



# ALPS

## Practice Management Pointers

## All about the Calendar

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### It Begins with the Mail

Calendar and docket control begins with the proper handling of incoming mail. Handling mail improperly can result in disciplinary complaints and malpractice claims alleging a lack of diligence or competence under Rule 1.3. Improper mail handling can also cause you to miss calendar deadlines and fail to timely respond to clients' questions or needs. On the other hand, appropriate mail handling can give your firm a reputation for professionalism and demonstrates to clients, colleagues, and judges that your office is run in a competent and diligent manner.

Proper mail handling procedures begin with the opening of the mail as soon as it is received and note that for the purposes of this discussion the definition of mail includes incoming email, faxes, and hand deliveries. Mail should be received and opened in a centralized fashion with one or more people (depending upon firm size) responsible for opening the mail, entering calendar data into the firm's master calendar, and delivering the mail to the appropriate recipients. Each piece of mail should be date-stamped and reviewed for deadlines. A mail handler should enter deadlines and reminders on the firm's master calendar and then a second set of eyes (e.g. the attorney in a solo practice) should double check that every critical date was entered correctly by comparing it to the original mail document. After the mail handlers have completed these steps and placed their initials by each date gleaned and entered, they can deliver the mail to the respective staff or attorneys for their review and related substantive work.

When the recipient staff or attorney receives their mail, they should review it to ensure that the firm's mail handlers caught all important dates and correctly entered them into the firm's master calendar. They should then attend to each letter's recited questions or requests for information. If the firm keeps duplicate calendars (which are essential for litigation attorneys), the staff or attorneys should ensure that their duplicate calendar contains the same entries. Do not overlook the necessity of making certain that the duplicate calendars are created

independently from the original and are not simply copies, otherwise the accountability piece will be missed.

While redundant calendars are important, their real value can only be realized if these redundant systems are independent from the primary master calendar and here is why. Calendaring errors continue to remain a leading source of malpractice claims across the country. One of the common missteps is simply a data entry error, be it an incorrectly entered date or a date that never made it into the calendar. Mistakes happen. In fact, calendar entry errors are a common reason for missing statute of limitation deadlines.

With this in mind, ask yourself, "If there were an incorrect entry in your primary calendar are you confident that this error would be caught?" If the answer is no, then adjustments need to be made. Remember that there is a difference between copying the data from a master calendar to a backup calendar and independently entering data from original documents into two separate and independent calendaring systems. If the person maintaining the primary master calendar makes an error, the odds that a second person who is responsible for independently maintaining the secondary calendar will make the same mistake are quite low. The true purpose of maintaining an independent yet redundant secondary calendar is to catch the misstep that may occur from time to time. Again, mistakes happen.

While there is no one right way to catch calendaring errors there are two common approaches. One is to have a second staff member or each individual firm attorney personally maintain a secondary independent system. The other is to have a second staff member or each attorney accept the responsibility for independently reviewing the accuracy of the calendared entries placed in the primary system by reviewing the original documents. Having this double-check function occur at the attorney level can be quite beneficial because each attorney is then certain to know about every calendar entry for which he or she is responsible. This approach also helps to ensure that your firm will meet all statutory deadlines. After a few days of practice, these suggested mail handling procedures should not take more than fifteen to twenty minutes, even in firms with fifteen or more attorneys.

Do not be reluctant to let support staff handle the mail, including email. A principal reason for having support staff open mail, enter data into the calendar, and route mail is to create a system that will inherently prevent calendaring errors. A second reason is to avoid losing mail. If the firm centralizes its mail-opening procedures and immediately makes relevant calendar entries, it avoids placing that burden on attorneys. When mail arrives, attorneys commonly have ongoing distractions like active files on their desks, telephone calls, or unanswered e-mail. In these circumstances, if the attorney is solely responsible for handling his own mail, work distractions or a desire to get the substantive work done can result in a document being filed away or even misfiled without a critical date ever being entered into any calendar.

For firms with more than one attorney, please remember that attorneys are not immune to personal stress, substance abuse, depression, and other all-too-prevalent maladies. If an attorney is troubled and his client service is starting to slip, you do not want him opening his own mail because no one else in the office will be able to ensure that he is meeting all deadlines. When the firm's support staff is responsible for mail opening, calendar entries, and mail routing they have the opportunity to catch and inform the managing partner or office administrator of any persistent signs of trouble. This can be a significant issue for larger firms where every attorney is responsible for the actions of the others.

Occasionally an attorney will insist on opening and handling her own mail. She may have a number of reasons for doing so. A typical reason is a desire to work on a weekend day when support staff members are not available to obtain and open the mail, enter the calendar data, and route it to the appropriate recipient. Regardless of the reason for handling mail before support staff have processed it, consider having this attorney copy the mail she wishes to take and leave the original for staff to process when they arrive. Alternatively, you might reverse the roles—this attorney could date-stamp the mail herself and make the appropriate calendar entries just as her staff would have done. Then she would leave the original marked as “calendared” for her staff to review the calendar entries when they return to the office. Either way you have ensured that the all-important double-check function has occurred.

### **What to Calendar**

The obvious question now becomes what information should a firm enter into the calendar. The following list details the types of dates that should be calendared for all attorneys regardless of practice area:

- **Expected completion dates** - All files in the office should have at least one task entered in the system. Even if all that is being done for the client is a codicil for a will, the date the work is expected to be completed should be entered. If three questions have been identified in a litigated case, and each has been assigned to an associate for research, the due date of each memo should be entered. If, at the last meeting, the PTA board was promised a report of a specific area of the law, that due date ought to be entered as well.
- **Status reports** - For any work that will take more than one month, a specific date should be entered to remind the responsible attorney to make contact with the client and advise how the project is coming. Some attorneys will even write “Nothing is happening

because ..." letters just to make certain that the client does not begin to feel that their matter is being neglected.

- **Office administrative tasks** - Equally important to the overall mission of your firm is to note the dates when items like partnership tax returns or employee performance appraisals are due. You should also schedule time to check on what work is being done in the office and address any pressing issues. Putting these items on the calendar ensures that they are not overlooked.
- **Reminders** - Actually entering the due date of a task does not do much to assure that the task gets completed unless the calendar is reviewed well in advance of the due date. Reminders for all tasks of some importance build in redundancy, enabling the attorney to see those torpedoes that will cause severe damage if not completed in a timely fashion. For those critical and work intensive deadlines such as approaching statutes of limitations, filings, and discovery deadlines use multiple reminders to ensure timely completion of the work well in advance of the actual deadline. For example, with a statute of limitations deadline consider placing a 30, 60, and 90 day reminder in the calendar.
- **Meetings and appointments** - Whether in the office or out, all meetings must be calendared. If the appointment or meeting is a real estate closing or some other event that can only be done well with a good deal of preparation, then several entries need to be made. Any appointment made is important enough to be part of the calendar. If the appointment is outside of the office, calendaring the appointment will let staff know where the attorney is and whether or not the attorney can be interrupted.
- **Work toward goals** - If the firm has identified a new practice area in which it wishes to be involved, time for specific market research and other related tasks should be set aside and entered into the calendar. Otherwise this type of project often gets continually pushed aside.
- **Due dates for work to be completed by others** - If consultants or vendors are hired, the calendar should note the date a report or other work is due. This would hold true for work to be done by another law firm or attorney who has been associated in on any matter. A large number of claims against attorneys involve firms that are being held responsible because another attorney (usually out of state) failed to meet a deadline.

In addition to the above, litigators should calendar the following:

- **All time-barring constraints** - Missing statutes of limitations is still among the most frequent causes of professional liability claims against attorneys. Be sure that all the

relevant time-bars are known, calculated properly, and entered with reminders sufficiently ahead of the due date to allow the work to be done without an office crisis.

- **Trial scheduling orders** - All information from any court's trial scheduling order should be entered into the calendar system with appropriate work flows set up to complete tasks before the identified deadlines.
- **All deadlines imposed by the applicable procedure and court** - Be aware of the changes in the Federal Rules of Civil Procedure and any state or local rules. The calendar can help avoid procedural errors in addition to time-limit errors if the right tasks are entered into the system at the appropriate times. Before work on any case is started there should be a review of the procedural rules followed by the development of a plan of what will need to be calendared and how.
- **Follow-up dates for work that must be done by others** - Any discovery, motions, or exchange of information that others must complete, especially responses to your discovery, should be noted. Failure to follow up and obtain what was requested, or what you are entitled to, may be as hazardous as not making the request in the first place.

While this list is not intended to be the final word on items to calendar, it suggests where to start with the development of a master calendaring system that is utilized firm-wide or with specific practice groups. This system does not require that attorneys give up their time-tested personal calendaring systems as long they or their staff also update the master calendar. This is a case where more is indeed better.

### **Quality Control**

Now that the basics of calendaring have been covered let's turn to quality control. The goal is to avoid the fallout from an overlooked file. This is the nightmare that none of us ever wants to experience, particularly after a statute has run. One solution is to regularly conduct file review, which often does not occur due to a mistaken impression that a significant amount of time is necessary in order to accomplish the task. This could not be further from the truth. Here are two easy methods that can get you there.

If you prefer to rely upon computers to accomplish all calendar-related tasks, place a file review date on the calendar for each and every file. Everyone in the office must agree to the process, or it will not work. The attorney or firm must decide upon the frequency of review. I recommend a review every thirty to forty-five days. As work is completed on any active file, the calendar should be reviewed to see if there is another date thirty to forty-five days out that will result in the file being pulled. If not, enter a review date on the calendar. There should be no exceptions here. Also, this is where one of the benefits of computerized, rules-based

calendar systems becomes clear as such a system can be programmed to automatically enter file review dates as indicated.

Sometimes tasks can be accomplished more efficiently and effectively with less reliance upon computers and file review is one of those tasks. Here is one method that is often paper-based. Begin by creating a list of all active files by responsible attorney. Building the initial lists will be the only task for which staff time of an hour or two may be necessary. Often these lists can be created from the time and billing program but make certain that names of active files get printed in the report even if no work has been done on that file in the current billing period. Other attorneys simply maintain a file list in Excel or Word.

On the first day of each month, each attorney receives his or her list of active files. The list is taped to the corner of the desk and each time a file comes across the desk that client name is checked. When you open a new file, add the name to the list. When closing a file, cross off the name. On the last day of the month, there may be several files that have not been checked. Pull these files for review. Once all files have been reviewed, return the list to the designated staff person who will update these lists as necessary. Repeat the process monthly. I have visited firms who place so much importance on this kind of procedure that no paycheck will be issued to anyone who has not completed the process.

### **Contingency Planning**

Consider this, if a fire were to occur tonight and your office was totally destroyed would all attorneys at your firm have a calendar available first thing in the morning? If the answer is no, this could be a serious problem. Sometimes one or two attorneys refuse to use a firm's computer calendar, choosing to rely on the paper calendar that remains at the office at all times. Other attorneys or firms rely on computers for everything but the calendar. The reality is that after a fire or other devastating loss, complete calendars for all attorneys are often not there. Do not allow this to happen to you. It is time-consuming and expensive to rebuild calendars from courthouse records. Use a computer calendar and get a back-up off-site or take a copy of the paper calendar off site daily.

There are several other ways for the technically inclined to accomplish this task. Smart phones or computer tablets that are synced daily to the computer calendar and taken off-site are a great way to go. Maintain a copy of the calendar on your home computer or laptop (as long as the laptop travels off-site every day) and update from the office calendar daily. Other attorneys use free Internet-based calendars as a back-up given that privacy rights settings can adequately protect client information. An advantage with Internet-based calendars is that clients who may need to check on your availability from time to time can do so without having to contact you. The point is that there are many ways to have off-site calendars that are easy and do not take a great deal of time. Here is where a little bit of time can prevent a serious headache down the road.

## Odds-n-Ends

Finally, here a few deadline related practice tips that if followed can further help to ensure that deadline errors do not occur in your practice.

- Independently verify facts relevant to SOL dates and identify the correct defendants from reliable sources in every instance. Verify accident dates from police reports. Ascertain who the owner of the involved vehicle is as it may not be the driver of the other vehicle. Thorough investigation from reliable sources is the only way to ensure accurate information. Clients and the persons to whom they talk, for example physicians, may not be dependable sources of information. It is imperative that whoever is involved with determining filing deadlines understand the importance of conducting a thorough investigation as well as have the ability to make the determination as to the reliability of the information obtained. This person must also have a working knowledge of the statutes and their application in the various state and federal courts, which is particularly important when declining representation. Do not specify when a SOL will run in a non-engagement letter if you are solely relying on client memory. If they are wrong, or you are not given all of the facts, you will be wrong on the legal advice given as to when the SOL date is to run. This is one reason why an attorney should be entirely responsible for establishing SOL dates in every instance. Finally, if you don't have time to conduct a thorough investigation just say no.
- File suit and follow up with service of process in a timely manner. Never get to within thirty days of the SOL without having filed suit. Last minute filings are playing with fire because there is no time to address any problems that might arise. Do not put off the paperwork or service of process hoping to reach a settlement at the last minute. Unexpected events such as illness, computer failure, an incorrectly calendared date, office vandalism, and accidents are additional examples of what sometimes goes wrong. Play it safe and smart. If you discover you have named the wrong defendant - for example, the defendant was a person not a corporation - there will still be time to remedy the situation. In fact a number of firms require that all firm attorneys file suit thirty days in advance of the SOL date and set reminders from that date as a way to ensure that no SOL date will ever be missed.
- Appointments and court dates are often rescheduled for a variety of reasons and it is imperative that any and all changes are reflected in the firm's master calendar. Rescheduling also applies to voluntary dismissals as the master calendaring system will not alert you to a refiling deadline unless it has been updated. Develop a process that enables anyone who needs to reschedule an event or deadline to immediately let the mail handlers know so that the firm's primary master calendar can be updated in a timely fashion.

- See that every attorney in the firm has a readily accessible calendar available 24/7. This can help prevent the missed Monday morning hearing, the scheduling error from occurring when committing to a date while in court, or a missed appointment with a client. Of course, if the attorney makes a change to this travel calendar make certain that the change is captured and recorded in the firm's master calendar. This often happens in real time with smart phones or computer tablets, but don't overlook the necessity of taking care of this if an attorney's personal travel calendar happens to be paper based.
- Standardize the firm's calendaring procedures and develop a calendaring guideline that sets forth all critical dates that might arise at the firm and describes the desired approach to responding to these dates. Standards can include the type of acceptable primary and redundant system an attorney or staff member might use individually, and should require data entry into the firm's various master calendar and docket systems. Standardization allows staff personnel to calendar confidently as they back up each other, allows the firm to monitor compliance to calendaring guidelines, provides assurances that no deadlines will be missed due to regular use of reminders by all, and provides an assurance that filings occur well ahead of deadline dates.

I hope that it is now clear that avoiding some of the ways that critical date errors occur is relatively easy to do through the use of well-designed calendaring and docket control systems. Again, there is no one right or best way to accomplish calendaring and docket control. The real key is in thoughtful planning, thorough training, and commitment to follow through from all involved. Yes, these suggestions may take a little extra time, but the time involved is time well spent and I suspect that your clients will feel the same.



## Risk Management Questions?

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