

The High Price of Putting Things Off

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Our files are full of legal malpractice claims brought against good, hard-working attorneys who had one fatal flaw — they procrastinated. We all procrastinate to some extent. But chronic procrastination is no joke when it turns into neglect. Read on and see if any of the following situations sound familiar.

The volume practice. Attorney Smith maintains a small personal injury practice. Smith is currently handling a significant medical malpractice claim that she hopes will pay off and allow her to run her practice free of economic pressures in the future. In the meantime, she continues to take in a high volume of smaller personal injury claims which have been her practice's mainstay over the past several years.

Smith agrees to represent Injured Guy after an auto accident that occurred at an allegedly dangerous intersection at the juncture of towns A and B. Injured Guy suffered minimal soft tissue injuries and liability is weak, but Smith takes the case hoping for a quick settlement. She faithfully enters the statute of limitations deadline into her computerized calendaring program.

Then the procrastination begins. As each tickler date arises, Smith ignores the reminder and works on bigger, more pressing files instead.

A week before the statute of limitations is set to expire, Smith has done virtually no investigation or background work on Injured Guy's case. With her back against the wall, Smith files a complaint on Injured Guy's behalf naming both towns A and B as defendants. One month later she discovers that the state maintains the intersection in question, not A or B.

Because Smith waited until the last minute to file the complaint, she can no longer amend it. Unlike Smith, Injured



Chronic procrastination can make little cases into big ones — and it can make you into a malpractice defendant.

Guy's new lawyer does not suffer from procrastination and wastes no time in serving her with a legal malpractice complaint.

The good-intentions approach. Attorney Jones is an experienced and competent general practitioner. Jones is hired to handle the estate of Dead Guy. At first blush, the matter seems straight-forward; Dead Guy's estate, which consists primarily of his home, its contents, a checking account, and an IRA, is to be divided equally among his nieces and nephews. His eldest nephew is the executor. Feeling no pressure to start work immediately on such a simple matter, Jones puts Dead Guy's file on the side of his credenza and vows to start work on it next month.

When next month rolls around, Jones is preoccupied with a nightmare

divorce case that has heated up and defers Dead Guy's file for another month. Thirty days later, Jones is busy with several house closings and training a new secretary. Once again he postpones Dead Guy's matter for another 30 days. Next, flu season hits the Jones' household with a vengeance and his work schedule for the next few weeks is shot as he and his wife take turns staying home with the kids and running to the doctor. As soon as they're all on their feet again, Jones

promises himself that he will work on the Dead Guy's estate.

The distractions and excuses continue for months as Jones deals with one "crisis" after another and ignores Dead Guy's estate. One night Jones wakes up in a cold sweat obsessing over several matters he has neglected, including Dead Guy's. The next morning he gets to the office early and finally starts work on the file. He writes to the bank where Dead Guy maintained his IRA, informing it of the death and requesting that the funds be transferred into the estate account. A few weeks later he receives notice from the bank that the sole beneficiary under the IRA is the executor individually and not Dead Guy's estate as expected. Jones talks to the executor, who insists that Dead Guy intended the IRA proceeds to be distributed equally among his beneficiaries.

To rectify the situation, Jones sends the bank a disclaimer of beneficial interest signed by the executor. The bank then notifies Jones that the nine-month period under IRS rules for disclaiming a beneficial interest has passed. Furthermore, the bank refuses to distribute the IRA funds to all of the beneficiaries and instead distributes the proceeds solely to the executor, who then has to pay tax on the entire amount. After receiving a demand let-

ter from the executor's new counsel, Jones realizes for the first time that procrastination has turned a simple probate matter into a legal malpractice claim.

If either of the above examples sent a cold shiver down your spine, we suggest the following cures for your procrastination:

1. Don't ignore tickler and file review dates. You might as well throw your calendar out the window if you're going to ignore all those reminder dates. Instead, have your secretary pull each file as it comes up on your calendar. Every Monday, close your door and review those files to determine whether you have taken any action in the past 60 days. If you have not worked on the file for 60 days, figure out what needs to be done and do it. Don't put the file back until the work

has been completed and a new review date has been calendared for 60 days into the future.

2. Don't assume that any matter is as simple as it seems. Remember that most files contain unexpected problems and complexities — and give yourself adequate time to deal with them.

3. Every day pick two or three annoying little matters you've been avoiding and take care of them before you leave the office. If you try to tackle too much, you'll become overwhelmed and quit before you start.

4. Handle the file you dread the most first.

5. Get rid of those "dogs" you're currently neglecting. In our experience, it's always the ugliest file that gets pushed to the side.

6. If you're moving from one emergency to another, take a critical look

at your work load. If you have too much to do and not enough time to do it, consider hiring another lawyer on a part-time basis or co-counseling with an attorney who knows the subject matter and has the time to assist you. In the future, just bite the bullet and say no to new business that you don't have time to handle.

7. Take a real vacation at least twice a year. Work burnout can play a major role in procrastination. If you're "too busy" to take a vacation, you're probably the one who needs it the most. (A weekend away from the office fulfilling family obligations and running errands doesn't count.) After a few good days away from all distractions, you'll come back more refreshed and ready to face all of those files you've been ignoring.