

Top 10 Ways Not to Blow a Statute of Limitations

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According to an ABA nationwide study, over 20 percent of all legal malpractice claims result from missed deadlines. Not surprisingly, statutes of limitations are the most commonly missed deadlines. In some cases there's a calendaring error; in others, the lawyer fails to identify the proper statute. Here's my list of the top 10 rules trial attorneys should follow to reduce the chances of blowing a statute of limitations:

1. Calculate the statute of limitations date immediately. Determine the potential statute of limitations date on the *same day* that you're notified of a potential case, even if you haven't decided to accept it. If the statute is blown while you are investigating whether to take the case, you're dead.

Once you've established a preliminary statute of limitations date, calendar a verification date for 90 days in the future. At that point, review any new information to determine whether it changes your calculation.

2. Be alert for unusual circumstances that might affect your statute of limitations analysis. For example, does the injury involve a government entity? Did it occur in an unusual setting, such as on a cruise ship or an international air flight? When in doubt, call a colleague who is expert in the area.

In particular, always call local counsel to verify foreign statutes of limitations. This simple practice could eliminate many botched statutes each year. Consider this — how many Indiana attorneys would know the proper deadline for filing claims against the Chicago Transit Authority without asking a local attorney? Don't leave yourself similarly vulnerable in other jurisdictions.

3. Don't assume you already know



Make sure that ticking sound you hear is just the clock, not a time-bomb.

the deadline. Missed statutes occur when attorneys become complacent and assume they know the answer. You may be surprised by what you discover with a little research. Remember, most legal malpractice claims are brought against lawyers who have been practicing for at least 10 years.

4. Don't rely on information from a single source, particularly the client, when you calculate the date. Take the case of the client who said his car accident occurred at 12:03 a.m. Saturday morning. His lawyer relied on this information, foolishly waited until the last day to file the complaint, and missed the statute by one day. Why? According to the police report, the accident actually occurred at 11:55 p.m. on Friday night.

There are two lessons in this story. First, always verify the statute of limitations date through independent sources, such as a physician's report or

police records. Second, never wait until the last possible day to file a complaint.

5. Maintain a "redundant" calendaring system: make sure at least two people enter every date in at least two different calendars. Consider this example: Firm A's docketing clerk, engaged in an engrossing personal phone call, inadvertently enters the statute of limitations date into the centralized computer calendaring system as 3-1-97, not 1-3-97. Since A relies exclusively on its central-

ized calendaring system, the filing deadline is missed.

Firms that use a centralized calendaring system can avoid similar disasters by requiring the attorney primarily responsible for the matter to maintain a second calendar. Sole practitioners can accomplish a dual calendaring system by maintaining one calendar themselves and having their secretaries or clerks maintain the other.

6. Be wary of clients who create unreasonable time constraints by seeking your counsel at the eleventh hour. If you don't have enough time to properly investigate and perform, don't accept the representation. Lawyers under severe time restrictions can fail to identify the proper defendants before the statute of limitations expires. Even if another attorney sat on the file for months before the case was transferred to you, you'll probably be held liable if you're the attorney of record on the date the statute runs out.

7. Calendar the statute of limitations date for cases that you refer out to other trial attorneys for a fee. Follow up before the statute expires and verify that the receiving attorney has filed the complaint. If the receiving attorney misses the deadline, you can be held liable for the error. It's no fun paying for another attorney's mistake.

8. Make sure your calendaring system contains periodic tickler dates with enough lead time. As a rule, your system should remind you 180, 90, 60, 30 and 15 days before the statute expires.

9. Stop procrastinating! The tickler system won't keep you out of hot water if you ignore the reminders. Unfortunately, procrastination is at the root of scores of missed deadlines. A classic example is the trial lawyer who has a file for 18 months but does virtually no work on it until weeks before the statute of limitations expires. As a result, she names the wrong party in the complaint, fails to name additional

defendants, and fails to discover additional causes of action that could have been brought on the plaintiff's behalf.

If you are routinely overwhelmed by your caseload, it's time to reassess your practice and take some drastic action. Read up on time management techniques and revise your practice accordingly. Try hiring another attorney on a part-time or full-time basis. If all else fails, withdraw from representing some clients to lighten your work load. At a minimum, take on fewer cases in the future and concentrate on the ones you retain. If you don't lighten your load you'll eventually stumble under it.

10. Send nonengagement and withdrawal letters religiously.

Q. What's worse than being sued by your client for missing a statute of limitations?

A. Being sued by someone who *isn't* your client.

Nonengagement and withdrawal letters serve as vital evidence that you were not the claimant's counsel when the statute expired. With a little staff training and a couple of good form letters, you can send them with a minimum investment of time.

Don't be the next blown statute statistic. Revise your office procedures as necessary — the deadline is today.