
Less is More: Handling Formula Based Dates

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Calendaring Our Future Together.™





More or Less?



Misconceptions regarding formula-based docketing

- Will “automatically” calculate relevant deadlines
- Requires minimal training or guidance beyond teaching docket staff how to use the application itself





Why does this matter?



Negative Consequences of Extraneous Deadlines

- Can overwhelm attorneys with unnecessary or incorrect reminders and dates
- Can undermine trust in centralized calendaring system
- Can be confusing or demoralizing for docket staff



Taxonomy



1.

*Formula-based deadlines
superseded by court orders*

2.

*Formula-based deadlines
that do not apply due to
the nature or history of
case*

*Four Types of
Extraneous
Deadlines*

Deadlines that do not apply
to the party represented by
firm

3.

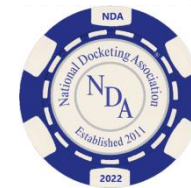
Formula-based deadlines
that might technically apply
but are extremely rare

4.





Strategies



Strategies/ guidelines for minimizing each type:

- Standardized approach/ entry protocol
- Communication/ information
- Knowledge/ training





Superseded by Court Orders



1. Rule-Based Deadlines Superseded by Court Orders:

- FRCP 56(b): Summary judgment motions due 30 days after close of all discovery.
- FRCP 26(f)(2): Joint 26(f) discovery plan/proposed schedule due 14 days after parties meet and confer pursuant to Rule 26(f).





Superseded by Court Orders



- **Standardized approach/ entry protocol**
 - ❖ Review existing deadlines

- **Communication/ information**
 - ❖ Encourage attorneys to forward case orders
 - ❖ Automated notices of new filings



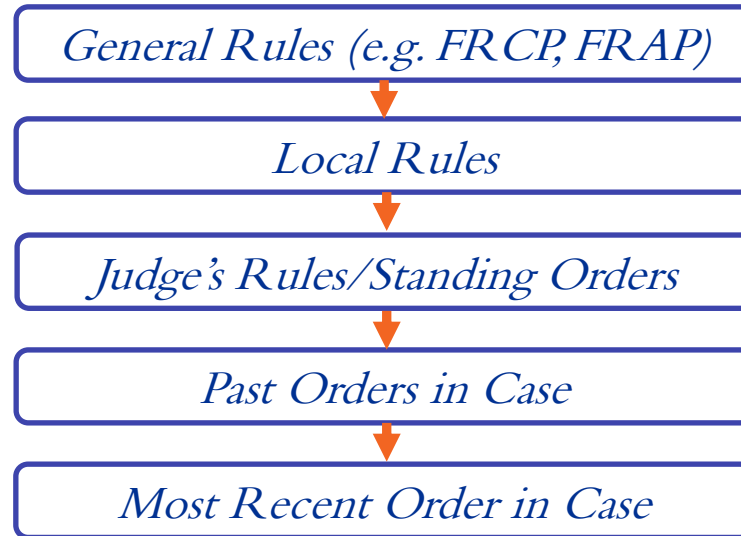


Superseded by Court Orders – Minimizing Strategies



- Knowledge/training

- ❖ Hierarchy of rules





Superseded by Court Orders – Minimizing Strategies



- **Knowledge/training**

- ❖ **Litigation terminology/ variations**

<i>Rule/Software Terminology</i>	<i>Order Terminology</i>
<i>Summary Judgment</i>	<i>Dispositive Motion</i>
<i>Answer</i>	<i>Responsive Pleading</i>
<i>26(a)(1) Disclosures</i>	<i>Initial Disclosures</i>
<i>26(a)(2) Disclosures</i>	<i>Expert Disclosures</i>
<i>26(a)(3) Disclosures</i>	<i>Pretrial Disclosures</i>

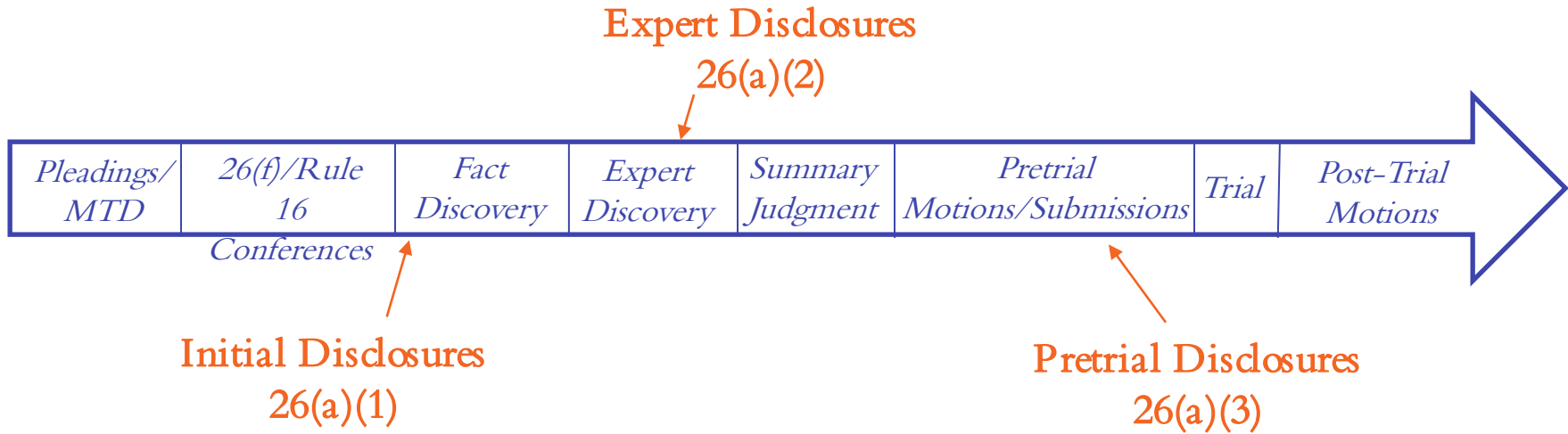




Superseded by Court Orders – Minimizing Strategies

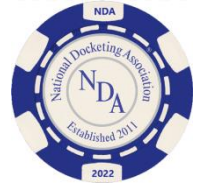


- Knowledge/training
 - ❖ Phases of litigation





Nature/History of Case



2. Rule-based deadlines that do not apply due to nature or history of case

Complaint (or amended complaint or counterclaim or amended counterclaim) alleging infringement of a patent

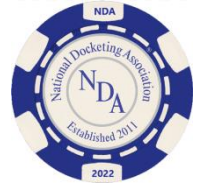
- *One-year deadline for filing petition for inter partes review (“IPR”) with PTAB. The kudzu of deadlines.*

kudzu





Nature/History of Case – Minimizing Strategies



2. Rule-based deadlines that do not apply due to nature or history of case

Civil case where U.S. is a party v. civil case where U.S. is not a party

- *60-day v. 30-day deadline for filing notice of appeal (FRAP 4)*





Nature/History of Case – Minimizing Strategies



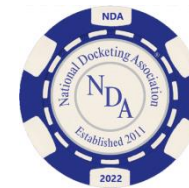
- **Standardized approach/ entry protocol**
 - ❖ For all formula-based deadlines, docket professional should ask themselves: “Does this deadline need to be here?” And if the answer is “It depends on X,” they should investigate X further.

- **Communication/information**
 - ❖ Easy access to case info and documents via PACER and other online systems





Correct but Rare



3. Rule-based deadlines that are technically correct but extremely rare:

- FRCP 60(b) allows a party to seek relief from any order or judgment of a U.S. district court for various reasons (e.g. fraud, newly discovered evidence, etc.) The deadline for filing a Rule 60(b) motion is one year after entry of the order.





Correct but Rare – Minimizing Strategies



- **Standardized approach/entry protocol**

- ❖ Test and refine approach

- **Communication/information**

- ❖ Communicate with attorneys regarding standardized approach

Docket Rule 60(b) motion deadlines only for orders involving written opinions

Only for orders regarding dispositive motions (e.g. MTD and SJM)

Do not docket at all?





Does Not Apply to Client



4. Deadlines not applicable to the party represented by the firm:

- In cases with large numbers of parties, calendaring all deadlines for all parties may overwhelm the attorneys with too many deadlines.

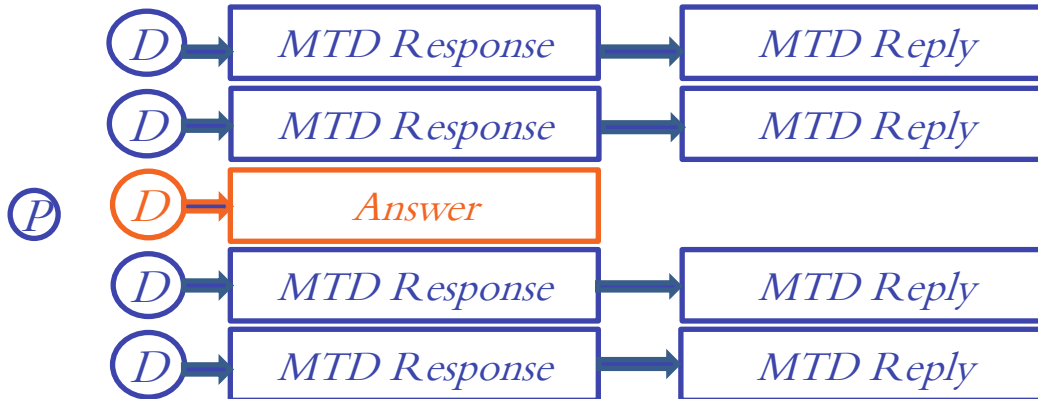




Does Not Apply to Client – Minimizing Strategies



- **Standardized approach/ entry protocol**
- Example approach. Calendar only:
 - (1) deadlines where your firm's client must act,
 - (2) opposing deadlines,
 - (3) deadlines/ dates that apply to all parties.





Does Not Apply to Client – Minimizing Strategies



- **Communication/information**
 - ❖ Note represented party in docketing system and party role.

- **Knowledge/training**
 - ❖ The general approach should not be followed blindly. Individual docket clerks should rely on their own best judgment and make exceptions when necessary.



Conclusion



“Doing what’s right isn’t the problem. It is knowing what’s right.” – President Lyndon Johnson



Thank you!