FEDERAL COURT:
E-Filing, Discovery, and Other Case Management Tips



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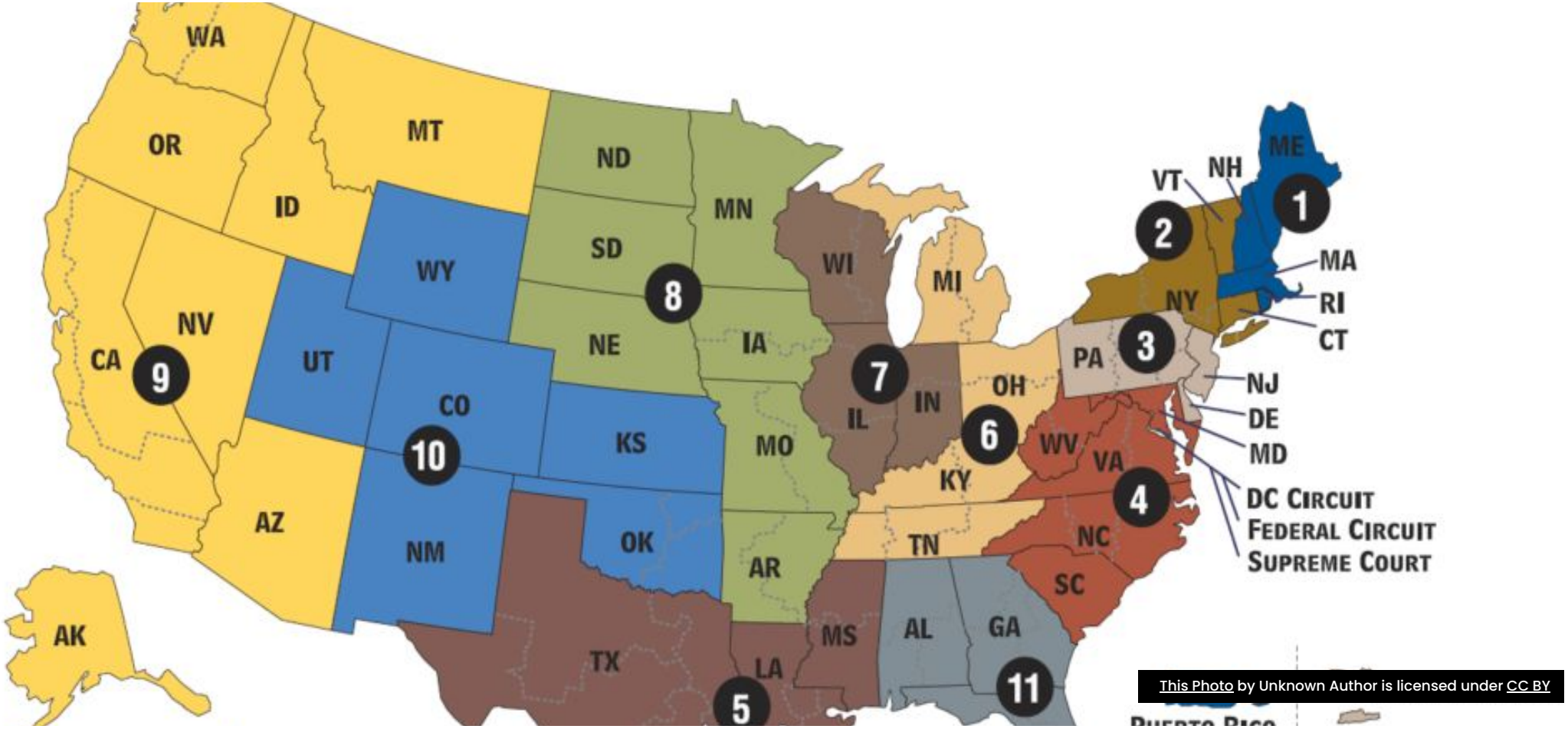
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Any rule referred to in this seminar should be checked to determine if there has been a change since the publication of this text. When checking the deadlines for matters involving state courts, ***always*** check the state court rule AND local rules. These rules should be consulted when checking for time deadlines.

PACER and CM/ECF

Filing Matters



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Filing & Service Reminders

- Plaintiff files the complaint (watch the statute of limitations)
- Serve a copy of the complaint on the defendant
- The complaint describes the damages and injury, explains how the defendant caused the harm, and shows the jurisdiction and relief requested
- Track deadlines for the timing events once filed (meet & confer, Rule 26(f) conference, Rule 16 conference, and others).

How To File A Case

CM/ECF (Case Management/Electronic Case Files) System:

- Allows court to maintain electronic case files and offer electronic filing online, make case information immediately available to attorneys, parties, and general public
- Registered filers can file documents 24/7
- Reduces paper, photocopies, postage, and courier costs

PACER and CM/ECF

Before you can file:

- Apply for attorney admission or register to file electronically with court
- Review procedures/guidance from court
- Visit court website for attorney admissions and electronic filing procedures

Note: If using NextGen CM/ECF – slightly different process, see hand-out materials for process; upgrade existing account or get new account

Creating a PDF (including a searchable PDF) Document to File

- Open the document in your word processing application
- Click File and select Save As.
- Click and Save type as dropdown
- Select PDF and click Save.

** Note: The document may change appearance on the font type, font size, printer, and other layout parameters in your original file

Filing PDF Documents

- Each court has a maximum allowed document size
  - Use Court EM/ECF Lookup to find the maximum size

- If a form-fillable, needs to be flattened so that it cannot be edited or altered by other users
  - Open form and add necessary data
  - Click File and select Print
  - Select a PDF printer and click OK or Print
  - Select “flatten” version of the form
  - Save and file the form on CM/ECF



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Commonly Asked Questions

- How do I get my free copy of newly filed documents?
  - You will receive an email with hyperlink to a filed document
  - Free copy to each party of a case and any secondary address on the email information screen within CM/ECF
  - Does not apply to transcripts

- I received a link to the docket sheet, does this cost?
  - Yes, a fee is applied for accessing a docket sheet and for any documents accessed from the link on the docket sheet

Commonly Asked Questions

- Can you get an exemption from e-filing?
  - Contact the court or check the court website

- Do the other parties automatically geta notification of a filing, or do they get the actual document?
  - A notice of e-filing or docket activity is generated and mailed to registered parties in the case.
  - Text of the docket entry is included, unique electronic document stamp, list of case participants receiving the notification, and a hyperlink to the document(s) filed.
  - One free look when click on the link within 15 days of receipt

Commonly Asked Questions



How do you delete a filing?

You CANNOT delete or edit filings after they have been submitted through CM/ECF.
Contact the Clerk's office.



Can a member of the public use CM/ECF to file documents?

Available to authorized users only.



If you forward an email notification to someone else, will that person be charged for viewing the document?

If you forward the email, without clicking on the link the recipient can access the document for free
Anything after the first viewing will be charged.

Trainings on Pacer and CM/ECF

Contact your local court to see what training sessions may be offered. Most courts offering CM/ECF access will provide an online tutorial, training database, FAQs, and a user manual. If a training database is provided, participants should use it to practice filing before filing a document in the live database.

Rule 4 – Summons, Service, and Waiver

Time to serve defendant - 90 days after the Complaint is filed

Several requirements in Rule 4 – you should always review prior to filing the Complaint to refresh memory

Calculating and Tracking Deadlines



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Triggering Events



- Knowledge of the rules is imperative

- **SAFE ASSUMPTION**
  - **That anything filed or served in a case – and any notification of the court – triggers at least 1 deadline!**

  - **Examples**: filing a complaint; service of summons and complaint; service of discovery requests and responses; and setting a trial date (triggers lots of deadlines).

Identify the Deadline

- **Some deadlines are obvious**, e.g., complaint activates deadline for filing proof of service of summons

- **Some deadlines less obvious**, e.g., complaint also triggers the deadline for plaintiff to object to judge assigned to the case, the last day to hold the case management conference, and the first day a defendant may move for summary judgment

- **You must look beyond the obvious to the WHOLE PICTURE.**

Apply the Rules: Local Rules and Federal Rules



Always check local rules and procedures (Judge preferences) – EVERY TIME!



The Local Rules can supplement requirements of Federal Rules or speak where the Federal Rules are silent – **especially on timing and deadlines!**



Do your OWN Court research!

Expectations of Judges/Magistrates

The Internet

- Most of the District and Magistrate Judges post Trial and Courtroom Procedures on their webpage.
- **READ ALL** before filing papers with the Court or appearing in front of the Judge/Magistrate.

EXAMPLE: Judge Tonya Walton Pratt

- Instructions on her webpage (Trial & Courtroom Procedures Tab) for Judge Pratt, for cases where both parties intend to file motion for summary judgment.
- Instructions hyper links in motions and requests a paper courtesy copy of any dispositive motion and its supplemental documents if the filing does not contain hyperlinks

Identification of Rules Involved

Timeframe	Identify the timeframe for each deadline
Date	Identify the date from which to start counting – and the date to stop counting [Rule 6, timing + Rule 4, method of service]
Holidays/Weekend	Factor in legal holidays and court closures, etc.
Method of Service	Factor in method of service [Rule 4, service; Rule 6, timing]

How to Count Weekends and Holidays

RULE 6. TIME: Section (a) Computation.

In computing any period of time prescribed or allowed by these rules, by the local rules of any district 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, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Exceptions To Deadlines Based On Service Method

"Hail Mary"

RULE 6. TIME

Section (e) Additional Time after Service under Rule 5(b)(2)(B), (C), or (D). "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 the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), - - - **3 days shall be added to the prescribed period**."

Extending Deadlines

RULE 6. TIME.

Section (b) Enlargement. "When...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 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 act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them."

How Mistakes Are Made

Forget to Calendar - #1 Error

Do not know what to Calendar

Apply the Wrong Rules

Forget How Many Days are in a Particular Month

Miscounting of Days

- **Examples:**
  - An assistant miss calendared a deadlines for requesting a trial de novo from the day the award was received instead of the day it was filed (*Yeap v. Leake*, 60 Cal. App. 4th 591 (1997).
  - Attorney missed a deadline because he forgot that October has 31 days, not 30 (*Fiorentino v. City of Fresno*, 150 Cal. App. 4th 596 (20017) – ONE DAY MATTERS!
  - Such errors do not sit well with judges. - - - In *Bank of America v. Henkin* (185 Cal. App. 3d 919, 922 (1986)), when the appellant's counsel insisted he had been given improper notice of a summary judgment motion, the court sanctioned him for pursuing a frivolous appeal, noting, "**The entire brief is based upon an error in performing the simplest, most rudimentary function – counting the days on a calendar.**"

Scheduling Tips

- Electronic Email and Court Notices – Check Your Email EVERY morning and throughout the day. 5-6 times daily. Habit.
- When deadline confirmed, put it on the calendar IMMEDIATELY – Calendar using “Hail Mary” Method
- Discuss any calendar conflict with the Attorney in case a Motion for Extension of Time is necessary
- Schedule a time at the beginning and end of your week to review assignments, deadlines, and Statute of Limitations
- Calendar items by Case name and/or Civil File Action Number to Keep organized. – plus description of assignment
- Calendar Statute of Limitations when get the initial case
- Make cheat sheet of deadlines from Federal Rules and Local Rules

ADD-ON FEATURES – LawToolBox 365

- **The #1 Legal Add-in for Microsoft 365**
- Use Microsoft 365 to instantly add deadlines to Outlook, Teams, and case management platforms.
- Prevent missed deadlines with updates and notifications when court rules change.
- Automate procedural deadlines as emails arrive so you can focus on winning your cases.
- Manage matters, calendars, deadlines, files, notes, and more inside Outlook and Teams.

Other Options

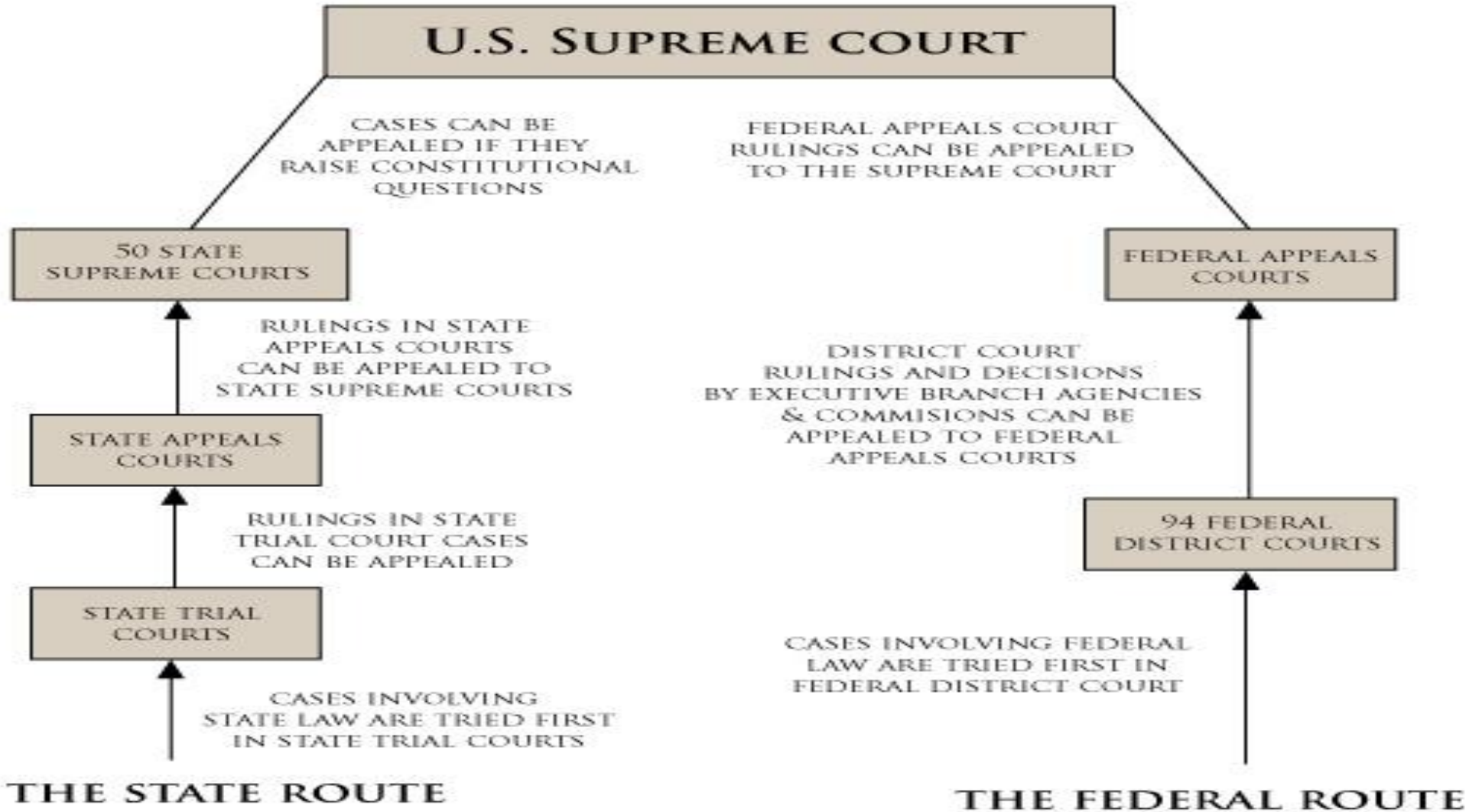
Good Old Hand Calculations and Calendaring (paper or online).	PracticePanther Legal Software	Clio	MyCase
CosmoLex	SmartAdvocate	Litify	Legal Files
Rocket Matter	Wrike	AbacusLaw	**ANY MANY MORE OUT THERE – Just do a Google Search and see what comes up!**

JURISDICTION VENUE



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PATHWAYS TO THE SUMPREME COURT



Federal Jurisdiction

Jurisdiction of federal courts have been defined by the Constitution, congressional statutes, and decisions of the Supreme Court of the United States

Subject Matter Jurisdiction

- Court has the power to hear the specific kind of claim to be brought in that court
    - **State Courts:** usually have general jurisdiction (any state or federal claim except those exclusively reserved for federal court)
    - **Federal Courts**: limited jurisdiction (diversity and federal question) – Refer to Jurisdiction Slides.

- Courts can only assume power over a claim that the laws of the jurisdiction authorize it to hear

- MAY NOT waiver subject-matter jurisdiction

- Court may dismiss a case *sua sponte* – on its own – for lack of subject-matter jurisdiction. Rule 12(b)(1)

Federal Question Jurisdiction

- Regardless of the value of the claim in federal court because claim arises under federal law, including the U.S. Constitution

- Plead on face of Complaint
  - State federal law the case arises under
  - Must be substantial part of the claim
  - Central to the claim and issues to be presented in the case
  - **Creates the cause of action.**

Diversity Jurisdiction

- Exceeds $75,000
  - Value of Claim Requirement

- Parties' citizens of different states
  - Complete Diversity Requirement

- Must be plead in Complaint
  - State amount in controversy exceeds $75,000 and that citizenship or each party on face of Complaint.
  - State that you are in federal court on diversity jurisdiction and cite statute/code if applicable

All other Cases….



State Court would be your venue unless there is a specialty court



E.G., bankruptcy, small claims, etc.

Venue

Answers the questions:

Which state? Which county?

The place or county in which the alleged events occurred

What if can file in both State and Federal court?



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Federal vs. State Considerations

- Filing Fees
- Proximity Differences
- Discovery Differences
- Summary Judgment Differences
- Case Management Differences
- Trial Rules and Rules of Evidence
- Jury Pool Differences
- Jury Selection Differences
- Court Room Technology for Trial
- Judge vs. Magistrate
- Motion for Change Judge in State Court – Not Federal
- Time to Trial (State vs. Federal)
- Paper vs. Electronic Filing Systems
- Calendaring
- Deadlines Adhered to Strictly
- Continuances of Trials
- Subpoenas and Service
- Admission Status
- Local Counsel

HOW TO REMOVE A CASE TO FEDERAL COURT



Removal of Action From State to Federal Court



State Courts do no adjudicate whether an action could be properly removed



Once a defendant has filed a notice to remove a case, jurisdiction is transferred automatically and immediately by operation of law from the State court to the federal court

28 U.S.C. § 1441 General Removal



Removal is to the district court of the U.S. for the district and division embracing the place where the action is pending (Section 1441)

If wrong venue the transfer after removal



Removal based on diversity of citizenship (Section 1332(a))



Joinder of Federal Law Claims and State Law Claims (Section 1331)

28 U.S.C. § 1447 – Remand

Post removal procedures and timing

PLEADINGS



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Pleadings – Rules 7 – 15

Complaint

Answer

Cross-Claims

Counter-Claims

Third-Party Claims

The Complaint



"I hope you have new complaints, because mine are all the same."

Preliminary Considerations

Before drafting consider theories of liability, elements of the cause of action, and remedies available given the facts presented.

Court rules generally require short, plain statements in the allegations.

It is plaintiff's counsel who must clearly allege facts that support a claim against the defendant.

The complaint may be drafted with multiple counts stating the respective issues and relief requested.

It is important to investigate the applicable statute of limitations period because the case will be dismissed if the complaint is filed too late.

Jurisdiction is an issue that will determine where to file a complaint. Review court rules and/or applicable statutes to determine proper jurisdiction.

Basics

1. the names of the parties and their status (plaintiff, defendant, etc.);

2. the court in which the case is to be tried; and

3. the docket number.

** the initial complaint will not have a docket number until one is assigned by the clerk's office at the time of filing.

Counts –Allegations



Each count in a complaint is identified as to its nature (e.g., “Count I – Negligence”).



Each allegation within an individual count is numbered.



State codes of civil procedure allow plaintiffs to plead as many of the claims they have against the defendant(s).

Fact v. Notice Pleading

- Many states use fact pleading, which requires plaintiffs to plead all facts supporting the cause or causes of action.
  - Discovery is then narrowed to the issues raised by the facts.

- The federal courts use the more relaxed standard of notice pleading.
  - Rule 8(a) requires that a complaint to set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.”

- Federal Rule 12(e) allows for the defendant to file a motion for a more definite statement when the complaint is too vague.
  - The motion must be filed before filing a responsive pleading (the answer).

- The alternative to attacking a complaint is to file a 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted.

Prayer for Relief



The “Prayer for Relief” appears at the end of the complaint and is usually identified by those words. It contains the remedies the plaintiff is requesting the court to grant.



These may include a request for money damages; an injunction; restitution; reasonable attorney’s fees and costs; or other relief authorized by the cause of action. There is usually a general request which asks the court to grant “other and further relief as the Court deems just and equitable.”



The answer to a complaint may also contain a prayer for relief.



These may include a denial of the plaintiff’s prayer in the complaint; a request to the court to dismiss the case; and attorney’s fees; or specific relief on the basis of a counter-claim(s). A request for attorney’s fees should identify the statute that authorizes the fees by citation.

Verification

Signed by the party or attorney of record.

The Answer



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Answer

The defendant may have procedural options prior to filing an answer to the complaint.

Procedural Options:

- motion to dismiss the complaint for failure to state a claim;
- motion to strike parts of the claim;
- objections to jurisdiction; and/or
- attempt to remove the case to a different court



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Answer (cont.)

- The answer should mirror the complaint as much as possible including the caption.
- The answer should be organized and numbered in reference to the counts and allegations of the complaint.
- There should be a denial that the plaintiff is entitled to the relief sought and a request for defendant's costs.
- The answer should raise any affirmative defenses available.
  - facts asserted by the defendant that will defeat the plaintiff's claim even assuming that the allegations in the complaint are true.

General – Answer Responses

- Admit
- Deny
- Lack Sufficient Knowledge to admit or deny the allegation

Counterclaims & Cross-Claims



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Counterclaims

- Counterclaims are those claims that the defendant may have against the plaintiff arising out of the same set of facts.
- The counterclaim should follow the responses to the allegations and affirmative defenses.
- Stating a counterclaim in the answer generally follows the same rules for pleading that apply to a complaint.
- A counterclaim will require a response from the plaintiff as to the allegations contained in the counterclaim.

Cross Claims

A pleading may state a claim by one party against a co-party if the claim arises out of the transaction or occurrence that is the subject matter of the original action or the counterclaim, or if the claim relates to any property that is the subject matter of the original action.

The crossclaim may include a claim that the co-party is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant

Third Party Claims



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Third Party Claims

Third party complaints are appropriate in circumstances when there is a party who is not listed as a defendant in the initial complaint but who may be liable for all or part of the plaintiff's claim.

Amendments



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Amendments

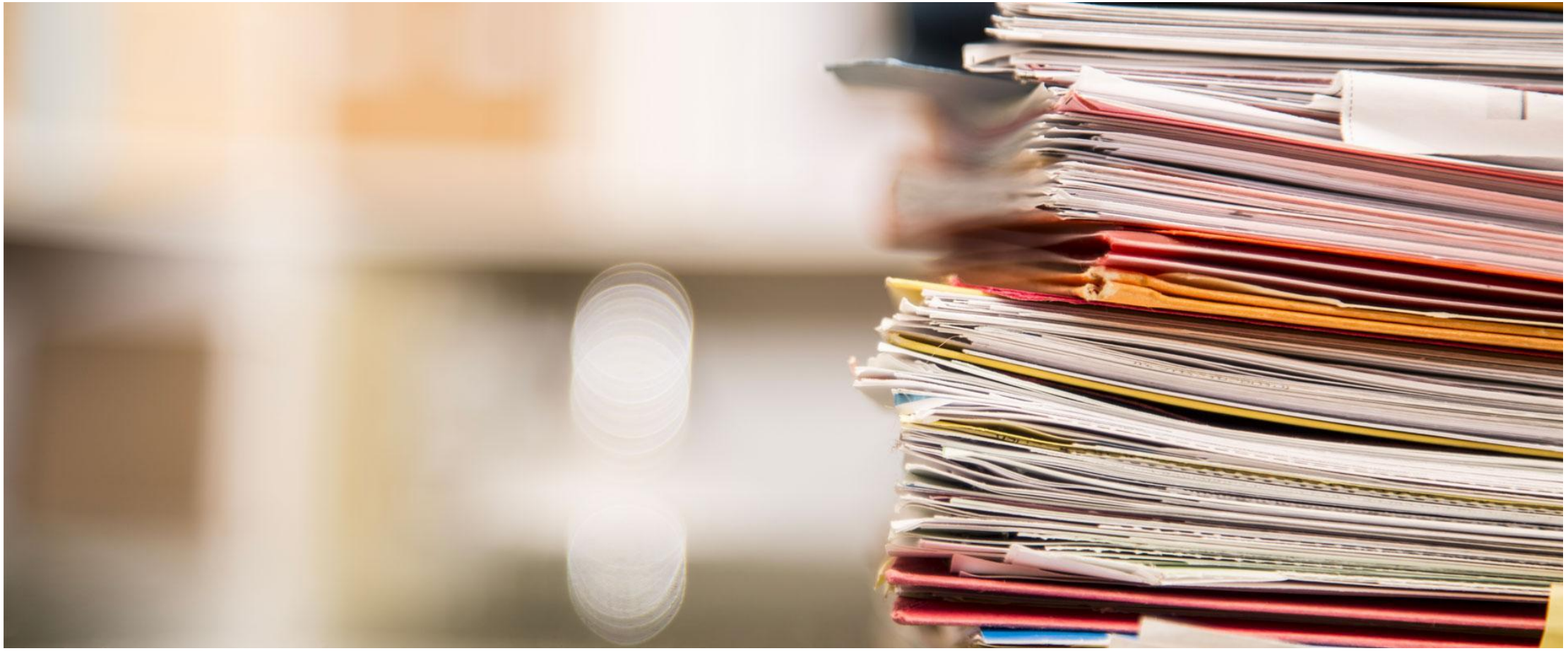
Add or Subtract Counts or Parties

Amendments are normally allowed anytime before Defendant answers the Complaint

- OR -

Amendment allowed at the discretion of the court

MOTIONS & BRIEFS

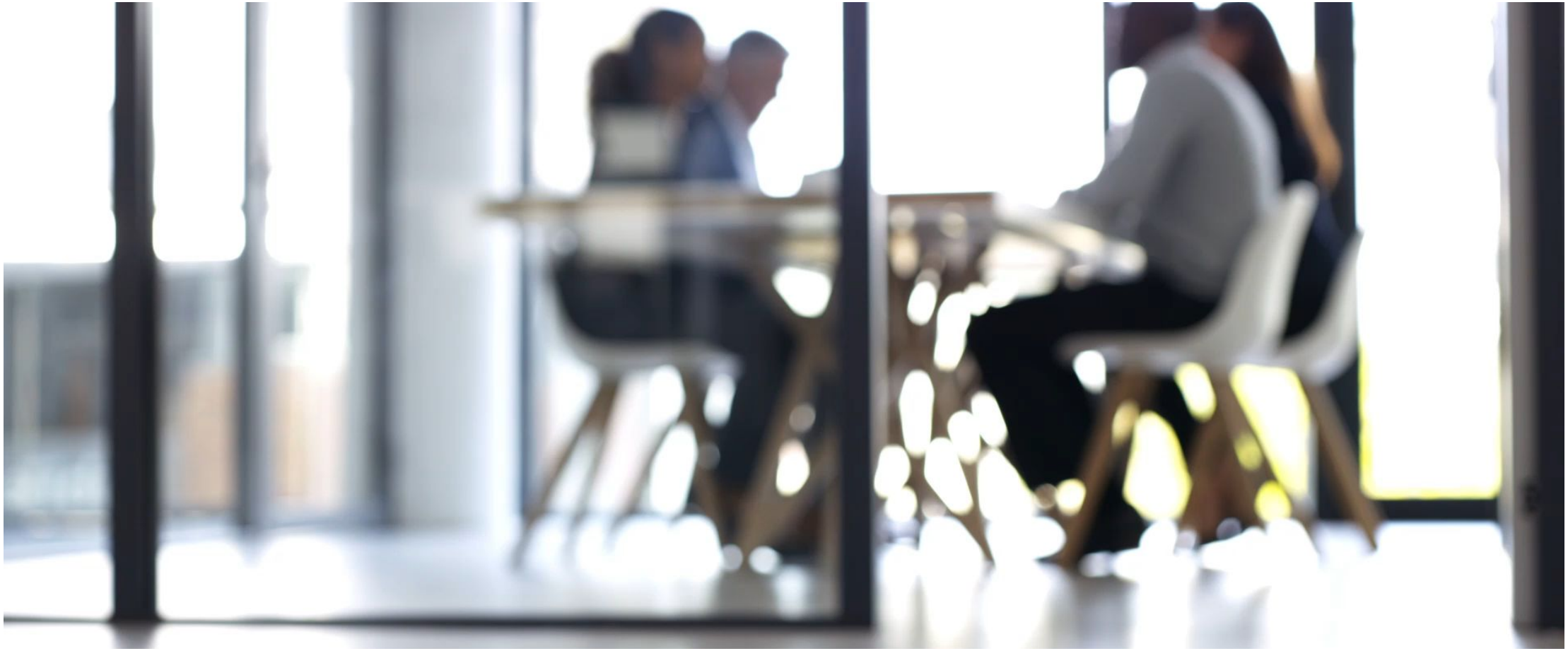


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MOTIONS

- Rule 55 – Default Judgment
- Rule 56 – Summary Judgment
- Rule 59 – New Trial
- Rule 60 – Relief from Judgment
- Also governed by Rules 7-15 in passing

Preparing for Hearings and Conferences



Prepare for Conferences

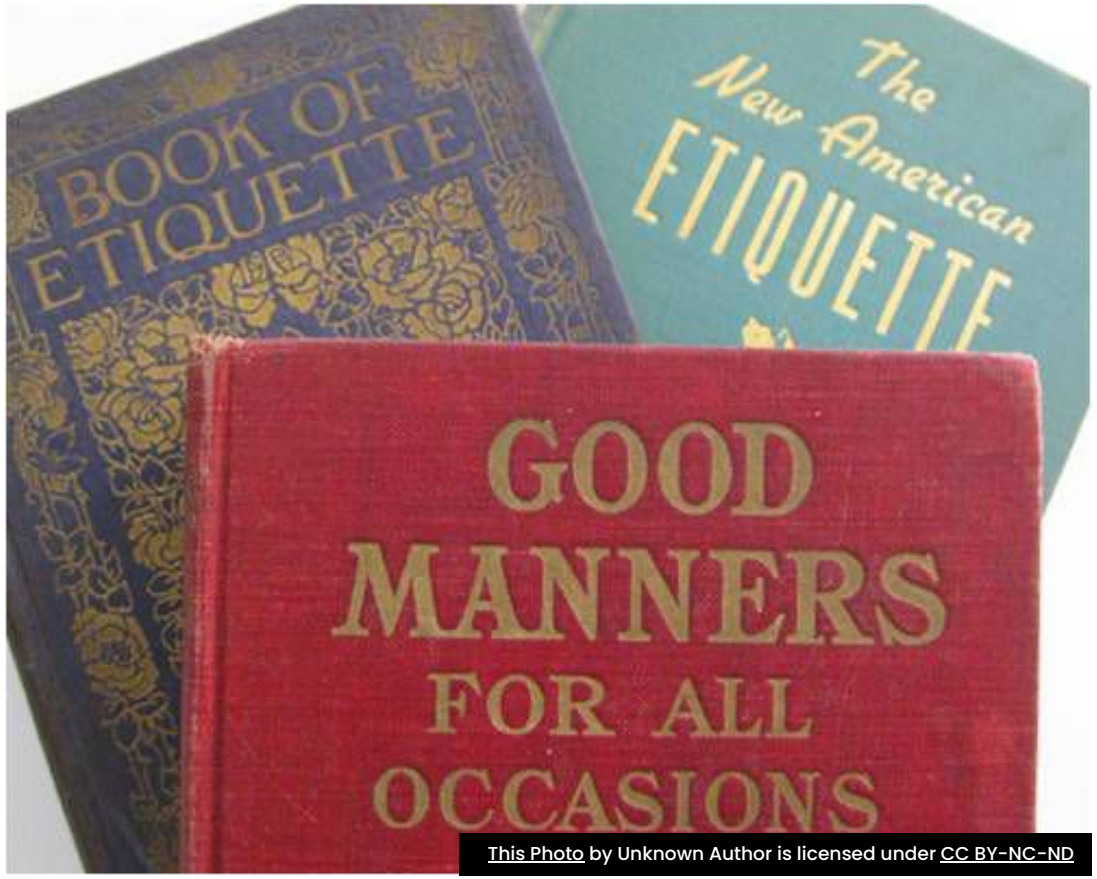
- Understand the purpose of the conference
- Review relevant rules and orders
- Gather and organize documents
- Develop an agenda
- Anticipate counterarguments – potential areas of disagreement

Prepare for Hearings

- Legal research
- Develop a strong argument
- Witness preparation
- Expert witness preparation and coordination
- Presenting evidence
- Oral advocacy skills and support

Courtroom Etiquette and Professionalism

- Dress Code and appearance
- Punctuality
- Respectful behavior
- Communication
- Active listening



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Manage Unexpected Situations

- Contingency Planning
- Adaptability



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Post-Conference and Hearing Strategies

- Documentation
- Follow-up
- Analysis and reflection



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Top 15 Pointers for Maintaining Client Files

- **Consistent Organization:** Establish a standardized system for organizing client files, ensuring uniformity across all cases.
- **Individual File for Each Client:** Create a separate file for each client to avoid confusion and maintain confidentiality.
- **Clear Labels:** Clearly label each file with the client's name, case number, and other identifying information.
- **Document Everything:** Record all interactions, communications, and decisions related to the case in a chronological order.
- **Initial Consultation Notes:** Document details from the initial consultation, including client's concerns, goals, and potential strategies.

Top 15 Pointers (cont.)



Engagement Letters: Keep copies of signed engagement letters, detailing the scope of representation, fees, and responsibilities.



Correspondence: Save all emails, letters, and communications exchanged with clients, opposing counsel, and other relevant parties.



Legal Documents: Include all legal documents, such as contracts, pleadings, motions, and court orders, in an organized manner.



Research and Legal Memos: Maintain research notes, legal memos, and analysis conducted for the case.



Evidence and Exhibits: Include relevant evidence, photographs, reports, and other exhibits with clear descriptions.

Top 15 Pointers (cont.)



Billing Records: Keep track of billable hours, expenses, invoices, and payment records in a separate section.



Conflict of Interest Checks: Document conflict checks performed before taking on a new client or case.



Case Summaries: Include summaries or case outlines for quick reference and a clear understanding of the case's progress.



Calendar and Deadlines: Maintain a calendar noting important dates, deadlines, and court appearances related to the case.



Regular Updates: Regularly update the file with new developments, court updates, and changes in case strategy.

Bonus Tip

Digital Backup: Consider maintaining electronic copies of all documents in addition to physical files for easy access and backup.

People Management

1. **Client Communication:**
    1. Keep clients informed about case developments, progress, and strategies.
    2. Explain legal terms and concepts in an understandable way.
2. **Active Listening:** When communicating with clients, colleagues, or opposing parties, actively listen to their concerns and perspectives.
3. **Regular Updates:** Provide regular updates to clients about case status and anticipated next steps.
4. **Manage Expectations:** Set realistic expectations for clients regarding the timeline and potential outcomes of their case.
5. **Empathy and Respect:** Show empathy and respect to clients, colleagues, and everyone involved in the case.
6. **Delegate Wisely:** Delegate tasks to support staff when appropriate, ensuring effective workload management.
7. **Team Collaboration:** Foster a collaborative environment by sharing information and involving team members in decision-making.
8. **Conflict Resolution:** When conflicts arise, address them professionally and constructively, seeking resolutions that benefit all parties.
9. **Maintain Relationships:** Build and maintain professional relationships with clients, colleagues, judges, and opposing counsel.
10. **Manage Stress:** Help manage stress by practicing self-care, setting boundaries, and seeking support when needed.

Use Case Management Strategies to Prepare for Trial



QUESTIONS?

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