July-August 2020 *Multnomah Lawyer Ethics Focus*

Keeping Track:
Calendaring in Law Firm Risk Management

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Late last year, the Oregon State Bar Professional Liability Fund's *inBrief* newsletter included some eye-catching statistics:

> "For claims closed between July 1, 2018, and October 1, 2019, the PLF paid almost $3.5 million to plaintiffs who had a malpractice claim caused by a missed deadline. That represents 34% of PLF money paid to claimants." (December 2019 at 5.)

Oregon is not unique in this regard. Since 1985, the ABA has periodically published a "Profile of Legal Malpractice Claims" reflecting statistics compiled from insurance carriers nationally. Calendaring and related administrative errors have remained stubbornly persistent throughout. No doubt that is at least in part because many practice areas—litigation in particular—are weighted heavily with deadlines. Although some deadlines are soft and can be stipulated away through agreement with opposing counsel, many are hard and unforgiving. Further, the Oregon Supreme Court in *Vandermay v. Clayton*, 328 Or 646, 984 P2d 272 (1999), held that expert testimony may not even be necessary when a lawyer's error is inherently within a lay jury's understanding. It is not difficult to imagine a trial judge in a given case ruling that a jury could readily understand the import of, for example, a missed statute of limitation.

The Oregon Supreme Court noted in *In re Snyder*, 348 Or 307, 316, 232 P3d 952 (2010), that "[a]n isolated incident of negligent conduct does not

establish neglect" in a regulatory sense under RPC 1.3. Nonetheless, missed deadlines can present risks beyond malpractice claims. *In re Obert*, 336 Or 640, 89 P3d 1173 (2004), for example, involved a lawyer who filed an appeal three days late—resulting in its dismissal. The lawyer was so chagrined by his error that he waited five months before telling the client. He was disciplined for the delay in informing the client.

Because deadlines are a fact of life for many practice areas, calendaring is also an essential part of law firm risk management. Although calendaring systems vary by firm size and practice, they typically include two central elements: inputting and monitoring dates. In this column, we'll briefly survey both. The PLF has a variety of practice aids on its website addressing calendaring and its knowledgeable practice management team is also available to consult with its insureds.

Inputting Dates

Technology has made calendaring both easier and more difficult at the same time.

It has made it easier in the sense that even general office software programs now typically include a variety of calendar features that make it easy to

enter key dates on both individual and work team or central calendars along with intermediate "reminders."

It has made it more difficult in the sense that electronic tools like spam filters may need to be adjusted to ensure that emailed court notices are not inadvertently blocked. Similarly, if a particular court only sends notices to an attorney of record rather than, for example, a "service" address including all work team members, the firm should set-up an internal forwarding mechanism to make sure that notices and other time-sensitive correspondence are shared with the entire work team and docketing staff so that they are appropriately calendared.

Throughout the inputting process, it can also be critical to have "more than one set of eyes" double-check the accuracy of the dates entered. Even the best calendaring system can fail as a risk management tool if an incorrect deadline is calculated on the front end. If court rules are ambiguous—for example, rules stating that an action is due "before" a particular event and not making clear whether the day of the event is included or excluded—they should be discussed within the work team and the most conservative date entered.

Monitoring Dates

Simply calculating and docketing a correct deadline for a particular event is not the end of careful calendar management. As an event approaches, the

deadline must also be monitored to make sure that the action required is taken. Calendar "reminders" should be set so that there is adequate time to complete the task. Simply because electronic dockets in many venues now permit filing up to 11:59:59 p.m. does not mean that should be a regular practice.

Human "reminders" are equally important. In an era when we can suffer from electronic "information overload," having a member of a work team remind the responsible lawyer in-person of an impending due date and monitoring progress can be essential. Staff members should feel empowered to speak to other firm lawyers if a particular lawyer appears to be ignoring or losing track of a looming deadline despite earlier reminders.

Again, having "more than one set of eyes" on an impending deadline can be critical. If the lead lawyer on a case, for example, is ill or in trial, another member of the team may need to step-in and handle preparing and filing the brief, motion or notice of appeal involved in the other lawyer's absence.

Summing Up

Most lawyers didn't go to law school so they could calendar a never-ending stream of deadlines. The most brilliant legal argument may never be made, however, if the lawyer missed the filing deadline involved. As long as

there are deadlines in law practice, calendar management will remain one of the most mundane but essential tools of law firm risk management.

ABOUT THE AUTHOR

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