

# Don't Be Fooled: Computer Calendaring Isn't Foolproof

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**Y**ou've spent countless hours researching the latest in computer-based calendaring systems and thousands of dollars to buy one so that your firm never misses a critical deadline. Two months later you miss the refiling date on a large medical malpractice case.

How did it happen? You relied too heavily on one calendaring system. Consider the following true story.

Law Firm was brought in as cocounsel on a medical malpractice case because of its trial expertise. The case involved an older man who died shortly after a surgical instrument was left inside his body. The referring attorney had previously filed suit in the case. After receiving the case, Law Firm promptly entered the case name and number in its new state-of-the-art computerized calendaring system.

A few months later, Law Firm decided to non-suit the case due to discovery compliance problems and refile at a later date. The responsible attorney at Law Firm did not tell the calendar clerk to take the case number out of the system when the case was dismissed.

Law Firm's computerized calendaring system was programmed to tickle for statute of limitations and refiling deadlines upon the entering of a matter into the system. Since this matter already had a case number, the system did not warn anyone of the impending refiling date and the statute was blown.

The lesson of this litigator's nightmare is not that computerized calendaring systems are ineffective but that no calendaring system is foolproof unless it contains a dual safeguard



***Don't rely on a single calendar — even a state-of-the-art one — to warn you of important deadlines.***

mechanism. In other words, each date must be maintained in two separate calendars, whether they are manual or computer-based, by at least two separate individuals. In the case at hand, if the attorney responsible for the file had placed the refiling date in his own calendar, the statute would not have been missed. Instead, he relied solely on Law Firm's computerized system.

Larger firms generally satisfy the dual calendaring requirement by having each date entered into a centralized computer system and then into each individual attorney's diary. Sole practitioners can maintain dual calendaring by having their secretaries maintain one diary and then keeping a separate diary themselves.

There are other procedures that lawyers can institute to avoid missing deadlines:

**1. Don't let the statute of limitations expire while you're deciding whether to take a case.** Plaintiffs' attorneys often do not know whether they will accept a case until they've reviewed the medical records and accident reports. If the statute expires while you're in possession of a potential client's materials, you'll probably be sued even though you're not in a formal attorney/client relationship.

Some attorneys send out letters in these situations stating that the firm is merely investigating the matter and has not agreed to represent the individual. These letters probably will not protect you if the statute passes while the injured party's records are in your hands.

**2. Don't calculate the statute of limitations date based on information the client tells you.** You must always independently verify the date of accident, the date of last treatment, or the date of the alleged loss from other written records such as doctor's records or police reports.

**3. Double-check all statute of limitations dates entered into the system for your cases.** We recently received notice of two separate claims in which a clerk erroneously entered July into the system rather than June. Remember that no calendaring system is better than the information entered into it.

**4. Never accept matters if the statute of limitations date or notice date is fast approaching.** These situations are ripe for malpractice. Besides missing the deadline, attorneys may fail to name the proper party in such cases because they lack time to investigate the facts. A surprising number of our claims involve failure to serve

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the proper party.

**5. Establish an office procedure that forbids attorneys from opening files until they've calculated and recorded statute of limitations dates.** You can do this simply by revising your new-file input sheet to include a line for the statute of limitations date and another for the responsible attorney's initials. Instruct office personnel that no file can be established unless both lines are filled in.

**6. Appoint a statute of limitations "enforcer."** Put one attorney in charge of verifying that complaints have been filed in a timely manner. He or she should receive a list of all impending statute of limitations dates every Monday, then visit each respon-

sible attorney and ask why the case has not been filed. This system acts as a backup in case the responsible attorney gets bogged down in other matters (e.g., a trial) and forgets that another deadline is looming.

**7. Require written verification that the complaint was timely filed.** Ask to see a stamped copy of the filed complaint. This may seem Draconian, but it's the best way to find a "bad apple" before he or she costs your firm a hefty malpractice claim.

**7. Emphasize the importance of statute of limitations, refiling, and other critical deadlines to your office staff.** They undoubtedly will take greater care in calendaring dates if they know that a missed deadline

could have a severe impact on the firm.

**8. Don't mention specific statute of limitations dates in nonengagement letters.** You should always send nonengagement letters to people whom you decide not to represent, particularly if you've reviewed the potential client's records. You should use the letter to inform them that there is a statute of limitations and urge them to see other counsel as soon as possible. You should not, however, specify the exact statute date. You may not have enough information to establish the proper date, and if you give an incorrect one you may be held accountable.