

# YOU WILL BE MISSED: BUT WHAT ABOUT YOUR FILES?

Increasing mobility of practitioners within the legal profession can expose firms to higher risk.

**T**he departure of a practitioner, even if only on extended leave, is usually not without some dislocation within the firm.

Even the most amicable parting is likely to involve file handovers and precipitate a review of resourcing within the section or even firm-wide. Clients can become anxious and follow the practitioner out the door, leaving other staff without work. Alternatively, it can take time for the firm to recruit new people, leaving others to carry a heavy burden.

Whatever distractions may be associated with a particular practitioner's departure, neither the practitioner nor the firm – specifically its other practitioners – should lose sight of their clients' interests.

It is crucial that any practitioner's departure be managed carefully by the firm. An important part of this process is ensuring that good file management is maintained at all times.

before the transfer authority arrived, with the firm having made limited efforts to chase the client for it.

As the client and file were leaving, no-one took responsibility. In the interim, nobody looked at the file and it appears that the departed practitioner's email account was not monitored as frequently as it could have been.

During that time, the firm received, but did not read, a letter from the opposing party's solicitors, arguably resulting in a missed opportunity for settlement. It also became apparent that the file had been poorly handled by the practitioner in the months preceding departure.

The matter proceeded to trial and the client lost, with costs awarded against it. The client sought to pass the adverse costs and costs of the lost litigation on to the departed practitioner. An issue arose as to whether the firm had taken adequate steps to protect the

that the retainers have ended. Until those files are duly transferred (or closed if the client's instructions have been completed) and the retainer terminated, the firm will owe clients who have signalled an intention to withdraw instructions the same duties as any other current client.

## Internal file handovers

Firms need to have a clear internal file handover policy for managing the transfer of files between operators within the firm. The policy should include the following points:

- The partner and any practitioners who will have responsibility for such files should be designated as soon as possible and the client given written notice of the change.
- A handover memorandum for each file should be prepared by the departing practitioner, identifying any looming deadlines and issues requiring urgent attention as well as describing the steps that have been taken on the matter and which steps have been planned. Each practice area will require different information in the memorandum but the policy should outline the level of detail required in any given case.
- File handovers should not be left to the last minute and practitioners should ensure they are sufficiently briefed when taking on files.
- Practitioners receiving files should ensure they bring themselves up to speed (even if time doing so is not chargeable) and avoid making assumptions about what has or has not been done on the matters. They should not underestimate the importance of getting to know their clients.

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## Managing the transition

Typically we see situations where the issue of which, if any, clients or files leave a firm with a departing practitioner is not addressed until the practitioner has or is about to depart. File transfer to the new firm is then delayed while the logistics concerning documents and payment of fees are worked out.

Meanwhile, work on the file is often not done, exposing the firm still "on the record" to risk.

Recently we saw a situation where a firm did establish several months in advance that a client was going to leave with a departing practitioner, but the client's matter was still not managed well. A number of weeks passed after the senior practitioner had left the firm

client's interests during the transition and therefore should be joined.

Few clients react well to being given a few days notice that the primary contact on their matter is leaving the firm. Dealing with the issue as soon as possible allows clients time to adjust and the firm time to plan how to proceed with each retainer.

Where the firm is required to transfer files, written authorities should be obtained from clients as quickly as possible. The files should be carefully reviewed to ensure that all documents and confidential metadata (in the case of electronic files) not being transferred are removed.

When all necessary steps have been taken to terminate applicable retainers, the firm will need to write to the clients confirming

## Conclusion

When a practitioner is moving on, the firm needs to proactively and promptly address what will happen to the practitioner's files. Policies on how files are to be handled should be developed and adhered to. ●

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