

Is Your Legal Calendaring Solution Still Meeting Your Needs?

Is a System Audit in Order?

WHITE PAPER

10/1/2014

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Is a System Audit in Order?

During the past three decades we have seen automated legal calendaring systems go from “nice to have” to “can’t live without” in most major law firms, as these firms took notice of several studies over several years consistently revealing that calendar-related errors were the leading cause of legal malpractice claims. So many law firms turned to automated legal calendaring to help mitigate those risks, with the added benefit of improving productivity. However, since even the best of these systems are not perfect (particularly if not used correctly), many firms were jolted by the recent major malpractice cases involving calendar related errors, and the resultant costly and embarrassing consequences. These cases were a warning to many law firms who were encouraged to take a new look at the risks they face, to rethink their approach, conduct a thorough audit of their entire calendaring and docketing process, and immediately remediate any risks identified in the audit.

If you can’t recall the last time you carefully scrutinized and audited – yes, actually audited – your calendaring processes, reviewed your deadline monitoring procedures, and evaluated your legal calendaring system to determine whether it has kept up with the ever-changing needs of the modern, highly automated, highly mobile law firm, it is probably time you did. For many (if not most) of you, your current calendaring service may still be the best fit for your firm. But that does not mean you should not periodically conduct a thorough audit to make certain there are no serious deficiencies in the use of the system and/or the enforcement of your internal procedures.

Regardless of your calendaring choice, it is only as good as the people and the training of those people who use it. It is critical that you have highly skilled and trained docketing professionals working with your attorneys to build backup and redundancy in a checks and balance system that relies *both* on good technology and great people. Equally important is the documentation upon which you and those people depend. If the policies and procedures are not in writing, they might as well not exist, so it is paramount that you document your policies, procedures and workflow so that everyone can rest easier knowing that you have established and followed a consistent process to prevent calendaring related errors.

This White Paper is intended to get you re-thinking and re-focusing on calendaring and risk management and to act as a starting point for a framework to help guide you through your audit. It is written with the intent of encouraging you to ask a lot of questions. It cannot and does not attempt to be all encompassing or to answer all the questions for you. This paper will examine five main areas to consider and review in your Legal Calendaring Technology Audit: The Rules Themselves; The Technology Behind the System; Risk Management and Risk Reduction Strategies; Your Docketing Staff, Policies and Procedures; and Features and Functionality. Two Addendums have been included to help you with your audit. Addendum A is a list of questions you should ask your current or prospective vendor and Addendum B is a brief listing of the major calendaring companies you may want to consider.

Rules Considerations

One of the most important questions that I am often asked by firms considering a calendaring solution is, “Do I need a rules-based system?” The answer is always the same, because of the risks involved and the ramifications of an error, the answer is an unequivocal, “Yes - your calendaring system must be rules based.” But the better question could be, “Who should provide those rules? Should it be me or an outside vendor?” The answer to that question is, “Ideally, both of you.” Of course, everyone involved with docketing and calendaring needs to have an intimate knowledge of the relevant rules and when, where and how to apply them. Never allow a rules-based program to replace your understanding of the rules.

Not every firm believes that they need to have a calendaring program where the rules are provided by an outside vendor and automatically built into their system. While conducting research for this paper, several firms stated that due to their internal expertise, type of practice and the jurisdictions in which they practice, they prefer to create those rules themselves and then apply those rules to their calendaring system. For most of those firms, their process seems to be working well, but they realize that they must be even more vigilant to make sure that everyone involved has the appropriate training and precise knowledge of the relevant rules.

Over the past several years, most of the larger U.S. law firms have adopted rules-based legal calendaring systems to help ensure that critical legal deadlines are not missed.¹ History has taught these firms that manually calculating deadlines, without double-checking the dates with an automated rules-based system, can be error-prone, unsafe and fraught with opportunity for calculation errors. (E.g., failing to realize a triggering event has occurred, failing to apply the correct rules to the event, applying the correct rules incorrectly, or simply miscounting). Calendar-related errors continue to be the leading cause of malpractice claims². In addition, administrative errors are at an all-time high³. The result of this news is mounting pressure on law firms to review and assess their processes to protect against unnecessary risk.

“Using human beings to schedule docket calendars is like using a typewriter today. The old-fashioned way results in more mistakes and it costs you more” –Howard Yellen of PCG ‘Polk Research Report.’

The law ultimately holds attorneys responsible for the accuracy of their calendaring and docketing, no matter who actually performed the work or which system they might have used to help them do so. In fact, in *Symbionics Inc. v. Ortlieb*⁴ the court emphasized that the lawyers have the obligation to build backup and reasonable redundancy into a calendaring process to protect against possible errors. Most malpractice carriers require that firms have at least two independently maintained docket control systems. Therefore, having an automated system, backed up by highly trained docketing professionals

¹ ABA, *Law Practice*, July 2010

²“Practice Management Pointers” Attorney’s Liability Protection Society, alpsnet.com

³ ABA’s *Profile of Legal Malpractice Claims 2008-2011*

⁴ *Symbionics Inc. vs. Ortlieb*, Court of Appeals, 4th Circuit, 2011

and lawyers overseeing and reviewing the results, and using a dual-entry system would seem the most prudent way to protect against calendaring errors.

At the same time, relying too heavily on technology can also be fraught with danger. *In Two-Way Media*⁵ the U.S. District Court for the Western District of Texas warned that it is not sufficient for attorneys to rely solely on the electronic and email notifications received from the automated systems, as they do not always fully convey the court's disposition in the matter. "The substance of the orders carry validity under the law, not the electronic [filings]." The judge also found it very troublesome that none of the attorneys in this situation had actually bothered to read the orders issued by the court, but instead, relied purely on the automated system notices (in essence a cover letter for the order). This case is not really about a failed calendaring system but about a failure in the processes which impacted the calendaring system.

In *Symbionics*, the court stated that Counsel's total dependence on a computer application – the operation of which counsel did not completely understand or comprehend – to determine the filing deadline for a notice of appeal is neither "extraneous to nor independent of" counsel's negligence and thus not "excusable neglect." And in *Robinson v. Wix Filtration Corp*⁶, the 4th Circuit Court of Appeals determined that computer problems in the appellant's office resulting in the failure to receive notice of a motion for summary judgment did not warrant relief.

If you elect to use a rules-based calendaring system, then obviously the most important piece is the rules. If your rules-based system makes a mistake or fails to catch a mistake made by someone manually miscalculating a deadline, you subject your firm to serious malpractice exposure. So if you are going to be relying on someone's rules, you have the right and the obligation to ask a lot of questions. To help you in that process, here is a partial list of considerations when evaluating a rules provider:

Where do the rules come from?

When evaluating the accuracy, and thus the reliability, of an automated rules-based calendaring system, it is prudent to consider the experience and the history of the rules provider. You want them to be a stable, proven entity with a successful history and a strong reputation. Find a company with years of experience and success in providing rules calendars and rules databases.

Does the company selling you the calendaring program create and own the calendar/rules processing system and rules databases themselves, or do they license them from a third party? Some companies create and maintain their own rule sets and thus will have complete control over the databases and the software that your firm will be using. But there are also several very successful Docket, Calendar, and Case Management providers that obtain their rules component from a third party rules provider, such as CalendarRules.com. Many of these users report that they prefer knowing that their software company is focused just on the software (which works seamlessly with a rules provider), and the rules provider can concentrate all of their efforts on building, maintaining, and delivering rules.

⁵ *Two-Way Media LLC v. AT&T Operations Inc. et al.*, case number 5:09-cv-00476

⁶ *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403 (4th Cir. 2010).

How large is the user base of the rules?

How many firms are using the system, and how many of those users are firms of your size, practice areas, and jurisdictional needs? A large user base yields the best feedback, would indicate their success in this area, and would enable the provider to continually improve its products. The larger the user base and the longer the company has been providing rules, the more “live testing” the rules databases will have undergone.

Understanding their underlying user base is critical because if the vendor goes out of business, ceases publishing rule updates, or does not properly maintain the rules; your firm will be at substantial risk. And of course switching to a new rules provider may require you to replace your entire rules calendar application, at substantial expense and inconvenience to your firm.

What is the experience and training of the rules developers?

How many attorneys/legal professionals does the company have working on the rules and what are their qualifications and experiences? Just being an attorney does not automatically provide them with the skills which are necessary to be a qualified rules provider. Does your rules provider employ experienced professionals, who have used various types of automated calendaring systems in their training and practice, to create, edit and update the rules databases? Do attorneys supervise and test the rule sets for accuracy? Does the company have a team of licensed lawyers who are dedicated to writing and researching the court rules?

How accurate/complete are the Rules?

Since your attorneys are ultimately responsible for the deadlines, even if they use an automated rules-based calendaring system, your staff and the attorneys still must confirm that they agree with how the rules were applied or interpreted to calculate those deadlines. Therefore, your system should include the authorities used for the rules calculations, allowing the staff reviewing deadlines to easily refer to the appropriate authority for an explanation of each date calculation. Some systems even allow you to link directly to the actual text of the rules that were used to determine those deadlines?

Where there is ambiguity in the interpretation of the rules, does the system alert you to the discrepancies and provide alternative deadlines depending upon your interpretation? Alternatively, does the system resolve any ambiguities on the safe side; e.g., ensuring that response due dates are earlier rather than later and that more notice is given instead of less?

If a user has a question relating to the rules, the authorities, the calculations, the wording of the rules or the interpretation of the rules and/or the deadlines calculated by the system, how are questions/inquires handled, by whom and how quickly?

Do the vendor’s rule sets include all deadlines for a particular jurisdiction or just the primary deadlines? Does the vendor include deadlines that are not specifically set forth in the rulebooks to help the attorney, (such as reminders or practice suggestions)? What deadlines will you have to manually calculate? How does the system handle (or allow you to handle) Statute of Limitations deadlines?

Does the vendor allow testing of their rules?

Does the vendor provide a pilot or test version of their application so you can properly test the functionality and court rules in order to confirm their accuracy? Or do they have an online version, such as deadlines.com, smartdockets.com or docketlaw.com, which can help you determine how calculations are generated prior to adopting the system firm wide?

Select a familiar jurisdiction (a venue where you have had numerous cases) and carefully evaluate the results of using the system. Compare the number of deadlines which are available from each vendor in that jurisdiction. If one vendor returns more deadlines than another, you may wish to consider why and which rules/events are missing or conversely, which are unnecessary or redundant.

How often are the rules updated and what is the process?

How often does the vendor update their rules and how difficult is the updating process (does your provider offer support in that process)? Ask the vendor on how many occasions the rules database was updated and at what intervals during the past year. Timely updates to your rules databases are critical since calculating deadlines with out-of-date rules may lead to missed deadlines, so ask vendors to provide information and documentation on their past rule updates. Will you receive actual notice of a rule change and are you alerted to the fact that prior calculations may now be incorrect, or does the system automatically recalculate and change your deadlines? Ideally, the vendor will update the rules whenever the rules change and seamlessly recalculate your affected deadlines with a notification of changes made to your deadlines as well as the rules.

Does the vendor have full-time staff that monitors the rules for changes or do they rely on their clients or an 'advisory board' for such information? If the vendor claims that they rely on an advisory board to monitor changes, this may be an indication that they are really just relying on their clients to inform them of changes and not actually monitoring the rules themselves.

Does the vendor provide documentation outlining the scope and impact of rule changes? Ask vendors for copies of past documentation they have sent to users detailing changes made to rules and how they impact events currently calendared.

Technology Considerations

When selecting a rules-based calendaring system there are many features and functions that enhance its operation and use. Every firm is different with its own unique needs but here are a number of important features that any firm should consider when evaluating a vendor's offerings.

Automatic Date Scheduling

- *Automatic Scheduling.* The system must automatically schedule events based on court rules for any given jurisdiction.
- *Automatic Calendar Updates.* The system should automatically update your calendar whenever a rules change impacts your deadlines.
- *Substitution of counsel.* You should be able to seamlessly assign or reassign attorney deadlines for all cases and events on both the new attorney's and old attorney's calendars.
- *Easily Identified Rules.* The user interface should make it simple to select the correct rule and quickly identify the event he/she wishes to calendar. Authority and keyword search should also be available.
- *Priority of Rule Sets.* The user interface should ensure that the proper priority is given to each rules database. Jurisdictions often require the application of multiple rule sets to perform accurate deadline/date calculations. Users should be able to simply select the jurisdiction in which the case is pending and the application should load all the appropriate rules databases automatically.
- *Holiday Tracking.* Your system should track all holidays specific to each jurisdiction and take each holiday into account when calculating deadlines.

Security, Auditing and Data Validation

- *Data Validation.* Whenever possible, data fields should be validated, as information is entered, to prevent against "garbage in, garbage out."
- *Audit Trails.* The system should provide Audit Trails that immediately record changes made to the calendar or docket. Your system should maintain a permanent audit trail for every modification and deletion, including the name of the user making the change, the date, time, and field(s) changed, as well as an opportunity to enter an explanation of those changes when desired.
- *Password Protection.* A comprehensive Password system protects the integrity of the data and the rules themselves, and must allow supervisors to control access. For example, a firm with a docketing department may allow attorneys and staff to access and view events but not allow them to add or change calendar events without going through the docketing department.
- *Just Docketed Reporting.* The ability to report by input operator to oversee additions and changes made by staff.
- *Private "To Do" items.* If desired, users should be able to add private appointments (e.g., doctor's appointments, anniversaries, and other personal dates) that only appear on their calendars, and show as busy time elsewhere.

Group Scheduling

- *Group Scheduling.* The system should be able to filter data by any combination of timekeepers, teams and/or practice areas.
- *Different levels of notification based on roles.* Senior partners do not need several reminders but the associate or paralegal managing the case does.
- *Automatically accommodate time zones.* For example, a noon meeting scheduled by the New York office that requires the attendance of a Los Angeles attorney must appear properly on the Los Angeles attorney's calendar at 9:00 am, not noon.
- *Schedules by Office.* The system should track and filter data by office location, practice area, and/or team.

Mobile Communications & Browser-based Accessibility

Has your calendaring system kept up with your attorneys' need to practice anytime and anywhere with secure access from almost any device? Are the calendaring entries made in your system automatically shared and updated on your mobile devices and in a truly optimized manner?

With the traditional physical law office no longer necessarily at the core of the modern law practice, all of your communication and collaboration tools, including your calendaring system, must allow your lawyers to leave the confines of the law office behind to compete in the current fast-paced, extremely mobile business environment.

Mobile devices and BYOD practices have given rise to an increasing number of options for the legal professional. How well your automated legal calendaring system communicates with external devices, operating systems, and a variety of productivity tools is critical to managing key calendar information. Having open access via browser-based mobile devices or a calendaring portal provides anytime, anywhere access to critical dates and deadlines and ensures that all parties see the same dates, thus minimizing the risk of missed deadlines.

Integration with Other Vendor's Applications: Sanctioned Integrations

Also important to your analysis, is the ability of the vendor's applications to integrate with other vendors' systems. Most of today's technology is much more compatible with other systems than it was just a few years ago, but you cannot ever assume compatibility. If your firm is relying on integration with existing platforms, involve your IT department in your evaluation and confirm in writing that both vendors sanction the integration, and that it is based on a contractual and cooperative relationship between the providers. Otherwise, if you experience data file damage or other system conflicts; you may have vendors pointing fingers at each other, instead of working cooperatively to solve what has become your problem.

Even when there is a sanctioned integration (and more critical if it is not sanctioned) your firm should create a lab environment and spend an appropriate amount of time verifying that integration internally prior to risking the integrity of all your systems

Integration with External Applications

There have been some exciting discussions about the potential for integration of calendaring systems with external applications and how this will enhance usage and provide information that the attorneys and docketing staff need to anticipate next steps in the litigation process.

Integration with external applications should include a PACER integration to parse emails and automatically download attachments. Direct integration with local courts, where available and if needed, should be a consideration. It can also include integration with your firm's accounting system and conflicts avoidance system to automatically import Clients, Matters, Attorneys, Offices, etc. Such integrations allow your firm to reduce risks associated with manual entry, make workflow more efficient, and uphold data consistency. Integration can also include your Document Management System to optimize workflow within your firm. Ask your vendor or potential vendors to create a Statement of Work for integrating various systems.

Big Data – Knowledge Management

Big data is becoming an important component in business intelligence initiatives within law firms. With the volume of information contained in your calendaring and docketing systems, what hidden gems and valuable insights are buried within that data? Your vendor can help you put it to work looking for patterns within your cases, your clients, your attorneys, and your firm. Which judges, attorneys, issues can be mined to better define strategies, improve processes, cut costs, and keep clients happier? There is the possibility that the calendar notations could be used to better understand what lawyers are actually doing, thus enabling your firm to offer more creative and profitable alternative fee arrangements. The information possibilities will certainly be useful for you to analyze in order to better understand your business, meet client demands, improve business development, optimize operations, drive profits, and gain a competitive advantage. The data is there; how can your vendor help your firm put it to use?

Service, Support and Training

No matter how good the system is and how smart your docketing team and or tech support professionals are, at some point you will need help, so it is critical to understand your vendor's service, support and training processes (and any potential charges for such service). What support options does the vendor offer? How difficult or challenging is it to manage the application, the updates, etc. and what kind of support help do they offer if you run into trouble? What about training with new installations? How about on-going training? Keeping the docketing team abreast of updates or training newly hired docketing professionals should be available from the vendor. Be sure to get those assurances in writing and in advance.

Risk Management Strategies

Over the last several years law firms have realized that risk management strategies are one of the most important keys for long term survival and success and a key strategy for ensuring long-term growth and profitability. Many firms have learned the hard way that they cannot manage risk on a fragmented departmental basis – they must have a clearly defined firm-wide risk management program that will align people, processes, and technology. An automated rules-based calendaring system should be a critical piece of any formal risk management program at your firm. It not only reduces the chances of missing important deadlines; it can also be used to help implement practice area and firm-mandated workflows as well as best practices. The following considerations should be used in evaluating your calendaring system and how it can complement your Risk Management and Risk Mitigation strategies:

Conflicts of Interest – Obviously, every new client and matter must be thoroughly vetted through your client intake/conflicts checking system. Your automated calendaring system can also be used to assure that anytime a user adds parties, changes counsel, or changes judges in a case via the calendaring system, a new conflicts check is automatically triggered.

Client Communication – Clients appreciate timely updates. In fact, the “expectation gap” between clients and lawyers is the genesis of many professional liability claims, so why not use your automated calendaring system to trigger regular client contact? The Colorado Bar Association suggests using your calendar management system to ensure timely client communications.⁷

File Review – If no other date is in the system make sure that there is at least a file review date. This will force someone to look at the file and make sure that nothing is missed. As long as the matter/case/file is open there needs to be a next step on the calendar.

Practice Proactively and Defensively – The entire underlying philosophy of risk management is being proactive. For every lawyer and firm, this strategy is essential in reducing malpractice risk. Use your calendaring system to anticipate issues and, where possible, prevent them from becoming problems. It is impossible to overemphasize the importance and value of using technology to prevent problems and provide the necessary documentation if you are required to proffer a defense.

Service Agreements, Engagement and Non/Dis-Engagement Letters – Whenever a new matter is created, or representation declined, the nature and scope of the engagement, declination, or disengagement should be promptly formalized. An automated calendaring system enables the firm to establish practice reminders to prevent activities from falling through the cracks.

Litigation Plans & Budgets – When appropriate, develop a litigation plan and budget and review it with your client prior to the commencement of litigation. Use your automated calendaring system to remind staff to periodically review and update the plan/budget, and to communicate those changes to the client.

⁷ *The Colorado Bar Association Lawyers Professional Liability Committee, www.technolawyer.com/r.asp?*

Document Retention/Deletion Policy – Use your calendaring system to create reminders based on a formal policy that includes procedures for closing files at the conclusion of the matter. Make certain the policy includes, at a minimum: designation of storage location, a schedule for periodic review of files in storage (physical and electronic), approved methods for destruction, and procedures for documenting destruction. Include the firm’s retention/destruction policy in your engagement letter and be certain to docket notification to clients of your intention to destroy their files.⁸

Continuing Legal Education (CLE) –A firm’s automated calendaring system can be used to help attorneys and other legal professionals monitor compliance with all of their CLE requirements. Training on how and why the attorneys should be using their automated rules-based calendaring system can also qualify for CLE credits in many jurisdictions.

Peer Review – Certain steps in your processes may require peer review. Why not build them into your calendaring system so that anytime certain events appear on your calendar, the appropriate peer review reminder is triggered?

Disaster Recovery – Your calendaring and docketing information is mission critical data. You must be certain that your automated calendaring system is incorporated into your Disaster Recovery plans. Insist on a firm-wide, automated, centralized calendaring system with built in redundancy and backed up by everyone in all your offices. Be sure that you and your vendor have a specific plan in place to restore the critical data and operational capabilities of your systems in the event of a personal mishap or a natural disaster.

High Availability and Load Balancing – This type of setup significantly increases the application up time and avoids calendaring interruptions due to hardware or network related failures. Confirm with your vendor or potential vendor that this type of setup is available and supported.

Insurance Considerations – Since your calendaring and docketing practices can so dramatically affect your malpractice insurance, it is important to appreciate how your firm is viewed by your professional liability insurance carrier. Premiums are calculated according to the level of risk that each firm presents. Many carriers provide premium discounts and/or will limit their rate increases to a firm with an automated, rules-based, centralized and redundant calendaring process that is mandated firm-wide.⁹

Be certain that you understand your carrier’s calendaring requirements and, once you have everything in order, be sure that your liability carrier is aware of your system and your processes for enforcement of your policies. Remember that insurance typically only covers the direct costs of a malpractice suit, along with damages and defense costs. A law firm has much greater, uninsured costs, associated with malpractice suits. According to Chubb Insurance for every insurable dollar, four dollars are uninsured.¹⁰

⁸ See *Sample Document-Destruction Policy* at <http://lawyerist.com/sample-document-destruction-policy/>

⁹ *Many firms that I spoke with believe that the insurance considerations easily justify the cost of an automated rules-based calendar system.*

¹⁰ *Chubb Insurance, Managing Legal Malpractice, A Professional Liability risk Management Handbook for Lawyers*

Docketing Staff, Policies and Procedures

Of all the critical areas for consideration when it comes to your legal calendaring audit, the individuals responsible for operating the system and the policies and procedures under which they operate, may be the most important factor in your review. No matter what choice you make in a calendaring solution, without a knowledgeable, properly trained, detail oriented docketing staff doing the actual day-to-day work, your firm risks being vulnerable to serious errors.

Docketing Staff - Docketing is not simple data entry. Proper docketing is a discipline that requires a solid fundamental knowledge of the rules and the procedures promulgated by legal authority, the ability to manually calculate deadlines and due dates in addition to using computer generated reports, effective schedule management skills, and strong attention to detail.¹¹ Understanding how to interpret or comprehend the way the rules are written and then apply them in real life situations is a skill that requires experience and development.

Be sure that your docketing professionals possess great attention to detail and a deep understanding of court rules and agency processes specific to the area/jurisdiction they will be responsible for managing. Do they understand “triggering” events and the implications to deadlines? Ask about some “out of the ordinary” rules and procedures specific to a certain judge or local court. Ask what steps they would go through in any given situation to make docket entries. Can they anticipate what happens after discovery and motion phases? Do they understand the trial, post-trial and appeal phases? Often times you will have to question the system itself, so knowing how to get the answers the old fashioned way and being able to do the entire process manually is absolutely necessary.

Be sure that your candidate or employee has experience with legal docketing systems, preferably rules-based applications. Many times a person with a wealth of legal knowledge is unable to transfer that knowledge and understanding into a technological interface. Intuitively understanding the logic of the software may be as important as understanding the rules themselves.

Titles and Responsibilities - Sadly, since the profession of docketing is sometimes treated as just a commodity in many law firms, there is presently little, if any, standardization of docketing roles, titles or responsibilities. Unfortunately this has negatively impacted the respect for the docketing professionals in many law firms. The National Docketing Association is working to develop some standardization of titles and responsibilities but until then, many titles such as Clerk, Specialist, and Administrator are an unreliable indicator of their associated skill sets. Many law firms assign these titles to those who simply input data without performing the necessary critical rules-based considerations and calculations, while other law firms assign the same titles to their most experienced docketing personnel. Talk with the docketing association in your area and try to align your titles and responsibilities.

¹¹ *National Docketing Association, www.nationaldocketing.org*

Certification - The National Docketing Association is in discussions on developing a comprehensive certification process for docketing professionals. Until that program is completed, most firms are left to their own devices on how to best hire, train, and staff a docketing department. In order to assure a solid foundation for your docketing team you should review everyone's experience and understanding as it relates to the areas of discussion in this paper.

Risk Agent - You want your docketing personnel to understand and take very seriously what is at stake if deadlines are missed or entered incorrectly, so make sure that your docket staff understands their role as a "risk agent" for your firm. This is not a task to be taken lightly, or assigned to just anyone who can take on "extra work." Additionally, your attorneys must understand that the docket staff serves as an aide to them, but does not absolve the attorney from their own responsibility for the accuracy of the data entered onto the docket.

Written Policies and Procedures - The calendaring process involves many moving parts, so it is important to have clear written policies and procedures because if they're not in writing, they may as well not exist. Create and mandate clear and comprehensive procedures that make it almost impossible to do the job any way other than how you want it done. This will provide comfort that the tasks, activities and processes are being completed accurately and consistently and reduce the chances of errors. Establish a central point of control and designate who will be accountable and responsible for docket and calendar items. Each step should be clearly identified and assigned to someone at the firm, with everyone knowing who is responsible for which part of the process and when they are required to take action. Once standardized, make sure that several people understand the entire process so that there is appropriate backup in an emergency. And then, regularly verify compliance.

Find a Champion - Setting the policies and procedures is only half the battle in many cases, because defending and upholding them is often times the more challenging aspect. Change is an uncomfortable experience for people, even if it is being implemented with the best of intentions so identify a champion at the highest possible level who has universal recognition and respect throughout the firm, like the firm's General Counsel, Chief Operating Officer, Risk Management Partner, or Firm-wide Litigation Manager. This will reinforce the necessity of the process and help reduce the amount of "challengers" you'd otherwise have to the new policies while prodding reluctant attorneys. No matter how good the system is, if everyone isn't using it the way it was intended, then the system will not work properly and might even create a dangerous and false sense of security.

With malpractice claims escalating at an astounding rate there's more reason than ever to put strong policies and procedures in place and mandate that everyone follow them in a consistent manner. A standardized, firm-wide calendaring program and the simple steps discussed in this paper can drastically reduce the chances of making mistakes and/or allow errors to be caught as quickly as possible. Taking the necessary steps to avoid malpractice claims in the first place is not only easier, but considerably less expensive than dealing with them after the fact.

Features and Functionality

Miscellaneous Features

A rules-based calendar system should incorporate certain fundamental features in order to help you calculate deadlines based on court rules. The most important features for you to consider are:

- Count forward and/or backwards from a specific date.
- Calculate in various units, including, at a minimum: Hours, Calendar days, Court days, Specific days of the week, Weeks, Months, and Years.
- Calculate a single deadline by counting two different units, such as five calendar days and three court days. Also to combine calculations such as five calendar days, three court days, and then the previous/next Tuesday.
- Determine whether a deadline moves forwards, backwards, or stays put when the calculated deadline lands on a holiday, or weekend, or other non-court days.
- Produce a separate list of holidays assigned to each jurisdiction and to take those holidays into account when performing deadline calculations.
- Compare the dates of two events and determine the date of a deadline based on that comparison.
- Calculate a deadline to land on a certain day of the week, such as the Tuesday prior to an event.
- Be quick and easy to find and select events that will be calendared.
- Provide an option to move (or not) individual or groups of deadlines when a trial date moves.
- Edit deadlines to accommodate a judge's order dates and recalculate related and dependent deadlines.
- Send email reminders, ideally with links to rules and practice tips.
- Automatically download PACER and other ECF documents.
- Integrate with local courts where available
- Integrate with Microsoft Outlook, Lotus Notes, Google Calendar, iCal or other calendaring applications.

Miscellaneous Functionality

The functionality of your system is critical because a great user interface translates into ease of use, helping to ensure that the system will be consistently used throughout the firm and translating into increased malpractice prevention. Far too many calendaring errors, which have led to numerous malpractice law suits, were merely the result of someone forgetting to use or choosing to not use their firm's calendaring system. Furthermore, a streamlined, well-conceived user interface, which is intuitive and easy to learn, requires less user training, and fewer resources. When evaluating a rules-based calendaring system, it's important to consider:

- *Automatic Reminders.* The rules calendar should enable users to set up automatic reminder dates based on key events such as Trials, Motion dates, etc. This feature saves time and ensures that attorneys receive adequate alerts for upcoming major events in advance of the actual deadlines.
- *Retroactive Event Recalculation.* Rules change periodically, so your system should be able to recalculate previously entered data that may be affected by such changes. The rules calendar should also "know" what dates NOT to change when a triggering deadline changes.
- *Case Notes.* Users may want to (or the firm may want to require them to) add their own notes to given events or matter records. A notes feature gives users the option to add text to individual case records, which may be beneficial for attorney input, setting case strategies, and providing focus.
- *Text Customization.* In order to save time, your rules calendar should enable you to replace common words and phrases with alternate words, phrases, and acronyms that are commonly used by your firm. For example, "Last Court Day" can be replaced with "LCD" or "Interrogatories" with "ROGs."
- *Flexible Reporting.* The system should have numerous "out of the box" and easily customizable reports to help you track all deadlines. But the program should also have the ability to generate various reports based on filters and querying criteria, such as input operator, timekeepers, client matter and case information, date ranges, and even codes and customizable data entry fields that are used in the program.
- *Automated Reporting Options.* Ask your vendor or potential vendor about the ability to automate reports on a preset schedule and then be able to have them automatically emailed to the appropriate individuals. Regularly circulating a master calendar is an easy and important malpractice prevention tool.
- *Outlook Functionality.* You should be able to filter events, control the formatting (subject line/body), adjust free/busy status and most importantly have a procedure where Outlook events will be automatically repopulated into Outlook if they are manually deleted by the attorney directly in their Outlook.
- *User Interface.* How many screens must a user navigate to calendar an item? How easy it is to select rules databases and individual rules? How easy it is to know if all appropriate rules databases have been selected, etc.?
- *Adequate Fields.* Make sure that there are enough fields available in the application so you can accommodate your firm's needs at all levels within the program, including but not limited to case/matter, event, related parties, attorneys, etc. How many of those fields can be defined by the firm?

In Conclusion

Malpractice lawsuits can devastate a law firm and the career of the one responsible for the error. Therefore, the establishment of centralized policies and procedures, backed by a firm-wide risk management culture, are key factors in the prevention of professional liability claims and are critical to the long term health of your law firm. Risk Management strategies should be included in every aspect of your practice, particularly with the calendars: something looked at several times a day by everyone, every day.

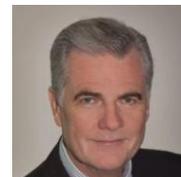
Of course, there are several other technical, functional and budgetary considerations, beyond the scope of this White Paper, which should be balanced by your unique needs, in your evaluation of any rules-based calendaring systems and the vendors that provide such systems.

This document should serve as a primer to help you evaluate and audit your current systems and procedures in the never ending battle to mitigate the leading cause of legal malpractice claims; calendar-related errors.

No two law firms are the same, so the best system for your firm is the one that your attorneys and staff will actually trust and use. I hope this White Paper will help you in your efforts to determine the best calendaring solution for you and your firm.

Joseph C. Scott, J.D., is a licensed California attorney, an entrepreneur, and a consultant with over 20 years of experience working in the legal vertical. As a recognized legal technology expert, Mr. Scott brings his unique perspective on the implementation of innovative technologies to help law firms achieve their business goals. Having served on several industry and company advisory boards, and as an author of numerous articles on legal technologies and risk management, Mr. Scott regularly speaks to law firms and associations across the country illustrating the power that software and internet-based solutions can provide to law firms. Mr. Scott also provides strategic counsel to law firms on how to deploy and effectively utilize emerging technologies to achieve a more powerful, productive, and successful law firm operation.

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APPENDIX A

Questions you should be asking during your calendaring evaluation

Use this list to prepare thoughtful questions and criteria when auditing your calendaring service.

The choice of any new technology (particularly if you are considering making a change) can be daunting. This White Paper and these questions are just a starting point in that process and should help you assess your needs and understand your options. Understanding your unique needs is the primary and most critical part of the process. Then, when you are ready to talk to vendors, take your time, ask them a lot of questions and get several references and then proceed slowly and choose carefully. The following is a list of questions that you can consider asking you current or a potential vendor so that you can better understand your needs and their offerings:

TECHNOLOGY RELATED QUESTIONS:

- What are the system requirements?
- Is your case calendar available 24/7?
- Is the system “browser based”?
- Is the system “Software as a Service”? If not, is a database required for installation?
- How often is the program updated, what is the updating process and how much time/effort/people are needed for the updates?
- Does the program store entity/party names, including but not limited to judge, opposing counsel, deponents, experts, etc.?
- How robust/user friendly is the search engine and the report engine?
- Does the service have flexible, user friendly report writing programs that easily allow users (even non-programmers) to define reports and run them at any time?
- Does the system allow for a complete case history and are reports available for same?
- Does the system have a scheduled report function to automatically distribute reports to attorneys and staff and what options are available?
- If you need to customize a feature unique to your firm, what is that process? Cost?
- How does your system handle substitution of counsel?

- How does the system maintain and handle holidays/weekends/non-court days?
- Confirm the vendor's Disaster Recovery/Business Continuity plans and obligation to back up your data as well as any obligation to restore lost or corrupted data in the case of a disaster. Make clear who will have access to the data and the process to get your backup.
- Consider getting something in writing confirming that the vendor understands the confidential nature of the information and what are their means of protecting it.
- Make sure that you have a complete explanation and understanding of how the system works with Exchange.
- Is the interface flexible, allowing the user to select which deadlines not to move to Exchange?
- Does the interface allow automatic removal of old appearance entries when a new status dictates?
- Does the program allow for both by attorney and by matter filtering when transferring events to the attorney's Outlook calendar?
- Can you schedule a court rule event with a date range which allows you to span that entry across multiple days on the attorney's Outlook calendar?
- Can Outlook appointments and reminders emails link directly to event details and documents?
- Is SharePoint supported?
- How does the system handle audit trails and how detailed are they?
- Is the program easily accessible and intuitive to use by end users (attorneys, paralegals, case staff) in addition to the docket team?
- How does the system handle secure access to the system, internally and remotely?
- How does the system handle scheduling and notifications by any combination of timekeepers, teams and/or departments?
- How does the system accommodate different time zones issues?
- How does the system support the differences in East Coast Docketing (typically document centric approach with deadlines attached to documents) and West Coast Calendaring (typically more automated deadline creation with some documents attached to the deadlines).

- What does the system offer by way of mobile offerings and are they browser-based accessibility?
- How will the system integrate with your other internal and external applications?
- How can the system help with “Big Data” initiatives?
- How easy/intuitive is their attorney change utility?
- Does the program allow users to quickly and efficiently assign and reassign attorneys and staff on multiple matters at the same time?
- Can you easily find out how many cases the firm and each attorney has in the system overall and by office?
- Does the program have any limitations on number of documents that can be assigned to an event?
- Does it have the ability to accommodate unlimited case assignments?
- Does the program provide functionality with the Federal and Local Courts to receive direct feeds of their ECF systems?
- Does the program provide functionality to track attorney state and federal admissions information with expiration date and then report on that information?
- What is the underlying coding framework and how easy is it to add new features?
- How customizable is the end-user experience?
- How does their system facilitate workflow related to calendaring at the firm?
- How flexible is the program to conform to the firms’ current workflow?
- Which optional features can be turned on/off? Several or only a few?
- Can the system give you access to and integrate with court forms?
- How are “ethical walls” supported for attorneys and other end users?
- Which Document Management Systems does your program integrate with?
- What is the average response time for a product/technical related support question?

RULES RELATED QUESTIONS:

- Where do the rules come from?
- How long has the rules provider been in the rules business?
- How accurate/complete are the rules?
- How many jurisdictions/rules sets are covered?
- How easy is it to select the applicable rule set(s)?
- How large is the user base for the rules?
- Who is responsible and what is the background, experience and training of the team used to research, prepare and update the rules?
- What is the average response time for rules related / date calculation support question?
- Do they provide FAQs or online help related to the rules/jurisdictions you cover?
- How are the judge's orders and the local rules handled within the system and the update?
- Do the Vendors rule sets include all the deadlines for a particular jurisdiction or just the primary deadlines?
- Does the vendor include any deadlines that are not specifically set forth in the rulebook that will help the user?
- Can the user add their own rules and/or reminders?
- Does the system provide a link directly to the actual full-text of the rules that were used to determine the deadlines?
- How does the system track (or allow you to track) Statue of Limitations deadlines?
- Detail how they resolve ambiguities or conflicts with the underlying rules?
- Does the program integrate with client intake programs, if so, what client intake programs?
- How often are the rules updated, what is the process and how much time/effort/people are needed for the rules updates? Will there be any down time is needed to perform a rule update?

MISCELLANEOUS QUESTIONS:

- How long have they been in business?
- How often do they add new features/services?
- Are they committed to innovation?
- Does the program integrate with conflicts programs, if so, what conflicts programs?
- Detail the training resources that the vendor makes available to their clients and any associated costs.
- What is the process and the cost of additional training for new features and/or newly hired personnel?
- Does the vendor offer a pilot or test version?
- Can you provide references to similarly situated firms?
- Does the vendor have any case studies and/or references of similarly situated firms that you can speak to?
- What partnerships do you have with other Vendors?

PRICING:

Make sure that you fully understand the complete pricing model including all upfront costs, maintenance costs, training and install costs and any renewal costs. I suggest getting something in writing detailing all related costs over a 1,3 and 5 year period. How much are the renewals and how often are the prices raised and by how much?

REFERENCES:

If you are considering a change make sure that you get references from firms that are similar to yours in size, practice areas and needs. But the reference accounts will not doubt have only good things to say (or the vendor wouldn't be using them as a reference) so also call around or connect through the National Docketing Association or your local docketing associations with other users to get their opinions. Ask them a lot of questions about the ease of transition and installation. Ask about any issues with the promises and the service, any surprises, etc. Finally, build a budget to support the successful implementation of that solution which should include training, maintenance, support, future upgrades.

APPENDIX B

Major companies offering legal calendaring services

Use this list of calendaring service providers to research your options.

Aderant offers comprehensive practice, financial and case management solutions for law and professional services firms of all sizes worldwide. Their wide suite of legal software solutions and services are designed to help you securely, effectively, and profitably manage your firm to gain a competitive advantage. For over three decades their **CompuLaw** offering has been relied upon for calendaring risk management and has earned a strong industry reputation for their accurate rules-based calendaring. The CompuLaw solution also includes: MyView, a browser-based end-user interface; Calendar workflow solutions; Integrations with popular DMS systems HP Worksite (Interwoven) and NetDocuments; SharePoint Web Parts; and Electronic Court Filing Integration. For more information, please visit www.aderant.com.

Aderant Deadlines.com is powered CompuLaw's rules database and designed to allow smaller firms to generate deadlines with a highly intuitive web interface, flexible pricing and easy access to critical deadlines. Deadlines.com calculates your deadlines, automatically adds them to your Outlook calendar, and makes it easy to bill the charges back to your clients as a research fee. For more information, please visit www.deadlines.com.

BEC Docket Enterprise is a complete calendar, docket and task management application, designed specifically for law firms using Microsoft Outlook, and suited for both Litigation and Transactional practice areas. Docket Enterprise maintains practice group schedules in a centralized SQL database. At the same time, it updates individuals' personal Outlook calendars and task lists with pertinent information from the group schedule. Docket Enterprise includes Schedule Express™ for quick and easy scheduling and also offers advanced scheduling features including date calculation formulas, scheduling templates, optional integration with court rules, automated reminders, weekend/holiday alerts, and multiple time zone scheduling. Docket Enterprise prevents the accidental deletion of critical appointments from individual calendars and includes a complete audit trail. As part of the BEC CoreRelate™ Framework, a complete suite of legal applications, Docket Enterprise is integrated with matter management and document assembly applications. For more information, please visit www.beclegal.com.

Bloomberg Law is a legal and business intelligence, news and research system designed for legal professionals who handle complex legal matters and are focused on delivering superior client service. By integrating Bloomberg's news, company and financial data with primary and secondary legal research you get greater context of the issues you are researching. Bloomberg Law allows subscribers unlimited desktop and mobile access to all the information in the system, presented in a sophisticated yet easy-to-use interface. With Bloomberg Law Dockets, you can quickly find the dockets that affect your clients and their business. For more information, please visit www.bloomberg.com.

CalendarRules.com – Founded by lawyer G. Scott Davis in 2008, CalendarRules.com’s team of lawyers, programmers and technology architects merges the latest Web and cloud computing technologies with court rules content from across the United States to deliver up-to-the minute court rules, dates and deadline information to thousands of lawyers nationwide. Their largest customer has over 2500 lawyers and their smallest customers are solos, with a wide range in between. Rules are available for state, federal, local, bankruptcy and appellate courts. Several Docket, Calendar, and Case Management system providers, including: BEC Legal System, Clio, Court Alert, HoudiniESQ, JuraLaw, LawBase, Legal Software Systems, MA3000, and Open Text, as well as others integrate with CalendarRules.com. For more information, please visit www.calendarrules.com.

CourtAlert CM/ECF is a nationwide docketing and rule-based calendaring system with highly customizable and intuitive software designed to respond to the workflow of the clients it supports and for users of all legal and technical skill sets. CourtAlert CM/ECF incorporates reconciliation technology that automatically integrates e-filing notices directly into the program, “Custom Rules” used to implement internal work processes, Integration with Outlook, Document Management, HR and accounting systems. Periphery functionalities include Knowledge Management, Attorney Admission Database and more. For more information, please visit www.courtalert.com.

CPA Global is a world leader in intellectual property management software and IP and legal support services. With offices across Europe, the US and Asia Pacific, CPA Global supports many of the world’s best known corporations and law firms with a range of IP and broader legal services, helping them to manage risk, cost and capacity, and realize greater value for their businesses and IP assets. CPA Global helps clients manage valuable IP Rights, such as patents, designs and trademarks, ensuring that IP portfolios are protected, maintained and regularly reviewed. CPA Global’s IP Management Systems include comprehensive workflows and rules covering all jurisdictions. CPA Global is also a market leader in the outsourced legal services sector, providing high quality and cost-efficient legal support services through delivery centers in the US and India. Founded in Jersey, Channel Islands in 1969, CPA Global today employs more than 1,800 people, serving clients’ needs in 200 jurisdictions through its own offices and an extensive agent network. For more information, please visit www.cpaglobal.com.

eDockets from American Legal Net provides a “desktop to courthouse” legal workflow solution that streamlines docketing and calendaring with a national platform that includes local expertise. eDockets offers convenience and ease of use, achieved through extensive integration of its docket and calendar functions both within the eDockets platform and with external core systems and applications. This integration includes active maintenance of personal calendars, computing and scheduling deadlines from published court rules, automated reference to official court and agency forms, direct docket feeds from Federal District Courts, New York Unified Court System, and Cook County and Collar Counties Courts, as well as automated processing and docketing of all PACER notifications. Additionally, eDockets features scheduled and distributed reports, keyword document search, attorney change utility, and integration with Forms WorkFlow. For more information, please visit www.alncorp.com.

JuraLaw by Law Bulletin Publishing Company is a completely web-based (SaaS) national solution that combines full-featured case, calendar and docket management with the enhanced content of court calendars, court dockets and court rules. This legal case management software helps law firms mitigate legal malpractice by keeping a firm's lawyers on track for critical deadlines and on time for court appearances. JuraLaw offers over 150 reports as well as search filters for case monitoring and business analysis purposes. JuraLaw can easily be integrated with Outlook calendars and NetDocuments. JuraLaw's tenured customer support and account management teams include experienced courthouse and docket professionals who help law firm personnel take advantage of JuraLaw's features that will make their docketing more efficient and accurate. Since 1984, major law firms have relied on Law Bulletin for their docketing needs. For more information, please visit www.juralaw.com.

LawToolBox is a centralized deadline management system that calculates state and federal court deadlines based on rules of procedure for each court. LawToolBox has offered a cloud-based deadline management system since the late 1990s and deadline synchronization to Outlook since 2002. LawToolBox's rule-based deadlines automate litigation timelines, email reminders and deadlines reports and empower every attorney and staff to better understand what needs to be done, and when. LawToolBox partnered with LexisNexis to provide court deadlines for LexisNexis Firm Manager and also offers sync software for LexisNexis Time Matters. For more information, please visit www.lawtoolbox.com.

Legal Software Systems was founded in 1984 and was among just a handful of companies developing integrated software designed specifically for law firms. By continuing to offer unprecedented service and innovative technology, while striking a balance of software and service, they continue to be a leader in this highly competitive industry. LSS specializes in the development and support of integrated Law Office Management Systems, from stand-alone applications to fully-integrated enterprise systems, which are flexible, scalable solutions, tailored to meet the requirements and budget of nearly any law firm. For more information, please visit www.legalsoftwaresystems.com.

LexisNexis , an original pioneer of online information, is a leading global provider of content-enabled workflow solutions designed specifically for legal and other professionals. LexisNexis offers a wide variety and comprehensive suite of legal solutions for law firms of all sizes and serve customers in more than 100 countries with 15,000 employees worldwide. As part of their calendaring offerings they have teamed with LawToolBox (see above) to provide deadline content and technology to help manage deadlines through LexisNexis Firm Manager. For more information, please visit www.lexisnexis.com.

MA3000 combines calendar and docket management with case-specific electronic data services to track and manage critical court dates, case information, events and deadlines. The system allows you to: Generate a complete docket history for complex cases, and calendar court appearances and deadlines for state and federal courts; Receive email alerts on case events, appearances, decisions, and judge assignments; Exclusive search of the New York Law Journal for comprehensive coverage of unique and hard to find case information; Disseminate case information for your firm with a comprehensive reporting suite; Access personalized calendars, online docket history, linked pleadings and judicial profiles with WebCalendar; Automatically identify and schedule appearances and deadlines with Rules Based Scheduling. For more information, please visit www.ma3000.com

Thomson Reuters one of the world's leading providers of legal technology and legal content, offers several rules-based calendaring choices to help reduce the risk of missing critical court deadlines through their various offerings, including: **ProLaw**'s rules-based docketing and case management calendaring solution; **Westlaw Legal Calendaring; Elite;** and **Deadline Assistant**, which is a new rules-based court calendaring add-on module to **Firm Central** (their cloud-based practice management platform) which calculates litigation dates and events based on the court rules specific to a jurisdiction. They have coverage for virtually all federal and state court and they provide a link to the full text of each rule in WestlawNext. Deadline Assistant also allow as firm to create a fully customized rule set or to permanently customize any court rule set, as well as to edit dates from within Outlook. For more information, please visit www.thomsonreuters.com