmative allegations in avoidance of any defenses asserted in an answer," i.e., a reply to an affirmative defense. A reply to an affirmative defense is not automatically appropriate in every case and the Council was persuaded that the deadline for responding to all pleadings should be uniform – 30 days. Accordingly, the last sentence of section 15 A referring to a 10-day deadline for "any other motion or responsive pleading" is deleted.

It should be noted that Rule 15 D does not entitle the movant to seek enlargement of the time for numerous "substantive" motions available to the parties throughout the ORCP. The time for a party to exercise some rights, e.g., motions for judgment notwithstanding the verdict under Rule 63 and motions for a new trial under Rule 64 cannot be enlarged. Before relying on

Rule 15 D to obtain more time in which to exercise a right or remedy, counsel must consult case law surrounding the specific right or remedy to determine whether any timeline that is involved is inflexible.

There are other amendments to Rule 15 that are of a technical nature for the purposes identified below; these are not expected to affect the meaning or operation of the rule.

1. The word “shall” is replaced with “must” twice in section 15 B and once in section 15 C, in keeping with current legislative drafting norms.
2. The word “such” is replaced with “that” in section 15 B and with “any” in section 15 D, in the first instance to modernize the language and in the second instance for clarity.

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B Pleading after motion.

B(1) If the court denies a motion, any responsive pleading required must be filed within 10 days after service of the order, unless the order otherwise directs.

B(2) If the court grants a motion and an amended pleading is allowed or required, that pleading must be filed within 10 days after service of the order, unless the order otherwise directs.

C Responding to amended pleading. A party must respond to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise directs.

D Enlarging time to [plead or do other act.] file and serve pleadings and motions. *[The]* **Except as otherwise prohibited by law, the** court may, in its discretion, and upon any terms as may be just, allow *[an answer or reply]* **any pleading** to be made, or allow any *[other pleading or]* motion, **or response or reply to a motion,** after the time limited by the procedural rules, or by an order enlarge *[such time]* **the time limited by the procedural rules.**

2019-2021 BIENNIUM STAFF COMMENT TO RULE 15

Note: This staff comment is provided as a convenience to those who read the Oregon Rules of Civil Procedure and have a general question as to the impetus for a particular amendment during the 2019-2021 biennium. Language in this comment was circulated to members of the Council on Court Procedures, but was not voted on or approved by the Council. This comment is neither legislative history for purposes of construction, as in statutory construction, to determine the intent of the Council in making any amendment, nor does it establish the meaning of any rule that has been amended. For the purpose of construing the Oregon Rules of Civil Procedure, the only authoritative legislative history is found in the Council's minutes of its deliberations. The Council's minutes can be found at www.counciloncourtprocedures.org. If the Legislative Assembly amended a rule, the legislative history for the Legislature's amendment can be found at www.oregonlegislature.gov.

ORCP 15

Rule 15 was amended in the 2017-2019 biennium, partly at the request of the Oregon State Bar's Procedure and Practice Committee, to clarify that the rule applied to all pleadings subsequent to the complaint and to better specify the timing for filing responsive pleadings. A concern that was not then resolved was the phrasing of section D that appeared to allow the court to extend the time for the filing of all pleadings and motions. The only hint that section D did not authorize extensions of the time in responding to all pleadings and motions was the phrasing, "after the time limited by the procedural rules . . ." Some deadlines are substantive, and a court is without authority to allow an extension, e.g., a motion for judgment notwithstanding the verdict pursuant to Rule 63 or a motion for new trial pursuant to Rule 64. In some instances, the deadline imposed by a rule is made subject to the court's discretion to modify that deadline, e.g., Rule 15 B, Rule 43 B(2), and many others. Compiling a list of deadlines that can, or cannot, be modified was considered unwieldy for inclusion in Rule 15. Further, whether a deadline can be modified may not be clear in a given case. To alert readers that section D will not allow for an extension in all cases, the first sentence now begins, "[e]xcept as otherwise prohibited by law . . ." as a "red flag" to warn readers that it would be wise to research whether a particular request for an extension is available.

The lead line in section D was amended in keeping with the title of Rule 15 and the other sections. The rule covers the time for filing pleadings and motions. The "or do other acts" phrase in the lead line, long present in earlier formulations of the rule, was deleted; the rule governs the timing of the filing of pleadings and motions. The unintentional limitation of section D's applicability to answers and replies was amended to make clear that the section applies to all pleadings (subsequent to the complaint), and to motion practice. Although UTCR 5.030 provides the timing for motion practice, section D authorizes the court to modify the time for responses and replies. Rather than an expansion of the court's authority, the amendment is in keeping with how the courts, and the parties, handle modifications of the schedule for filing pleadings and for motion practice.