TIME IS MONEY:
LESSONS LEARNED FROM ROCKET DOCKETS
TO IMPROVE EFFICIENCY IN LITIGATION

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I. Introduction

No courts and no dockets are identical. Each court faces its own mix of cases that it must
manage and adjudicate with the resources available to it.

Amidst the differences, however, there are some courts that have come to be known for
accelerating the time from initial filing to final adjudication before or at trial. They are
sometimes called, “rocket dockets.” By reducing the time of litigation, those courts often reduce
the cost of the litigation, to both the litigants and the court itself.

The purpose of this article is to identify various techniques that so-called “rocket
dockets” employ to accelerate adjudication of cases and to initiate a discussion of whether and
how some of those techniques could be used by other courts. In doing so, there will be no
judging of any court – no pun intended.

II. What is a “Rocket Docket”?

There is no commonly accepted definition of a “rocket docket.” Each attorney may have
an opinion regarding whether the court in which he or she practices adjudicates cases in an
efficient manner, given all related circumstances. The fact remains, however, that, if you
suddenly find yourself representing a defendant in a true “rocket docket” court, you typically
will not have any doubt or uncertainty about the nature of the court in which you are litigating.

For purposes of this article, the term “rocket docket” refers to a trial court in which the
median time for resolving civil cases and terminating them on the court’s active docket is 18
months or less.

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in the federal district courts for the District of Columbia and the Eastern District of Virginia, the latter of
which is often called a “rocket docket.” He is a past president of the bar chapter for the Alexandria
division of that court and served as the editor of its Rocket Docket News for several years.
III. Identifying “Rocket Dockets” By Data

Identifying courts that qualify as “rocket dockets” is a data driven exercise.

With respect to federal district courts, the Administrative Office of the U.S. Courts closely tracks, and reports on, the data federal district courts are required to submit regarding the time between initial filing and final adjudication of civil cases. The website for the Administrative Office of the U.S. Courts is https://www.uscourts.gov/about-federal-courts/judicial-administration. The information is reported on a quarterly basis and is very detailed.

The National Center for State Courts provides an important service in collecting information regarding the administration and efficiency of state court trial systems. The NCSC website is https://www.ncsc.org.

The NCSC collects and reports information regarding aspirational standards various states have adopted to encourage the expeditious resolution of civil cases. See National Center for State Courts, Case Processing Time Standards, https://www.ncsc.org/cpts (last visited Jan. 11, 2019). The following are examples of such time standards:

- California Rules of Court, 2.2 (Jan. 1, 2019) - Civil trial court cases disposition goals in California State courts average 24 months of filing.

- Florida Rules of Judicial Administration 2.250 - Florida time standards for trial and appellate courts for civil jury cases are 18 months from filing to final disposition.

- Texas Supreme Court Administrative Rule 6.1 – The time standard for civil jury cases from notice of appearance to disposition is 18 months

The NCSC also provides guidance to state trial court systems regarding how to facilitate the adjudication of civil cases. See National Center for State Courts, High Performance Court Guidelines, https://www.ncsc.org/Information-and-Resources/High-Performance-Courts.aspx (last visited Jan. 11, 2019).

While most states do harvest and report data regarding the time for adjudicating civil cases, (see, e.g., California State Courts, 2017 Court Statistics Report Statewide Caseloads Trends 2006-2007 Through 2015-2016, (2017) http://www.courts.ca.gov/documents/2017-Court-Statistics-Report.pdf), the reality is that there is not a collective, reliable pool of data that enables an apples-to-apples comparison regarding the relative efficiency (or inefficiency) of state trial court systems. However, every attorney who litigates civil cases in state trial courts surely has a clear understanding of, and most likely an opinion on, how the courts in which they practice are timely managing their dockets.
IV. Examples of “Rocket Dockets”: U.S. District Courts

Based on the most recent available data from the Administrative Office of the U.S. Courts, there are some very clear candidates for the title of “rocket dockets,” as well as examples of courts that will not be assuming that title any time soon. See Administrative Office of the U.S. Courts, Table C-5, Median Time Intervals From Filing to Disposition By Trial of Civil Cases Terminated During the 12-Month Period Ending (June 30, 2018) http://www.uscourts.gov/statistics/table/c-5/statistical-tables-federal-judiciary/2018/06/30

The federal district courts that had the fastest median time intervals from initial case filing to disposition by trial (for civil cases that terminated during the 12-month period ending June 30, 2018) included the following:

- Eastern District of Virginia (13.0 months)
- Eastern District of Pennsylvania (14.7 months)
- Southern District of Florida (15.2 months)
- Western District of Oklahoma (16.5 months)

The federal district courts that had the longest intervals for the reporting period were the following:

- District of Columbia (52.1 months)
- Northern District of Indiana (41.3 months)
- Northern District of New York (39.0 months)
- District of Utah (38.6 months)

VI. Why Does Time Matter?

In a 1970 speech to the American Bar Association, Chief Justice of the U.S. Supreme Court, Warren E. Berger, asserted the following:

A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law – in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets.


The first of Chief Justice Berger’s concerns – that confidence in our judicial system could be destroyed by inefficiency and delay – is an echo of the ancient maxim, “justice delayed is justice denied” (which seems to have many biblical, political and legal proponents throughout history). Maxims become maxims for a good reason: they express universally held and tested truths in the law.

When it comes to the adjudication of civil cases in our court systems, time is a critical feature, and too much time amounting to delay is an insidious factor undermining the goal of dispensing fair and appropriate justice.

Each side in a civil case inevitably makes its own assessment of how time will affect their strategic and tactical interests. Even though there can be individual and business interests on both sides of a civil case, many of the basic time-related factors for plaintiffs are shared. For example, a plaintiff who is seeking to recover money from a defendant must consider the time value of money; getting a payment within one year can be significantly better than a payment several years later. Moreover, the more time that passes, the greater the potential risk of the defendant encountering financial difficulties that limit its ability to satisfy a judgment and to avoid bankruptcy. Moreover, the longer a case goes on, the greater the possibility that insurance coverage could be exhausted.

The following is a chart listing the pros and cons of various time-related factors that could affect a plaintiff’s strategic and tactical analysis:
<table>
<thead>
<tr>
<th>Time-related factors</th>
<th>Less Time</th>
<th>More Time</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Time Value of Money</strong></td>
<td>Accelerates potential recovery</td>
<td>Delays potential recovery</td>
</tr>
<tr>
<td><strong>Investment in the Case</strong></td>
<td>Limits investment</td>
<td>Increases investment</td>
</tr>
<tr>
<td><strong>Risk from Non-Recovery</strong></td>
<td>Lessens risk</td>
<td>Increases risk</td>
</tr>
<tr>
<td><strong>Settlement Discussions and Possibility of Settlement</strong></td>
<td>Accelerates</td>
<td>Extends</td>
</tr>
<tr>
<td><strong>Plaintiff’s Exposure to Expensive and Intrusive Party and Non-Party Discovery</strong></td>
<td>Limits</td>
<td>Extends</td>
</tr>
<tr>
<td><strong>Defendant’s Exposure to Expensive and Intrusive Party and Non-Party Discovery</strong></td>
<td>Limits</td>
<td>Extends</td>
</tr>
<tr>
<td><strong>Defendant’s Perception of Risk</strong></td>
<td>Might limit</td>
<td>Might increase</td>
</tr>
<tr>
<td><strong>Risk for Unprepared Plaintiff</strong></td>
<td>Increases risk</td>
<td>Reduces risk</td>
</tr>
<tr>
<td><strong>Advantage for Prepared Plaintiff</strong></td>
<td>Increases advantage</td>
<td>Lessens advantage</td>
</tr>
</tbody>
</table>

Time-related factors also impact defendants. For example, a corporate defendant may have to record a contingent liability in its financial statements and book corresponding reserves; the longer the case goes on, the greater the impact on the corporate defendant’s finances. Additionally, a corporate defendant that has reporting obligations regarding litigation risks can be severely affected by an extended, multi-year case, including access to and the cost of financing. Moreover, as insurance policies face annual renewal, extended litigation could result in dramatic increases in premiums and potentially denial of renewals.

The following is a chart listing the pros and cons of various time-related factors that could affect a defendant (some of which are the same or similar as those for a plaintiff):
<table>
<thead>
<tr>
<th></th>
<th>Less Time</th>
<th>More Time</th>
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</thead>
<tbody>
<tr>
<td><strong>Time Value of Money</strong></td>
<td>Accelerates possible payment to plaintiff</td>
<td>Delays possible payment to plaintiff</td>
</tr>
<tr>
<td><strong>Cost of the Litigation</strong></td>
<td>Concentrates but ultimately limits cost</td>
<td>Extends but ultimately increases cost</td>
</tr>
<tr>
<td><strong>Budgeting and Reporting</strong></td>
<td>More predictable</td>
<td>Less predictable</td>
</tr>
<tr>
<td><strong>Impact on Financial Reporting,</strong></td>
<td>Shortens impact</td>
<td>Extends impact</td>
</tr>
<tr>
<td><strong>Including Booking of Reserves</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Insurance Issues,</strong></td>
<td>Lessens risk</td>
<td>Increases risk</td>
</tr>
<tr>
<td><strong>Including Coverage,</strong></td>
<td></td>
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<tr>
<td><strong>Renewal,</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>Premium Issues</strong></td>
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<td><strong>Settlement Discussions and</strong></td>
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<tr>
<td><strong>Possibility of Settlement</strong></td>
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<tr>
<td><strong>Plaintiff’s Exposure to Expensive</strong></td>
<td>Limits</td>
<td>Extends</td>
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<td><strong>and Intrusive Party and</strong></td>
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<tr>
<td><strong>Non-Party Discovery</strong></td>
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VII. What Factors Cause or Contribute to Extended Dockets?

Why are some courts able to resolve civil cases faster than others? There are many factors that affect a court’s ability to adjudicate civil cases efficiently and quickly. Some of those factors can be changed, others cannot. Here are some of the major impediments to the quick resolution of civil cases in various courts:

- Heavy criminal dockets
- Urban vs. rural jurisdictions, i.e., higher concentration of populations often yield crowded dockets
- Federal vs. state courts, i.e., limited vs. broad jurisdiction
- Legislature-mandated court rules and procedures (e.g., limiting viability of motions for summary judgment in certain jurisdictions)
Legislated expansion of jurisdiction or dockets (e.g., Congressional action to send all Guantanamo habeas cases to the DDC)

- Diverse dockets, including substantial domestic relations, personal injury and collection cases (e.g., high volume of immigration cases in the border states)
- Limited judicial resources, including lack of discovery or magistrate judges and extended judicial vacancies
- Non-assigned or rotating judge system, i.e., lack of judicial familiarity with cases
- Inadequate or ineffective commitment to ADR (compare selective use of ADR, where appropriateness of cases for ADR is assessed by court staff or judges, to mandated ADR regardless of appropriateness, where no pretrial occurs before a trip to Multi-Door ADR)
- High volume of Multi-District Litigation (MDL) and class action cases
- Parallel or related agency, criminal or Congressional proceedings which can slow some civil cases.
- Availability of interlocutory appeals before trial court resolution (e.g., New York and Pennsylvania)

Recognizing that some of those impediments will not be removed soon or at all, the question becomes whether there are some techniques rocket dockets employ that could be adapted to other court systems resulting in a marginal but important decrease in the amount of time necessary to adjudicated civil cases. Understanding what fuels a rocket docket is an important first step.

VIII. What Techniques Do Rocket Dockets Employ?

Although specific details may vary from court to court, there are some basic attributes most of the rocket dockets share that contribute to their accelerated statistics:

- Active court oversight/participation

  Most of these courts are very proactive in structuring and enforcing deadlines and adherence to procedures. Much of the oversight and participation is imbedded in local rules, standing orders and consistent procedures. Whatever latitude attorneys are given in preparing and trying their own cases, everything is done within a very clear structure.

- Creating a culture of proactive case management (including chief judges’ or court administrators’ internal rigor in overseeing individual judges’ timeliness)

Regardless of what autonomy each individual judge may have to run his or her own docket, most of these courts have a very active oversight system and court leadership that monitors and enforces the court’s adherence to deadlines. Court leadership creates a common culture among the judges on the bench for efficient and timely adjudication. The Clerk’s Office is also critical to these courts achieving their time goals.
• Transparency and access to court data, with monitoring and comparative analysis

In these courts, it is possible to step back and “see the forest for the trees” because there is a high degree of transparency and access to court data that allows for a clear understanding of and adherence to deadlines across the various constituencies in the courthouse.

• Individual case assignment system

The most effective rocket dockets have an individual case assignment system rather than a general rotation system, which allows each judge to manage and monitor the cases on his or her docket across the full lifecycle of the cases. In those courts with magistrate or discovery judges, the additional assignment of that judge to the case enhances case efficiency.

• Early and automatic scheduling orders

Using some sort of early triggering event (e.g., first appearance by any defendant, filing of first responsive pleading or motion by any defendant), the assigned judge *sua sponte* issues an initial scheduling order that opens discovery and establishes major, immutable case milestones such as the discovery cut-off deadline and date for final pretrial conference.

• Early and automatic commencement of discovery

Rocket dockets typically permit the early commencement of discovery, notwithstanding disclosure proceedings, scheduling conferences and preliminary motions practice. The period for discovery is sufficient but not abundant under the theory that parties will not make efficient choices if given unlimited time for discovery.

• Efficient and compact motions practice

Motions practice in rocket dockets often have one or more of the following elements: limited briefing period; page limits on briefs; mandatory noticing for hearing (subject to cancellation by the judge); regular, weekly hearing dockets; prompt rulings (at or shortly after hearing); court-issued orders; discouraged discovery motions.

• Disfavoring extensions (or extensions that affect major case milestones)

By local rule, scheduling order and/or accepted practice, extensions and continuances are strongly disfavored and require court order. If granted, they cannot change major case milestones such as the final pretrial conference and trial date.

• Mandatory/parallel ADR procedures that do not affect major case milestones
Rocket dockets aggressively use ADR procedures, including using other judges in the courthouse. ADR procedures occur parallel to other case activities and will not change or delay major case milestones such as the final pretrial conference and trial date.

- Fixed final pretrial conference

The final pretrial conference is schedule early in the case and will require designation of trial exhibits and witnesses. Trial date is set at final pretrial conference.

- Prompt and reliable trial dates

With active reliance on ADR procedures and dispositive motions, trial docket can be effectively and efficiently managed. Trial dates are set at the final pretrial conference and will occur shortly thereafter (e.g., within 4-8 weeks of final pretrial conference).

IX. What Techniques Can Realistically Work in Non-Rocket Docket Courts?

Given the various factors listed in Section VII above, it may not be possible for a non-rocket docket court to adopt all or even many of the practices and procedures used in rocket dockets. But the overwhelming need to reduce delay and costs in civil litigation should provide the necessary incentives to adopt changes and improvements where it would be feasible to do so. Without endeavoring here to specify every rule or procedure that might or might not be suitable to adopt in a particular court, it seems that the following broad areas should be the focus of every court system seeking to reduce the time between the filing and adjudication of a civil case:

- Individual case assignment rather than general rotation system
- Specialty dockets, e.g., business courts, complex civil litigation dockets, case tracks
- Tailored local rules and standing orders
- Transparency and accountability systems
- Streamlined motions practice (e.g., time and length of briefs, regular motions day, prompt decision-making)
- Revised discovery process (e.g., automatic/early commencement, parallel to motions practice, accelerated dispute resolutions, time limitations, strict guidelines)
- Prompt issuance of scheduling orders with standard structure and timeline
- Meaningful summary judgment procedures
- Immutable final pretrial conferences
- Prompt and fixed trial dates
- Limitations on extensions and continuances

X. Role of Bar Organizations in Creating and Contributing to a Culture of Efficient and Timely Court Dockets.

Virtually every rocket docket is facilitated by practitioners who are enthusiastic adherents to the culture of efficiency and civility essential to the prompt and efficient adjudication of civil cases. This is so because the attorneys who practice in those courts have seen the benefits that
have accrued to their clients from the clarity and predictability of a quick docket. In some courts, the relationship between the court and the bar boarders on a partnership. Simply put, the importance of local bar organizations in enabling a court to achieve greater efficiency and reduce delay cannot be overstated. For that reason, courts looking to effect positive change ought to consider the following bar-related activities that are often employed in rocket dockets:

- Establishing bar organizations and groups focused on court efficiency issues
- Active coordination with established bar organizations and groups
- Involving bar groups in drafting, commenting on and implementing local rules and standard orders
- Holding annual bench-bar dialogues
- Holding annual bar admission, orientation and training sessions for new lawyers
- Frequent and consistent communication of court culture
- Holding frequent and regular CLE programs on court procedures and issues
- Developing enhanced systems for fostering civility among members of the bar

XI. Techniques for Succeeding in Rocket Dockets: Survival Tips

If you find yourself litigating in a rocket docket, there are certain basic techniques and strategies that will increase the chances for your client and you to succeed:

- Set, monitor and update client expectations.

Clients and their in-house counsel dislike surprises regarding the events, risks or costs of litigation. Thus, in every case, it is critically important to set, monitor and update client expectations to minimize surprises. Because rocket dockets proceed so quickly, the occurrence of litigation developments, the changes in the risk quotient and the accumulation of costs typically are accelerated and compacted. While managing client expectations in that environment can be challenging, rocket dockets tend to be more predictable, including with respect to the sequence, extent and duration of events in the litigation. Accordingly, it is critical in rocket docket litigation to set and communicate clear expectations up front; carefully monitor how subsequent events may alter those expectations, particularly with respect to cost-benefit analyses; and proactively update previous expectations and estimates for the client as the case progresses.

- Whether plaintiff or defendant, be ready to serve early discovery requests as soon as discovery opens.

Failing to have written discovery requests ready to be served immediately when discovery opens will unnecessarily delay the development and assessment of your case and will place you at a strategic and tactical disadvantage against a prepared opponent. It is also important to send out subsequent rounds of written discovery as you continue to develop and revise your trial plan.

- Prioritize the discovery you need, not the discovery you simply like.
The limited discovery period in a rocket docket forces the parties to identify and prioritize the discovery they actually need in order to obtain the evidence necessary for their trial plan and proof roadmap. In this sense, rocket dockets create the greatest potential for cost savings because discovery is defined by necessity rather than imagination, which can often explode pre-trial costs for cases without significant time limitations on discovery.

- Know your case as soon as possible; conform discovery to your proof roadmap

Litigants in rocket dockets do not have the luxury of developing and massaging their trial plan or proof roadmap over time and with the hindsight of what discovery revealed. Developing the evidentiary needs and structure of your case is essential right from the beginning, and the discovery you seek must conform to your trial plan.

- Develop good working relationship with opposing counsel; the extension you refuse today is the one you will need tomorrow.

Rocket dockets, particularly successful ones, typically enjoy and foster a collegial bar, out of necessity if not idealism. There is no time to engage in gratuitous jousting over inconsequential disputes, and the courts have little time or patience for those sorts of disputes. The hard-charging attorney who has a history and practice of opposing extensions in other types of courts will find that the extension request he or she refuses today in a rocket docket will be the one he or she needs tomorrow. Cooperation and collegiality are not inconsistent with zealous advocacy, and the credibility earned from such cooperation and collegiality could pay dividends before the court.

- Don’t wait to retain and activate experts

Retaining and deploying experts early in the process is particularly critical in rocket dockets. Expert discovery often occurs during the discovery period itself, although some rocket dockets entertain scheduling modifications regarding depositions of experts. Regardless of such minor scheduling tweaks, the reality is fact and expert discovery typically proceed on parallel tracks in rocket dockets, so there is no time to waste in identifying experts, having them formulate their opinions and preparing any written reports.

- Schedule and plan early mock jury/focus groups to test trial themes, particularly in high stakes cases.

If you are going to be trying your case to a jury in a rocket docket, and particularly when the claims or issues are high stakes and warrant the use of mock juries and focus groups to test trial themes, you must have a plan, and undertake efforts, to conduct such processes as early in the case as possible. Whether you conduct certain discovery and how you elicit certain deposition testimony, including from non-parties, could be significantly affected by the results of such trial preparation techniques. Sometimes it will not be possible or productive to conduct such sessions during the discovery period, but there is often very limited time between the conclusion of discovery and the trial of the case in rocket dockets. If you think a mock jury or a focus group is essential to winning at trial, you need to plan ahead.
• Be ready to multi-task: staff, organize, and budget your case for parallel tracks of activity.

Most pretrial tasks in a rocket docket proceed simultaneously on parallel tracks. Proper staffing under those circumstances is essential. That does not mean every task or team is separate and discrete, but it does require very clear and deliberate staffing and task assignments, as well as careful, centralized and proactive case management. With work proceeding on parallel tracks, the costs of the litigation will be highly concentrated. While the burn rates might be high for the short run, the ultimate savings could be significant, and the client should be advised regarding both the short-term budget demands and the long-term added value.

XII. Conclusion

To ensure confidence and trust in our judicial system, and to provide affordable access to our courts, every court system should be continuously focused on how to increase its efficiency and reduce the time within which civil cases are adjudicated. While there may be immutable factors preventing certain courts from becoming “rocket dockets,” it is quite possible to selectively deploy those processes from rocket dockets that are adaptable and will be successful in reducing delay and rendering fair and efficient justice.