



This article is a reprint of the San Fernando Valley Bar Association's Valley Lawyer magazine, January 2011 issue.

# Avoiding Common Malpractice Risks Associated with Legal Calendaring

By Joseph C. Scott, J.D.

**I**T MAY COME AS NO SURPRISE THAT MANY LAW firms, from solos to mega firms, are anxious when it comes to managing their court calendars and calendar-related deadlines, and are often caught crossing fingers and holding their breath when it comes to avoiding costly mistakes. Fortunately, technology is now available that can make their job much more efficient and less error prone.

With the advent of legal-specific court date calculation and rules-based calendaring technologies, firms of all sizes and budgets can tap into resources that can assist with the calendaring process, improve efficiencies and minimize the risk of missing a deadline that could eventually lead to a malpractice lawsuit. With this said, it is worth taking a closer look at the industry's collective calendaring challenge and what firms can proactively do to avoid future risk and maximize calendaring compliance.

## Numbers Don't Lie

According to the American Bar Association's *Profile of Legal Malpractice Claims*, calendar related errors are the leading cause of malpractice actions against lawyers and account for over 34% of all malpractice claims. Based on the ABA's study, this includes failure to file documents – no deadline (10.7 percent); improper calendaring (7.4 percent); failure to know or ascertain deadlines (6.4 percent); procrastination with follow-up (4.2 percent); failure to react to the court calendar (3.6 percent); and clerical errors (2 percent).

The same study clearly revealed that small firms account for a majority of all claims with 70 percent of claims filed against firms with five or fewer attorneys, a 5 percent increase since the previous study in 2003.

Economic stability also plays a factor in malpractice frequency. According to a 2008 *Trends in Risk Management* survey conducted by the International Legal Technology Association (ILTA), malpractice claims rose 60% during the

previous economic downturn (2000-2003) compared to more stable economic times.

While malpractice represents a firm's worst-case, end-of-days, scenario, there are still far too many calendar and rules related errors making headlines. In *Fiorentino v. City of Fresno*, the plaintiff's attorney missed a 90-day deadline to request a hearing by one day because the person calendaring the deadline forgot that October has 31 days, not 30.

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."

In a bankruptcy case 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.

With these cases as proof, it is understood that court calendaring, particularly in California, is a tricky proposition. While the court may set some of the deadlines in a given case, many must still be calculated based on a multitude of different rules.

## Rules-based Calendaring: Where to Begin?

While accurate statistics regarding rules-based or automated calendaring/docketing use among all law firms is not available, ILTA's 2010 Technology Survey provides a useful snapshot of such technologies within law firms with more than 20 attorneys. Among this group, 17% indicated not having any technologies to automate the calendaring process and 19% use Outlook to manually keep track of court deadlines and dates. Of course, as with other legal technologies, these statistics

would look a lot different if available for solos and small firms, where a majority of practitioners are relying on manual techniques at best.

Given that every step of the calendaring process represents a potential disaster waiting to happen, it is no wonder that calendar related errors are the leading cause of malpractice claims. To minimize human errors which may cause miscalculations at any step during the process, law firms of any size should consider using rules-based calendaring programs which follow a well-defined and proven process:

- **Select the jurisdiction and the event.** An event, something like the entry of judgment or the date of trial, triggers the date calculation timetable. Rules-based calendaring

programs will include jurisdiction and trigger event lists that reduce research time to nearly nothing.

- **Identifying and applying codes and rules.** Rules-based calendaring systems are updated whenever codes and rules change, and can even include email alerts with relevant changes. These programs consider all of the rules and codes to generate critical deadlines in just seconds, minimizing staff time spent on this time intensive task.
- **Generate deadlines.** Based on the applicable codes and rules, accurate deadlines are generated. These systems can even account for holidays and specific judges rules that might affect the calculation.
- **Ready for Calendaring.** Rules-

### Top 10 Ways to Reduce Calendar Related Risks

- 1) **Development of a risk management program.** Designed to clearly define loss prevention policies and articulate how the firm will manage risk through people, processes and technology.
- 2) **Establishment of a risk task force.** Comprised of docketing, IT, risk management and administration, this group will champion and oversee all aspects of the risk management program including evaluation and selection of appropriate systems and services.
- 3) **Review and analysis of malpractice carrier mandates.** Understanding carriers' automation requirements and disaster recovery plans can streamline compliance and result in insurance discounts.
- 4) **Establishment of disaster recovery/business continuity procedures.** Get lawyers' calendars in as many places as possible without duplicate entry and advocate the establishment of firm-wide, rules-based, centralized calendaring.
- 5) **Establishment and documentation of calendaring practices and procedures.** Includes analyzing flow of pleadings and documents; auditing users to verify firm compliance; and reviewing firm culture to determine fit for automated calendaring systems.
- 6) **Maximizing calendar exposure.** The more end-users that can view firm calendars and deadlines, in a controlled, secure, non-redundant setting, the better off the firm. Maximizing calendar exposure firm-wide, encouraging integration with other desktop calendars and establishing one cohesive, central and easy to access calendaring system, will minimize calendar related errors and reduce billable time spent on researching rules and calculating deadlines.
- 7) **Desktop calendar integration.** Integrating calendaring systems with existing platforms such as Outlook, GroupWise and Lotus Notes adds to the cohesiveness and integrity of the firm-wide, centralized calendar.
- 8) **Establishment of a calendaring portal.** Provides anytime, anywhere access to critical dates and deadlines via a web portal, including mobile lawyers as well as clients.
- 9) **Dedicated calendaring administrator.** A central manager is designated to oversee the firm-wide calendaring system providing one consistent point of contact and responsibility.
- 10) **Test drive technology.** Automation, powered by intelligent technologies, is ready and proven to streamline existing calendaring methods and can be utilized on a pay-as-you-go or pay-per-use basis.

based systems populate web-based docket calendars or produce date calculations that can be integrated with Outlook or other non-legal specific calendaring programs.

### **Making the Case for Calendaring Alternatives**

While non-legal-specific, computerized calendaring systems rely too much on human interaction and in-depth knowledge of specific court rules and dates, manual calendaring, even on a computer via popular applications such as Microsoft Outlook Calendar, will equally not protect a firm as well as a system that utilizes an accurate, automated legal rules-based date calculation service.

Rules-based computerized date calculations services are no longer limited to large law firms with extensive IT support, or to firms whose attorneys only concentrate on litigation. Recent advances have made such technologies not only affordable, but also manageable for firms of all sizes, including sole practitioners. Various services available online do not even require law firms to purchase and learn new software programs, but operate via a software-as-a-service web model.

This new way of delivering on-demand deadlines and calendaring is also very conducive to a mobile workforce. Web portals, for example, can provide mobile lawyers, as well as clients, anytime, anywhere access to critical dates and deadlines.

Being proactive when it comes to automatic calendaring systems and deadline technologies is critical, especially during economic downturns. It is a fact that malpractice claims rise during an economic crisis. While insurance companies prepare for these tougher times by tightening rules and increasing rates, firms of all sizes need to shore up calendaring policies and proactively review systems and processes.

Rules-based computerized date calculation technologies enable firms of all sizes and complexities to: automate date scheduling by entering key dates – the service calculates all related dates and deadlines; reduce human errors since any calendaring system is only as good as the information entered; schedule local court and holiday rules – services should account for local rules and also

keep track of courts' varying holiday schedules; and schedule and update groups for complex litigation – dates sync with their Outlook calendar.

If changes occur, the "smart" calculation service will send an automated message in order to alert the user. Automation leads to less time spent on manual calendaring and deadline scheduling, saving money on precious administrative time (and potential missed deadlines and malpractice claims).

Even with such automation by the firm's side, it is critical to proceed methodologically and responsibly; while some of today's date calculation technologies make the task of calendaring more simplified and easier to manage, it is strongly recommended to have a licensed attorney supervise the process.

Although it is common and often recommended to delegate certain aspects of calendaring to an experienced and trained administrator or paralegal, based on the severity and frequency of calendar-related malpractice claims, the attorney should be the one to control the process and take ultimate responsibility for the outcome.

In this technology age where there is often a struggle to truly benefit from the latest and greatest new gadget or tech tool, legal date calculation services have come of age and are at law firms' disposal when it comes to automating court calendar rules and deadlines.

Beyond automation, modern calendar technology is increasingly being utilized as a risk management tool designed to minimize calendar related malpractice risks. As evidenced by a burgeoning legal user base, calendaring systems can play a supporting role in firm risk management or act as the driving force behind an integrated firm-wide risk management initiative. ⚡

**Joseph C. Scottis** is an LA-based attorney and Vice President/General Manager of CompuLaw, LLC and Deadlines On Demand, LLC, providing legal rules-based calendaring software and services for law firms. He is a regular speaker and CLE presenter on the topic of risk management, legal industry calendaring and related business continuity. He can be reached at (310) 553-3355 or [jscott@compulaw.com](mailto:jscott@compulaw.com).

