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■ **Bulletin # 229**
The upside of redundancy

Redundancy gets a bad rap. By definition, redundancy is repetition of a thing that has the effect of making that thing unnecessary. In the human resources world, redundancy is a term applied to positions that are no longer required and carries with it the implication that the employee is not essential. Our common perceptions of redundancy are negative and influenced by the view that duplication is unnecessary, implies inefficiency and increases costs.

In the world of engineering, however, redundancy is often a critical component of design. Aircraft are built with multiple engines, for example, when fewer or even one may only be required to actually fly the plane. In buildings, alternate electrical power systems provide backup in case of primary source outages. Cloud data storage services maintain not only a single backup of data, but multiple copies stored in different locations. Laptop computers operate on both A/C power and battery sources.

Redundancy in design means there is an element of built-in inefficiency, as some systems will exist in duplicate, resulting in increased costs. But such redundancy can function as an effective risk management tool. Intentional redundancy in system design assumes that there is risk of both human error and system failure. One way these risks are mitigated is through development of backup or duplicate systems.

In the same way, building some redundancy into law practice management systems is an important component of your firm's risk management.

You may already have incorporated a kind of redundancy into your law firm practices; for example:

- preparing memos to file as a means to confirm conversations;
- documenting verbal instructions from clients in letters or emails; and
- using retainer letters to confirm agreements as to fees and scope of retainer.

This basic practice of "putting it in writing" is a form of redundancy that serves a very

important risk management function, although it does increase costs in terms of time and effort expended. Insurance claims data confirm that a lawyer's well-documented file often provides an effective defence to a legal malpractice claim and that where such documentation is lacking, the risk of a successful malpractice claim is increased.

Many law offices take a similar approach with their client data. Documents received in paper form may be retained as a backup to scanned electronic versions. Even more important is the duplication of those electronic records through conducting regular system backups and testing those backups to ensure their effectiveness. Recent news stories of law firms infected by ransomware viruses confirm the importance of maintaining accessible and complete system backup files to limit the related risk.

Another law office system that requires a redundancy approach is in the recording and calendaring of limitation periods. A centralized approach to recording limitations is essential for every law office. Such a system should include a standard review of every new matter coming into the office for relevant or potential limitation periods.

The maintenance and use of a duplicate limitations calendaring system is also recommended so that each can serve as a check against the other. In this context, duplication does not refer to an exact copy, as that would mean errors registered in one would also be duplicated in the other. To provide the most effective check, a redundant limitations calendar should be entirely independent of the primary system. In any case, regardless of the particular type of reminder system employed, consistent and rigorous use of that system is essential.

Redundancy isn't desirable in all aspects of your law practice management systems but should be carefully considered as an effective means to manage and mitigate your risk. Both client communications issues and missed limitation periods continue to generate significant numbers of malpractice claims annually. Many of the inherent risks with respect to these issues could be effectively mitigated through intentional redundancy.

■ **Bulletin # 230**
Checklists for lawyers

The Checklist Manifesto: How to get Things Right is an important book on risk management and has application to most every field of professional practice.

Author and physician Atul Gawande distinguishes in the book between errors of ignorance and errors arising from a failure to apply knowledge, noting that most errors fall into the second category. This is consistent with statistics on errors in legal practice that result in insurance claims. Errors more commonly arise from a failure to take an action, whether related to communications, limitation periods, practice management or other causes, than from a failure to know the law.

While still not widely used in law practice, checklists are commonly relied upon in a number of other fields. Gawande cites aviation as a prime example, but also notes the increasing reliance upon checklists in medicine, manufacturing and other sectors. Lawyers, he suggests, could benefit from greater reliance upon checklists.

Why Use a Checklist?

At this point you may find yourself adopting a defensive posture. While lawyers in some areas of practice already rely upon checklists, many do not. Some possible reasons why you may be reluctant to incorporate checklists include a fear it will be time consuming or a belief that your client matters are not sufficiently standardized to fit into a checklist approach. You may also consider yourself so well versed in the specialized work you do that there's no need for referring to a checklist.

But we all know that lawyers are not immune to making errors. You're not a robot, but a fallible human prone to at least occasionally slipping up. There are times when you may be working on a file that is a little outside your area of specialization. At those times in particular, a checklist not only helps to avoid errors but also can provide some comfort. Checklists are also useful as a tool to help you prepare for the sometimes inevitable Plan B. In case of emergency, or if someone else needs to step in for you unexpectedly, a checklist can help to ensure your client's work doesn't suffer.

You know that it would waste your valuable time and your client's money if you had to reinvent documents for each individual client. Instead, you rely on a quality bank of precedent documents. In the same way, establishing checklists for work processes that are repetitive and standardized also saves your time and your client's money.

A further reason you may want to consider adopting use of checklists is because defending a malpractice claim is both time consuming and very stressful. If a simple tool could save you that headache, why wouldn't you use it?

What's in it?

Gawande's checklist for building checklists includes three parts: development, drafting and validation. In the first part, development, you need to determine and frame the objectives for the checklist. At this stage, Gawande proposes that you ensure items that will improve communication among team members are included and involve those team members in the creation of the checklist. Given the prevalence of communications issues among legal malpractice claims, these suggestions are particularly relevant to legal processes.

In the second part, drafting, you will determine what's included and what's not. In doing so, you will need to consider if each item is:

- Critical and in danger of being missed;
- Not checked by other mechanisms;
- Action-oriented with a specific response required; and
- Capable of being affected by use of a checklist.

Gawande includes a number of specific suggestions for formatting a checklist, including that it fit on a single page, use simple language and follow a logical format. He suggests that it also include the date of creation or revision.

The third phase of checklist development is validation, an essential phase. At this point, the checklist is pilot-tested and modified as required. Questions to consider include whether the checklist detects errors at a point where correction is still possible and whether the checklist fits the flow of the work to be done. This is when you should also determine when next to review and revise the checklist as necessary.

What else?

It's not enough to go through the process of developing checklists, although you may find you discover critical internal process or system issues along the way. Checklists, like any risk management tool, are most effective when you consistently use them and build their use into your firm's internal processes and systems.

If you're still not convinced, read The Checklist Manifesto.

(With extensive credit to: The Checklist Manifesto: How to get things right by Atul Gawande, Picador, 1st ed. 2009)