

File (Mis)Management by Melissa Kraal

A good file management system is essential in any legal practice whether it be a small or large practice. Lost, stolen and irreversibly damaged files often lead to disgruntled clients who, when unhappy with the service they've received, would in turn take their business away or worse, sue the practice for negligence at the slightest oversight.

It is not merely the physical aspects of a file that lawyers and law practices should pay attention to. In most cases that involve claims against lawyers, it is the mismanagement of the content or even the lack of content of a file, which generate claims. In essence, having a filing system that looks good would negate its benefits if the proper documentation is not done and the critical information does not get recorded into the file.

Whilst it is quite easy to appropriate the cause of claims against lawyers on their negligence of file handling and lack of proper systems and procedures, there are oftentimes further root causes that inhibit a lawyer from performing his duties well. This article aims to point out first and foremost that lawyers are, human beings, and even the best of them are susceptible to having "off" days. Therefore, the *Human Factor* is not something that can be swept aside and neglected for tired and stressed lawyers can make mistakes in so many ways ie forgetting to communicate with clients, failing to lodge a court document in time, misplacing and losing files, and what is even worse is completely missing court dates altogether.

Four Risks Associated With File Mismanagement!

The Risk! You fail to diarise a court appearance date and decide that your memory is sufficient to remind yourself about it. The date comes, but you're having a stressful day, and so you forget about it completely. The Judge strikes out your case when you failed to show up, because he's having a bad day too!

The Consequence **Missed Court Dates**

The Human Factor Do not leave everything to memory. There will be times when we all forget names, dates, and places we have to be at! The more frenetic our schedules become, the easier it is to overlook and forget completely.

Rectify It!

In the order of maintaining your files, a KIV system is a must and it is an essential element in your overall system. This system ensures that all active files are being tracked in some manner by the practice's lawyers and ideally one partner.

One main reason for this is to ensure that all pertinent dates have been recorded so that your cases do not get dismissed for failing to be filed within the time limits AND that you do not miss that all important court appearance.



#1 Missed Court Dates

#2 Lawyer-Client Miscommunication

The Risk!

You fax your client a letter on a Friday evening informing him he is expected in court the following Monday. Unbeknownst to you, the fax transmission failed.

You forget all about it until Monday morning when your client fails to show up and an unhappy Judge is kept waiting...

The Consequence

Lawyer – Client Miscommunication

The Human Factor The latest in technological communications have made us more complacent. What used to be detailed letters and emails have now been swapped for short text messages, oftentimes ending with an apology from the sender for the brevity of the message.

Rectify It!

Nothing beats the proverbial “in black and white”. Log everything you receive from your clients in a client communications sub-folder. File away correspondence that have gone both ways. Make notes of telephone conversations and meetings that are pertinent and log them into the same. Clients, like lawyers, are susceptible to error and forgetfulness, so having everything that your client says or instructs on paper will help you much later should the client refute the same.

Aside from recording client communications, it is vital too that you as your client’s lawyer, keep your client informed at every crucial point of the case and its proceedings. This is especially important when things do not go as intended. Being in an open client-lawyer relationship will help foster greater trust and goodwill between parties.

#3 Lost & Damaged Documents

The Risk! In your hurry to leave work in the evening, you pack up your things and stack all the files you have been working on, on the floor, beside your dustbin. You could have taken 15 minutes to put your files away in your fireproof cabinets. But you did not. The office maid comes in early the next morning and assumes the files left by the dustbin is to be disposed off. By the time you arrive at the office after your morning court session, you realise that your files have been thrown and there is no way to retrieve them.

The Consequence

Lost & Damaged Documents

The Human Factor It is quite a normal human assumption to believe that accidents and mishaps “Will never happen to me”. In assuming so, most people take many simple things for granted.

Rectify It!

Your files make your practice. So care and effort should be exerted with the management of your filing system be it physical files or electronically stored files.

Natural disasters, accidents and human negligence can lead to lost and destroyed files. Whilst some documents within the files can be reconstructed by building-off copies from court-lodged documents and also with help of your opposing counsel, doing so could be costly, time-consuming and stressful. Others such as Title Deeds, Sale and Purchase Agreements and Wills cannot be recreated and is deemed forever lost.



#4 Conflicts of Interest

The Risk! You interview a prospective client. This client is bent on suing his employer for wrongful termination. None of the names of the parties involved ring a bell. You agree to take on the case. In actual fact, your other partner who manages the Johore branch of your law firm is defending your client's ex-boss in another wrongful termination suit. You do not know of this because you've not spoken to your partner in months because of a disagreement...

The Consequence Conflicts of Interest

The Human Factor A law partnership is first and foremost a legal practice, and secondly it is a business entity. Petty arguments and fall-outs should be addressed immediately and both parties should amicably move on. Holding onto grudges and hurt feelings is part and parcel of being human, but for the sake of the partnership, it should be set aside and professionalism between all parties must be paramount at all times.

Rectify It!

It is important that a standard operating procedure is maintained for all meetings with new clients and prospective clients. A file should be opened even if the prospect does not become your client although this does not have to take the shape of physical file. Maintaining a soft-copy database of all the prospective clients is cost effective and sufficient in helping your practice conduct future conflict checks. Along with the prospective client's personal details, all other details mined from the meeting or interview should also be taken down and recorded. The minutiae that should be logged on your conflicts system should include details such as the names of the all parties involved, the nature of the case, the property the prospective client was interested in purchasing etc.

What is also important is for there to be open communications between all partners and lawyers within a firm, regardless of how many branches a firm has. Partners and lawyers should always know what their peers are working on at all times – a central conflicts check will assist in doing so.

*Read our **The Dreaded C – Conflicts Series** in Jurisk! issues of:*

1. December 2007
2. March & June 2008 and
3. September 2008

In conclusion,

take proactive steps in your practice. Maintain rigorous KIV systems so that minute details do not fall through the cracks. Follow up whenever necessary with your clients to exchange notes and agree that both parties are on the same page.

Most importantly, keep yourself healthy. Stress and work-related anxiety almost always is the cause of mistakes and oversight.

- Exercise regularly
- Get yourself thoroughly examined at least once a year
- Eat healthy, and do not skip meals
- Drink lots of water
- Supplement your diet with vitamins

And most importantly, put aside some vacation time to unwind.