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Federated states

Avoiding traps: Central differences between federal and California state courts – and why federal may be your more strategic choice



Cooper

By Miles B. Cooper

The lawyer evaluated the fact pattern, considering venue potential. This case was likely headed to federal court, with complete diversity of citizenship. While a local defendant could be added to defeat diversity, the question remained: Was the case better served in federal or state court?

Grandeur

Knuckle-dragging personal-injury lawyers can go their entire career without visiting federal court if that's their preference. This means many of us have limited federal court experience. Federal filings mean different rules, different expectations, and recognizing that mistakes can have dramatic consequences. Federal judges have no qualms imposing heavy sanctions when lawyers screw around. The top-level evaluation when considering where to file is two-fold. First: Can one's team work prospectively and follow gnats' ass rules better than the potential defense team? Procrastinators without good team guardrails get crushed by federal procedure. Second: Will the federal jury pool's broader geographic draw and federal grandeur outweigh crushingly limited voir dire and unanimous jury verdicts?

Seeing around corners

Federal rules require thinking a long way down the road. This can catch state practitioners flat-footed. Staying ahead requires reading (or re-reading) the federal and local rules as well as asking the judge's clerk for any department rules and judicial preferences. Local rules typically have a no brown M&Ms rule. Say what?

For those not aware, Van Halen's rider on his concert contracts included a clause that required M&Ms - *but absolutely no brown ones*. Long taken for being high maintenance, it served as a safety valve. Brown M&Ms meant the rider had not been followed in detail and everything – wiring, sound, safety – needed confirmation by the band's team. For federal court, the local rule equivalent is frequently an unusual font type and size, frequently a serif font like Times New Roman in 13-point size. Yes, the federal bench's older average age (and eyes) might prefer a larger font. And yes, filings that don't meet the standard get rejected.

Courts further require joint case management and scheduling conference statements. This means working with one's adversary, and by necessity means working on a draft well before the deadline. While this sounds challenging, it initiates dialogue and delineates agreements and disagreements. A scheduling conference sets the case's tone and timeline. Calendaring the scheduling conference order's deadlines, with appropriate 30-, 60-, and 90-day ticklers, is essential. Unlike state court, the due dates do not all stem from a trial date. This procedural difference is a trap for the unwary. Specifically providing the order to the team member responsible for calendaring, and then verifying the dates made it to the calendar, helps prevent errors.

Rule 26 mandatory initial disclosures are a blessing and a burden. Everyone is, in essence, required to disclose all witnesses and documents that impact the case. As California practitioners adapt to the 2024 state court mandatory initial disclosure requirements, this difference will become less noticeable. Whether in state or federal court, the disclosure requirement is akin to answering all potential discovery in a narrow window. Building in time to answer meaningfully is important. Why meaningfully? Because unlike most state court judges, federal judges impose serious sanctions when they think lawyers or clients are playing games. These include monetary sanctions, issue sanctions, or both. Rule 26 expert disclosures and expert reports are also far more detailed than state court disclosure requirements. All the expert's opinions must be included in the expert's report, and the report must be timely disclosed. Leave lots of lead time to work with experts to meet this provision.

Presence

Most federal courtrooms seem to have been built to humble those entering them before the federal judiciary's power and scope. Thick carpets. Massive spaces. Contrast this to state courts, which can vary from impressive to rented space in a strip mall. (Sonoma practitioners of a certain generation, this one's for you.) Federal courts allow that moment in argument where one can talk about how important the case is, how big the damages are, because we wouldn't be here (gesture and gaze around the imposing space) unless it was significant.

With this grandeur comes exceedingly limited lawyer voir dire. While there are exceptions, judges tend to keep this tightly constrained. That jury pool will come from a broader area, which can be beneficial. Mono County or USDC Eastern District in Fresno? Fresno may be better. Even with that unanimous verdict. Because that's the final delineator. Unlike superior court's 3/4 requirement, usually 9 out of 12, federal courts require unanimous verdicts. And that can be a tough standard to meet.

Outro

Back to our lawyer. After a detailed discussion with the team about pros and cons, it was decided. The carrier kept matters in house. The in-house counsel was typically overworked, had scant team support, and no measurable federal experience. The rural county venue was also more challenging than the district court jury pool. Time for a brief federal rules refresher. This knuckle-dragger's team could think ahead and use the tilted playing field to their advantage.

Miles B. Cooper is a partner at Coopers LLP, *where they help the seriously injured, people grieving the loss of loved ones, preventable disaster victims, and all bicyclists. Miles also consults on trial matters and associates in as trial counsel. He has served as lead counsel, co-counsel, second seat, and schlepper over his career, and is an American Board of Trial Advocates member.*

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