

5 Tips For Surviving The 'Rocket Docket'

By Scott Flaherty

Law360, New York (April 03, 2013, 4:14 PM ET) -- When a fast-moving court docket adds to the normal pressures of litigation, adopting a proactive approach to collecting and preserving evidence, as well as divvying up tasks and focusing on communication, can go a long way in helping counsel make a compressed schedule work to their advantage, lawyers said.

Certain U.S. district courts — including the Eastern District of Virginia, the Eastern District of Texas and the Western District of Wisconsin — have gained a reputation for moving cases along quickly to trial, attorneys say.

Those reputations are backed by numbers. From Oct. 1, 2011, to Sept. 30, 2012, for instance, the Eastern District of Virginia had a median time-to-trial for civil cases of about 11 months, according to recent statistics from the Administrative Office of the United States Courts. Over the same period, the Western District of Wisconsin had a median time-to-trial of 17.6 months for civil matters. By contrast, one of the more plodding federal courts, the Southern District of California, had a median time-to-trial of 34.8 months for civil cases.

The tight timelines that come along with a case in one of these jurisdictions, or that simply lands before a judge who pushes things quickly toward trial, present certain obstacles that, attorneys say, can often be countered by adopting strategies to effectively manage the case. Here are five of them:

Engage Your Opponent and the Bench

From the outset of a case in a "rocket docket," it's crucial for attorneys to emphasize communication, within their own legal team, with the opposite side and with the presiding judge, according to Ankur Kapoor, an antitrust litigation partner with Constantine Cannon LLP.

Judges who preside over rocket dockets are often sticklers for enforcing strict deadlines, attorneys said. As a result, while engaging an opponent may not come naturally for many attorneys, missing a deadline or appearing uncooperative with opposing counsel become heightened risks in a fast-moving case, according to attorneys.

"You suck it up, and make sure that you are communicating with opposing counsel to make sure that they get what they're reasonably entitled to," said Kapoor. "The key word being 'reasonable.'"

Kapoor added that one benefit of communicating and cooperating with the other side is that it indicates to the judge that your side is taking the court's instructions to heart and making a concerted effort to stay within the tight schedule.

"Every time you go before the court, you want to be able to tell the judge you've agreed to meet certain deadlines," he said.

Kick-Start the Discovery Process

Managing a case in a fast-moving court presents different pressures and opportunities depending on which side a client falls on, according to Michael J. Songer, co-chair of Crowell & Moring LLP's litigation group. A plaintiff, for instance, can use the schedule to its advantage by conducting discovery in advance of filing and by "staying ahead of the game" on the discovery front, once the complaint has been lodged, he said.

But for counsel representing a defendant, who, by default, often has less time to prepare a case, it's critical to meet with the client immediately to make sure the discovery process is set into motion, Songer said.

"You're playing catch-up and you're going to be held to this fast schedule," he explained.

Francisco A. Villegas, an intellectual property litigator with Cohen & Gresser LLP, echoed Songer's suggestion, saying one key is to ensure that clients are on notice from the start that certain documents will need to be preserved.

It's also important to make an early assessment of the case, the evidence that will be most helpful and how that evidence should be collected — through document requests from the other side or depositions, Villegas added.

"Time can be your friend, but if you don't prepare early, it's going to be your enemy," said Villegas. "And you have enough enemies already."

Use 'All Hands on Deck' or 'Divide and Conquer' Staffing

When it comes to putting a staff in place for a case in a fast-moving court, attorneys suggested two options for assembling a team: filling out the roster with people who can take on any task at a moment's notice, or using small groups to specialize in certain aspects of a case.

But no matter which approach is taken, it's likely that a case in a rocket docket will end up with a larger staff mounting the legal efforts, in part because so much needs to be done so quickly. The number of man-hours in a fast-moving case — whether the result of attorneys working full time on the matter or simply having more attorneys fill part-time roles — is almost always bigger than a slower case, according to Songer.

With the rapid pace, it's important for everyone on the team to be on the same page, because there are a number of possible situations in which one attorney may need to handle part of the case that would otherwise have fallen to someone else, Songer said. This sort of scenario might crop up, for example, if a partner is tied up in depositions on a given day, forcing an associate to field questions from the client.

"My philosophy is everyone has to know everything, because you don't know what you're doing next week," he said.

But Villegas of Cohen & Gresser suggested a different approach to staffing, which he referred to as "divide-and-conquer."

He said a typical staffing model — which might be made up of a small group of partners and associates who know the ins-and-outs of every part of the proceedings — needs to be adapted in fast-moving cases. Villegas suggested increasing the number of attorneys, but splitting them into small units that can specialize on certain portions of the case.

“You want to create some subteams. You have knowledge and tasks that are compartmentalized,” Villegas said. “In bigger, and especially in fast moving cases, having everybody knowing everything probably won't work.”

Divvy Up Tasks

The approach to staffing goes hand-in-hand with another key to managing a case in a fast-moving jurisdiction — making sure the critical tasks are moving forward on parallel paths. Kapoor of Constantine Cannon refers to this idea as “pipelining.”

In one of the “pipes,” certain members of the legal team have to work with the client to set the discovery process in motion, he said. While discovery is taking place, another part of the legal team must be simultaneously addressing tasks like answering the complaint and preparing dismissal or summary judgment motions.

Communication has a role to play in coordinating these efforts, said Kapoor, who suggested that, no matter how attorneys approach the issue of staffing, it's worth holding a meeting at least once per week in which the teams working on different aspects of the case can discuss their progress.

“You've got to have those two teams talking to one another,” he said. “You get all the pieces in place, so at the snap of a finger, you can rock and roll.”

Don't Let Grass Grow Between Deadlines

In slow-moving proceedings, it sometimes works to hold off on preparing certain parts of a case until the court issues an intermediate ruling, such as a decision on a motion to dismiss or summary judgment. But for cases in rocket dockets, where deadlines come hard and fast, downtime is not a luxury attorneys can count on, according to Villegas.

The lack of time to relax makes it important, he said, “to prepare as much as possible in advance of deadlines.”

If you relax for “a month and a half, or two months of downtime, in a jurisdiction where trial could end up within 12 months, you've just wasted two out of 12 of those months,” said Villegas. “That's a lot of time.”

Songer said something similar, explaining that attorneys should continue to push forward on multiple fronts, even considering the possibility that a late-stage dismissal or summary judgment ruling “might make it all moot.”

“The dates are still there,” he said. “The court's calendar will not move, and you can't rely on a favorable ruling or something to relieve you.”

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