

## Malpractice claims: is calendaring a safety net?

by Joseph C Scott, JD

During the last economic downturn, legal malpractice claims increased up to 60% compared to better times. There are many reasons why clients sue their attorneys but the court calendar can represent an area of increased risk during a recession. Managing the court calendar can be an error-prone process under the best of circumstances, but it can be much more difficult now, as law firms lay off attorneys and staff. When attorneys or staff are let go, their critical knowledge of court dates and upcoming deadlines may walk out the door with them. The attorneys and staff left behind often find themselves swamped with cases, and they may lose track of urgent deadlines and court appearances.

According to the ABA, calendar/deadline-related errors are traditionally one of the leading causes of malpractice claims. The ABA has identified three key areas that can lead to missing crucial deadlines: failing to know or ascertain the calendar; failing to calendar properly; and failing to react to the calendar. By recognizing where the pitfalls are, attorneys can help minimize the chance of making an error and finding themselves on the receiving end of a lawsuit from a disgruntled client.

While accurately determining and recording crucial court and deadline-related dates seems like a straightforward process, it is one of those items that is more easily said than done. Court deadlines must be researched, which can take a great deal of time and focus. For large firms with many attorneys working in multiple jurisdictions, the process can be even more difficult. Court deadlines can vary dramatically from one jurisdiction to the next, and courthouses also close during local holidays, which must be taken into account.

Technology can help eliminate much of the risk while improving calendaring efficiencies. Law firms can now take advantage of rules-based calendaring programs that can automatically calculate ➔

➔ court dates, eliminating the chances of incorrectly determining deadlines. These types of technology run the gamut from comprehensive software systems with court rules in jurisdictions and practice areas around the country to pay-per-use internet-based deadline calculation services that require no software and minimal training.

Once a court date or deadline is accurately determined, it must then be precisely recorded on the court calendar. If any information is inverted or miscalculated, the resulting dates will not be correct and the mistake can cascade throughout the life of the matter. Once the information is properly recorded on the firm-wide calendar, it must be communicated to each relevant attorney and staff member. If each attorney uses his or her own calendar, the chance of errors increases, since calendars must be updated individually. If a firm utilizes a standardized calendaring program or a deadline calculation service that can input and update deadlines automatically, the chance of mistakes is significantly reduced.

As stress levels increase, attorneys are more likely to miss court dates, even if those dates have been properly determined and recorded. Clear communication and proper delegation of roles to attorneys and staff can help ensure that a date does not fall through the cracks. Calendaring programs that provide automatic updates and reminders can also help ensure that every deadline is met.

The concerns over malpractice claims have become so serious that California, for example, has recently passed a professional conduct rule that requires lawyers to disclose to most of their clients if they do not carry malpractice insurance. In these difficult economic times, rules-based calendaring programs have proven so reliable that many insurance carriers are now offering a discount or other financial consideration to firms that use them. However, by taking advantage of the latest technology and implementing sound calendaring practices, firms can help ensure that their malpractice insurance is not ever used, even though attorneys carry it.

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