

COMPUTERIZED CALENDAR SYSTEMS CAN HELP DRIVE DOWN THE COSTS OF LEGAL MALPRACTICE INSURANCE

Insurance is all about risk, and in the eyes of many insurers today, law firms represent a high risk in the area of malpractice. In this interview, attorney Mark Bassingthwaight, risk management coordinator of the Attorney Liability Protection Society (ALPS), discusses the types of errors and omissions that can lead to malpractice litigation and how law firms can prevent them. He focuses on factors involved in the use of rules-based computerized calendaring systems.

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Is malpractice insurance becoming a major burden for law firms?

Bassingthwaight: For some firms, malpractice insurance is a heavy burden; for others, it isn't. The costs of insurance are based largely on risk, and some firms are perceived to be much riskier than others. Many of the larger firms have taken significant steps to reduce their liabilities. However, most of the small and mid-sized firms and solo practitioners are still dragging their feet.

For example, many insurance carriers offer premium discounts to firms with computerized firmwide calendaring systems in place, but many firms are still maintaining pencil-and-paper calendars, with all the risk of error that involves. And most of the firms that are using firmwide computerized calendaring aren't using the most efficient technology. The majority are using Microsoft Outlook, a generic approach. Firms using rules-based calendaring systems designed specifically for lawyers are actually in the minority.

Are calendaring errors a major cause of malpractice litigation?

Bassingthwaight: According to the ABA Standing Committee on Lawyers' Professional Liability, missed critical deadlines, often a result of poor calendaring practices, are a leading cause of malpractice litigation. In addition, conflict of interest claims are a serious concern due to their high potential for resolving with a large loss. Attorney impairment is the other significant concern because we recognize that often some type of impairment, even common things like stress or burn-out, are a contributing factor behind the misstep that led to the malpractice.

Technology, along with effective training and management, can greatly reduce all three of these risks. Again, some firms are at much greater risk than others. Firms handling large volumes of litigation are, by their nature, high risk. For them, a key goal should be to not just eliminate risks but, in particular, to eliminate the kinds of risks that can lead to serious damages. The severity of lawsuits is more critical than their number.

Can firms use any kind of computerized calendaring system?

Bassingthwaighte: We don't dictate the specific system; but if they ask or if they're running into problems, we generally advise them to go with rules-based calendaring software. About half of the law firms I've visited are using Microsoft Outlook—and many of them are still missing deadlines, big time! My

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guess is that over the next few years, insurance carriers will start pushing law firms, especially firms handling a lot of litigation, to move to a firmwide or practice area rules-based calendaring process. This approach to calendaring can be done with the help of sophisticated software or even through the Internet, with systems that offer 24/7 access to calendars (some products are referred to as “Web Portals”) or with online legal date calculation services such as Deadlines On Demand (www.deadlines.com).

What are the advantages of a rules-based calendaring system over a generic system like Microsoft Outlook?

Bassingthwaighte: With a rules-based calendaring system, you have a company like CompuLaw keeping track of all the local rules for you and alerting you to any changes or updates. Compare this with what happens at many firms. They assign a legal assistant to keep track of critical dates. Often, the person is inexperienced and is not trained to look for exceptions. If errors creep into the calendar, there is no firmwide method of catching them.

Even with rules-based calendars, don't you still have the problem of lawyers failing to meet deadlines?

Bassingthwaighte: Even the best calendar can be ineffective if an attorney is impaired. I'm not talking just about alcoholism. Lawyers can be affected by numerous physical and psychological problems, including burn-out, depression, stress and exhaustion. Most firms have very few quality-control processes to identify lawyers who are losing control of their workload. Some firms ask lawyers to review their files once a month, but file review is time-consuming, and many lawyers simply don't do it. Where impairment is a potential problem, I encourage firms to use their calendaring system as a tool to monitor workloads and assignments and to identify potential impairments. If a lawyer is not meeting mandated file review dates, that raises a red warning flag.

Also, with a computerized system, firms can insist that lawyers file papers and meet other deadlines a specific number of days before they're actually due. Again, this kind of approach spots developing problems before they can snowball into a malpractice lawsuit. It's pure gold if you can get a firm to use its case management system to raise accountability to a higher level. It provides assurance that the work the firm brings in will actually be completed in a timely and responsible manner.

If a firm implements a rules-based calendaring system, are there risks the firm still must consider?

Bassingthwaighte: The goal of a calendaring system is to make sure that the firm's attorneys are aware of deadlines at all times. So, you want a system that can be accessed by lawyers who are traveling or in court. All it takes is a fire or disaster to create havoc. If the computerized calendaring system is de-

stroyed, it can take months of work and many sleepless nights to restore it. That should never happen. With today's technology, it's relatively easy and inexpensive for a law firm to back up all of its critical data in an offsite location—preferably well away from the main office. Then the firm can ride through a disaster and still be back in business in a matter of hours.

What other factors should law firms consider when assessing the liability of their legal calendaring procedures?

Bassingthwaight: A case management system with rules-based calendaring enables a firm to raise its practices to a higher level. It creates accountability. If a lawyer or legal assistant makes an error, you can pinpoint responsibility for the error and provide whatever training is needed to make sure it doesn't happen again. A firmwide computerized system can also help spot areas where the firm's processes and procedures are breaking down. Any law firm that sees improving the quality of its work as a competitive tool should move to automated rules-based calendaring. It will do a lot more than help fend off malpractice suits; it will help eliminate many of the errors and oversights that undercut the quality of the firm's casework. ❖

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