

2015 Law Practice Fundamentals: It's as Simple as PI

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Fixing and Avoiding Common Litigation Missteps

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INTRODUCTION

Litigation is rife with landmines that can torpedo even the best case. As lawyers, inevitably we will all make mistakes. The best way to fix any litigation mistake is to avoid it in the first place. But as the old adage goes – to err is human. To best avoid missteps in the first place, it is imperative that the prudent lawyer utilizes all of the tools in his or her toolbox, such as mentors, colleagues, community listserv emails (DTLA, TTLA, AAJ, etc.), date calculators, and case management software. Learning how to fix mistakes is almost as important, if not more so, than not making any mistakes at all. This presentation aims to provide advice and instruction on how to avoid irreparable mistakes, how to effectively fix the fixable, and allow you to learn from the mistakes of others to avoid making the same ones.

PLEADINGS AND FILING MISTAKES TO AVOID

Litigation missteps can be procedural, substantive, or strategic. Unfortunately, there are many vital procedural mistakes that cannot be fixed. Probably the one mistake most likely to lead to the death penalty for your case is blowing the statute of limitations. Not only is there no way to fix this procedural error even if you try to file for leave of court, but you risk the chance of being sued for legal malpractice. There have been multiple examples of this in the legal field lately – disgruntled clients are suing firms for “allowing” their statute of limitations to expire and therefore they have lost their cause of action.

In drafting petitions, don’t forget to comply with CRPC 30.014 (last 3 digits of plaintiff’s driver’s license number and social security number) and 30.015 (current address information to court clerk). Also check TRCP 21c, prohibiting filing pleadings and documents with “sensitive data” (driver’s license numbers, social security numbers, names of minors, etc.). You have a redaction obligation and a retention requirement. A clerk can refuse to file non-conforming documents.

In 2013, at the direction of the Legislature, there were some rule changes affecting pleadings instituted. Rule 47 now requires a party to not only plead a short statement of the claim, but the party must also plead a range of monetary damages sought. If the monetary relief is not pled, the party will not be allowed to proceed with **ANY** discovery until the pleading is amended. In medical malpractice cases, there is a tension between CPRC chapter 74 and Rule 47 because chapter 74 prohibits pleading an amount sought. My personal practice is, after receiving a letter or special exception that I have failed to plead a maximum amount sought, is to send a letter explaining the prohibition and stating my intention to seek the highest range (over one million dollars).

Also be aware of Rule 91a, titled “Dismissal of Baseless Causes of Action.” This new rule permits a party to move to dismiss a cause of action on the simple ground that it has “no basis in law or fact.” So long as the moving party files the motion within 60 days of the first pleading that contains the challenged cause of action, the court **MUST** grant or deny the motion within 45 days of its filing. Not only is the court only allowed to consider the evidence contained within the four corners of the challenged pleading when ruling on the motion, but the prevailing party is automatically entitled to attorneys fees. Obviously, this new rule is dangerous.

One more irreparable “mistake” is to make sure you work with and cooperate with opposing counsel. We work in an adversarial system and are all obligated to advocate for our clients. However, this does not mean we can’t all be civil and get along. If opposing counsel asks you for extensions and Rule 11’s, give them. Obviously, there is a limit to how many extensions to provide, but there will absolutely be one day where you are the one in need of an extension. Fostering positive relationships with opposing counsel can only save you headaches and potentially blown deadlines in the long run.

DISCOVERY

Discovery is another area of litigation that can either make or break any case. When sorting through and handling discovery that either you plan to serve on the opposing party or discovery that you are served with yourself, it is imperative that all deadlines are calendared appropriately and that all local rules regarding available procedural remedies are followed exactly. By not following the local rules, you run the risk of encountering a mistake you cannot fix.

When serving your own discovery, one effective tactic is to send your first round of discovery, including a notice of the defendant's deposition, with your original petition. This is an aggressive strategy, but it gets the case moving right from the start and puts opposing counsel on notice of how you intend to litigate the case. The deposition will likely be quashed due to its unilateral nature; however, serving the notice like this provides the basis for a motion to compel later in the litigation if they refuse to give timely dates for the deposition.

If the case involves any kind of relevant medical treatment, make sure to order both the medical and billing records in an admissible form pursuant to CPRC §18.001 – 18.002. If there isn't one, someone from the medical records department will have to testify as to the authenticity of the documents and that the records were made within the normal course of business. Essentially, make sure you follow the CPRC so you don't have to deal with an evidentiary prove-up of basic medical and billing records. CPRC §18.002 provides multiple examples of acceptable templates for a records affidavit. Do it early so you aren't scrambling before trial and make a mistake you could have avoided. Don't forget to supplement these records at least 30 days before trial.

Try to always review any discovery with which you are served within three days of receipt. The initial responses are often full of boilerplate objections and assertions of privilege. Once the discovery is reviewed, type up a basic letter to opposing counsel detailing each and every document or response you think that you are entitled to and formally request that they supplement their

response. Most times, opposing counsel will take these letters seriously and will supplement in a timely manner with the documents and responses to which you are entitled. TRCP Rule 192.3 details the scope of discovery for each party and puts limits on certain uses of objections. Make sure to consult this Rule to ensure that you are receiving each and every document and response that you are entitled to under Texas law. Sending the letter to opposing counsel not only provides the required certificate of conference in case there is a later need for a Motion to Compel, but also oftentimes discovery will be supplemented solely to avoid a Motion to Compel hearing. Setting these rules for yourself ensure that you will take the time to thoroughly comb through all discovery received and therefore will help to avoid failing to obtain vital discovery due to oversight.

Another rule you must implement in your practice is to ensure your calendar is marked appropriately for any due dates for discovery responses. If you have a scheduling order in your case, calendar every deadline, no matter how mundane, making special note of your expert designation deadlines. TRCP Rule 193.2 governs objecting to written discovery. If the objections to written discovery are not served within the time required, the objections themselves are automatically waived unless the court excuses the waiver for good cause. These deadlines are even more important when you are served with Requests for Admission. Failing to timely respond renders each and every request deemed admitted. This can have horrible consequences when the case reaches the courtroom and during settlement negotiations (although it is easier to fix this failure than it used to be by moving to strike the deemed admissions showing good cause for not timely answering, that the other party will not be unduly prejudiced by striking the deemed admissions, and if not struck the case will be decided on deemed but possibly untrue facts). Ensuring that discovery deadlines are not blown will make the litigation process flow quickly and efficiently and will ensure that the mistakes to be fixed are limited in number.

Also consider sending a letter reserving your right to utilize any documents produced during the course of discovery as evidence at the time of trial pursuant to TRCP 193.7. This will self-authenticate all documentation produced during discovery if not challenged within 10 days of sending the letter.

COURTROOM AND MOTION PRACTICE MISTAKES

A necessary step for every venue you practice is getting a feel for the courtroom before your setting. You must know the judge and the court rules. Learn the judge's pet peeves for each and every case you have. Network with and talk to other attorneys in your field who have practiced in front of the judge. Make friends with the court coordinator and the bailiff. Introduce yourself to them every time you go to that courtroom until they know you and remember you. The court coordinator and clerk can be your best friends or your absolute worst enemies. These people can help you fix your mistakes both before and after you make them, so try to be friends. Make sure to follow up with the coordinator to set hearings – they are extremely busy and you should never wait for them to set your hearing on their own. They are the ones who work with the judge on a daily basis and can advise you of his or her likes and dislikes.

Knowing the court's tendencies also means knowing the local rules. Most counties have their own local rules that may alter the general deadlines for different aspects of your case. Many judges have their own separate set of rules that may also affect your deadlines. Most of these rules are published online, but always check with the trusty court coordinator and clerk to be safe.

Make sure you keep track of deadlines in regards to motions set for hearing. Local rules often set deadlines. For instance, in Dallas County, responses are generally due 3 business days prior to the hearing. You could lose the ability to make an argument or rely on evidence if you miss a local deadline, so know the rule. Not knowing the local rules or not researching the rules in general will not constitute good cause to obtain leave of court to file a late response. So long as you don't upset

the court, you can usually ask for leave to fix most everything. If you realize that you are in danger of missing a deadline, at least get something on file and ask for leave to amend. Also, check the Civil Procedure rules for motions that have their own deadlines, such as venue-related motions (a response is due 30 days before a hearing and reply is due 7 days before a hearing).

You should always go watch a proceeding in the court before you have to appear. If you have a motion for summary judgment hearing, go watch the judge conduct a motion for summary judgment hearing before you are set. If you have an upcoming trial, go watch portions of a trial. This allows you to learn the judge's pet peeves and tendencies for yourself. It also provides an opportunity to make your face familiar to the judge. Judges will often take note of your presence and inquire why you are there during a break. This not only provides face time with an unfamiliar judge, but also shows the judge you are genuinely interested in complying with the court's rules and streamlining our case. The judge will appreciate your commitment. Talk to the judge before and after an appearance or trial. Ask the judge for any advice or feedback for future appearances.

When making appearances in court, always overcompensate and dress both appropriately and conservatively. Try to avoid anything ill-fitting or overly colorful. At the beginning of your practice, most young lawyers are striving to be taken seriously. Dressing appropriately is an easy way to earn both your colleagues' and judge's respect, and is surprisingly a mistake many attorneys make, no matter how long they have been in practice. Remember your audience. You will appear on code and exemplify the lawyer stereotype to a blue collar jury if you dress like a rich lawyer, so leave your Rolex and cuff links at home during trial.

Be conscientious of basic etiquette. Do not talk over co-counsel or the judge. The first thing that goes when you are nervous is your ability to listen and take in what is around you. Also, it will irritate the judge. A lot. The more irritated the judge is with you, the less likely he or she will be

to listen to what you have to say and be lenient. The jury will also pick up on the judge's attitude towards you and draw conclusions about your case.

Finally, **TURN OFF YOUR CELL PHONE**. Do not set it on vibrate or silent. Phone settings are not a guarantee. If an alarm goes off or the judge can hear your phone vibrating, the judge is not going to be pleased. Wait to check your email until a break. No work email is more important than what is going on in that courtroom.

E-FILING

E-filing is everyone's new favorite thing. Many Texas courts require your filing to be done electronically and will not accept any paper. However, there are still some old-school judges who want paper copies despite the obligation to e-file. Make sure to learn how your judge prefers for his filings to come through. If you refer to an attachment in your moving papers and have briefly described the substance (which you will have done if drafted properly), the court will probably still consider the substance of the attachment even if you forget to attach the exhibit or there is some kind of e-filing glitch. The most critical advice regarding e-filing is to **NOT** wait until the last minute. Expect problems – they will inevitably occur and usually when you have waited until the last minute and are working under deadline.

RESOURCE RECOMMENDATIONS

There are countless resources available to make your life easier; however, some firms do not allocate a budget for every resource and some of us don't have deep pockets at the very beginning of our careers. Keeping that in mind, there are a few resources I highly recommend investing in despite the cost. Every trial lawyer must own O'Connor's Texas Rules of Civil Trials. It costs \$106 and might be the best money you spend. It provides quick access to case cites, time tables, forms, and rules. Furthermore, judges regularly reference this book from the bench during hearings and trials. My personal rule – if I'm going to court for any reason, my O'Connor's goes with me.

Another vital book to purchase is the Texas Pattern Jury Charges, which costs \$125 for each set (there are 4 sets: Business, Consumer, Insurance & Employment; Family & Probate; General Negligence, Intentional Personal Torts & Workers' Compensation; and Malpractice, Premises & Products). You should use the pattern jury charges for almost everything, from drafting pleadings to preparing for a deposition. It will confirm that you have pled each and every element you must prove in your petition and will ensure that you don't forget to ask a witness a necessary element of your cause of action.

KNOWING YOUR LIMITS

While trial lawyers should focus on not making procedural and substantive mistakes, there are other mistakes that are neither procedural nor substantive that are worth mentioning. Probably the most important lesson for a trial lawyer to learn is how to effectively work with and benefit from others in the workplace. No matter what kind of law you practice or how many clerkships you had, nothing can prepare you for the ridiculously steep learning curve you face during your first few years of practice. I've seen many young lawyers make the mistake of alienating their coworkers and losing out on vital learning opportunities. I still go to other attorneys, both young and old, at my firm and at networking functions to ask for advice and feedback before and after a deposition, hearing, or trial. Talking through an issue with someone who isn't living it or asking someone with a fresh pair of eyes to review a document can be invaluable. Use your peers and offer the same in return.

It is imperative for trial lawyers to learn how to budget time. Oftentimes, there will be multiple different tasks on multiple cases requiring you to prioritize your work. Not having an effective system in which to organize your time will lead to missing deadlines and your work likely falling onto coworkers.

Remember to take criticism constructively from bosses, peers, and judges, even when it doesn't seem like constructive criticism. It is not a personal attack, but rather a tool designed to help

you become a better lawyer. No attorney will know how to do everything right the first time. Receiving feedback from those who have been practicing much longer will aid you to prepare properly for the next time.

Treat every person in your office with the same respect and deference you would treat the senior partner. Most support staff will have been at your firm for a number of years and will likely know more than you for the first few years. They can either be your best friend or your worst enemy. If you have formed relationships with co-workers, they will likely go out of their way to help you, especially if you have something due last minute or you get an assignment and you have no idea what to do. Burning bridges with those co-workers is a huge asset lost.

Your reputation will follow you in the legal community and if you establish a negative one, it will be difficult to shake regardless of whether you stay at the same firm your entire career, bounce around, or are a solo practitioner. You never know who knows who, especially in a community as small as the legal one. Remember to engage with those around you and stay humble.

State Court Timetables

Pretrial motions

Step	Action	Rule	Deadline
1.	Plaintiff files suit	TRCP 45-59, 78-82	Before limitations period expires
2.	Jury request by either party	TRCP 216- 220	at least 30 days before trial
3.	Hearing on TRO, if requested	TRCP 680	immediately
4.	Court grants TRO	TRCP 680	
5.	TRO expires	TRCP 680	by its own terms or 14 days after Court grants TRO
6.	Hearing on temporary injunction	TRCP 680, 681	as soon as possible; takes precedence
7.	Defendant is served	TRCP 99, 119	Before limitations period expires
8.	Return filed with Court	TRCP 105 107(g)	after limitations period expires
9.	Deadline for defendant's answer	TRCP 99(b)	by 10:00 a.m. on the next Monday following 20 days after limitations period expires
10.	Plaintiff files motion for no-answer default judgment	TRCP 107(h), 239	after deadline for defendant's answer and at least 10 days after return filed with court, but before defendant files answer
11.	Defendant files notice of removal to federal court	28 USC § 1446 (b)	30 days after defendant is served or receipt of a copy of the initial pleading. If suit is removable at the time it is filed, the defendant must file the notice or removal within 30 days after receiving either the summons, a copy of the complaint, or both. If a suit is not removable at the time it is initially filed, the suit must remain in state court unless a voluntary act by the plaintiff brings about a change that makes the suit removable
12.	Plaintiff files motion to remand to state court	28 USC §1447(c)	30 days after defendant files notice of removal to federal court
13.	Defendant files special appearance	TRCP 120 a(1)	by 10:00 a.m. on the next Monday following 20 days after limitations period expires and before any other pleadings below
14.	Defendant files motion to transfer venue to another county	TRCP 85, 86(1)	by 10:00 a.m. on the next Monday following 20 days after limitations period expires and before any other pleadings below
15.	Defendant files Code FNC motion to dismiss	CPRC §71.051(d)	by 10:00 a.m. on the next Monday following 20 days after limitations period expires plus 180 days
16.	Defendant files common-law FNC motion to dismiss; as soon as ground becomes apparent		but after defendant files motion to transfer venue and special appearance
17.	Defendant files motion to change venue because of local prejudice	TRCP 21 (b), 257	As soon as prejudice becomes known, but at least 3 days before hearings on pending motions in due order: special appearance, venue, FNC, abate, etc.

18.	Defendant files answer – general denial	TRCP 85, 92	by deadline for defendant’s answer but after special appearance and motion to transfer venue
19.	Plaintiff/Defendant files special exceptions	TRCP 91,	at or after defendant files answer- general denial, but must be ruled on before trial
20.	Defendant files motion to dismiss a baseless cause of action	TRCP 91 a.3(a)	before limitations expires plus 60 days
21.	Plaintiff/Defendant files motion to abate	TRCP 21(b), 85	at or after defendant files answer – general denial and at least 3 days before hearings on pending motions in due order: special appearance, venue, FNC, abate, etc. but must be ruled on before trial
22.	Defendant files plea to the jurisdiction	TRCP 85	as soon as ground becomes known
23.	Objection to assigned judge	GOVT §174.053(c)	before first hearing at which assigned judge is to preside or at least 7 days after receiving notice of assignment
24.	Motion to disqualify Judge	Tex. Const. art. 5, §11; TRCP 18a(b)(2), 18b(a)	as soon as practicable after party learns of reason for disqualification
25.	Motion to recuse a Judge	TRCP 18a(b)(1), 18 b(b)	at least 10 days before date set for hearing or trial. In limited circumstances, the party may file a motion to recuse after the tenth day before the date set for a hearing or trial
26.	Plaintiff/Defendant files and serves MSJ	TRCP 166a(c), (i)	if traditional MSJ after defendant is served and 21 days before SJ hearing. If no-evidence MSJ, after adequate time for discovery and 21 days before SJ hearing
27.	Hearing on pending motions in due order: special appearance, venue, FNC, abate, etc.	CPRC §71.051(d); TRCP 84, 87(1), 120a(2)	30 days before trial
28.	Notice of trial setting in an expedited action under TRCP 169, any party can ask the court to set a trial date what is within 90 days after the discovery period ends	TRCP 245	45 days before trial
29.	Motion in Limine		before voir dire
30.	Plaintiff files nonsuit	TRCP 162	before plaintiff rests its case
31.	Offer of proof	TRE 103(b)	before jury is charged
32.	Trial	TRCP 247, 262-265	date set by Court

Motion for Summary Judgment

Step	Action	Rule	Deadline
1.	Plaintiff files suit	TRCP 45-59, 78-82	Before limitations period expires
2.	Defendant is served	TRCP 99, 119	before limitations period expires
3.	Deadline for defendant's answer	TRCP 99(b)	by 10:00 a.m. on the next Monday following 20 days after defendant is served
4.	Defendant files answer	TRCP 83-98	at or before deadline for defendant's answer
5.	Movant files MSJ	TRCP 166a (a)-(c), (i)	At least 21 days before hearing on MSJ and, if under TRCP 166a(i), after adequate time for discovery. Depending on the type of service, the movant may need to file and serve the motion and notice of hearing more than 21 days before the hearing
6.	Movant serves notice of date of SJ hearing	TRCP 166a(c)	at or after movant files MSJ and at least 21 days before hearing on MSJ. Depending on the type of service, the movant may need to file and serve the motion and notice of hearing more than 21 days before the hearing
7.	If traditional SJ, movant files evidence to support MSJ	TRCP 166a(c), (d)	at time movant files MSJ and at least 21 days before hearing on MSJ
8.	Nonmovant files response and objections to MSJ	TRCP 166a(c), (i)	7 days before hearing on MSJ
9.	Nonmovant files evidence to support response to MSJ	TRCP 166a(c), (d), (i)	7 days before hearing on MSJ
10.	Nonmovant files affidavit and motion for continuance	TRCP 166a(g)	as soon as possible but before hearing on MSJ
11.	Nonmovant files special exceptions to challenge vague or unclear MSJ,	TRCP 166a(c)	7 days before hearing on MSJ
12.	Nonmovant files amended pleading (petition or answer) adding new claims or defenses	TRCP 63	7 days before hearing on MSJ unless leave of Court obtained
13.	Movant files special exceptions to challenge vague or unclear response to MSJ,	TRCP 90,91	3 days before hearing on MSJ
14.	Order on special exceptions signed		at or before hearing on MSJ
15.	Hearing on MSJ	TRCP 166a(c), (i)	at least 21 days after movant serves notice of date of SJ hearing
16.	MNT filed	TRCP 329b	SJ signed plus 30 days
17.	MNT overruled	TRCP 329b(c)	SJ signed plus 75 days by operation of law, or earlier by written order
18.	Judgment becomes final and court loses plenary power	TRCP 329(d), (e)	SJ signed or MNT overruled plus 30 days

Discovery schedule for level 1

Step	Action	Rule	Deadline
1.	Plaintiff files suit	TRCP 45-59, 78-82	Before limitations period expires
2.	Discovery period begins	TRCP 190.2(b)(1)	before limitations expires
3.	Defendant is served	TRCP 99, 119	before limitations period expires
4.	Deadline for defendant's answer	TRCP 99(b)	by 10:00 a.m. on the next Monday following 20 days after defendant is served
5.	Plaintiff serves discovery requests on defendant	TRCP 194.1, 196.1(a), 196.7(a), 197.1, 198.1	No later than 30 days before discovery period ends
6.	Defendant's deadline to respond or object to plaintiff's discovery requests	TRCP 21a(b), (c), 193.2(a), 194.3, 196.2(a), 196.7(c) (1), 197.2(a), 198.2(a)	If request is served before defendant's answer, 50-53 days after service, depending on type of service. If request is served after defendant's answer, 30-33 days after service, depending on type of service
7.	Defendant serves discovery requests on plaintiff	TRCP 194.1, 196.1(a), 196.7(a), 197.1, 198.1	No later than 30 days before discovery period ends
8.	Plaintiff's deadline to respond or object to defendant's discovery requests	TRCP 21a(b), (c), 193.2(a), 194.3, 196.2(a), 196.7(c) (1), 197.2(a), 198.2(a)	30-33 days after defendant serves requests, depending on type of service
9.	Plaintiff designates its testifying experts	TRCP 194.2(f), 195.2	at plaintiff's deadline to respond or object to defendant's discovery requests, when plaintiff responds to RFD about experts, or 90 days before trial
10.	Plaintiff furnishes its retained testifying expert's report	TRCP 194.02(f)(4), 195.5	plaintiff designates its testifying expert, or as ordered by the Court
11.	Plaintiff tenders its retained testifying expert for deposition	TRCP 195.3(a), 195.4 f	plaintiff furnished expert report; reasonably promptly after defendant designates its testifying experts
12.	Defendant designates its testifying experts	TRCP 194.2(f) 195.2	at Defendant's deadline to respond or object to plaintiff's discovery requests when defendant responds to RFD about experts, or 60 days before discovery period ends
13.	Defendant furnishes its retained testifying expert's report	TRCP 194.2(f) (4), 195.5	Defendant's deadline to respond or object to plaintiff's discovery requests, when defendant responds to RFD about experts, or 60 days before

			discovery period ends
14.	Defendant tenders its retained testifying expert for deposition	TRCP 195.3 (b), 195.4	Reasonable promptly after defendant designates its testifying experts and after plaintiff's experts testifying on the same subject have been deposed
15.	Deadline to supplement discovery responses	TRCP 193.5(b)	reasonably promptly after discovering need and no later than 30 days before trial
16.	Discovery period ends	TRCP 190.2(b) (1)	180 days after service of first discovery request served by plaintiff or defendant or whichever is earlier. This deadline for the end of the discovery period applies to cases filed on or after March 1, 2013
17.	Deadline for MSJ	TRCP 166a (c), (i)	If date not set by court: For traditional MSJ, after defendant's answer but 21 days before hearing on MSJ. For no-evidence MSJ, after adequate time for discovery but 21 days before hearing on MSJ
18.	Pretrial conference date	TRCP 166	set by Court
19.	Hearing on MSJ	TRCP 166a(c)	at least 21 days after deadline for MSJ
20.	Trial	TRCP 247, 262-265,	date set by Court

Discovery schedule for level 2

Step	Action	Rule	Deadline
1.	Plaintiff files suit	TRCP 45-59, 78-82	Before limitations period expires
2.	Discovery period begins	TRCP 190.2(b)(1)	When plaintiff files suit
3.	Defendant is served	TRCP 99, 119	before limitations period expires
4.	Deadline for defendant's answer	TRCP 99(b)	by 10:00 a.m. on the next Monday following 20 days after defendant is served
5.	Plaintiff serves discovery requests on defendant	TRCP 190.3(b) (1)	No later than 30 days before discovery period ends
6.	Defendant's deadline to respond or object to plaintiff's discovery requests	TRCP 21a(b), (c), 193.2(a), 194.3, 196.2(a), 196.7(c) (1), 197.2(a), 198.2(a)	If request is served before defendant's answer, 50-53 days after service, depending on type of service. If request is served after defendant's answer, 30-33 days after service, depending on type of service
7.	Beginning of 9-month limitation for discovery in non-Family Code cases	TRCP 190.3(b)(1)(B)	earlier date of first oral deposition or due date for first response to written discovery
8.	Defendant serves discovery requests on plaintiff	TRCP 190.3(b) (1)	No later than 30 days before discovery period ends
9.	Plaintiff's deadline to respond or object to defendant's discovery requests	TRCP 21a(b), (c), 193.2(a), 194.3, 196.2(a), 196.7(c) (1), 197.2(a), 198.2(a)	30-33 days after request is served, depending on type of service
10.	Plaintiff designates its testifying experts	TRCP 194.2(f), 195.2	at plaintiff's deadline to respond or object to defendant's discovery requests, when plaintiff responds to RFD about experts, or 90 days before trial
11.	Plaintiff furnishes its retained testifying expert's report	TRCP 194.02(f)(4), 195.5	plaintiff designates its testifying expert, or as ordered by the Court
12.	Plaintiff tenders its retained testifying expert for deposition	TRCP 195.3(a), 195.4 f	If plaintiff furnished expert report; reasonably promptly after defendant designates its testifying experts. If plaintiff did not furnish expert report, reasonably promptly after plaintiff designates its testifying experts
13.	Defendant designates its testifying experts	TRCP 194.2(f) 195.2	at Defendant's deadline to respond or object to plaintiff's discovery requests when defendant responds to RFD about experts, or 60 days before discovery period ends
14.	Defendant furnishes its	TRCP	defendant designates its testifying experts, or as

	retained testifying expert's report	194.2(f) (4), 195.5	ordered by the Court
15.	Defendant tenders its retained testifying expert for deposition	TRCP 195.3 (b), 195.4	Reasonable promptly after defendant designates its testifying experts and after plaintiff's experts testifying on the same subject have been deposed
16.	Deadline to supplement discovery responses	TRCP 193.5(b)	reasonably promptly after discovering need and no later than 30 days before trial
17.	Discovery period ends	TRCP 190.3(b) (1)	Family Code cases: 30 days before trial, other cases: earlier of 30 days before trial, or beginning of 9-month limitation for discovery in non –Family Code cases plus 9 months
18.	Deadline for MSJ	TRCP 166a (c), (i)	If date not set by court: For traditional MSJ, after defendant's answer but 21 days before hearing on MSJ. For no-evidence MSJ, after adequate time for discovery but 21 days before hearing on MSJ
19.	Pretrial conference	TRCP 166	Date set by Court
20.	Hearing on MSJ	TRCP 166a(c)	at least 21 days after deadline for MSJ
21.	Trial	TRCP 247, 262-265,	date set by Court

Federal Court Timetables

Pleadings and Pretrial motions

Step	Action	Rule	Deadline
1.	Plaintiff files complaint	FRCP 3	Before statute of limitations expires
2.	Jury demand by either party	FRCP 38(b)	Anytime after plaintiff files complaint, but no later than 14 days after service of last pleading directed to issue that is trial by jury
3.	Plaintiff notifies defendant of lawsuit and requests that defendant waive service.	FRCP 4 (d)(1)	Immediately after plaintiff files complaint
4.	Defendant returns waiver	FRCP 4 (d) (1) (F)	If defendant is in U.S., at least 30 days after plaintiff notices defendant of lawsuit; If defendant is outside U.S., at least 60 days after plaintiff notifies defendant of lawsuit
5.	Defendant fails to waive service	FRCP 4 (d) (1) (F) (2)	After plaintiff notifies defendant of lawsuit and requests the defendant waive service.
6.	Plaintiff presents summons to clerk	FRCP 4 (c)	As soon as possible after plaintiff files complaint; or after defendant fails to waive service
7.	Plaintiff furnishes summons and complaint to person who makes service	FRCP 4 (c)	After plaintiff presents summons to clerk
8.	Defendant is served with summons and complaint	FRCP 4(c)-(m)	If defendant is in U.S., from when complaint filed plus 120 days, if the plaintiff needs additional time to complete service, FRCP(m) it requires the court to extend the time if the plaintiff shows good cause and permits the court to extend the time even if the plaintiff does not show good cause. If defendant is outside U.S. from when complaint filed plus time limit provided in international agreement.
9.	Plaintiff files motion to collect expenses of service if defendant is in U.S. (if necessary)	FRCP 4 (d)(2)	After defendant is served with summons and complaint
10.	Plaintiff files proof of service and affidavit (if necessary) with court	FRCP 4(l)(1)	As soon as possible after defendant is served with summons and complaint
11.	Defendant files answer or FRCP 12(b) motion	FRCP 4 (d)(3), 12 (a)	Defendant is served with summons and complaint plus 21 days; If U.S. is a defendant and served plus 60 days; If defendant is in U.S. and waives service plus 60 days; If defendant outside U.S. and waives service plus 90 days; If FRCP 12(b) motion is filed, answer due 14 days after FRCP 12(b) motion is denied or postponed

12.	Plaintiff files request for entry of default (see “Request to clerk for Default Judgment,” or “Motion to Court for Default Judgment,”	FRCP 55(a)	Immediately after defendant files answer or FRCP 12(b) motion if defendant has not filed an answer or otherwise defended.
13.	Either party adds or drops a party	FRCP 21	No deadline
14.	Plaintiff amends proof of service	FRCP 4 (l) (3)	No deadline – at court’s discretion
15.	Motion to intervene	FRCP 24(a), (b)	On timely motion
16.	Motion to substitute party	FRCP 25(a) (i)	90 days after service of statement noting death of party
17.	Motion for leave to file supplemental pleadings	FRCP 15(d)	On reasonable notice
18.	Amend pleadings	FRCP 15 (a)(1), (a)(2)	Once as a matter of course (1) 21 days after serving the pleading or (2) if the pleading requires a responsive pleading, whichever is earlier: 21 days after service of the responsive pleading or a motion under FRCP 12 (b), (c) or (f); otherwise, with opposing party’s written consent or court’s leave
19.	Response to amended pleadings	FRCP 15(a) (3)	Whichever is later: within the time remaining to respond to original pleading or 14 days after service of amended pleading the court may order a deadline for the response that is different from the deadlines provided by the rule
20.	Movant files and serves MSJ	FRCP 56(n)	Anytime until 30 days after the close of all discovery the deadline for an MSJ may be different under court order or local rule
21.	Trial setting	FRCP 40	As set by local rules
22.	Motion in Limine	Determined by local rule	Filed before pretrial conference presented for ruling at pretrial conference but no later than voir dire
23.	Plaintiff’s voluntary dismissal	FRCP 41(a)	Anytime before defendant files answer or FRCP12 (b) motion OR movant files and serves MSJ, whichever is first; by stipulation signed by all parties who have appeared; or by court order
24.	Offer of proof	FRE 103	Immediately after evidence excluded
25.	Trial	FRCP 39	

Pretrial Disclosures & Conferences

Step	Action	Rule	Deadline
1.	Plaintiff files complaint	FRCP 3	Before statute of limitations expires
2.	Defendant is served with summons and complaint, or if waiver of service is requested, notice of commencement of suit and request for waiver of service	FRCP 4(c) – (m)	If defendant is in U.S. before statute of limitation expires plus 120 days; If the plaintiff needs additional time complete service of the complaint and summons on a defendant that is in the U.S. FRCP 4(m) requires the Court to extend the time if the plaintiff shows good cause and permits the court to extend the time even if the plaintiff does not show good cause. If defendant is outside the U.S. before statute of limitations expires plus time limit provided in international agreement
3.	Defendant files answer or FRCP 12(b) motion	FRCP 4 (d) (3), 12 (a)	21 days after defendant is served with summons and complaint, or if waiver of service is requested, 21 days after notice of commencement of suit and request for waiver of service; If the U.S. is a defendant, 60 days after defendant is served with summons and complaint, or if waiver of service is requested, 60 days after notice of commencement of suit and request for waiver of service; If the defendant is in the U.S. and waives service, 60 days after defendant is served with summons and complaint, or if waiver of service is requested, 60 days after notice of commencement of suit and request for waiver of service; If the defendant is outside the U.S. and waives service, 90 days after defendant is served with summons and complaint, or if waiver of service is requested, 90 days after notice of commencement of suit and request for waiver of service; If FRCP 12(b) motion is filed, answer due 14 days after FRCP 12(b) motion is denied or postponed
4.	Parties hold discovery conference	FRCP 26(f)(1)	As soon as practical after defendant files answer or FRCP 12(b) motion, but no later than 21 days before court issues scheduling order. This deadline may be shortened by local rule.
5.	Parties file discovery plan	FRCP 26(f)(2)	Parties hold discovery conference plus 14 days
6.	Parties make initial disclosures	FRCP 26(a)(1)(c)	Parties hold discovery conference plus 14 days, or by court order or parties' stipulation
7.	Court issues scheduling order	FRCP 16(b) (2)	As soon as practical after parties file discovery plan, but no later than when defendant was served plus 120 days or defendant answered plus 90 days, whichever is earlier
8.	Court conducts pretrial conference and issues pretrial	FRP 16(c), (d)	Anytime after court issues scheduling order

	order		
9.	Parties make expert disclosures	FRCP 26(a)(2)(D)	<i>Experts:</i> As set by Court order or parties' stipulation, or no later than 90 days before trial. <i>Rebuttal experts:</i> As set by Court order or parties' stipulation, or no later than 30 days after other party's disclosure on same subject matter
10.	Parties make final pretrial disclosures	FRCP 26(a)(3)(B)	As set by court order, or no later than 30 days before trial.
11.	Parties make objections to other party's deposition designation and exhibit lists	FRCP 26(a)(3)(B)	Parties make final pretrial disclosures Plus 14 days, or by court order
12.	Court conducts final pretrial conference	FRCP 16€	As close to trial as is reasonable
13.	Trial	FRCP 39	

Motion to Court for Default Judgment

Step	Action	Rule	Deadline
1.	Plaintiff files complaint	FRCP 3	Before statute of limitations expires
2.	Defendant is served with summons and complaint, or if waiver of service is requested, notice of commencement of suit and request for waiver of service	FRCP 4(c) – (m)	If defendant is in U.S. before statute of limitation expires plus 120 days; If the plaintiff needs additional time com complete service of the complaint and summons on a defendant that is in the U.S. FRCP 4(m) requires the Court to extend the time if the plaintiff shows good cause and permits the court to extend the time even if the plaintiff does not show good cause. If defendant is outside the U.S. before statute of limitations expires plus time limit provided in international agreement
3.	Defendant defaults	FRCP 4 (d) (3), 12 (a)	After defendant is served plus 21 days; If U.S. is a defendant, after defendant is served plus 60 days; If U.S. is a defendant waived service and defendant is in U.S. after defendant is served plus 60 days; If defendant waived service and defendant is outside U.S., after defendant is served plus 90 days.
4.	Plaintiff files request for entry of default with clerk	FRCP 55 (a)	After defendant defaults
5.	Clerk enters default	FRCP 55 (a)	After plaintiff files request for entry of default with clerk
6.	Defendant files motion to set aside entry of default	FRCP 55 (c)	After clerk enters default
7.	Plaintiff files motion for default judgment with court	FRCP 55 (b) (2)	After clerk enters default
8.	If defendant has not appeared, court enters default judgment	FRCP 55 (b) (2)	After Plaintiff files motion for default judgment with court
9.	If defendant has appeared, notice of hearing is served on defendant	FRCP (b) (2)	After Plaintiff files motion for default judgment with court
10.	If defendant has appeared, a hearing is held	FRCP (b) (2)	When set, but a least 7 days after notice is served if defendant has appeared
11.	Court enters default judgment	FRCP(b)(2)	After a hearing if defendant has appeared
12.	Clerk enters default judgment	FRCP(b)(2)	After Court enters default judgment
13.	Defendant files motion to vacate default judgment	FRCP 60(b), (c) (1)	A motion based on FRCP 60(b) (1)-(3) must be made within a reasonable time after the court enters default, but no later than 1 year after the court enters default or 1 year after the date of the proceeding; A motion based on FRCP 60(b)(4)-(6) must be made within a reasonable time after the court enters default judgment
14.	Court denies motion to vacate		After defendant files a motion to vacate default judgment

Summary Judgment

Step	Action	Rule	Deadline
1.	Plaintiff files complaint	FRCP 3	Before statute of limitations expires
2.	Defendant is served with summons and complaint, or if waiver of service is requested, notice of commencement of suit and request for waiver of service	FRCP 4(c) – (m)	If defendant is in U.S. before statute of limitation expires plus 120 days; If the plaintiff needs additional time complete service of the complaint and summons on a defendant that is in the U.S. FRCP 4(m) requires the Court to extend the time if the plaintiff shows good cause and permits the court to extend the time even if the plaintiff does not show good cause. If defendant is outside the U.S. before statute of limitations expires plus time limit provided in international agreement
3.	Defendant files answer or FRCP 12(b) motion	FRCP 4 (d) (3), 12 (a)	21 days after defendant is served with summons and complaint, or if waiver of service is requested, 21 days after notice of commencement of suit and request for waiver of service; If the U.S. is a defendant, 60 days after defendant is served with summons and complaint, or if waiver of service is requested, 60 days after notice of commencement of suit and request for waiver of service; If the defendant is in the U.S. and waives service, 60 days after defendant is served with summons and complaint, or if waiver of service is requested, 60 days after notice of commencement of suit and request for waiver of service; If the defendant is outside the U.S. and waives service, 90 days after defendant is served with summons and complaint, or if waiver of service is requested, 90 days after notice of commencement of suit and request for waiver of service; If FRCP 12(b) motion is filed, answer due 14 days after FRCP 12(b) motion is denied or postponed
4.	Movant files and serves MSJ	FRCP 56(b)	Anytime until 30 days after the close of discovery. The deadline for a motion for summary judgment may be different under court order or local rule.
5.	Nonmovant files motion for continuance requesting time to obtain affidavits or conduct discovery.	FRCP 56 (d) (2)	As soon as possible, but before or with nonmovant's response to MSJ; check local rules
6.	Nonmovant files response to MSJ		Anytime until 30 days after the close of discovery. The deadline for a motion for summary judgment may be different under court order or local rule. Check local rules and court order for deadline to file response.
7.	Movant files reply to MSJ		Anytime until 30 days after the close of

	response		discovery. The deadline for a motion for summary judgment may be different under court order or local rule. Check local rules and court order for deadline to file reply
8.	Hearing on MSJ. If either party wants an oral hearing, it should make a timely request in writing.	FRCP 6(c)	When set, but no earlier than 14 days after notion is served under FRCP 59, does not contain deadline for the response, but it should be filed within any limits set by local rules for responses
9.	Court signs SJ or order denying SJ	FRCP 54, 56(a)	As soon as practical after hearing on MSJ
10.	If MSJ granted and no additional claims remain, court may enter final judgment. If partial MSJ granted and additional claims remain, trial begins on additional claims, and final judgment signed	FRCP 54(b), 56(a)	As soon as practical after hearing on MSJ After trial of remaining issues
11.	If MSJ granted, clerk prepares and enter judgment	FRCP 54(b), 58, 79(a)(2)(c)	Promptly after court signs SJ or order denying SJ
12.	If SJ entered, party files MNT.	FRCP 59(b)	Promptly after court signs SJ or order denying SJ plus 28 days
13.	Nonmovant files opposing affidavits to MNT based on affidavits	FRCP (c)	Promptly after court signs SJ or order denying SJ plus 28 days, plus 14 days
14.	Response to MNT filed	FRCP 59 (c)	Check local rules for deadline to file response FRCP 50 does not contain a deadline for the response but it should be filed within any limits set by local rules for responses
15.	Reply affidavits filed in support of MNT based on affidavits	FRCP 59(c)	No deadline – at court’s discretion
16.	Court denies MNT	FRCP 59	Promptly after court signs SJ or order denying SJ plus 28 days, plus 14 days Check local rules for deadline to file response FRCP 50 does not contain a deadline for the response but it should be filed within any limits set by local rules for responses No deadline – at court’s discretion