

STEP UP SUPERVISION IN TIMES OF CRISIS

Supervision should not be viewed as a burden but a fundamental aspect of legal practice that drives staff and client satisfaction and firm profitability.

The supervision of employee solicitors has always been important, and doing it effectively is even more crucial now many practitioners are working remotely.

Picture this. You recently completed your first 12 months of supervised legal training. Now that you are admitted to practice, your boss, who runs a busy practice and is the principal of the firm employing you, trusts you to get on with your job, and you do just that. You're dealing directly with clients, drafting and settling documents yourself.

Then, a client phones and complains they have been unable to obtain finance to settle a transaction because you failed to remove a caveat on title. Not long afterwards, another client complains that although you provided a solicitor's certificate certifying that you explained a guarantee to them, they did not understand their house was at risk and the finance company now wants to sell their home.

Picture the same scenario, but as the principal of the firm. Your firm is sued by the two clients and you have to deal with your insurer, the solicitors appointed to act on your firm's behalf, and the first-year lawyer who handled the files, who is now stressed and having trouble concentrating. You're probably going to have to pay your excess, twice.

An important factor in a firm's success is its ability to attract, develop and retain talented lawyers and support staff.

Obligations are placed on principals in Victoria in relation to the supervision of their employees. A failure to supervise an employee solicitor can result in a breach of the *Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015* and, depending on the severity of the breach, disciplinary action for the principal involved.

Rule 37 of the Conduct Rules states that a solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of legal services for that matter.

A "solicitor with designated responsibility" refers to the solicitor ultimately responsible for the conduct of the client's matter. Given a client's retainer is with the law practice¹ and not the solicitor working on the file, the responsibility to supervise employee solicitors falls on the principals of the firm.

Where a firm is engaged in connection with litigation, the courts have the power to make a non-party costs order against the firm if the firm's conduct causes costs to be incurred improperly or wasted by a failure to act with reasonable competence.²

It therefore makes sense for senior practitioners and principals to view supervision not as a burden, but as a necessary aspect of legal practice and a driver of client satisfaction and firm profitability.

The imagined but highly plausible scenario above could have been avoided by any number of actions:

- **Use of appropriate proactive management systems.** What is appropriate will depend on the nature of the firm and may include regular reporting and meeting requirements with staff, file reviews and training. An open door policy is not a proactive management system as it places the onus on employees to seek assistance if they have a problem, which is not always recognised in time.
- **Documented office systems and processes.** Documenting the firm's processes, policies and procedures gives all staff a clear understanding of their role and what is expected of them. Use checklists where possible.
- **Use of practice management tools.** Using the tools available through the practice management system to generate reports to improve understanding of how file operators are managing their files. Old work in progress, unpaid bills or inactivity on a file is often a sign of trouble.
- **Monitor incoming and outgoing mail.** Are partners aware of correspondence coming in and leaving the office? It is crucial to ensure that partners maintain a level of knowledge and involvement on files handled by employee solicitors, junior and senior.

Remote supervision

With much of the profession working remotely due to COVID-19, supervision of employees has presented new challenges. Reasonable supervision should now include using technology through regular staff meetings via video or phone. Don't underestimate the value of having personal conversations with people. Ensure principals and staff have remote access to the firm's system, not only so the provision of professional services can continue, but so that practice management tools can be accessed. It may require additional effort, but remote supervision is possible. ■

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

1. *Kelly v Jowett* [2009] NSWCA 278.
2. R63.23, *Supreme Court (General Civil Procedure) Rules 2015* and s29(1), *Civil Procedure Act 2010* (Vic).

TIPS

- Principals have a non-delegable obligation to supervise staff working on client files. The client's retainer is with the law practice, not the solicitor working on the file.
- Effective supervision should be viewed as an essential element of legal practice and an investment in the firm's success and profitability.
- Supervision remotely, while presenting challenges, is a means of staying connected to colleagues during extraordinary changes to professional lives as a result of COVID-19.

