

RISK MANAGEMENT

At the Risk Management seminars conducted by Marsh Pty Ltd (previously Sedgwick) over the past few years, practitioners have identified some of the underlying causes of claims and some methods in which they can be avoided. It is probably of no surprise that in a majority of cases, it is administration and file management issues that result in claims rather than a failure to address legal issues.

One of the problems with such claims is that details of events and conversations are not always recorded on file, or are poorly recorded, rendering them either meaningless, or prejudicial to your own defence. An auditable file trail clearly identifying what was discussed and agreed, along with the subsequent written confirmation, may be the difference in an allegation being immediately established as groundless, or a lengthy and costly action which has a detrimental effect on both your firm and you personally.

So, how do we maintain an authentic auditable trail? Detailed file notes of course! Each firm should ensure a standard format for file notes, and ensure that all staff are aware of the need for such notes. We have often heard the cry "I know I told them about it, but I don't have a record". It may not seem like much at the time, but the minute something goes wrong, you will be thankful for your pristine records.

SOME TIPS ABOUT FILE NOTES.

File note methods

Whilst a simple white note pad is an obvious choice, it lacks in providing prompts for certain information, which in the course of a busy day, can easily get missed. A preferred format is to have a preprinted form with prompts for: Date; Time; Whether a Telephone Call or Meeting; Name of participants and where they are from, Subject Matter; File Number; and Sign Off.

If you do preprint such forms, it is quite useful to have them printed on coloured paper, for ease of reference in the file.

Another method is to use a carbon book for your file notes, with the original going in the file, and a copy retained in the book. These should preferably be pre-printed with the prompts and numbered pages. As the file notes need to be chronologically entered into the book, it forces contemporaneous note taking, and discourages the practice of "I'm a bit busy right now, so I'll write it up later".

With this method there is also an undisputable record of the conversation taking place at around the time and date specified, as the record is imprinted in the carbon copy book. This can guard against spurious claims that a conversation never took place.

Whichever method is utilised, there are some basic file note rules which should be followed:

- Full names of all parties should be included on the file note at least once, and initials can be used thereafter. It may save time to just use initials, but this can create confusion if the file is required to contest a claim some years later, the people are no longer around, or there are a number of parties with the same initial.
- Include a reference as to whether it was a meeting or telephone conversation, the date and time.
- Include the year reference with the date and do not simply put the day and month.
- Include the name of the file and reference number which will prevent misfiling of the file note, particularly if you are acting for the client on more than one matter. Where a note does relate to more than one matter, copy the file note for both files. It can be useful to use a highlight marker to identify the relevant

matter reference on each copy, so as to be certain at subsequent reviews that the note has been copied into both files.

- If a file note is typed from a handwritten note, include both the date of the conversation, and the date the file note is prepared. Attach the handwritten note to the typed file note.
- Be clear about who instigated the contact. This may become important.
- Keep records of any unsuccessful attempts to contact another party, and retain telephone messages from them on file.
- Sign the file notes
- Be clear about the elements of the discussion and ensure your note reflects what actually occurred, ie, "delete clause four" may have been discussed, but the file note should be clear about what was agreed - i.e. "John confirmed in order to delete clause four relating to access rights....understands that this may cause limitations of.....", OR "settlement offer of \$20,000 advised to Tom who instructed to accept" instead of simply "settlement offer agreed"
- Confirm major points of any discussion in writing.
- Copy the file note for a diary reference if you will need to instigate further action or followup.

The above are some fairly simple and obvious tips that may make the difference between a long-drawn-out defence of an allegation, or an easily supported rebuttal which can put an end to any further claim.

This article was supplied by Cheryl Richardson, Principal at Marsh Ltd (formerly Sedgwick).

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