

Running a litigation file:

Seven tips for junior lawyers

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This paper is a summary of a longer paper available <http://tinyurl.com/hx98cd8> (at my website). In this paper I aim to provide a summary of the observations I have made in the longer paper, plus some tips for each area.

At the start

In the early years of your career, the particular point where the matter first enters your office will probably be a partner or senior solicitor delivering the good news that “this one is yours” while having three boxes placed near your desk. Whichever way, the first thing you need to do is assess what you actually have in front of you.

Tip 1: You need to actually look

Don't just accept the file note from the solicitor now departed the firm or team that says “everything is fine, the client has been asked to do a few things, and matters can wait until they get back to us.” If it isn't in some form of order, then your first question should be: **“Is this a ticking bomb?”**

The expectation quite rightly upon you is that any issues will be identified early and dealt with. So look.

Where you are the actual first person in the firm dealing with a matter, in some ways this is simpler. You can obtain the key information first hand. If you inherit a file, then get it in order.

Keeping order

My personal preference when running litigation files was for five basic sections: court documents, correspondence,

clients instructions and documents, research and miscellaneous. These might be physically in one folder or separate folders, but were always identifiable.

Tip 2: It doesn't matter how you identify each group, so long as they are

Before I talk about what is in each section, I will note that generally the documents within each section should be in chronological order. Whether earliest first or latest first, they need to be in order.¹

Court documents: Every document either filed in or issued by a court, tribunal, commission or registry for the matter should be in this section. It is somewhat disconcerting to be reading something which refers to a particular order having been made and to not have a copy of that order. Don't leave it stuck to the back of the letter from the other side or the registry and file it somewhere else.

Correspondence: Every letter between you, your client, the other party and the court should be placed in the correspondence section. Again, this sounds simple. But I can recall any number of times where a letter was referred to in one document on a file I had inherited, and that letter was nowhere to be found and that relevant to managing the matter.

Clients instructions and documents: This is the most complex section and proves the most difficult to bring order to. Ultimately the documents will need to be



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separated into individual documents for disclosure purposes. Do this from the beginning of your conduct of the file. Put them in chronological order.

Research: Relevant legal research would be placed here. Also, any other relevant information obtained by you should be placed in this section. This might include any amount of internet searches, notes, and other documents obtained (brochures, etc.).

Miscellaneous: Where you throw everything else—all the boarding passes, maps, irrelevant Google searches², and related information you have acquired and which is not really relevant to the other sections. Drafts of advices might go here, as well as draft court documents.

I make further comments on how to keep order in my full article <http://tinyurl.com/hx98cd8>.

Timeframes

There are always timeframes relevant to litigation. In some matters there may be more than one applicable timeframe that is immediately relevant to a client. Some may seem far off. They aren't.

In litigation there will be at least one—the *Limitation of Actions Act*.³ But of course, this is not the only relevant legislation that affects timeframes. For example, there are timeframes particularly relevant to the conduct of general personal injuries actions, the motor accident cases and worker compensation claims. All jurisdictions have similar and varied legislation relation to commencement of family provision matters and administrative law appeals.

And once you have an action commenced, the rules of procedure that apply to the particular forum you are in keep the parties moving along.

Tip 3: Work out the timeframes that apply and note them down

For more comments in relation to timeframes, such as limitation periods, see <http://tinyurl.com/hx98cd8>.

Client statements

I spoke to a number of chamber colleagues about this paper, hoping to glean ideas for further content. All immediately focused on one thing: "Tell them to make sure they get a statement from the client!"⁴

Take heed of such uniformity.

Tip 4: Get statements

You should start preparing the statement from the time of your first instructions. It should be a recitation of the relevant facts known to the client in a chronological order. It should be broken into numbered paragraphs. Try to keep the content of each paragraph limited to one concept or idea. And keep asking questions about all the information given to you—who, when, where, why, and what documents, emails, notes or other facts has the client got which support their statement.

Documents

The other side of obtaining a statement is to make sure you obtain all the relevant documents.

You are never given all the documents on the first request. There will always be something along the lines of emails sent, a diary, even a contract, that the client doesn't think is relevant. Your job is to ensure they understand that everything is relevant, even to just get the 'big picture'. The big picture is important, because it is what a court will be told. Clients will self-censor, thinking a particular document should not be released on the basis of some



misguided idea as to privacy, commerciality or their understanding of the law. Dissuade them of this notion as you take the statement.

Tip 5: Read the documents forensically

Not just the ‘relevant content’, but the document in its entirety. For example, if a document has a fax header-line on it, where was it from or to, and when? If it is a contract, who is it actually between, or when was it signed, or which version is it? When was the company registered? With electronic documents, take the time to look at the ‘file properties’ of any key documents—when was it created originally, who it was created by, and when was it last amended and who by? These little things can matter.

A chronology

These simple lists bring an order across an entire file that cannot be beaten.

Tip 6: Chronologies allow you to see holes in a story, as well as the conflicting points

They can be in a table in Word, Excel or some similar program. The important fact is that the information is able to be manipulated—a simple paragraph reciting what happened is useless as a chronology. A good chronology will have every factual event listed, with at least three columns detailing when the event took place, a description of the salient facts of the event, and also where the evidence of that factual event was obtained from.

Where documents differ on the facts, then you need to ask why. People can be mistaken as to timeframes, or content of documents, but such differences should be identified early.

Talk to people

Communication is extremely important in what we, as lawyers, do.

When talking to a client, it is surprising how much more information can be obtained if you visit them, rather than them visiting you. This is especially true where large organisations are involved. The ability to talk to people ‘on the ground’ can be invaluable.

Next is professional courtesy and respect. Always remember that in litigation you tend to come up against the same opposing practitioners again and again. Today you might be against a firm but tomorrow you may actually need their support in another matter. Leaving one matter with a strong professional relationship will benefit your practice.

Finally, talk to your colleagues. They will have ideas on how to handle a particular problem, or will confirm your thoughts on how it should be handled. But do not become someone who has to be spoon fed everything. Your colleagues will desert you. An old partner of mine had a statement on a plaque on his desk.

It is my:

Tip 7: If you come to me with a problem, but no solution, you are part of the problem

Simply put, think up every way you might solve your particular dilemma, and then why each will or won’t work. Guidance will be better achieved if you, yourself, come up with the solution.

Conclusion

As I indicated at the beginning, this is just a summary of ideas in my paper. If you get yourself into a habit of doing the little things early, then as the bigger things come along, you will hopefully be able to stay a little more in control.

- 1 The order can be different between sections, for example, earliest first for court documents, latest first for correspondence.
- 2 With a note as to why you thought it possibly relevant is a good idea.
- 3 There are correlating federal and state and Territory acts in every jurisdiction.
- 4 Unfortunately this didn’t help me, as I had already thought of that one.

