

Minimizing Risk While Maximizing Performance*

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Insurance is all about risk. Law firms and lawyers need professional liability insurance to help protect them against the risk of frivolous malpractice accusations and to see that clients are protected in the event that a malpractice error ever does occur. For those providing the insurance, it all comes down to managing risk. Insurance companies strive to manage the risks that they take on, in part by working to help insureds minimize the risks that they represent.

Today, the greatest risk to law firms, and, by extension, their insurance companies, are malpractice claims that arise due to a calendaring error. The American Bar Association has found in its latest malpractice survey (ABA Profile of Legal Malpractice Claims, 2000–2003) that calendaring and deadline-related errors remain the leading cause of malpractice claims. Failure to calendar properly, failure to react to the calendar and failure to know and ascertain deadlines account for a combined 16.63 percent of all malpractice claims at a national level.

Many of the largest law firms are getting the message. Those firms, which enjoy the advantages of numerous support staff and extensive technology budgets, are taking steps to address the problem and reduce their potential liability. Big firms can better afford calendaring and matter management systems. They have office managers and administrators who oversee practice management and ensure that certain methods are standardized throughout the entire firm. But, it's a different situation for mid-sized and small firms. These firms tend to drag their feet when dealing with malpractice prevention through investment in systems and processes.

For insurance companies, reluctance on the part of any law firm, regardless of size, to implement standardized practices and firm-wide computerized calendaring systems is highly worrisome. For this reason, insurance companies encourage firms to take a proactive approach to the problem, and one of the most effective ways to do so is through the adoption of a systematic firm-wide calendaring system. Insurance companies view the issue as so significant that many offer premium credit exclusively to law firms with automated calendaring technology.

Since every law firm is different, there is no one-size-fits-all solution. However, there are a few characteristics that any good state-of-the-art calendaring system will have in place.

It Should Be Rules-Based

Staying on top of the rules of various courts is a challenge for firms of every size. Even major multinational firms have found themselves on the wrong end of a lawsuit due to a missed deadline.

Changing court calendars, differing rules in different jurisdictions and local holidays make checking and rechecking deadlines a tiresome and often nerve-racking process for law firms. But a calendaring system that incorporates a rules-based program helps to take away that anxiety and uncertainty. With these rules-based systems, court holidays and internal firm deadlines, for example, are automatically calculated and set with the ability to add customized predetermined reminders. Even better, calendaring practices can now be standardized throughout a firm or practice group.

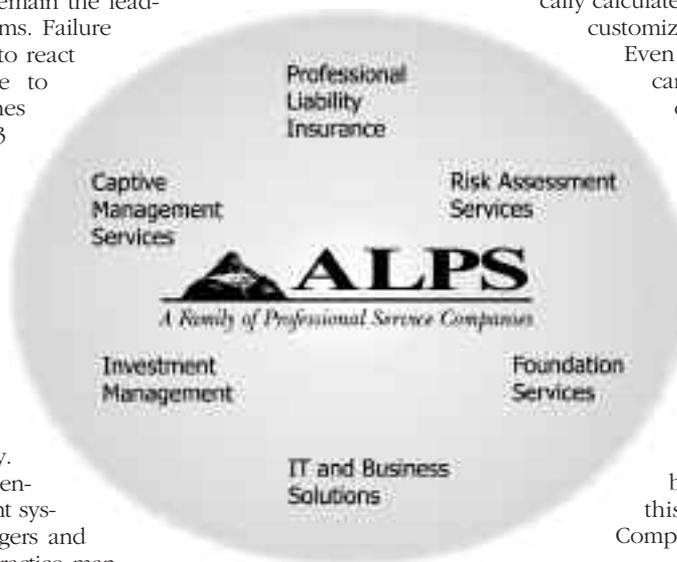
Many sophisticated calendaring technology programs, such as CompuLaw Vision software (www.compulaw.com), update court rules automatically and regularly. Since dates and deadlines are constantly changing and must be monitored throughout the course of any matter, getting those regular updates should also be efficient and affordable and this is where a product like CompuLaw shows its value.

A good system should also include a standardized method for file review, which is a major shortcoming of so many law firms. With multiple cases that can take years to resolve, it can be too easy for attorneys to forget to review every file and, unfortunately, sometimes a seemingly small matter gets overlooked and a serious loss follows. With regular prompting from the system, via a customized file review reminder, lawyers are able to stay abreast of every open matter.

It Should Be Useful at an Administrative Level

Convincing even two technologically savvy attorneys in one law firm to switch to the same calendaring system can be a challenge. Old habits die hard sometimes. Therefore, when searching for a new system, it must be one that everyone at the firm, including support staff, buys into. Take the time to understand the product, determine how it will fit into the practice and train your users.

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The system should include an audit trail to determine who has made what changes when. The system should also be viewable in different formats. The ability to view an individual calendar as well as a firm-wide or practice group-wide master calendar meets different needs. Attorneys and support staff must also be able to upload it to different formats, including desktop calendars and personal digital assistants.

It Must Contain Redundancies

If your law office burned to the ground overnight, would every attorney at the firm have a calendar in the morning? This is a favorite question of risk managers, who love redundancies. In fact for—litigation firms particularly—risk managers and insurance companies are looking for a minimum of three independent redundant calendaring systems within a firm. At the end of the day, if one calendar is wrong, the hope is one of the others is correct and the calendar error will never result in a viable claim.

Of course, don't overlook off-site storage of the backup of all computer files—not just calendars—as another redundancy. As recent events have unfortunately proven, man-made and natural disasters can have far-reaching and devastating consequences.

Hopefully, these few thoughts adequately demonstrate the concerns that insurance companies have regarding the risks associated with critical deadlines as well as provide insight into how you can reduce your exposure to these kinds of risks. Failing a client by missing critical deadlines can be both personally and professionally devastating. But, by being proactive in implementing systems and procedures that seek to guarantee that deadlines are being met, lawyers can focus on doing what they do best—practicing law and serving clients well.

ALPS is the endorsed legal malpractice insurance carrier of the Virginia State Bar.