



Calendaring software won't protect you unless you know how to use it. BY JOSEPH C. SCOTT

LEGAL CALENDARING: WHAT YOU DON'T KNOW CAN HURT YOU

According to the ABA, over one-third of all legal malpractice claims are attributable to deadline and calendaring errors. As a result, automated legal calendaring systems are among the most adopted legal software systems. However, recent malpractice cases involving calendar-related errors by firms using automated systems have motivated firms to take a closer look at the risks inherent in legal calendaring and their approaches to mitigating those risks with technology. Often, after that review, they find that a lack of competence in calendaring technology has left them vulnerable, regardless of the technology they are using or how much they are paying.

Technology can be incredibly helpful in mitigating the risks associated with legal calendaring. However, relying too heavily on technology can also be fraught with danger, as evidenced by several notable decisions. In *Two-Way Media LLC v. AT&T Operations Inc.*, No. 5:09-cv-00476 (W.D. Tex. Feb. 6, 2014), the court warned that it isn't sufficient for attorneys to rely solely on automated systems as such systems do not always fully convey the court's disposition in a matter. In *Symbionics Inc. v. Christopher Ortlieb*, 2011 WL 2076335 (4th Cir. May 23, 2011), 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. LLC*, 599 F.3d 403 (4th Cir. 2010), the court determined that computer issues in the appellant's office, resulting in the failure to receive a notice of a motion for summary judgment, did not warrant relief.

In most malpractice cases involving calendaring or docketing errors, it isn't really about a failed calendaring system but about a failure in the *process*. If you can't recall the last time you thoroughly evaluated your calendaring processes, reviewed your deadline monitoring procedures and evaluated your legal calendaring system, it's time you did. You should review it from a technology *and* a calendaring competence perspective to make certain there are no serious deficiencies in the use of the system and the enforcement of your internal procedures.

Many firms have learned the hard way that they can't manage risk on a fragmented departmental basis. They must have a clearly defined firm-wide risk management program aligning people, processes and technology.

CALENDARING COMPETENCE

When it comes to your legal calendaring system, the people responsible for operating the system and enforcing the associated policies and procedures are the most important factor in your analysis. No matter what choice you make in a calendaring

solution, without a knowledgeable, properly trained and detail-oriented docketing staff doing the actual day-to-day work, your firm is vulnerable to serious errors.

It is critical that skilled and trained docketing professionals work with your attorneys to build backup and redundancy in a checks-and-balances system. Equally important is the documentation. If the policies and procedures are not in writing, they may as well not exist. You must document your policies, procedures and workflow so that the firm has a consistent process to prevent calendaring-related errors.

Docketing is not simply data entry. Proper docketing is a discipline that requires solid fundamental knowledge of the rules and procedures promulgated by various legal authorities and 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 are necessary. Understanding how to interpret or comprehend the way the rules are written, and then apply them in real life situations, requires experience and skill.

Be sure your docketing professionals possess great attention to detail and a deep understanding of court rules and agency processes specific to your practice areas and jurisdictions. Do they understand “triggering” events and their implications for deadlines? Ask them about some “out of the ordinary” rules and procedures specific to an individual judge or local court. Inquire about the steps they would take in any given situation to make docket entries. Can they anticipate what happens after discovery and motion phases? Do they understand the trial, posttrial and appeal phases? Often you will have to question the system itself. Your staff needs to know how to get the answers the old-fashioned way and to be able to do the entire process manually.



For More Information

Is it time to rethink and refocus your firm's legal calendaring and risk management strategy? Read more from Joseph Scott at gsspconsulting.com/white-paper/

Be certain that the staff involved with docketing and calendaring has an intimate knowledge of the relevant rules and when, where and how to apply them. A person with a wealth of legal knowledge may be unable to transfer that knowledge and understanding into a technological interface. Intuitively understanding the logic of the application may be as important as understanding the rules themselves. And, remember, ultimately attorneys are responsible for the accuracy of the deadline calculations, whether they calculate and input the dates themselves, rely on staff members to do so or use an automated rules-based system.

TECHNOLOGY COMPETENCE

The review of any technology, particularly if it has served you for several years, can be daunting. The best approach is an

objective perspective where you ask, If I were to choose a new system today, would I stick with our current system or select something else?

The functionality of your system is critical. A great user interface translates into ease of use, helping to ensure the system is consistently used. Far too many calendaring errors have merely been the result of someone forgetting to use, or choosing not to use, the firm's calendaring system.

No matter how good the system is, and how smart your docketing team and/or technical support professionals are, at some point you will need help. You must understand your vendor's service, support and training processes. Make sure you know the answers to the following questions:

- What support options does the vendor offer?

- How difficult or challenging is it to manage the application and its updates?
- What kind of assistance is available if you run into trouble?
- What about training for new installations?
- How about ongoing training?

The vendor should provide application updates and training for newly hired docketing professionals. Be sure you have those assurances in writing and in advance.

FEATURES AND FUNCTIONALITY

Many features and functions enhance the operation and use of a calendaring system. When evaluating your calendaring system and how it complements your risk management and risk mitigation strategies, consider how it handles the following:

- Automatic date scheduling, reminders and group scheduling.
- Security, auditing and data validation.
- Mobile communications, browser-based accessibility and cloud-based capabilities.
- Integration with other vendors' applications and other external applications.
- Knowledge management and big data.
- Conflicts of interest. Does it communicate and integrate with your conflicts software?
- Client communication.
- Disaster recovery.
- Reports. Are they automated, flexible and customizable?

RULES-BASED SYSTEMS

Firms of all sizes have adopted rules-based legal calendaring systems to help ensure that critical legal deadlines are not missed. If you elect to use a rules-based calendaring system, the most important piece is the rules themselves. However, you must remember that if you use a

rules-based system, never allow it to replace your understanding of the rules.

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 help implement practice area and firm-mandated workflows and best practices. Many firms, because of their internal expertise, type of practice and the jurisdictions in which they practice, prefer to create the rules themselves. If you choose that path, you must be vigilant to ensure that everyone involved has the appropriate training and precise knowledge of the relevant rules.

If you rely on a vendor's rules, you have the right and the obligation to ask many questions. To help you in that process, think about asking these questions:

- Where do the rules come from?
- How large is the user base for the rules?
- What is the experience and training of the rules developers?
- How accurate and complete are the rules?
- Does the vendor allow testing of its rules?
- How often are the rules updated, and what is that process?
- What is the process for asking questions on a rules calculation?

INSURANCE CONSIDERATIONS

Since your calendaring and docketing practices can dramatically affect your

malpractice insurance, it's important to understand how your professional liability insurance carrier views your firm. Premiums are calculated according to the level of risk that each firm presents. Many carriers provide premium discounts or limit rate increases for firms with automated, rules-based, centralized and redundant calendaring processes that are mandated throughout the firm.

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

CONCLUSION

Malpractice lawsuits can devastate a law firm and the career of the one responsible for the error. Therefore, establishing centralized policies and procedures backed by a firm-wide risk management culture is key to preventing professional liability claims and 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.

No two law firms are the same. The best system for your firm is the one that your attorneys and staff will actually trust and use. **LP**



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