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Briefly: Deadlines or guidelines?

By Eric Magnuson and Eric Boettcher

Lawyers live in a world of rules and statutes. Deadlines imposed by those provisions are ubiquitous in litigation and repeatedly spring up during the lifespan of a case, starting with the statute of limitations for asserting claims and culminating with the deadline for seeking appellate relief from a judgment.

They manifest themselves in numerous forms. Sometimes they work in conjunction with other deadlines. For example, if a party moves for a new trial by the deadline provided in Rule 59, the deadline to appeal the trial that is the subject of the motion doesn't start until the court rules on the motion. Minn. R. Civ. App. P. 104.1, subd. 2.; Fed. R. App. P. 4(a)(4)(A). There are also, of course, rules about how to calculate the specific date on which a deadline falls. See Minn. R. Civ. P. 6.01; Minn. R. Civ. App. P. 126.01, Fed. R. Civ. P. 6; Fed. R. App. P. 26. Myriad other deadlines are found in the rules of each court, and in countless statutes.

Lawyers must be constantly vigilant of deadlines—a lawyer's failure to comply with a deadline can mean not only the end of the client's case, but also a malpractice claim and ethical sanctions against the lawyer. See In re Charges of Unprofessional Conduct in Panel File No. 42735, 924 N.W.2d 266 (Minn. 2019) (assessing whether attorney violated rules of professional conduct by filing a summary judgment motion six days late). Although deadlines may be a source of stress (or worse) for many lawyers, they are critical to the functioning of the legal system. Deadlines prompt a plaintiff to file suit before relevant evidence disappears or becomes unreliable, to move the case along, and provide finality after the court enters its judgment. See Catherine T. Struve, Time and Courts: What Deadlines and Their Treatment Tell Us About the Litigation System, 59 DePaul L. Rev. 601, 621 (2010).

Some deadlines are truly absolute, but many have some flexibility. The fundamental dichotomy drawn by courts is between deadlines that are "jurisdictional requirements" and those that are merely "claim-processing rules." Jurisdiction defines a court's power "to hear and determine a particular class of actions and the particular questions presented," and "generally depends on the scope of the constitutional and statutory grant of authority to the court." McCullough & Sons, Inc. v. City of Vadnais Heights, 883 N.W.2d 580, 585 (Minn. 2016) (quotation marks omitted). If a party fails to meet a jurisdictional deadline, a court is powerless to ignore or ameliorate the consequences. Claim-processing rules, on the other hand, "promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." Hamer v. Neighborhood Hous. Servs. of Chi., 138 S. Ct. 13, 17 (2017) (quotation marks omitted). Because claim-processing deadlines are simply "procedural tools," they may be waived or forfeited, and non-compliance with them does not "divest the district court of jurisdiction." McCullough, 883 N.W. at 588-90 (quotation marks omitted).

Most deadlines are non-jurisdictional and have at least some flexibility. For example, in examining Minnesota Rule of Civil Procedure 59.03's requirement that a hearing on a motion for new trial be held within 60 days of the service of notice of an order for judgment, in Rubey v. Vannett, 714 N.W.2d 417 (Minn. 2006), the Minnesota Supreme Court held that the 60-day deadline was a non-jurisdictional claim-processing rule because prior decisions had held that non-compliance with that deadline could be waived or excused. Id. at 422. Likewise, statutes of limitation are typically non-jurisdictional. See Carlton v. State, 816 N.W.2d 590, 600 (Minn. 2012) ("Generally, statutes of limitations, like any affirmative defense, may be waived by a defendant who fails to assert it.") (quotation marks omitted). Where, however, a claim is brought under a "statutorily-created cause[] of action that establish[es] jurisdictional prerequisites," statutes of limitation are jurisdictional, as "compliance with the time period is a condition of the statutory right." Id. at 601.

Appellate deadlines are also mostly non-jurisdictional. As we have discussed previously, briefing deadlines in Minnesota appellate courts can be extended on motion if there is "good cause," Minn. R. Civ. App. P. 131.02, subd. 1, and if a briefing deadline is ultimately missed, a party can move for leave to file its brief out of time. See Eric J. Magnuson & Luke Hasskamp, Briefly: How to Get an Extension if You Really Need One, Minn. Lawyer (May 2019). Various other provisions in the Minnesota Rules of Civil Appellate Procedure permit courts to grant some leeway on deadlines. See Minn. R. Civ. App. P. 102 (providing that with the exception of the deadline for filing an appeal, appellate courts may for "good cause shown" suspend requirements imposed by the Rules); 103.04 (stating that "appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require"); 126.02 (providing that except for the deadline for filing an appeal, an "appellate court for good cause shown may by order extend or limit the time prescribed by these rules or by its order for doing any act, and may permit an act to be done after the expiration of that time if the failure to act was excusable under the circumstances").

In contrast, the 1983 comment to Minnesota Rule of Civil Appellate Procedure 103.01 provides that a "notice of appeal served on both the adverse party and the clerk of the trial court and filed with the clerk of the appellate courts is required in order to vest jurisdiction," and "appellate courts have repeatedly stated that they lack jurisdiction to hear an appeal where the notice of appeal is not timely filed," 3 Eric J. Magnuson, David F. Herr, & Erica A. Holzer, Minnesota Practice: Appellate Rules Annotated § 103.3 (2020). Yet, in reality, the time to appeal is not an absolute "jurisdictional" deadline in a broader sense of that word. Cf. Kontrick v. Ryan, 540 U.S. 443, 454 (2004) (observing that "'[j]urisdiction' . . . is a word of many, too many, meanings" and that courts "have more than occasionally used the term 'jurisdictional' to describe emphatic time prescriptions in rules of court"). Article 6, § 1 of the Minnesota Constitution vests "the judicial power of the state . . . in a supreme court, [and] a court of appeals, if established by the legislature," and Article 6, § 2 provides that the Supreme Court "shall have original jurisdiction in such remedial cases as are prescribed by law, and appellate jurisdiction in all cases." In exercising this constitutional power, the Supreme Court has stated that even if "the relevant statutory provisions, case law, or Rules of Civil Appellate Procedure might otherwise preclude appellate review because the appeal is not timely," it nevertheless has inherent authority to "accept jurisdiction if the interests of justice so warrant." State v. M. A. P., 281 N.W.2d 334, 337 (Minn. 1979); see also Magnuson et al., supra, § 117.7 (stating that time limits to file petition for Supreme Court review are also subject to this exception). The court, however, will exercise this power only in "an exceptional case" that "merits … departure from the rules," not in cases involving mere "good cause" or "simple attorney negligence, inadvertence, or oversight." In re Welfare of J.R., Jr., 655 N.W.2d 1, 4 (Minn. 2003). Although the Minnesota Court of Appeals has stated that it may not exercise jurisdiction over an untimely appeal in the interest of justice (despite the Supreme Court's ability to do so), see Township of Honner v. Redwood County, 518 N.W.2d 639, 641 (Minn. Ct. App. 1994), "[t]here does not seem to be a strong reason … to view the court of appeals as without inherent powers, and it presumably could exercise this power if it chose to do so," Magnuson et al., supra, § 101.4.

The limitation on this inherent authority exception, however, is that "where legislative enactments specifically create the rights and procedures governing the dispute," an appellate court is likely without authority to exercise jurisdiction if the notice of appeal is not timely filed. Magnuson et al., supra, §§ 102.4; 126.4; see also Carlton, 816 N.W.2d at 601. Thus, it may be that the only truly jurisdictional, graven-in-stone deadlines that appellate courts are powerless to alter or forgive are those contained in causes of action that are purely statutory creations.

That said, at the end of the day, lawyers should use every effort to comply with all deadlines, regardless of where they fall on the spectrum from flexible to truly jurisdictional. With a "flexible" deadline, what constitutes "good cause" or is "in the interest of justice" can vary from case to case and judge to judge, even within the same court. See Eric J. Magnuson & Matthew J.M. Pelikan, Briefly: In the Interest of Justice, Minn. Lawyer (Feb. 2015). It is perilous indeed for a lawyer to stake their case and potentially their professional reputation on the court cutting them a break for a blown deadline. Responding to a charge of ethical violation for missing a deadline, or explaining to a client why the court did not find good cause to excuse that error, is a position we all want to avoid.

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