



Serving Illinois Lawyers

A photograph of the DeWitt County Courthouse in Illinois. The building is a grand, classical-style structure with a prominent portico supported by columns. To the left of the entrance is a tall, white column topped with a statue. An American flag flies on a tall pole in front of the building. The sky is blue with light clouds. The photograph is partially overlaid by a red diagonal graphic element.

**THE FUNDAMENTALS
OF LOSS PREVENTION
FOR LAWYERS**

Calendaring and Time Management

Calendaring and Time Management

Better computer calendaring systems, e-filing, and multiple modes of communication with clients have resulted in fewer claims for failure to calendar or file, procrastination and lost documents. The use of case management systems and e-filing will be discussed at the end of the next section on file management, but if you do not currently use a case management system you must be particularly mindful of calendaring and time management.

Consider the following guidelines in establishing a calendaring system:

Calendar all types of dates and deadlines:

- statutes of limitation (municipal, state, federal);
- administrative hearing dates;
- all court appearances;
- closing dates;
- procedural deadlines;
- request to admit deadlines;
- pleading and discovery dates;
- appointment/meeting dates;
- service of process follow-ups;
- tax filing deadlines;
- notice of appeal deadlines;
- corporate filing deadlines;
- vacations and personal appointments; and
- mandatory file review dates.

Be sure you are referencing the correct statute of limitations

Municipal, state and federal statutes of limitations may differ. Another factor that may influence a statute is the entities involved. Many lawyers have blown statutes of limitations by misidentifying a municipal entity as a private entity.

Maintain a redundant calendaring system

The mechanics of a redundant calendaring system are quite simple: two different people must enter every date into two different calendars. If you don't have a redundant system, it's not sufficiently error-proof. For example, let's suppose that a docketing clerk inadvertently enters the statute of limitations date for a particular case as 7-1-99 instead of the correct date of 1-7-99. If another person has independently calendared the correct date in a separate calendar, the mistake can be caught before it's too late.

If you are a solo practitioner, you can accomplish a redundant calendaring system by maintaining one calendar yourself and having your assistant maintain the other. If you work in a firm that uses a centralized calendaring system, the second calendar should be maintained by the lawyer who is primarily responsible for the case or matter.

Don't maintain different calendars for different types of dates

The saying goes, "If you have two calendars, you don't have one." Maintaining one calendar for court appearances, another calendar for statutes of limitation deadlines, and a third calendar for client appointments and personal commitments can lead to confusion and broken commitments. For example, you may schedule a series of depositions for the same week that a major brief is

due in another case. In other instances, a real estate closing may inadvertently be scheduled for the same date a tax return is due.

The point is that a lawyer should be able to consult one calendar and obtain a complete picture of all their commitments for that day, that week and that month. In this way, the lawyer can plan their schedule to accommodate all their commitments.

Include tickler dates in your calendar

Your calendaring system should contain periodic “tickler” dates to remind lawyers of impending deadlines and to provide lawyers with sufficient lead time within which to respond. In the case of a statute of limitations deadline, the system should generally tickle a lawyer at least 180, 90, 60, 30 and 15 days before the limitation period expires.

Establish procedures for reviewing the mail for new deadlines

Each piece of mail should be date-stamped received and then reviewed for dates that need to be calendared, such as deposition dates and tax payment dates. Those dates should then be placed into both the central calendar and the backup calendar as suggested above. If a clerk reviews the mail, they should initial or highlight each date that is calendared so that the lawyer ultimately receiving the mail knows that the date was identified and calendared.

Mandatory File Review Schedule

Mandatory file review systems are designed to ensure that each file in your office is reviewed on a regular basis. Periodic file reviews serve several important functions from a loss prevention standpoint:

- They prevent files from slipping through the cracks, particularly during periods when lawyers are overworked or preoccupied with other matters.
- They remind lawyers to correspond with clients on a regular basis.
- They provide lawyers with an opportunity to review files without the pressure of an impending deadline.
- They also allow you to catch files that are lost or misplaced before it's too late.

The key to a mandatory file review system is to calendar regular file review dates every 30 to 60 days. You should begin this process when you open a new file by indicating on the New Client/Matter Intake Form the date on which the file should be reviewed. Files should generally be reviewed every 30 to 60 days. This form should then go to the calendaring clerk who will calendar the first review date. If you use a computerized calendaring system, it can be programmed to automatically enter 30-day reminders until the file is closed.

For a sample [New Client/Matter Intake Form](#), see the Addenda [Sample Letters and Forms](#).

Every Monday morning your assistant should then pull the files that are calendared for review that week. It is critical that you physically review the file — don't just look at the file name and re-calendar it for another 30 days. By reviewing the physical file, you may discover that a critical document has not been prepared or that service has not yet been perfected on a particular defendant. In short, don't rely on your memory to determine whether any work needs to be completed — check the file instead.

Computerized file review systems are preferable because the reminder dates can be automatically programmed. In contrast, manual file review systems are extremely time intensive and more prone to error. If your assistant forgets to enter the next file review date or refile an index card, the system breaks down. This cannot happen with an automatic calendaring system.

If you do not have the option of using a computerized system, you can establish an index card file review system in the following manner: You will need a set of index cards divided by month,

day and year. Each client/matter must have a separate index card. If the Smith file is opened on January 15, then the Smith index card is placed behind the February 15 divider for a 30-day review. Every Monday your assistant will then pull the files scheduled for review that week.

Procedures to avoid missed statutes of limitations

- **Make your initial calculation of the statute of limitations date immediately.** Determine the potential statute of limitations date on the same day that you are notified of a potential case, even if you have not decided whether to accept the representation. If the statute is blown while you are investigating whether to take the case, you may be held responsible.
- **Calendar a verification date** for 90 days into the future, once you have established a preliminary statute of limitations date. At that point, review any new information you have received to determine whether it changes your calculation.
- **Don't assume you already know the correct statute of limitations.** Missed statutes occur when lawyers become complacent and assume they know the answer. Therefore, go back and check the statute. Remember, most legal malpractice claims are brought against lawyers who have been practicing for at least ten years.
- **Be on the alert for unusual circumstances that might impact your statute of limitations analysis.** For example, does the injury involve a government entity? Did the injury occur in an unusual setting such as on a cruise ship or an international air flight? When in doubt, call a colleague who is an expert in the area.
- **Always call local counsel to verify foreign statutes of limitations.** This simple practice could eliminate many missed deadlines each year. Consider this -- how many Indiana lawyers would know the proper deadline for filing suit against the Chicago Transit Authority without asking a local lawyer? Don't leave yourself vulnerable to comparable questions in other jurisdictions.
- **Don't rely solely on information provided by any one source, particularly clients,** in establishing the statute of limitations date.

Example: Client said their car accident occurred at 12:03 a.m. Saturday morning. Their Lawyer relied on this information, foolishly waited until the last day to file the complaint and missed the statute deadline 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 to be learned from this story.

- Always verify the accident date (or other dates critical to establishing when the statute of limitations period began to run) through sources other than the client, such as a physician's report or police records.
- Never wait until the last possible day to file a complaint or file a document electronically.

Calendar all critical deadlines for cases that you refer out to other trial lawyers for a fee

Follow up before the deadline expires and verify that the receiving lawyer has taken the necessary action. If the receiving lawyer misses the deadline, the referring lawyer can be held liable for the error.

Be wary of clients or referring lawyers who create unreasonable time constraints by seeking your counsel at the eleventh hour. If you will not have time to investigate and perform, do not accept the representation. Lawyers operating under severe time restrictions often fail to identify the proper defendants before the statute of limitations expires. Even if another lawyer

sat on the file for months before the case was transferred to you, you will probably be sued if you are the lawyer of record on the date the statute runs out.

Don't procrastinate. Keep in mind that even the most sophisticated calendaring system won't help if you chronically ignore the tickler dates and procrastinate. This is particularly important for lawyers who represent plaintiffs. If a plaintiff's lawyer waits too long to investigate a case, they may be time barred from suing an additional defendant or pursuing another cause of action because the statute of limitations deadline for that particular defendant or action has already passed.

Calendaring Do's and Don'ts

Do...

- ✓ Maintain a redundant calendaring system.
- ✓ Include tickler dates in your calendar.
- ✓ Establish procedures for reviewing the mail for new deadlines.
- ✓ Establish procedures to avoid missing statutes of limitations.

Don't...

- ⊗ Maintain different calendars for different types of dates.
 - ⊗ Allow more than 60 days to pass without reviewing a file.
 - ⊗ Overlook deadlines for cases that you refer out to other lawyers for a fee.
 - ⊗ Procrastinate.
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To download our entire guide, ***The Fundamentals of Loss Prevention for Lawyers*** or to access Sample Letters & Forms, visit our website www.isbamutual.com.

Disclaimer

This booklet includes loss prevention techniques designed to reduce the likelihood of being sued for legal malpractice. It is not the intent of these materials to suggest or establish practice standards or standards of care applicable to a lawyer's performance in any given situation. Rather, the sole purpose of these materials is to assist lawyers insured by ISBA Mutual in avoiding legal malpractice claims, including meritless and frivolous claims. To that end, the intention is to advise lawyers insured by ISBA Mutual to conduct their practice in a manner that is well above the accepted norm and standards of care established by substantive legal malpractice law. The recommendations contained in these materials are not necessarily appropriate for every lawyer or law firm and do not represent a complete analysis of each topic.

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