

legal industry



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Legal Industry Calendaring: How to Minimize Risk and Shore Up the Malpractice Safety Net

Whenever attorneys need to file court documents or appear before a judge, the person who performs the task of scheduling those dates varies from firm to firm. Some firms have a managing clerk or a docketing department that is responsible for this function. In some firms, a paralegal might handle this. And of course, in some firms, each attorney maintains his or her own calendar. According to the most recent “Profile of Legal Malpractice Claims,” conducted by the American Bar Association, calendar/deadline related errors are the leading cause of legal malpractice claims. Of all malpractice claims filed against attorneys, a total of 16.63% was due to not knowing or not properly responding to the legislated court rules dates: 5.19% for failure to calendar properly; 4.35% for failure to react to the calendar; and 7.09% for failure to know/ascertain deadline.

As legal administrators, it is often your responsibility to ensure compliance with professional liability insurance requirements for your firm or law office. You are charged with providing practice management guidelines, including monitoring and support of your firm’s docketing and case management practices. Therefore, your comprehension of this function is of vital importance to your firm.

Simply put, as soon as a matter is scheduled for court, dates must be quickly and accurately determined. The Internet has eased the process somewhat, since many jurisdictions post court schedules on their Web sites. However, many courts are not yet online, so docket managers must then make phone calls or confirm the information in other ways. If a firm’s attorneys are practicing in multiple jurisdictions, the process becomes much more difficult. For example, some jurisdictions have 60-day filing deadlines, while others allow only 30 days.

Once a date has been determined, the docket manager must accurately calculate the full schedule of deadlines, factoring in every holiday and weekend. Once that is done, the information must be accurately recorded into the court calendar, and the calendar of every attorney and staff member involved in the matter.

Of course, court dates change frequently, so someone must constantly check throughout the lifecycle of a matter to ensure that all of the dates are still accurate. If one date changes, the entire process must be completed again. One small error in any of these steps can result in a firm missing a crucial filing deadline. Such a mistake can result in a case being dismissed, which can then lead directly to a malpractice lawsuit. Unfortunately, such mistakes are common at law firms.

A malpractice case represents the worst-case scenario; there are few situations that are more difficult for law firms than to be on the other side of a lawsuit. However, even if a judge is understanding and chooses not to dismiss a case outright, court sanctions may still be imposed. Besides financial penalties, a missed deadline can cause major damage to the law firm/client relationship, as well as the firm’s overall reputation.

It is little surprise that many firms feel anxious about managing the court calendar, and hope for ways to create a safety net to ensure mistakes do not occur. Fortunately,

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technology is now available that can make the job much more efficient and less prone to error. With the advent of legal-specific court calendaring programs and systems, firms of all sizes and budgets can tap into resources that can ease the calendaring process, improve efficiencies and minimize the risk of missing a deadline that could eventually lead to a malpractice lawsuit. In fact, these technologies are so effective that many of today's malpractice insurance providers offer discounts to firms that utilize them.

Selecting the Right Technology for Your Firm

There are no cookie-cutter solutions to any type of technology, and the court calendar is no exception. What works well at one firm may not be appropriate for another. When considering new technology for court calendaring, legal administrators must take an objective look at the needs of their own firm and attorneys and decide which options represent the best fit. There are several factors to consider:

➔ Look for a legal-specific calendar.

For some law firms, moving away from paper-based calendars to an electronic version was a big step. Some have adopted generic electronic calendaring systems. These types of calendaring programs may be relatively inexpensive, simple to learn and easily available, but they do not offer any advantages when it comes to the particular challenges of docketing and court calendaring. Such non-legal-specific calendars lack the capability to calculate court dates or factor in all local and state holidays.

Instead, firms should consider the advantages of rules-based calendaring programs, which have been developed specifically for the legal industry. These rules-based programs offer built-in deadlines

and court rules for various jurisdictions. Such programs range from extensive systems that include jurisdictions around the country and require investments of hardware and software, to Internet date calculation services that operate on a pay-as-you-go basis.

By utilizing rules-based calendaring technology, law firms can see immediate benefits in efficiencies and a reduction in the chance of errors. Many of these services can calculate all of the relevant deadlines quickly, based upon only a few pieces of information.

When looking at different systems, legal administrators should inquire about the manner in which each provider handles updates and rules changes – will the firm be notified automatically when a rule changes on a previously searched item? If a provider does not offer such a service, docket managers will still be tasked with frequently double-checking for any changes in deadlines or rules.

Legal administrators should also look for providers that can send new court dates and updates in a manner that allows that information to be uploaded seamlessly into the firm-wide calendar. With an automated system, docket managers do not need to worry that dates will be transcribed inaccurately on the calendar or inadvertently forgotten.

Lastly, firms should also find out what jurisdictions and practice areas that each provider covers. If the firm plans to grow or expand, the technology needs to be able to keep up.

➔ Be consistent with the calendar.

In order to ensure that everyone involved in a matter receives every deadline and update, each attorney and staff member should be using the same type of calendar. This

Theme: Torn from the Headlines

Missed Deadlines Mean Malpractice (and Lost Clients) For Firms of all Sizes

TRUE STORY: Malpractice Verdict Costs Chicago Law Firm \$35 million

A prestigious Chicago-based law firm gets hit with costly malpractice verdict after Tae Bo Creator/exercise king Billy Blanks claims they tried to cover up mistakes and missed deadlines.

Twenty million dollars in compensatory damages and an additional \$15 million in punitive damages were awarded by a Los Angeles County Superior Court jury after Blanks charged his lawyers with filing suit in the wrong venue. Blanks also claimed that a new, corrected suit was not filed until after the statute of limitations had expired. Missing the deadline prevented Blanks from seeking any relief in the matter. Blanks, who named the lead lawyer on the case as well as the entire firm in the suit, further contended that these mistakes were intentionally covered up.

TRUE STORY: Two-Lawyer Upstate New York Law Firm Misses Court Date; Judge Rules the Mistake “Inexcusable.”

A confluence of unusual events caused a firm to miss a crucial filing date in a bankruptcy case. The secretary responsible for calendaring went into premature labor, one of the two partners at

the firm had been abroad adopting a child, and the other had been called to military duty in Iraq. With all of those distractions, no one at the firm noticed that the date had gone un-calendared. Despite the “unusual events” in the case, the court declined to grant an extension to the firm’s clients. That cost the clients the opportunity to claim additional damages from a bankrupt hospital. In its ruling that the firm’s procedural error was inexcusable, the court that it was not the unexpected office absence that caused the missed deadline, but rather, it was poor office procedure.

TRUE STORY: High-Profile West Coast Litigation Firm Undergoes “Lawyer’s Nightmare.”

Whose fault is it? In the case *Pincay v. Andrews*, the nightmare began when a filing clerk missed a deadline. Specifically, the firm missed an appeal filing deadline because the firm’s paralegal miscalculated the due date. In this case, the appeals court panel found the mistake to be “excusable neglect.” In the dissent, it was rebuked that “if it is inexcusable for a competent lawyer to misread the rule, it can’t become excusable because the lawyer turned the task over to a non-lawyer.”

TRUE STORY: Top Bankruptcy Firm Loses Client Over Missed Deadline.

In a case representing the bankruptcy of New World Pasta Company, representatives at a top bankruptcy firm lost exclusivity for their clients by failing to request an extension before exclusivity expired. The Bankruptcy Code grants debtors exclusive rights for the first 120 days of bankruptcy to file a plan of reorganization.

Once the error was recognized, an extension request was made. However, the bankruptcy court denied the request. The firm was replaced by the client with another firm the following month. The first firm may also be responsible for covering some of Weil’s costs in preparing for the case.

type of consistency allows for smooth updates and makes it easier to back up the firm-wide and individual calendars, in case of a technological failure, fire or natural disaster.

→ Consider how attorneys work and live.

When it comes to the court calendar, it is also important to consider how and where attorneys work. Attorneys who travel frequently, often appear in court, or work from home need to be able to receive deadlines and updates on their personal digital assistants. For these attorneys, changes to the court calendar should be able to sync with their devices remotely.

→ Look at the view.

Many different calendaring systems offer views that can be customized. At some firms, the ability to view the court calendar by individual, team and practice area can be an extremely useful feature. For a solo practitioner, such a feature would not be necessary.

→ Streamline the calendaring process.

Legal administrators should also take into account the manner in which the court calendar is staffed. The more streamlined the process, the better. In order to limit confusion and redundancies, law firms should clearly designate who oversees each aspect of the court calendar.

→ Get everyone on board.

No matter how efficient and effective a court calendaring system is, it will not work to the best of its ability if everyone at the firm does not participate. Having an advocate at the firm, with the authority to convince others to adopt the new technology, will be critical to the success of the endeavor.

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