

## Self-Serving Deadlines

By Audrey Priolo, Litigation Procedure Attorney

It should be no surprise to any federal litigator that FRCP 6(d) gives parties an extra three days to act after a triggering document is served by mail. The three-day FRCP mail service offset is widely known and standard practice across the country. Most law firms simply add three days to deadlines and don't give the service offset much thought. On the surface, this seems like a calculation I could confidently delegate to my 9-year-old daughter. However, there are instances where applying a 3-day service offset moves from a straightforward black and white issue to a murky shade of grey.

For example, look at FRCP Rule 14(a)(1):

A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

FRCP Rule 14(a)(1) calculates the third-party plaintiff's deadline to obtain leave of court from the same third-party plaintiff's service of its original answer. Accordingly, if the third-party plaintiff mails its original answer, some may argue that the third-party plaintiff may increase its time to file a third-party complaint by three days. However, logic and careful reading of FRCP 6(d), reveal the service offset does not apply where the triggering document is served by the same party affected by the deadline. FRCP 6(d) says:

When a party may or must act within a specified time **after being served** and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a). (Emphasis added.)

FRCP 6(d) does not provide any extension after serving a document, but only after being served with a document. This is just another example of the complexity of legal time calculations. Many deadlines seem simple. However, most, if not all, deadlines require a deeper look. Without this advanced examination, attorneys are exposed the risk of missing deadlines and the resulting undesirable consequences.

*Audrey L. Priolo is a licensed California attorney with over 13 years of litigation and trial experience, who now works at American LegalNet as a Litigation Procedure Attorney. Questions may be directed to [apriolo@alncorp.com](mailto:apriolo@alncorp.com)*