

CLAIM OF THE MONTH

WHEN DEADLINES BECOME HEADLINES

SAFEGUARDING YOUR PRACTICE AGAINST TIME BARS

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One of the most common paths leading to malpractice claims is the failure to adhere to mandatory timelines for filing notices or pleadings. Despite this fundamental understanding among practitioners, missed deadlines continue to occur at an alarming frequency. This article aims to highlight common missteps and provide practical advice to prevent the ultimate loss of a client's case.

Understanding the "Nullum Tempus Occurit Regi" Doctrine

Let's begin by addressing the "nullum tempus occurrit regi" (no time runs against the King) doctrine, which grants immunity to governmental entities from prosecution unless allowed by statute. When such entities can be sued, the notice period for bringing a lawsuit is typically shorter than the standard statute of limitations. It is crucial to be aware of these rules and deadlines when pursuing claims against a governmental entity. Here are three examples where attorneys encountered challenges with governmental entities:

- An attorney filed a medical malpractice case against a doctor but failed to realize that the doctor's employer hospital was municipally owned. As a result, the attorney overlooked the 90-day notice of intent to sue rule, leading to the dismissal of the suit.
- Another attorney sued a bus carrier after a client sustained injuries at the bus terminal facilities. However, the attorney was unaware that the terminal was owned by a Port Authority entity subject to a 90-day notice of intent to sue. Consequently, opposing counsel successfully sought dismissal based on the time bar.
- In a case against a private water company within the two-year statute of limitations, the company claimed it was a quasi-governmental entity with a 180-day filing deadline. Although the parties eventually settled, considerable time and resources were wasted over the dispute regarding the shortened timeline.

Understanding the Nature of the Client's Case

The focus should be on comprehending the nature of the client's case. Different types of allegations, such as contract, personal injury, wrongful death, property, professional malpractice, or claims against a governmental entity, can have varying statutes of limitations, with some deadlines being shorter than others. For example, an attorney might file a breach of contract case on time but later discover that pursuing a tort claim would have been more appropriate. This mistake could lead to a motion to dismiss based on the shorter statute of limitations for tort claims.

Awareness of Differing Statutes in Different States

Many attorneys are licensed in multiple states or are willing to proceed pro hac vice on behalf of clients. It is vital to recognize that states often have different statutes of limitations and deadlines. Even if the practitioner is aware of these differences, any lapse in attention during client intake can prove fatal to the pursuit of a viable claim. For instance, an attorney representing a client from one state with an injury claim stemming from an accident in a neighboring state must be mindful of the differing limitation periods. Failure to conduct a thorough preliminary workup might result in a missed deadline, leading to dismissal.

Key Practice Points to Ensure Client's Claims Are Properly Preserved

To safeguard against missed deadlines and potential malpractice claims, consider the following key practice points:

- Identify the statute of limitations at the time of client intake and set reminders for follow-up and filing.
- Determine the type of claim being pursued (tort, contract, personal injury, etc.).
- Be aware of the relevant state laws applicable to the case.
- If a governmental or quasi-governmental entity is involved, understand any specific notice requirements or shorter deadlines.
- Consider proposing a tolling agreement when deadlines are approaching quickly.
- Implement a calendar system during intake and maintain appropriate backups.
- Assign at least two individuals to review the calendar at regular intervals for effective case management.
- Utilize checklists specific to the claim and practice areas, updating them periodically.
- Consider reading "The Checklist Manifesto" by Atul Gawande for additional insights.

In conclusion, avoiding blown deadlines is primarily a matter of paying close attention. By heeding the examples and considerations mentioned in this article, your practice can be better protected against the threat of potentially devastating time bars.