

Advisor

An update on issues regarding liability protection for the legal profession.



Preventing Deadline Errors

Deadline and calendaring errors are among the leading causes of legal malpractice claims, accounting for 28% of claims reported in the latest *Profile of Legal Malpractice Claims*, published by the American Bar Association (2008). (See the chart on page three.) The good news is that most deadline-related errors can be prevented.

Deadlines are driven by many different sources, making all matters in a law firm time-sensitive, regardless of the area of law. The deadline may be dictated by a statute of limitations or by filing dates or by client service requirements. Consequently, good client service and good risk management dictate that all law firms follow a comprehensive deadline control system.

Missing a deadline may compromise a client's case, leading to serious legal and financial consequences, particularly if the claim is time-barred. Deadline errors that cause irreparable harm may be difficult to defend.

Should the deadline error result in a claim of legal malpractice against you, defending it may require a great deal of your time and money – the time you spend helping with your defense and the amount you pay to meet your policy deductible. If defense and indemnity costs exceed your lawyers professional liability

insurance limits, your costs would increase even more. For your clients and for you and your firm, implement and follow a comprehensive deadline control system in your practice.

The potential for improved law office management through computer enhancement is great. There are a variety of good computerized calendaring systems, some are stand alone, others are integrated with case management system software.

A centralized computerized system is desirable. Automated case management and calendaring/docketing software incorporate many excellent deadline control features and can be very effective if used properly. Computerized deadline calculation software will dictate the deadlines and tasks automatically once the matter is logged into the system. However automatic a system may be, active oversight by a lawyer is very important.

Elements of a Good Deadline Control System

- **Consistent and universal use of the system.** Many firms have an excellent deadline control system, however it is used selectively so the system works selectively. Your system is only as good as the information you provide. Think of the deadline control system as a checkpoint through which all clients and matters must pass. As soon as you take on a matter, put deadlines associated with each case handled by every attorney into the system.

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- **Require everyone to participate in the deadline control system.** That includes partners. Your system may not work unless everyone is required to follow through on notices. Regardless of the size of the firm, the solo lawyer or all partners and department heads should routinely monitor the system to verify that it is used universally and that deadline notices are correct and effective.
- **Thorough training of all staff and attorneys.** Cross-train staff and attorneys. Fully document the system so that staff changes don't shut it down. Plan formal lines of delegation, designating a backup lawyer to respond to deadlines if the responsible lawyer cannot.
- **Redundancy.** Disasters happen. If you use only one calendar, you may find yourself with no calendar, spending many grueling weeks reviewing files, calling opposing counsel, clients and judges to re-establish dates. In addition to the master calendar, redundancy may include the system back-up, individual PDAs, practice area calendars, etc.
- **Regular back-up stored away from the office.** It is critical that whatever deadline system your firm uses be backed up daily and stored off-site.

- **Deadline tickler reminders and file review reminders.** A calendar system without a tickler component to alert you to approaching deadlines may not function as you had anticipated. Enter dates in advance of a deadline to tickle or remind you, to give you time to complete the work prior to the deadline. For example, calendar a statute of limitations for ticklers four months out, two months out and then one month out. A daily review of the required activities and warnings of impending deadlines on your cases is ideal.

Cross-train to prepare for possible staff changes.

- **Legal-specific and court rules based.** Include all statutes and rules relevant to each case in order to track mandated filing periods, expiration, defaults and other time limits.
- **Perpetual calendaring.** Consider calendaring out deadlines to as long as five years. Unless it is properly entered in the deadline system, a matter with a distant deadline can become a time bomb, silently ticking until it is too late. See the Claims Scenario on page four.
- **Program for change.** Rarely does a matter proceed exactly as you expect, so build flexibility into your deadline control system. You may have to adjust the timeline to a change in strategy. Or you may need to modify deadlines to keep up with new laws and developments in case law.

Many claims arise, not from a system failure, but from the failure to place an item within the system or failure to act upon a notice once it has been given. Anyone can make a mistake, but if the system is administered properly, someone else may be able to catch the problem in time to prevent harm. 🌴

See Claims Scenario on Page 4



Deadlines Specific to Practice Areas

In addition to appointments and meetings and client communication and service deadlines, specific practice areas impose specific deadlines. The following lists deadlines that may be more specific to litigation or to real estate. The lists are not complete, but are provided as an example of what a lawyer in these practice areas would include in a deadline control system. Depending on your practice and your firm's culture, there would certainly be other time-sensitive tasks on the list.

Real Estate:

- Contract deadlines
- Loan/documentation deadlines
- Inspections/due diligence deadlines
- Closings
- Lien notifications
- Recording deadlines

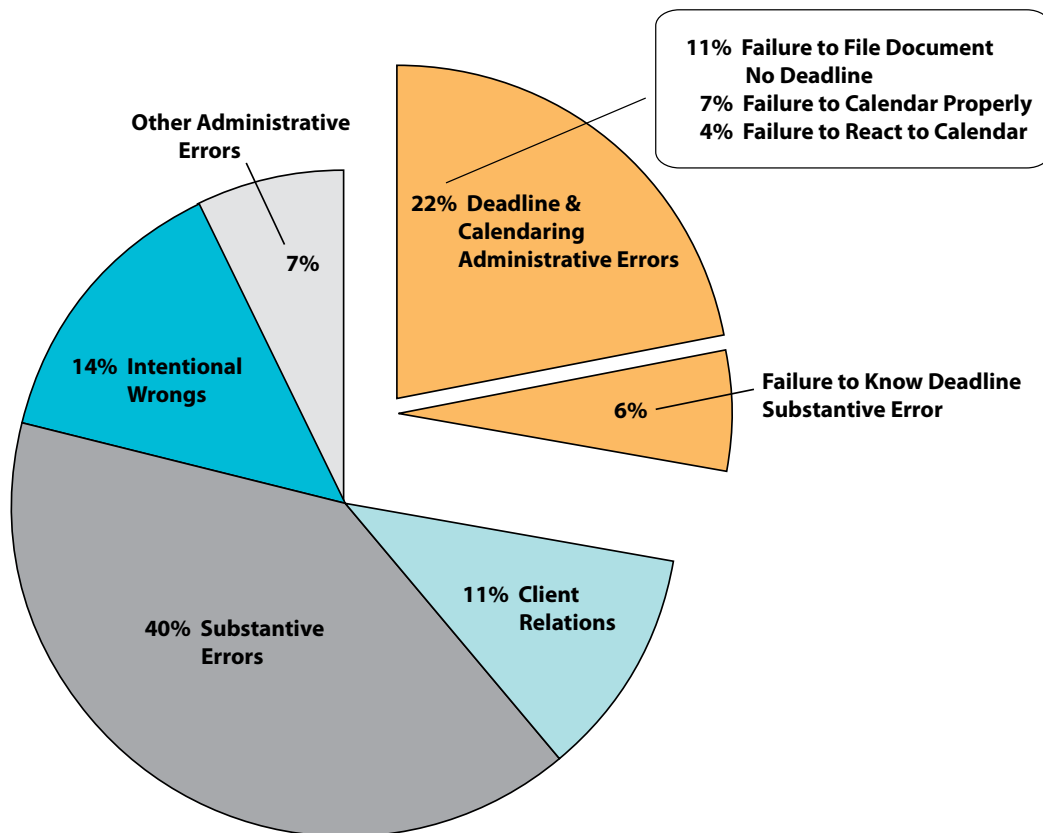
Litigation:

- Statutes of limitations
- Pleading deadlines
- Court dates, including filings and appearances
- Discovery dates
- Opposing party deadlines



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Source: Profile of Legal Malpractice Claims 2004-2007, American Bar Association (2008)

Claims Scenario: Failure to Calendar

Why take the time to enter a statute of limitations into your deadline system when you always file suit as soon as you take a case? After all, there's no danger of the statute running if you file right away — is there? No, but the statute of limitations is not the only deadline. Consider this scenario:

Lawyer A accepted a case with a fast approaching statute of limitations; to make sure he didn't miss the statute, he filed suit immediately. The case was later dismissed for failure to prosecute.

Because Lawyer A filed the suit immediately, he failed to enter the statute, or any of the other deadlines, in the calendar. The attempt to re-file the case failed because the statute had run by that time. Had Lawyer A entered the SOL, the associated dates would have been scheduled, including the failure to prosecute deadline. 🌴

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