

Manage Practice Risks Better

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A client of ours was recently confronted by the ultimate risk to professional practice. Her suburban office in a typical high street building, burnt down, with everything in it. Every file and every computer! All records were lost. However, the client had a recent offsite backup of all client, matter, document and accounting data enabling her to re-establish the practice as soon as she had purchased new equipment. A big risk; overcome by the simple discipline of making a backup.

There are many risks associated with running a small law firm. Trust is very much at the heart of the solicitor and client relationship. It is for this reason that people entrust lawyers with the details of their lives as they seek guidance and help. Of course, a relationship of trust is one of the utmost good faith. So client expectations are high, much higher than those of a layperson.

In any human endeavour, the higher the expectation, the greater the scope for disappointment, the greater the risk. To mitigate those risks you must have systems and procedures. The good thing about this is that almost every step that you take to mitigate risks will also contribute to making your practice more profitable.

Because self-discipline is so important and yet so hard to maintain, particularly for lawyers working alone, the benefit of using systems is that they impose

the discipline in a convenient way. As an example, if you use an accredited trust accounting system as recommended by the provider, then you will comply with the trust accounting rules and regulations without having to pay very much daily attention to compliance. Happily, there are systems available that can help you to overcome the most common practice risks just as easily.

What is the catalyst for complaints? It's the money stupid!

Although there can be many reasons for a complaint against a lawyer, very often the catalyst is a dispute over money which then manifests itself as a complaint.

So if you want to minimise your risks, you must make sure that the financial side of your engagements are clear, from beginning to end. If you are involved in litigation of any kind this is particularly important. There is surely no tougher and more miserable experience for a lawyer than trying to collect money from a client when the litigation has been lost. You must protect yourself with a good costs agreement in the first place, and regular scheduled reviews and updates as the matter progresses. In fact, as many a litigator knows, even if you have been successful in the prosecution of your client's case, clients very often conclude that they would have succeeded

without your help and your services are overly costly and unnecessary. So be on your guard!

The Step-by-Step Guides in LEAP Office include precedent Costs Agreements in all common types of matters. All you need to do in each instance is review the appropriate agreement and tailor it to the circumstances of the matter. Thereafter, you must keep your client informed as circumstances change.

Using LEAP accounting collecting money as a deposit has also never been easier. You generate a Request for Trust Deposit and email it to your client, using standard email templates, in less than a minute. Your client has the option of paying online or at any post office, with the funds being automatically allocated to the correct matter.

Regular discussions with your clients about costs, and habituating your clients to paying costs in advance and regularly, is your first and best line of defence against claims.

The power of the contemporaneous note

Prosecuting or defending any claim depends on the best evidence, and for a claim against a lawyer to be defended, the best evidence is a document or a contemporaneous note that can be shown to be contemporaneous. More about



System Problems – 20.2% of claims – 2010	
Delay	The usual cause of delay flows from uncertainty in what to do. Anything unusual or more difficult is put in the too hard or later basket. By adopting the Step-by-Step Guide for every matter and using the precedents this problem is overcome. Further by following the recommended management procedures work is quickly reallocated when someone is overloaded or unable to do the job. The agenda system ensures that the job is continually brought forward and not forgotten.
Lack of file maintenance	Using the Electronic Matter, you have all information about each matter in one place. Matter data, instructions, incoming and outgoing documents, emails and PDF's as well as your contemporaneous notes are kept in an organised and useful fashion. Every file is automatically organised. You just have to use the system.
Lack of staff supervision	<p>Lack of supervision extends from knowing what a junior is doing, to having the time to provide needed guidance on the law.</p> <p>Fee Earner Overview</p> <p>This report provides immediate and accurate information about the whole portfolio of work being done by any fee earner. New clients, new matters, work done as well as key financial information relating to matters being dealt with are reported on. So instead of asking a fee earner what work they are doing, you print this report and review the work they are doing - a very different proposition.</p> <p>Contemporaneous notes</p> <p>Because all fee earners are making contemporaneous records in the timesheet, you have an exact audit trail of all activity. As principal, you can access and view a subordinate's timesheet and as a bonus, whenever you record time on a matter, you are presented with the last ten activities on that file. So any work done by someone else is immediately apparent.</p> <p>Guidance on the law</p> <p>By using the Step-by-Step Guides, staff receive on the job training as they do each matter. The guide tells them the why, and the how is provided by the sequential precedent letters and documents. The busy principal is able to refer staff to the guide to answer most of their questions. If the recommended management actions are taken the staff will receive ongoing input from the principal and will be given and take responsibility to be the authority themselves on a chosen area of law.</p>
Oversights	Adopting the agenda (workflow) system and setting critical dates as you go, eradicates oversights. All that is required is the disciplined use of the system by you and your staff.

documents later. Let's consider the contemporaneous note. Any lawyer who has reviewed a file of another lawyer knows the frustration of trying to piece together what has occurred without proper contemporaneous notes. You cannot manage risk if you do not make contemporaneous notes.

- Common sense suggests you should;
- Professional conduct requires it;
- Your client expects it (how

would you feel if your GP did not make notes?)

- Risk management demands it!

And it is a happy coincidence that if you do make contemporaneous notes in the right way that information can be used for billing as well.

Our clients have found that using our Timesheet they can:

- Quickly and very easily locate the correct matter - every time;
- Accurately start and stop the

timer for each attendance;

- Even make entries BEFORE a matter is created;
- Quickly and easily (with extended task codes and auto text) make meaningful notes regarding the attendance;
- If you choose, use the contemporaneous records for billing purposes.

So instead of managing risk itself, you have a system that time records, time costs and manages risk at the same time.



Even if you are not using time recording for billing purposes, it is just as easy to make contemporaneous notes in fixed fee work such as conveyancing so you have the comfort of knowing that you have only one system and every attendance is recorded in the same way. If you do this, you will find that your interpretation of events is far more likely to prevail because you have the evidence.

You will manage risk as a natural consequence of doing the work. There is no better system for doing so.

Let's now look at some of the major causes of claims against solicitors in New South Wales during 2009 to 2010 and consider how a good system and a little self discipline

would have helped defend those claims.

Poor communication with clients - 39.6% of claims - 2010

This category accounted for a staggering 39.6% of all Lawcover claims in the 2010 financial year. I would think that almost every one of these communication failures would be avoided if the practitioners involved had a good system to support them in their work.

How can this be? Lawyers are generally good with words both written and spoken. The answer is perhaps a shortage of time,

resources and a lack of good systems.

Document problems – 16% of claims - 2010

Once again, these risks can be minimised with a good system. Documents lie at the heart of almost all legal practices so access to up to date legal forms and precedent letters, agreements, deeds and the like is essential for you to limit risk and prosper financially.

Not knowing the law adequately - 12.5% of claims - 2010

Our research has revealed that an

Poor communication with clients- 39.6% of claims - 2010	
Client's instructions not followed	Without a disciplined way of taking instructions you are at risk. With LEAP Office, at the outset of every matter the client's instructions are obtained in full and recorded on the Instruction Sheet. They prompt you to get all required information. The Instruction Sheets have been prepared by lawyers with many years experience and by methodically taking instructions you will have written proof of your clients instructions. They exist for most common areas of law, so even if you are taking instructions in an area that you are not fully familiar with, your risks are minimised.
Failure to advise	This category covers a failure to advise in writing and thereby have the best evidence. Producing a letter is easy and requires limited typing skills. In many instances a precedent letter containing general advice on the issues involved is provided for you to forward to clients with the initial letter. A limited amount of customising of the precedent to the facts of the matter is required. In addition, as all letters generated are automatically stored in an Electronic Matter, you have the proof that the advice was given. You just cannot realistically expect just your word to be believed over a negative claim by a client unless you have written proof. A good system proves the advice as well as the fact of creation.
Failure to define extent of retainer	The precedent cost agreements for all matter types provide a general description of the typical retainer which just needs to be tailored to each matter. Initial letters confirm and define the retainer. In this way, both the scope, and the cost of the work to be done is circumscribed in advance and you can defeat a claim to the contrary.
Failure to obtain instructions	Most often, this occurs in a telephone conversation when naturally enough details are forgotten over time. Particularly in complex matters. If you have not confirmed instructions in a letter, at least a detailed contemporaneous note will demonstrate that you did in fact obtain instructions.
Incomplete explanations or advice	Incomplete explanations source from a lack of understanding of the law or a fear of displaying ignorance. LEAP Office includes Step-by-Step Legal Practice Guides in all common areas of law. The Guides are kept updated at all times so that there is easy access to and explanation of the law that a practitioner is expected to know. Again, this is particularly helpful in areas that you are not fully familiar with.



Document problems– 16% of claims - 2010	
Drafting errors	<p>Most small law firms cannot afford to acquire and keep up to date their own legal forms and precedents. Copying documents from a previous matter is rife and risk laden.</p> <p>With LEAP Office you get thousands of maintained and up to date automated legal forms and precedent documents in the common areas of legal practice.</p> <p>The precedents cover the common issues and must be tailored in accordance with instructions. For instance, the standard special conditions for a contract for the sale of real estate may need a special condition relating to a host of different situations. These less usual special conditions are found in the library of special conditions.</p> <p>These legal forms and precedents are used by more than 1000 sole practitioners and small law firms in New South Wales so you have the peace of mind of knowing that they are widely used and risk is minimised so long as you adhere to your client's instructions.</p>
Failure to check documentation	<p>No system can do this for you and there is no replacement for care in checking documents. However, the task is greatly reduced if the letters and documents that are written are standardised throughout the office and are based on settled and maintained forms and precedents.</p>

alarming number of small firms, and solo practitioners in particular, do not have adequate, or any, legal support materials. This situation is exacerbated by the fact that most solo practitioners and small firm lawyers work across multiple practice areas with frequently little or no prior experience which elevates practice risks enormously. To make legal works available to these lawyers, LEAP Office includes Step-by-Step Legal Practice Guides in most common areas of law. As relevant guides are linked to the type of matter being worked on, it is extremely easy for you to access the necessary information – your

library is already in the matter!

So your risks in every area of claim can be eliminated or mitigated purely through the introduction of a uniform system with standard procedures and routines. To summarise, if you just focus on four crucial areas, the risks of a client bringing a claim against you are minimised and these are:-

- A complete Instruction Sheet for every matter;
- Ensure that your client is always fully informed, in writing, of the potential financial obligations, outcomes and consequences of the work you will do;

- Make diligent contemporaneous notes of EVERY client attendance; and
- Whenever possible, confirm in writing by letter or email.

When it comes to risk management, if you look after the basics, the basics will look after you! ●

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Not knowing the law adequately - 12.5% of claims - 2010	
Incorrect advice	<p>If you don't know or are unsure of the law then just check the guides. They are constantly updated to reflect changes in practice and the law. There is no need for you to keep abreast of changes except to check when giving advice about which you are unsure.</p> <p>You can also easily, with just one click in the browser, save your research into the Electronic Matter so that you have 'point in time' proof of the legal authority on which you based your advice.</p>
Lack of legal knowledge	<p>Most practitioners have a vague memory of many areas of law that they have studied or encountered at some time. Don't guess, look at the Guides and if needed use the Feedback system to ask the Author for clarification. With LEAP Office you have a practice support system available at your fingertips.</p>

