How to Honestly Answer a Malpractice Insurance Application

Catherine Sanders Reach - Chicago Bar Association

October 12, 2017
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How To...Honestly Answer a Malpractice Insurance Application

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Quadrennial LPL Claims Study 2015

Figure 1A
Percent of All Claims by Area of Law in 2015 Study

PROFILE OF LEGAL MALPRACTICE CLAIMS 2012–2015

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Quadrennial LPL Claims Study 2015

Figure 2
Percent of Claims by Firm Size in 2015 Study

PROFILE OF LEGAL MALPRACTICE CLAIMS 2012–2015

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PROFILE OF LEGAL MALPRACTICE CLAIMS 2012–2015

Errors grouped by four type-of-error groups: Administrative, Substantive, Client Relations, and Intentional Wrongs. In summary, the overall picture painted by the data in the 2015 Study illustrates a significant drop in Administrative Errors, and even more significant rise in Substantive Errors—now exceeding over half of all alleged errors—with little change in Client Relations and Intentional Wrongs, both of which represent a relatively small combined share of all errors (23.03 percent) reported.

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Common Malpractice Application Questions

- Payables/Receivables
- Calendaring/docketing
- Conflict checks
- Standard letters (Fee agreement, non-engagement, closing)
- Security
- Succession Planning
- Practice areas
- Office sharing
Security Question Intent = Protect Sensitive Data

- Social Security Numbers (PII)
- Financial Account Information (PII/NPI)
- Credit Card Information (PCI)
- Intellectual Property/Trade Secrets
- Medical Records (HIPAA)
- Other types of protected data*
  - Attorney-Client Privilege
  - Minors (COPPA)
  - Credit Reports

*Not a comprehensive list
Physical Security

- Alarm System
- Locking system on doors
- File cabinet locks
- Other
  - Clean desk policy?
  - Security cameras?
  - Locked server room?

Got medical records? See HIPAA requirements for physical safeguards.
Real Time Protection

• Firewall
  • PCs
    • Software: Built into security suite like McAfee, Symantec; built into Windows/Mac OS
    • Hardware: Wireless router configuration
  • Network/Servers (get IT help)
    • Software: Built into Windows Servers
    • Hardware: Routers, Security appliances. Brands like Barracuda, SonicWall, Cisco

• Anti-virus
  • PCs – Suite like McAfee, Symantec, Bitdefender or stand alone like AVG, Windows Defender. Must pay for real time updated definitions
  • Macs – Bitdefender, Sophos, Kaspersky, Avast

• Intrusion Detection
  • Network, Host, or Physical setups: these detect unusual activity on a network and try to block a hacker or malicious software from circumventing existing security systems.

Do You Need a Firewall?
http://www.pcmag.com/article/313986/the-best-free-firewalls

The Best Antivirus Protection of 2017
http://www.pcmag.com/article2/0,2817,2372364,00.asp

Intrusion Detection System
https://www.sans.org/security-resources/idfaq/what-is-intrusion-detection/1/1
Encryption - Email

• Outlook, Gmail or other?
• Mac or PC?
• Examples:
  • Absio's Dispatch
  • MS Office 365
  • SendSecure
  • Enlocked
  • Rpost SecuRmail
  • Virtru
  • Citrix ShareFile

EMAIL ENCRYPTION FOR EVERYONE
http://lpmt.chicagobar.org/email-encryption-for-everyone-2/

Easy Encryption for Email – Not an Oxymoron
http://www.slaw.ca/2013/08/12/easy-encryption-for-email-not-an-oxymoron/
Encryption - Smartphones

- NOT just a 4 (or 6) digit PIN
  - iPhones
  - Android
- Also consider
  - Remote wipe
  - FindMyPhone
  - Lookout app

Encrypting iPhones/iPads
https://support.apple.com/en-us/HT202064

Encrypting Android
http://www.androidcentral.com/how-does-android-lollipops-encryption-affect-me

Secure chat and voice tools
Secure messages from your phone with Signal or What’s App. The EFF’s Secure Messaging Scorecard (https://www.eff.org/secure-messaging-scorecard) original version is outdated, but these apps remain secure choices over text messaging.
Encryption – Hard Drives

- Mac OSx
  - FileVault built in!
- Windows 7 (Pro, Ultimate and Enterprise) and 10 (Pro)
  - BitLocker built in!
- Windows 8.1
  - Built in (and turned on by default)
- Third party encryption
  - Symantec, VeraCrypt, DiskCryptor

Weekend Project: Encrypt Your Client Files
https://lawyerist.com/128796/weekend-project-encrypt-client-files/

Encrypt Your Mac with FileVault

Windows BitLocker Drive Encryption

Windows 8.1 Encryption

Windows 10 Encryption
https://www.howtogeek.com/234826/how-to-enable-full-disk-encryption-on-windows-10/

Third Party Encryption tools
http://www.pcworld.com/article/2304851/so-long-truecrypt-5-encryption-alternatives-that-can-lock-down-your-data.html
Encryption - Files

- Microsoft or Adobe passwords
  - Easily breakable
- In Windows for files or folders
  - Right click - Properties - General - Advanced - Encrypt
- In Mac
  - Disk Utility
- Third Party
  - VeraCrypt (RIP TrueCrypt)
- Storing sensitive information in a less than secure cloud storage?
  - BoxCryptor
  - ViiVo
  - Sookasa
  - SpiderOak

Encrypt files and folders in Windows 7

Encrypt files and folders in Windows 7
http://windowsreport.com/encrypt-files-folders-windows-10/

Encrypt files and folders in Mac

How to Encrypt Sensitive Data

Top 5 Free Encryption Tools To Protect Your Data Stored in the Cloud
Encryption – External Devices/Storage

• Use BitLocker or Disk Utility
• Buy pre-encrypted drives
  • Maxtor
  • WD
  • Seagate
  • IronKey thumb drives

How to Encrypt a Portable Hard Drive (Windows)

IronKey Flash Drive
Wireless Networks

- Security protocols
  - Enable Encryption
    - WPA/WPA2, IPSEC, SSL, PEAP
  - Use hardware/software firewalls
  - Change all default settings
  - Limit the number of connections to the number of computers
- Don’t know how? Get help!

6 Reasons Why You Should Secure Your Unsecured Wi-Fi Wireless Network, What Can Happen (such as porn), What To Use

Oh, and put a piece of tape over your webcam if you aren’t using it.
Password - Best Practices

• At least 12(?) characters long; Mix of case (upper/lower) numbers, letters and symbols
• Try a passphrase (Myd*ghasFleas!)
• Do not use common dictionary words, easy to find information about you (public records reveal a LOT – family, address, children, last addresses, way more)
• Do not use the same password for everything
• Change them frequently
• Bonus: make up a fake answer for security questions

If your username is your gmail address or law firm email address then that is very easy to figure out. The bad guys are half way to accessing your primary email account and changing your passwords locking out of your bank account, credit cards, and more.

Imagine losing access to your account and everything in it
When a bad guy steals your password, they could lock you out of your account, and then do some of the following:
• Go through – or even delete – all of your emails, contacts, photos, etc.
• Pretend to be you and send unwanted or harmful emails to your contacts
• Use your account to reset the passwords for your other accounts (banking, shopping, etc.)
You may have heard of LastPass, Keepass, Roboform or 1Password to manage your personal passwords – and that is a great way to generate new, complex passwords that are vaulted and recorded if you are a sole practitioner. The password for your password manager will need to be available to your successor. However, if you want to manage the passwords for the firm you have options as well.

LastPass Enterprise helps each person by managing their passwords, and the firm would have better password security and also central storage of server and device passwords. LastPass Enterprise costs $24 per user per year [https://lastpass.com/enterprise/enterprise-pricing/](https://lastpass.com/enterprise/enterprise-pricing/)

Zoho Vault, their online team password manager, lets a firm store passwords, share common passwords, track user actions, control access by password revocation, define password policies and more. The price for the professional plan is $4 per user per month with a minimum of 5 users (there are plans suited for smaller groups) [https://www.zoho.com/vault/pricing.html](https://www.zoho.com/vault/pricing.html)

CommonKey is a competitor and vaults all team passwords for individuals and shared passwords. The product is free for teams of three, $2 per user per month for larger teams. [https://commonkey.com/pricing](https://commonkey.com/pricing)

To see LastPass in action see the How To... video: [https://vimeo.com/169932026/f13ea5a28c](https://vimeo.com/169932026/f13ea5a28c)
Backups

- Make sure electronic backups are encrypted
- Have a backup strategy
  - Analyze, plan, implement, test, review
- What security policies should be in place?
  - Computer acceptable use policy
  - Email use policy
  - Internet use policy
  - Social media use policy
- Other useful, related policies
  - Employee privacy policy
  - Email/document retention policy

See the recent CLE on backup:

Avert Disaster! Business Continuity Planning for Law Firms
Recovering from disaster, big or small, requires prior planning. Process documentation, data mapping, backup best practices and an incident response plan are all essential to helping a firm meet their ethical requirements to competently serve clients. In this program we will discuss tools and tips for documenting essential firm information, how to begin to tackle mapping data for recovery and risk management, best practices and practical steps for backing up electronic files and correspondence, essentials of an business continuity plan.

Speaker:
Catherine Sanders Reach, Director, Law Practice Management & Technology Division, The Chicago Bar Association
http://tinyurl.com/mt36tmx
Basic Security Best Practices for Law Firms

By Catherine Sanders Reach, MLIS
Director, Law Practice Management & Technology at The Chicago Bar Association

First, Let’s Talk About Passwords

You have heard you should be creating passwords that are between 8 and 12 characters long and include a mix of upper and lower case, numbers, letters and symbols. To help you create and remember a complex password try coming up with a passphrase – like Myd*ghasFleas! - but substitute letters with characters and numbers. Do not use common dictionary words or information about you like birthdays, children’s names, last addresses, or middle names. You may also have heard you should change your password frequently. The really important key to making a safe and secure password is that you use a UNIQUE password for each login. If one account gets broken into then any others using those credentials are vulnerable.

Following this advice is a tall order. However, using a password management application can help. These applications are a great way to generate new, complex and unique passwords that are safely stored – you just have to remember the password for the service! Some examples are LastPass, Roboform and Dashlane.

Recently the National Institute of Standards and Technology (NIST) updated their Digital Identity Guidelines. The update, in addition to other items, removed the formerly best practices recommendations of frequently changing passwords and the requirement of creating compositionally complex passwords. Why? By making the requirements onerous people simply fail to follow them or adopt other risky behaviors, like putting passwords on sticky notes taped to the monitor. In fact, Bill Burr, the NIST manager who crafted the original document suggests in hindsight the original requirements were misguided. So, current thinking suggests using long and unique passwords for each of your logins, change your passwords if you are notified or fear they have been exposed, and take advantage of the many choices in password management applications available for individuals and teams.

Also, when you can set up two factor authentication. It is available in Microsoft Office 365, Google, Facebook, LinkedIn, practice management applications and many other services you use. Two factor authentication is something you know (a password) and something that you have (usually a phone). When you set it up you may put in your cell phone number. Then when you login - say to Gmail – you put in your username and password as usual. Then you will be asked for a code. The code is texted to you and is has a one time use. Enter the code and then you can access your account. Even if hackers got your password, without your phone they will not be able to login to your account without the code. Nifty huh?

Next, Let’s Consider Updates and Patches

Most hacks and exploits, including the recent ransomware attacks that have crippled essential services as well as major law firms, are perpetrated by tricking a user into clicking on a link or downloading an
infected file that then uses code to attack a vulnerability in an operating system or network. It is good to stay alert and recognize dangerous emails, but even if you open one you may have a fighting chance against infections if you are keeping your systems updated and patched.

Whether you are using Windows or Mac make sure you are using up-to-date and supported versions of the operating system. “Supported” means that the companies are still issuing security patches and fixes to keep your machine protected. DO NOT IGNORE when your system notifies you that an update needs to be installed. You can even set it to automatically install if you don’t want to be bothered with it.

It isn’t just your operating system you have to keep patched. Ever seen an “update available” message for Acrobat Reader, QuickTime, Flash, Java, or ActiveX? These are background applications running on your machine that help other software do its job. They are frequently exploited because most people ignore the updates. But you aren’t, are you?

Also, don’t forget to update your browsers. The currently supported version of Internet Explorer is 11. Browsers like Google’s Chrome can be set to automatically update, so you don’t have to worry about it.

Finally, don’t neglect to update the mobile operating system on tablets and phones, as well as the apps you have installed on them. If you are ever presented with an update that you question just copy the text of the message and search it in Google to see if it is legitimate.

What Else Should We Worry About?

Well, do you use free wifi on your laptop, phone or tablet? Do you also use that device to store and transmit client confidential information? Free or even limited access wifi (like coffee shops that issue the same password to everyone) are notoriously insecure because of the real risk of interception or the creation of “man in the middle” networks created to ensnare those looking for the fastest, cheapest wifi.

There are a few easy ways to protect your client data. You can use your smartphone to provide a wifi signal, either by tethering it to another device or turning on the phone’s hotspot. You can get a mifi card for internet access from your mobile carrier. Or you can subscribe to a mobile Virtual Private Network service like “Private Internet Access” for a mere $3.33 per month. Just don’t be tempted to use free wifi, even if it “just to check personal email” on a device you also do client work on.

You Should Protect Your Mobile Devices In Case One Is Lost Or Stolen

First, all mobile devices should have encryption enabled to protect data on the installed drive. So, how do you do that?

On iPhones you should set up a passphrase and make sure that “data protection enabled” is turned on in the settings. On Android phones enable a PIN to access the phone’s features and then go into the security settings to enable encryption. The process is similar for iPad and Android tablets.

Windows mobile devices that are running Windows 7 Professional and more recent versions have an encryption tool called BitLocker already installed. Just search for it on the computer and follow the instructions to enable encryption protection on the laptop or convertible device.
Mac users will find an encryption tool called FileVault already installed. Simply go to System Preferences from the Apple menu, then click Security and Privacy then “FileVault”. Follow the instructions to enable.

To enable encryption of external hard drives and thumb drives look for encryption software built into external hard drives and thumb drives as well.

Commercial encryption software from companies like Symantec, AxCrypt, or DiskUtility have encryption tools for any device.

Also, you should use software that uses GPS location tracking to locate your device and remotely wipe the drive if it is lost or stolen. For those with IT help there are some options they can help with. If you don’t have help you can easily do this yourself.

On an iPhone or iPad enable “Find My Phone”. If you lose your phone just log into iCloud.com and you can try to use the phone’s built in GPS location to ping the phone and show the location on a map. You can also erase the phone’s data. Your GPS does not have to be on, this will turn on the GPS on the phone.

Similarly, on Android devices go into your Google account in any browser to the “Find My Device” section. Select your device and then you can sign out of your phone, lock your phone, locate it or erase the data.

Third party applications like Lookout Mobile have similar features, plus anti-virus, safe browsing, privacy advisor, backup, and more for $3 per month.

Additionally to locate or remotely wipe a Windows or Mac laptop you can install and subscribe to Absolute’s LoJack for Laptops or Prey (P-R-E-Y).

Also, in online services like LinkedIn, Facebook, Twitter, Google, iCloud and others log on from a browser, go into your settings and “forget” the lost or stolen device.

**Good Backup Is Also Good Security!**

Having adequate computer backup will solve for a number of issues. A good backup plan can help get your firm back up and running whether your hard drive crashed, you got a ransomware infection, or lost a device.

The often-cited “3-2-1 rule” says that for appropriate backup you need at least three copies, on at least two different kinds of media, at least one of which is kept off-site. But in practice, accomplishing this can be a challenge. Business continuity experts say that one backup should be kept at least 100 miles away from the others. So an automatic online backup service satisfies two of these requirements - continuous backup and the data being stored at least 100 miles away. Dropbox, OneDrive, and other online document storage services are not complete backup. Look at business options from Mozy, Crashplan or Carbonite for full and functional backup options. Then create a backup image and a periodic file backup and save it on an external drive. An image can be created in Windows and Mac and is a snapshot of your
computer’s hard drive with all the settings, software, files and registry to make restoring from a backup as painless as possible.

Finally, Look at IL RPC 1.1 and 1.6

“Reasonable efforts“ to ensure confidentiality of client information is fact-specific. In Illinois RPC 1.6 Comment 18 suggests that a lawyer should examine the sensitivity of the information, the risk of disclosure without additional precautions, the cost of extra measures, the difficulty of adding safeguards, and whether more safeguards adversely affect the lawyer’s ability to represent the client. By conducting this risk assessment a lawyer will be better positioned to understand what she needs to do to protect a client’s confidences.

For more information, including video tutorials on using many of these technologies, see lpmt.chicagobar.org/how-to.
Checking for Conflicts of Interest

Many solo practitioners and members of small firms think that they can handle conflict of interest checking on the fly. Solos often believe that reliance strictly on memory is a sufficient way to avoid conflicts. In small firms, paper conflict forms with the names of potential new clients are often circulated so that the other lawyers can perform a mental check, and are then filed away to gather dust. In both these instances, the conflict checking process is very much “in the moment” and is unmoored from any information the lawyers are unable to immediately bring to the front of their minds.

Why Is a System Necessary?

Because conflicts of interest can lead to serious ethical lapses derailing a matter that’s ready for closing or trial, solos and small firms need to institute case information storage and retrieval systems that will allow for the quick determination that signing up a particular client today won’t create problems now – or down the road. Failing to do so can result in wasted money and effort, frustration for the lawyer and the client, lost fees, and trouble with the judge or a formal ethics complaint from a party.

Conflicts of interest fall into several categories. Conflicts may exist or may arise when a lawyer represents more than one party in a transaction or action and those parties’ interests are or become adverse. Conflicts may also exist or arise between the best interests of the client and those of the lawyer, particularly when they are involved in a business transaction incidental to or in addition to the representation. Conflicts may exist or arise when a lawyer opposes a party he or she has previously represented, if the matters involve the same facts or the lawyer attempts to use information learned about the former client during the prior representation. Conflicts may exist when a lawyer obtains confidential information from a potential client but doesn’t represent him or her and fails to enter the unaccepted client into the conflict system. And even after a conflict check has been performed, new conflicts may arise as more parties are brought into a transaction or action.

Because a lawyer’s conflicts of interest begin with the first case and stick with the lawyer like a shadow throughout his or her career, a long-forgotten representation while a lawyer was in solo practice may create an imputed disqualification for the lawyer’s current firm – or one that would otherwise like to hire him or her.

For all these reasons, it’s crucial that all lawyers, even solo practitioners, begin with their first client to establish “…reasonable procedures appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.” (Comment to Rule 1.7 of the Alabama Rules of Professional Conduct.) Obviously, such systems are best designed to prevent conflicts between current clients or current and former clients, but the information they contain can be
What Does a Good System Include?

As the comment to the rule states, your conflict of interest check procedures should be appropriate for the size and type of your practice, but regardless of how small your practice is or how limited the number of practice areas you engage in, every conflict of interest system should include the following:

- The ability to easily gather and record information on all parties (and witnesses where appropriate);
- The ability to integrate this information with other office systems to eliminate duplicate data entry;
- The ability to allow both lawyers and staff to enter and access information as appropriate;
- The ability to do “fuzzy” searches for names that sound alike but are spelled differently;
- A requirement that all necessary information be gathered and checked before legal services are rendered;
- A requirement that the check be documented; and
- A requirement and one or more reminders that checks be re-run whenever a new party enters the matter or a new lawyer or staffer with prior legal experience is hired by the firm;
- Written documentation on how to properly make a data entry and perform a conflict check.

What Systems Are Available?

Many years ago, before the advent of the personal computer, most law firm conflict of interest systems were maintained using one set of index cards for clients, another for opposing parties and, often, a third for significant witnesses or other related participants. Some of these systems were homegrown, using only blank index cards from the office supply store, and others utilized multi-part carbon paper sets specifically marketed to lawyers to make the creation of the index cards easy. With the availability of automated options for conflict checking, however, there is no reason any law firm, even a solo practitioner, should consider such a system now (although we can provide information on how to do this, if you really insist).

Do It Yourself Systems

Instead, lawyers can adapt a searchable word processing document or one of several database programs such as Microsoft Access for conflict checking or, even better, opt for a conflict checking program made specifically for solos and small firms.
For those wishing to create their own conflict checking system using a word processing document or customizing their own database, the following information should be collected:

**Name**  (Include the last, first and full middle name of the person or full legal name of the entity. For entities, also include the names of principles such as partners, directors, officers, shareholders with controlling interests and key employees.)

**Prior Names**  (Include all nicknames, prior or maiden names, aliases or former entity names or d/b/a names.)

**File Title**  (Whatever you would put on the file tab if you created a paper file or name the folder within an electronic filing system.)

**File Number**  (If you use a numbering system in addition to a file name.)

**Responsible Attorney**  (Even if you are a solo include this information; you may add additional attorneys in the future.)

**Status**  (Client, unaccepted client, office consult only, opposing party, victim, spouse, child, witness, insurer, creditor, testator, personal representative, heir, guardian, conservator, etc.)

**Date**  (The date on which the record was created.)

**Details**  (Anything about the person, particularly if their name is a common one, that might help future searchers determine the identity, status or relationship of the person or entity in the entry to persons in a future conflict search.)

**Stand-Alone Conflict Checkers**

As this is written I am aware of only one stand-alone legal conflict of interest checking systems.  RTG Conflicts  (http://www.rtgsoftware.com/conf/conflicts.htm) can be bought for $95 and offers a 45 day free trial.

In my opinion, stand-alone conflict checkers are better than self-crafted systems because they are more likely to ensure that you capture all of the required information, however, because they do not integrate with other office systems they will require duplicate information entry, which burns staff time and costs money.  Your best option is a fully integrated practice management system which includes conflict of interest checking.  A list of such programs is available from the Practice Management Assistance Program.
Practice Management Systems

Most fully integrated practice management systems include the ability to check for conflicts of interest and, in my opinion, they are a better investment than stand-alone systems because they make it easy to enter all relevant conflict information at the same time that information about the client is being entered to open the matter. In addition, these systems allow you to pull your contacts, calendar, to do list, email, documents and time keeping and billing all together in one place. For more information on available practice management software and cloud-based practice management systems, see Selecting Practice Management Software for the Solo Practitioner and Small Firm from the Practice Management Assistance Program.

Your Conflict of Interest System Rules

1. Always perform a conflict check before an initial interview. A carefully drafted intake form filled out by the client ahead of time is extremely useful.

2. Perform a second conflict check after the initial interview once you’ve gotten additional facts from the potential new client and before consenting to the representation.

3. Make sure your system requires a new check for conflicts whenever information about a new party is added to the file or entered into the firm’s information management system.

4. Assign one person the responsibility for maintaining the system, but put check in place to make sure that person carries out his or her responsibilities.

5. Never open a new file without documentation that a conflict check has been run and no conflicts were found.

6. Make sure information about anyone from whom you receive any factual information is added to the system, especially if you do not go on to represent them. These are the ones that are easily forgotten but will come back to bite you.

7. Be sure to update the system each time new employees (lawyer and non-lawyer) join your firm by adding their names and also adding in any new lawyer’s conflict information to date.

8. Make sure information found about potential conflicts of interest is promptly delivered to the responsible lawyer, before legal services are provided.
Calendar and Docketing

Advice From Malpractice Insurance Providers:

From: http://www.americanbar.org/content/dam/aba/administrative/lawyers_professional_liability/downloads/lawfirmlossprevention.authcheckdam.pdf

1. LAW FIRM LOSS PREVENTION SYSTEMS & PROCEDURES

A. Docket and Calendar Control

Docket and calendar control was one of the first risk management issues identified by the insurance industry. Today, some form of calendaring system is standard fare for law firms of all sizes. The insurance industry’s emphasis on adequate docket and calendar controls is the result of claims experience directly related to missed deadlines by practising lawyers. Recent American Bar Association statistics indicate that more than 26% of all claims made against lawyers are administrative in nature. Of the administrative errors, 19% are directly related to calendaring mistakes; 11% are the result of the failure to make a docket control or calendaring entry; 4% are due to a subsequent failure to file and 4% are the result of a failure to react to a deadline once entered. St Paul experience tracks with the national figures; 22% of our lawyers claims are the result of calendaring errors with 5% specifically attributable to a failure to make a calendar entry. Missed dates and other administrative errors associated with docket and calendar control remain a significant cause of loss. Although a comprehensive docket and calendar system will not completely eliminate these losses, it will significantly reduce a law firm’s exposure. There are a variety of docket and calendar systems available and the following descriptions are generic. However, practically all systems fall somewhere within these general descriptions.

1. Computerised Systems

Software companies are marketing literally dozens of automated docket and calendaring systems. The systems are typically centralised with data entry performed by a designated staff member. Commonly, docket or calendar sheets are filled out by the lawyers or their staff and submitted to the docket entry clerk. The central system is then able to issue a series of reminders to lawyers and staff as the important dates approach.

2. Perpetual Calendar Systems

A perpetual calendar system is basically a series of index cards filed by day, month and year with a cross-reference capability (e.g. colour codes) for items with the greatest priority. In this system, the lawyer or designated staff member records pertinent dates and time frames on individual cards which are then filed according to date with the additional reminder cards filed prior to the ultimate due date.

3. Dual Calendar Systems

This system is simply two calendars or diary books to record future actions. Typically, one calendar is kept by the lawyer and another by an assistant. Problems inherent in this format include capacity and lack of reliability.
4. Single Calendar Systems
This system is extremely vulnerable to error and is an unacceptable format from an insurance perspective. Even sole practitioners should use a system where they are required to make more than one entry in recognition of an upcoming event.

THE ST PAUL’S RECOMMENDATIONS
1. Your firm’s docket and calendar system should be at least a dual entry system.
2. Your system should include both litigation and non-litigation items.
3. Firm policy and guidelines on docket and calendar control should be in writing and made available to all of the firm’s employees.
4. Centralised docket systems should be controlled by more than one person and have adequate backup in the event of computer failure. Your firm’s system should record more than final due dates.
5. Docket and calendar reminders should be sent to at least two persons, e.g., a lawyer and his/her assistant.

Notes from another legal malpractice insurance company:

The questions on the applications run the gamut, but most carriers are looking for some sort of dual calendaring system, where more than one person is responsible for entering, verifying and monitoring the deadlines. The system must be backed-up and ideally provide multiple ticklers for key deadlines. The true solo firm will always be challenged because they may not have any other person within the firm to monitor, input, or verify deadlines. I know this from experience, as the large majority of who we insure are solos.

The first rule of thumb, however, is for the applicant to answer the application honestly. If they try to provide answers that the underwriter is looking for, rather than the truth, that can cause more problems down the road and frankly avoids the point of the questions. The point in asking these questions is primarily focused on getting attorneys to THINK about their internal processes and make improvements where they are lacking. Most good underwriters will react to a suspicious answer on the application by asking follow-up questions and try to get to the reason for an answer that looks unusual – which in the long run works to the benefit of the firm that is trying to better manage their risk. Carriers would much rather have insureds that manage their risks well rather than folks who are just good at answering their applications.

Missed deadlines is still one of the principal causes of malpractice claims, even after 4 plus decades of carriers asking these questions and teaching, coaching and risk managing these issues to death. Yet, I have never seen an application where an attorney or firm indicated they did not have a calendaring system. The problems are typically:

1) The date was not entered at all in the system;
2) The date was entered incorrectly;
3) The wrong date was entered; or
4) The lawyer failed to react to the date timely.

The first three problems can be managed through a process of review and verification as the file is being set up, and all four can be limited if ideally reviewed by more than one person. There is
no system that is fool-proof, but approaching this task with a uniform process, where multiple people are properly trained and responsible for tracking and responding to deadlines, seems to work the best in my experience.

If the true solo has no other staff person to assist, he or she will have to develop a process of checking and double checking the date, the calculation of the date, the entering of the date, and the appropriate ticklers leading up to the date. There is software that helps with this process, but I avoid endorsing any one product. Timely responding to the date, for the true solo, is the final, most important step, and I am not aware of any software that can make someone act.

Rules Based Calendaring

Practice management software that integrates with a Google or Outlook calendar can often help a lawyer or firm add ticklers based on triggering events. In some cases those will need to be calculated by the attorney. However, some of the practice management products have “rules” based calendaring, which will allow for automatic calendaring of ticklers and due dates based on jurisdictional court rules. Examples include Clio Elite, Firm Central, and Cosmolex in the “cloud”, Prolaw and Time Matters installed software, as well as stand along calendaring and docket products like LawToolBox, Docket Enterprise and Deadlines.com that integrate with practice management applications or directly with MS Outlook or Google Calendar. See more options in Capterra.

![Deadlines.com](image-url)
Caution! Uneven Surface: Succcession Planning to Cover Bumps in the Road

Catherine Sanders Reach,
The Chicago Bar Association
Alvin the Cat

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiff,

v.

Defendants.

C.A. No.: 1:13-cv-00698 (BAH)

PLAINTIFF’S CONSOLIDATED RESPONSE TO
ORDER TO SHOW CAUSE AND DEFENDANTS’ MOTION TO DISMISS

Plaintiff respectfully submits this consolidated response to the Court’s February 3, 2015 order to show cause and Defendants’ February 9, 2015 motion to dismiss for failure to more timely reply to the Court’s order to show cause. In support of its statement of good cause shown for accepting submission of (1) Plaintiff’s Response to the Order to Show Cause and Opposition to Defendants’ Motion to Dismiss, (2) Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, with Exhibits 1-15, (3) Plaintiff’s Statement of Disputed Material Facts, and (4) the supporting affidavit of Plaintiff states as follows:
Who Needs To Prepare a Succession Plan?
§ 3-501.3. Diligence

Comment 5:

“To prevent neglect of client matters in the event of a sole practitioner’s death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action...”
Naming the attorney who is authorized to step in on the insurance application or renewal application is becoming a requirement of many insurance companies.
Name an Assisting Attorney

- Attorney friend?
- Attorney spouse?
- Attorney child?
- Attorney of your age or younger?
- Attorney living near you?
- Attorney whose practice is similar to yours?

- Define the relationship between you and the assisting attorney
  - Your attorney
  - Your clients’ attorney
  - Both?
Name an Authorized Signer

• Do you want to have the Assisting Attorney and the Authorized Signer to be the same person?
• Contact the trust account bank to confirming their standards have been met
• Establish when authorized signer’s powers are activated.
  – Now?
  – When notified by Assisting Attorney?
  – When notified by family?
Succession Plan = Procedure Manual

- How to check for conflicts
- How to generate list of active and closed client files, with client contacts
- Client trust account balances
- Record retention policy
- How to check the calendar for deadlines
“As the empathy and patience of your clients diminish and their legal needs become more acute, their concerns may end up taking the form of professional malpractice claims for missed deadlines, claims filed against you or your estate for a refund of their retainer, or even ethics complaints.”
Succession Policy in the Engagement Letter

“Attorney may appoint another attorney to assist with the closure of Attorney’s law office in the event of Attorney’s death, disability, impairment, or incapacity. In such event, Client agrees that the assisting attorney can review Client’s file to protect Client’s rights and can assist with the closure of Attorney’s law office.”
Tools – Practice Management Software
**Open Matters Report**

Admin : Reports : Matter List

Which matters are presently being actively managed?

Actively managed, meaning their status is [ ] Open [ ] Completed [ ] Closed

Show only those with [ ] Statute of Limitations

<table>
<thead>
<tr>
<th>Client</th>
<th>Matter</th>
<th>Status</th>
<th>Statute of Limitations</th>
<th>Most Recent Activity</th>
<th>Current Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jake S Nopays</td>
<td>Bankruptcy Proceedings</td>
<td>Open</td>
<td>N/A</td>
<td>Mar 13 2008</td>
<td>($1,750.00)</td>
</tr>
<tr>
<td>Peggy Sue de la Rosa, Esq.</td>
<td>Sheffield Property on West 57th</td>
<td>Open</td>
<td>N/A</td>
<td>May 20 2008</td>
<td>$0.00</td>
</tr>
<tr>
<td>Kenneth E Radley</td>
<td>State of Georgia vs. Kenneth Radley</td>
<td>Open</td>
<td>N/A</td>
<td>Oct 05 2011</td>
<td>$0.00</td>
</tr>
<tr>
<td>Delta Health Systems</td>
<td>Overtime Violation</td>
<td>Open</td>
<td>N/A</td>
<td>Oct 05 2011</td>
<td>$0.00</td>
</tr>
<tr>
<td>Sky Bros</td>
<td>Hobbs Complaint</td>
<td>Open</td>
<td>N/A</td>
<td>Oct 05 2011</td>
<td>($1,002.00)</td>
</tr>
<tr>
<td>Sky Bros</td>
<td>Crow Forklift Accident</td>
<td>Open</td>
<td>N/A</td>
<td>Oct 05 2011</td>
<td>($3,000.00)</td>
</tr>
<tr>
<td>Sky Bros</td>
<td>Riley Workmen’s Compensation</td>
<td>Open</td>
<td>Aug 19 2015</td>
<td>Oct 05 2011</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

* Rocket Matter, practice management software
Documentation

- Location of original client files
- Bank account records (trust and general)
- Passwords for all online accounts
- Passwords for phone, mobile devices
- How to access voicemail (work and mobile)
- Post office boxes, safe deposit box
- List of contacts (insurance, staff, other services you do business with)
Tools - Asset Management Software

My DataSafe

PasswordBox

SecureSafe

Planned Departure

DEATH SWITCH

Google

Inactive Account Manager

« Google Account settings
Tools - Password Management Software

- LastPass
- KeePass
- dashlane
- 1Password
- RoboForm

Simple, Convenient Security
Go Paperless

Would You Want to Help?

This might not be so bad...
Wrap Up

• Provide instructions to produce a list of client contact for open files
• Keep all deadlines in your calendaring system
• Document, document, document
• Keep time/billing records updated
Standard Letters and Document Assembly and Automation

Catherine Sanders Reach, MLIS
Standard Letters for Clients

• Samples from ABA GP|Solo including:
  » Engagement Letter and Fee Arrangement
  » Non-Engagement Letter
  » Non-Engagement Letter After Review
  » Non-Engagement Letter (Follow-Up to Initial Interview)
  » Non-Engagement Letter
  » Fee Agreement for Defense in Criminal Proceedings
  » Compensation Agreement (Contingent Fee)
  » Letter Awaiting Further Instructions
  » Guarantee of Payment of Fees
  » Disengagement Letter: Unpaid Fees
  » Separate & Additional Agreement
  » Declining Further Representation
  » Closing Letter

At: http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/sampleengageletters.html

See also IICLE and the Form Tools Formulaw, automated standard forms:
https://www.iicle.com/formulaw
WHAT is Document Assembly?

• Assist in the creation of electronic documents
• Use pre-existing text or data to assemble new documents
• Can automate conditional and variable text, plus data and format
Where do I get it?

• Built into the word processor
• MS Word plugins
• Text Expanders
• Tools in practice management software
• Web-based document assembly
Why Automate?

– Decline of hourly billing
– Increasing competition
– Higher volume of cases
– Clients:
  • Know more
  • Shop around
AUTOMATE FUNCTIONS IN MS WORD
Autocorrect
Re: Mark: Subject: JACK DANIEL'S Use of Trademarks

Dear Mr. Wensink,

I am an attorney at Jack Daniel’s, the owner of the JACK DANIEL’S trademarks (the “Mark”), and have many years in connection with our well-known merchandise.

It has recently come to our attention that another entity’s design that closely mimics the shape and image of the cover is set forth below.

We are certainly flattered by your appeal of Jack Daniel’s, we also come across designs like this on a regular basis. What may not be so apparent, however, is that if we allow uses like this one, we run the very real risk that our trademark will be weakened. As a fan of the brand, I’m sure that is not something you intended or would want to see happen.

Name: I am an attorney
Gallery: Quick Parts
Category: General
Save in: Building Blocks
Options: Insert content only

Malpractice application, p.55
Dear [Jane Smith]:

We represent [Company/Periodical], a wholly-owned subsidiary of [Company/Periodical]. Recently, we noticed that [Company/Periodical] used the term "[company name]" in the article, "[Name of Article]," which appeared in the [Company/Periodical] edition of your publication (see attached). It appears that the article may have been referring to our client's [company name] brand, but because the author's name used the phrase "[company name]," that may not be clear to your readers. Accordingly, we write to request that your writers refer to our client's trademark properly in future stories.
Mail Merge

Fictitious Law Firm
www.companyname.com

Tuesday, September 18, 2012
Sent Via Email

AddressBlock
Email_Address
GreetingLine
MS Word Add-Ons

• The Form Tool [http://www.theformtool.com/](http://www.theformtool.com/)
  – Free/$90 Pro/ $350 Pro Plus

  – 90 Day Free Trial/$380 single user/$800 3 users + networking

• SmokeBall [http://www.smokeball.com/](http://www.smokeball.com/)
Digital and Electronic Signatures

See: https://youtu.be/sBrfsVMN0GI?list=PLWM5HOP9IO8_J_d8B27ZMEcKlVz7R4Qvg
In Practice Management Software

**Installed**
- Time Matters
- Practice Master
- AbacusLaw (forms)
- AmicusAttorney

**SaaS**
- MyCase
- Clio
- RocketMatter
Stand Alone Document Assembly

**Generic**
- Hot Docs
  - HotDocs developer
  - HotDocs user
  - HotDocs Document Services

**Practice Specific**
- WealthDocx
- Cowles Estates Practice System
- AIA Contract Documents
Document Assembly for Business and Law (made easy)

"I can do in 10 minutes what used to take me an hour, and know it's perfect each time."

—Law Firm Partner, Indianapolis
What You Need To Do

• **STOP** using old documents as the basis of new ones
• Build your gold standards and **USE** them
• **Consolidate** your firm’s intellectual capital