

PERSPECTIVES

Strategies to Manage Your Law Firm's Professional Liability Exposures

MSP L 01/04 "Practice Management Strategies — Part 4"

January, 2004

Practice Management Strategies Part 4

Deadline and Docket Control Systems

Be aware that missed deadlines are the single largest root cause of professional liability claims –

An estimated 25% to 40% of all professional liability claims result from missing a critical time deadline of some kind. Missed deadlines are a major concern since they can result in extremely serious professional liability claims, which often are relatively easy to prove.

For example, if a lawyer, through oversight, misses a particular statute of limitations, and the underlying case, which has stipulated damages of \$5 million is thereby lost, a professional liability claim for that same amount is sure to ensue.

Use a sophisticated computerized calendar system as your main docket control system – Prior to the widespread use of computers in law firms, docketing calendars were created on a manual basis. This involved a labor intensive, highly error prone environment whereby lawyers or support staff, at the outset of a trial, tried to subjectively apply complex court rules to determine a myriad of deadlines that would apply to a given litigation. In such a manual system, errors in calculation and oversights are inevitable.

Today, highly sophisticated software programs are available from CompuLaw and other companies. These systems can be programmed with court rules so that if a trial date is entered, the system

will automatically calculate all time-critical deadlines for the litigation. The more sophisticated the docket software is, the less room there is for error.

Manual calendars can be used as backups to the computer system, since it always is advisable to have a minimum of two or three different calendar systems in place in order to help ensure that no deadlines of any kind are missed.

Make sure all dates get captured and entered into the system – The biggest calendaring challenge, since initial notification of critical dates can come from several disparate sources, is making sure that all critical dates get identified and entered into the system. This becomes even more challenging if the law firm is involved with one or more practice areas which have a number of deadlines that are endemic to that practice area alone, such as Bankruptcy, Probate, Patent, Estate and Tax law, among others.

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Published by

Cavnac & Associates
INSURANCE BROKERS

License No. OA99520

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In order to purport to capture all dates, a clear set of written date input procedures, which encompasses all the paths through which initial notification of dates can come, must be developed and distributed. Additionally, all lawyers and support staff must make the commitment to discipline themselves to adhere to the procedures.

Use a centralized system with clearly assigned responsibilities and controls – There should be at least one centralized firm-wide system in use. The reason for this is if, alternatively, each practice group or each lawyer purports to do their own independent calendaring as the primary calendar, inevitably there will be breakdowns. A specific person, along with a backup person when the primary person is unavailable, should be given the responsibility of overseeing the input and distribution, which is usually done in the form of a weekly report distributed to each lawyer and secretary in your firm.

Built-in controls to make sure an item gets handled are extremely desirable. For example, as a deadline approaches, a lawyer may get daily notice of the impending deadline until the lawyer confirms by e-mail or otherwise to the docket coordinator that the deadline has been successfully met.

To the extent that systems rely on and assume that various individuals will follow through, the system will be deficient. Where there is a centralized control in place ensuring that something will be handled, the system can come very close to being fail-safe.

Documentation

Recognize that clear written documentation is the best defense to a professional liability claim – Your legal position when a professional liability claim has been brought against you often will hinge on the level and quality of documentation you can produce. If you can produce clear written evidence that you were not at fault, you will almost certainly prevail. If you are unable even to locate or produce your client file, it is best to be prepared to cut a check for the amount of your insurance policy's deductible.

Always go the extra mile in documentation vis-à-vis each of your clients – Nowhere are the legal scales more tipped than in the relationship between a lawyer and client. For clients acting in good faith

and with “clean hands,” the courts will almost always uphold their reasonable expectations and reliances, and even many of their unreasonable ones.

Clients will be given every benefit of the doubt by most judges, and nearly all juries, based on the premise that the lawyer is charged with having a complete knowledge and understanding of the law, while your client is not legally expected to know anything, and to understand very little. Because the scales are so uneven, the lawyer must always go above and beyond what appears to be reasonable.

More is always better when it comes to documentation.

Dual Professions

Avoid acting in dual professions and roles relative to a single client – It is almost always inadvisable to wear more than one hat for a given client or in a given transaction. The reason for this is that operating in dual roles can create confusing and uncertain roles and expectations.

A classic example of this is the situation in which a lawyer who is also a CPA is serving a client. On the one hand, the CPA can have many duties to disclose information. This readily can come into conflict with the duty of the lawyer to protect client confidentiality. The best strategy is to stick solely to the role of lawyer, and avoid the roles of broker, agent, director, or promoter. ✂

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