

Risk management **audit checklist**



LEGAL
PRACTITIONERS'
LIABILITY
COMMITTEE

Don't wait for the worst to happen...

Use this audit checklist to determine and monitor whether your practice is at risk of a negligence claim.

Introduction

This audit checklist is a risk management tool for legal practitioners to determine and monitor whether their practice is at risk of a negligence claim arising from poor management of the retainer or the matter.

The checklist does not seek to audit the technical quality of the legal work undertaken. Rather, the audit is directed at the way the work has been performed regarding issues such as retainer management, client communication, supervision, file management, cost disclosure and useable trail (i.e. record keeping).

This publication concentrates on these issues because analysis of our claims has shown failures in each of these areas is responsible for the vast majority of negligence claims brought against the practitioners insured with LPLC.

LPLC's experience shows that practitioners are often unaware they are not managing these issues properly or these are issues that can and should be managed.

This audit is a good place to start to inform or remind yourself of problem areas, to determine the effectiveness of your current approach and to identify what steps may need to be taken to reduce the risk of a claim.

How to use this checklist and get the audit process going in your firm

- **The checklist is designed to guide you through a review of a file in terms of:**

A RETAINER MANAGEMENT

- > includes setting up, varying and closing the retainer and managing the client's expectations throughout

and

B MATTER MANAGEMENT

- > includes delegation and supervision, communication, record keeping, and file and time management.

- **The checklist requires you to answer yes or no to the questions raised.**

A significant number of 'no' answers on a file or group of files will highlight that your firm needs to review its risk management strategies as it may be at risk of claims in the future.

- **To start the audit process**

- > Choose the area within your firm you wish to audit (e.g. by practice area, matter type, department, workgroup, practitioners according to position or level of experience).
- > Decide the number of files to be audited from each practitioner in the audit area – we suggest five files per practitioner subject to time available and type of files.
- > Select the files randomly and include both open and closed files.
- > Fill out a checklist for each file – you may photocopy the checklist in this booklet or copy the checklist from the risk management section on our website at www.lplc.com.au

- **Review the results**

- > Review the completed checklists for 'no' answers to identify significant issues. In particular look for any patterns of 'no' answers within the audit area or for each practitioner.
- > Consider possible adverse consequences if these answers or patterns continue (i.e. assess the risk of a claim if nothing changes).
- > Decide the actions that need to be taken by whom and by when to reduce your risk.
- > Set a date to review implementation or repeat the audit if appropriate.

If you would like to discuss on a confidential basis:

- > the audit process
- > your results or
- > your proposed risk management strategies in response to the audit

Contact us on 03 9672 3800 or email lawyersrisk@lplc.com.au

Firm

Practice group

File operator

Partner/supervising principal

File name and number

Status of file open: active/inactive closed

_____|_____|_____|_____ |_____

Date of review Reviewer

Scope of this review First review or

Follow up to previous review of date _____

Part A: Retainer Management

Part B: Matter Management

Part A

Retainer Management

CLIENT/MATTER SCREENING

1	Is it clear when the retainer commenced?	Yes	No
2	Is it clear who the client is? (e.g. company versus director/shareholder)	Yes	No
3	Is the matter in an area of law in which the firm currently practices extensively?	Yes	No
4	Is there evidence that a conflicts check has been conducted?	Yes	No
5	In other respects does the client/matter comply with firm policy and procedures about matter acceptance? (e.g. areas of work, high risk clients/matters, approval/sign off on acceptance, credit checks etc.)	Yes	No
6	Has a decision to decline to act for a party been communicated in writing to the party?	Yes	No N/A
7	Has there been a clarification in writing to another party (e.g. unrepresented or closely connected to the client) that the firm is not acting for them?	Yes	No N/A

LEGAL TEAM SELECTION

8	Has the person handling the matter handled similar matters before?	Yes	No
9	Is the partner/principal supervising the matter unrelated to the client (i.e. not a relative or business associate)?	Yes	No

RETAINER SET UP

10	Are the terms of the retainer with the client in writing?	Yes	No
11	Are the following items included in the written retainer?		
	> Confirmation of the client's instructions.	Yes	No
	> What the practitioner will do (i.e. scope of work).	Yes	No
	> What the client will do.	Yes	No
	> If the retainer is limited, the consequences and risks to the client of the limitation.	Yes	No
	> The identity of the partner/supervising principal/legal team members.	Yes	No
	> Costs disclosure (i.e. fee/disbursement estimate – whether required by Part 3.4 of the <i>Legal Profession Act 2004</i>).	Yes	No

> Reporting and billing arrangements/frequency (e.g. monthly or at settlement).	Yes	No
> Any time limits applicable and the consequences if missed.	Yes	No
> Client's obligation to keep practitioner informed of current contact details and consequences if does not.	Yes	No
> Note conduct rules of the basis upon which the retainer may be terminated.	Yes	No
12 Is client's acceptance of the terms of the retainer evidenced in writing.	Yes	No
13 Is the practitioner acting for only one party or interest in the matter or transaction?	Yes	No N/A
14 In all other respects is there compliance with the firm's matter opening procedures? (e.g. matter form is signed off by a partner/principal, included in the matters register)	Yes	No

VARIATION OF RETAINER

15 Is there timely communication with the client about any changes in the terms of the retainer? (e.g. as to scope, fee estimate, personnel)	Yes	No	N/A
Remember fee estimates must be updated regularly and well prior to when the estimate will be exceeded by the work in progress.			
16 Have the changes been evidenced in writing?	Yes	No	N/A
17 Is the client's acceptance of these changes evidenced in writing?	Yes	No	N/A

BILLING

18 Have bills been rendered and if so, are they consistent with the retainer (or variations) in terms of amount and frequency?	Yes	No
19 Are bills being paid in full and on time?	Yes	No N/A
20 Are any client queries or dissatisfaction over costs/billing being handled appropriately and by an appropriate person?	Yes	No N/A

TERMINATION OF THE RETAINER

If the retainer has been completed or terminated prematurely proceed to question 21.

If the retainer is still on foot proceed to Part B.

21 On completion or termination of the retainer did the practitioner promptly and before closing the file:			
> write to the client either confirming that the matter was at an end or the retainer terminated?	Yes	No	N/A
> notify the client about destruction of the file?	Yes	No	N/A
> render a final account or advise client nil owing?	Yes	No	N/A

> account for any money held in trust?	Yes	No	N/A
> spell out to the client any outstanding issues requiring attention and by when, including advice on any applicable time limit and the consequences if missed?	Yes	No	N/A
> where the matter involved a deadline for the exercise of an option or the renewal or registration of a document, spell out to the client who is responsible for exercising the option, renewal or registration?	Yes	No	N/A
> return all original documents to the client?	Yes	No	N/A
> ensure any documents required to be stamped and/or registered are stamped and/or registered.	Yes	No	N/A
> otherwise account for any other original documents on the file? (e.g. held in a deeds packet in a secure place)	Yes	No	N/A

22 If the retainer was terminated prematurely whether by client or firm, was appropriate consideration given or arrangements made relating to the following.

> Professional liability assessment?	Yes	No
> Appropriate notice to client and/or court and/or Land Use Victoria?	Yes	No
> Payment of costs?	Yes	No
> Retention of copies or lien over documents?	Yes	No
> Timely release of file to another firm?	Yes	No

End of Part A

Part B

Matter management

DELEGATION AND SUPERVISION

- 23** If the file has been delegated, was it delegated to a person with the appropriate capability, workload and development? Yes No N/A
-
- 24** If the file has been delegated, is there evidence of appropriate supervision:
- > at the outset of the matter? Yes No N/A

 - > at critical junctures? Yes No N/A

 - > throughout the entire matter? Yes No N/A

- 25** If the file has been transferred within the firm, were any of the following protocols observed:
- > written hand over memo prepared dealing with strategy, unresolved issues, critical dates, next steps and information about the client? Yes No N/A

 - > file organised and up to date at time of transfer? Yes No N/A

 - > client involved and consulted in approving and meeting new practitioner? Yes No N/A

 - > cost implications (i.e. no duplication) discussed with the client? Yes No N/A

- 26** Whether the file was delegated, is there otherwise compliance with firm policy and procedures regarding quality assurance? (e.g. two partner sign off, approval of opinion committee and regular file review) Yes No N/A
-

COMMUNICATIONS AND RECORD KEEPING

- 27** Are the client's original instructions clearly documented? Yes No
-
- 28** Are any changes or updates to instructions received from the client clearly documented? Yes No
-
- 29** Are special instructions, such as settlement instructions, obtained and confirmed in writing? Yes No N/A
-
- 30** Does it appear the operator makes file notes of all attendances (personal, telephone, voicemail etc.)? Yes No
-

31 Do file notes bear the following characteristics:

> dated, including the year?	Yes	No
> identity of the author?	Yes	No
> set out how long attendance took?	Yes	No
> list who was present?	Yes	No
> legible?	Yes	No
> set out substance of advice and/or who is to do what by when?	Yes	No
> can be considered a note to file (meaningful to someone else) rather than a note to self (meaningless to anyone else)?	Yes	No

32 Are there letters of advice/progress reports to the client:

> at the beginning of the matter?	Yes	No
> at regular intervals?	Yes	No
> at critical junctures?	Yes	No

33 Are significant correspondence or memoranda sent or received by the practitioner copied to the client?

Yes No

34 Have any changes in the legal strategy for completing the matter been confirmed in writing to the client?

Yes No

35 Have any changes in the time frame for completing the matter been confirmed in writing to the client?

Yes No

36 Has there been a good response time to:

> telephone calls?	Yes	No
> face to face requests?	Yes	No
> correspondence?	Yes	No
> emails?	Yes	No

37 Does the file contain copies of all communications? (e.g. letters, faxes and emails)

Yes No

38 Are all drafts clearly marked and in numerical/date order?

Yes No N/A

39 Is there every reason to believe the client is not satisfied with the job?

Yes No

40 Does it appear any client dissatisfaction was dealt with by an appropriate person or in accordance with the firm policy?

Yes No N/A

41 Does it appear any client dissatisfaction was resolved satisfactorily by the firm?

FILE AND TIME MANAGEMENT

42	Is the file well organised (chronological, divided into separate sections)?	Yes	No
43	Is there evidence that filing is up to date? (e.g. emails printed and on the file)	Yes	No
44	Has the operator used any checklists, precedents or other performance tools in conducting the matter?	Yes	No
45	Is there evidence that documents were cross checked or proof read before being presented to the client for execution?	Yes	No
46	Has the file progressed or been completed within a reasonable time?	Yes	No
47	Has the file been proactively, not reactively managed? (e.g. file reviews and actively pursuing issues)	Yes	No
48	Has a system for monitoring deadlines been used? (e.g. is there evidence of an individual, shared and/or centralised diary system and a back-up diary system)	Yes	No
49	Has any deadline monitoring system been used for limitation periods and other 'drop dead' deadlines?	Yes	No
50	Has any deadline monitoring system been used for reminder of steps to be taken on the file?	Yes	No

End of Part B

Reviewing the results

Review the completed checklists for 'no' answers to identify significant issues.

In particular, look for any patterns of 'no' answers within the audit area or for each practitioner.

Is overall **Retainer Management** satisfactory?

If not, please comment on concerns.

Is overall **Matter Management** satisfactory?

If not, please comment on concerns.

Is the file otherwise completely satisfactory?

If not, please comment on concerns.

- > Consider possible adverse consequences if these answers or patterns continue (i.e. assess the risk of a claim if nothing changes).
- > Decide the actions that need to be taken by whom and by when to reduce your risk. Set a date to review implementation or repeat the audit if appropriate.

Have any outstanding matters from a previous review been satisfied? Yes No N/A

If not, please list the outstanding matters.



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