



TechLink

CUT MALPRACTICE RISK

with a solution that saves money

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Nearly all lawyers and law firms are painfully aware of the high cost of legal malpractice insurance. However, few are aware that the number one cause of legal malpractice actions is calendar/deadline-related errors related to court dates (ABA "Profile of Malpractice Claims," 1999). The ABA findings, compiled for 1996-1999, show calendar causes for malpractice claims as:

- 7.03% due to a failure to calendar;
- 1.27% due to failure to react to calendar;
- 15.24% due to failure to know/ascertain calendar; and,
- 23% due to not knowing or not properly responding to the legislated court rules dates.

Another study done by Lawyers Mutual Insurance Company of Kentucky (LMICK) drew the same conclusion in 2000. The LMICK study found that calendar-related issues are the number one cause of administrative malpractice. Clearly, law firms need better ways to improve the often-challenging task of calculating rule-based deadlines and tracking their overall calendars.

While few lawyers realize the risk associated with court calendaring errors, even fewer are aware that automated calendaring programs provide financial relief for the high cost of malpractice insurance. Just as health insurance is lower for non-smokers, the cost of legal malpractice insurance is often discounted for lawyers and law firms that use court rules-based databases. In fact, more than half of insurance carriers that write legal malpractice policies reduce rates 5-25 percent for firms utilizing automated calendaring programs (Howard Yellen, JD, "Legal Malpractice: Risk Reduction that Makes Sense"). This is because using court rules databases technology virtually eliminates the risk of human error in calculating dates.

Savings come in a variety of packages, ranging from straight discounts to holding down rate raises. In some instances, insurance companies will not underwrite malpractice insurance for litigation firms if they are not using automated court calendar docketing. Law firms that use a court rules-based database with calendaring software should inform their malpractice insurance company, and if the insurance company does not offer a discount, the firm should negotiate one.

While there is some up-front investment in purchasing and implementing an automated calendaring system, it is one investment that will quickly pay for itself. Discounts can come in many forms. For example, the insurance carrier for one firm in Washington, D.C. required that they implement a rules-based calendar program, with the caveat that if they did, their rates would not increase as much. In addition to insurance savings, automated calendaring can reduce staffing costs and eliminate duplication of effort.

In spite of these advantages, many firms today still use the traditional form of manual calendaring. Secretaries determine the court dates for the attorneys, who then write them into their planning books. If a critical court date changes, they must recalculate the entire schedule. This takes hours and is prone to human error. The probability of human error increases in a direct relationship to the amount and complexity of the litigation a firm handles. An automated rules database and calendaring software will calculate the schedule or recalculate changes in seconds.

In a manual system, if a calendar is lost and there is no other copy, the case, the firm and the lawyer are all at risk. The secretary must recalculate the schedule immediately. Keeping all docket schedules in a calendaring program pro-

ducts against loss with a backup copy of the calendar. In a case with fluctuating dates, the manual system is at increased risk for human error. Compounding this problem, courts may issue changes in calendaring rules at any time. Often, firms assume the basic or federal rules when calculating deadlines manually and are not careful to check any specific local rules. Therefore, they sometimes miss deadlines that are specific to local jurisdictions.

A good calendaring system includes a number of necessary features. If a firm is interested in obtaining critical knowledge about automated court rules-based systems, these elements are essential. If a program does not include any one of them, continue to look.

First, the system must offer court rules-based databases for jurisdictions in which the firm practices, including state district, state appellate, federal district, appellate circuit and the Supreme Court. The system should also provide rules sets for special courts like bankruptcy, family court, intellectual property and arbitration.

Second, automatic date scheduling is a necessary component of docketing software. It is intrinsic that all docketing software be able to routinely and correctly schedule events based on court rules. It must also track by each matter and link that information with the appointments, tasks and other docket dates for each attorney. Since a trial date or any other date that sets the schedule into motion is subject to change, the docketing software must allow the firm to either automatically change all dates for the matter or only adjust the trigger date as is applicable in any particular case.

The vendor that creates the rules databases should revise them regularly. It is extremely important that the calendaring vendor explain their updating system for rules changes, including interim changes. The vendor must have a team of qualified lawyers whose sole task is to review court rules and create databases.

An automatic reminder feature should be included in docketing software, and it should allow the firm to set repeating reminders for critical dates. Also, a "data validation" system is an important tool in reliable docketing software. It is unlikely that the system operator will input incorrect data with data validation.

In the best rules-based calendar systems, the programs do not use obscure codes to select jurisdictions or individual court rules, but utilize English-language trees to help users make the correct selection.

Often, there are several lawyers working as a team. Docketing software should have the capability to produce the calendars for all lawyers on a matter as a team, as a department or by other means. Having the calendars coordinated can be crucial for the law firm's management of a team of lawyers.

In order to ensure that events are accurately scheduled, docketing software should factor holidays into its court schedule calculations. Preferably, the vendor will supply accurate holiday tables with every rules database.

A high quality docketing software system will create an audit trail, allowing the firm to review changes, additions and deletions for any subject.

Firms of all sizes can benefit from the accuracy and reliability of court rules-based calendaring. In addition to cutting the risk of malpractice and lowering insurance costs, it allows a busy litigator to focus completely on the issues of the case.

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