

TAKE A STEP BACK

Seeing the big picture is essential for good matter management.

Experienced busy practitioners practising in their area of expertise are still at risk of claims. Unless you take time to stop and think about each matter it is easy to assume it is just like the last one you worked on. Don't get so caught up in the process that you lose sight of your client's position and what is really happening in the matter.

Claims against practitioners often involve allegations the practitioner did not properly understand the client's objectives and advise appropriately. Practitioners can manage these risks by periodically stepping back to think proactively about issues and asking themselves the following questions.

- What is the client really wanting to achieve?
- Why is the client wanting to do this, especially if it is against their interests?
- What is the scope of my retainer and who is the actual client?
- Are my instructions in the interests of the client or co-clients?
- Have I considered authority, capacity and potential conflicts of interest?
- What has changed since the start of the matter? Do I need to re-scope?
- What aspects of the matter are unusual or outside my expertise?

At the beginning of the matter

Think about when you last finished a complex matter against a tight deadline. How much time did you have to review the matter to check that all aspects had been properly completed?

Quality control should be built into matters from the outset. Develop comprehensive procedures and checklists for the types of work you do regularly. These should include mechanical steps like attending to registration of documents or security interests. At the start of each matter think about what is different about it and what further steps should be added to the procedure and checklist.

During the matter

Although the temptation is to move onto the next task, it pays to be proactive throughout the matter thinking about the big picture and whether you have:

- all the instructions you need and understand the client's objectives and expectations, as they may have changed since the start of the matter

- identified information from previous matters that may be material to the current matter, such as interdependent agreements
- confirmed in writing what work is in and out of scope
- thought critically about the client's strategy and whether it matches the client's objectives
- informed the client of their options and recorded the advice in writing
- diarised critical dates.

Example

In one claim, the practitioner advised a property developer pre-contract on the purchase of a development site. The practitioner was aware the client intended to develop the site. The contract was signed with an 18-month settlement period and the client indicated he would be nominating a corporate entity as purchaser. A few months later, unbeknown to the practitioner, the client submitted a planning application to build townhouses on the property. Two months later the client advised the practitioner who the nominee would be. When preparing the duties form 6A as part of the nomination process, the practitioner answered "no" to the query about whether land development had occurred. Before a further nomination was made, the practitioner was told the planning permit had been granted so answered "yes" on the further form 6A. Before settlement an on-sale was negotiated and a contract was signed by the nominee and the new purchaser. Settlement was delayed at the last minute when it was discovered that double duty was payable. When acting on the conveyance the practitioner needed to look at the big picture. The client was a developer, there was a long settlement period and the client was going to nominate a new purchaser. This should have led the practitioner to advise about stamp duty consequences of early planning applications. ■

This column is provided by the **Legal Practitioners' Liability Committee**. For further information ph 9672 3800 or visit www.lplc.com.au.

TIPS

- Be proactive about understanding the client's objectives and expectations.
- Think critically about the client's instructions.
- Stop to think about what is different about each matter.
- Amend your procedures and checklists accordingly.

