Lawyering Law
A comprehensive suite of risk management services for law firms and lawyers

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Mitigate the Risk of Malpractice Through Effective Calendaring and Docketing Practices

Calendaring errors are a leading cause of malpractice claims. These errors include failure to know or ascertain a deadline, errors in data entry regarding deadlines, failure to use file review dates, and the absence of a back up calendar. Procrastination is also a common bad habit of lawyers that contributes to missed deadlines. Having a system in place for calendaring and docketing filing and discovery deadlines as well as internal "ticklers" is the most effective way to keep track important dates and maintain diligence to mitigate the risk of malpractice.

Lawyer's Calendaring Responsibilities

A calendaring system only works if it is utilized consistently and comprehensively by the lawyer with primary handling responsibilities. As the saying goes, "garbage in, garbage out." The data must be reasonably accurate and complete, and it begins with establishing an effective line of communication with the client, and knowing to ask right questions to ask from the outset. Lawyers must make sure to investigate the information provided by the client, taking time to review and verify it in order to double-check facts like the dates of important events and identities of opposing parties. When this time-consuming step is rushed, critical facts are missed, which may include, for example, an earlier date when the client suffered a loss or discovered a problem. Of course, once the critical information is gathered, the relevant dates should be immediately entered into a calendaring system.

It is imperative that lawyers manage timing from the beginning of the case. Often a new case will be set aside in order to deal with more time-sensitive matters. This leads to situations where cases and their deadlines slip through the cracks.

It is also important to handle declinations of representation properly in order to avoid a malpractice claim. Where a lawyer or law firm declines to represent a potential client, a non-engagement letter should be promptly sent. If that potential client later claims that the lawyer or law firm missed a deadline in their case, this non-engagement letter will be evidence that the lawyer or law firm never undertook the representation. (Sample non-engagement letters can be found in the model letters section of the lawyeringlaw.com website.)

Office-Wide Calendaring System

While lawyers have individual responsibilities when it comes to calendaring and keeping track of important deadlines, an office-wide calendaring system is an

important tool to ensure that lawyers are notified of upcoming deadlines. Indeed, it is mandated by the rules of professional conduct. See, ABA Model Rule 5.1(a): "A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." Calendaring is a basic tenant of competency and diligence. See, ABA Model Rules 1.1 (competency) and 1.3 (diligence). Thus, lawyers who have supervisorial responsibility over staff and subordinate lawyers must ensure that the firm has Policies and Procedures in place that govern calendaring and docketing, and periodic reviews are conducted to confirm that the Policies and Procedures and actually followed. The failure to do so presents both malpractice and disciplinary risks for supervisors, subordinates and the firm itself.

A law firm should also have clear set of calendaring practices in place. Features of an effective calendaring system include:

• **One point of entry**: Rather than maintaining a calendar at home, a calendar at the office, Post-Its, etc., a lawyer should have a calendaring system which keeps all the information and dates in one place. This makes it more likely that someone else will correct a data-entry mistake or identify if a lawyer is letting a deadline slip. Additionally, if someone in a law firm is suddenly unable to work, this system allows others to know all deadlines and important dates on that lawyer's cases.

• **Easy to use and maintain**: The best calendaring systems will be easy to use and maintain, as well as easy on which to train new personnel. The more difficult a calendaring system is to use, the more likely there will be a data entry error that leads to a missed deadline. It is also important to make sure everyone is trained in using the calendaring program – both lawyers and support staff. The program will not be useful if everyone does not know how to use it properly.

• **Redundancy and off-site backup**: An effective calendaring system will include some redundancy, such as multiple paper calendars or multiple reminders for deadlines. A law firm should maintain an off-site backup version of the calendar in case of disaster or cyber-breach and have the capacity to cross-check this back-up with master.

• **One docket date for each open file**: It is important to have one docket date open for each file in order to ensure regular review of the case. This practice can reduce the risk of a common grievance of clients – neglect of their case. A review of inactive files might reveal necessary action, or remind the reviewer to close files that require no further work. The system should then prompt the reviewer to send a disengagement letter informing the client that the representation has ended. (Sample non-engagement letters can be found in the model letters section of the Lawyeringlaw.com website under Model Letters and Other Documents.)

• **Rules-based scheduling software**: Rules-based scheduling software can calibrate deadlines to specific areas of law and jurisdictions, and recalculate deadlines if a court rule changes. This software is extremely effective in reducing the likelihood of missed deadlines and legal malpractice insurance agencies offer heavy discounts on the software.

Procrastination

Procrastination is, unfortunately, a common habit of lawyers. Policies and Procedures for calendaring and docketing will counteract this tendency. Many firms implement a firm-wide buffer requirement – for example a requirement that there must be three months between filing and running of the statute of limitations. A good firm-wide practice implements soft deadlines before hard deadlines, like calendaring a reminder date, a warning date, and due date.

Another way to reduce procrastination is to break large projects down to smaller parts and calendar those tasks. It is often the large, time-consuming projects that are put off by busy lawyers. Breaking these down into more manageable tasks can ensure that a large project is not left to the last minute.

As an individual, a lawyer who is struggling with procrastination should determine whether they are avoiding specific types of cases or specific client. If so, a lawyer might consider whether there are ways they can avoid those types of cases or those clients in the future. If it is general procrastination caused by stress and too much work, it may be necessary for a lawyer to reduce their workload. It may also be necessary to deal with the underlying issues – distractions, stress or emotional strain, inefficient work habits.

Calendaring errors and missed deadlines are a common, but easily preventable, cause of malpractice claims and disciplinary complaints. Maintaining an effective calendaring system and taking steps to reduce or prevent procrastination can ensure that a lawyer or law firm meet deadlines and mitigate liability and disciplinary risks.

Please visit the Lawyeringlaw.com website for a Docket and Calendaring Checklist (under “Checklists”) and a sample Calendaring and Docketing Policies and Procedures form (under “Model Letters and Other Documents.”). We also provide helpful articles on this subject under “Articles, Publications and 50-State Surveys.”

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