

Practice Support Staff: Their Role in Risk Management

By Ronwyn North

Risk Manager's Note: Whilst this article provides examples of the Australian experience, universal similarities are abundant in practice management for the legal profession around the world. We hope that you will use such examples to better your practice and incorporate risk management efforts to include your practice support staff as well.

Professional liability claims don't stem just from lawyers, writes Ronwyn North, and ignoring the actions of practice support staff when framing a risk management programme can be a very ill-conceived strategy

When you think of 'practice support staff' and 'risk management', does your chain of thought run more along the lines of fraud controls, workers' compensation claims and other business interruption risks, or do you think more about poor client service, complaints and other professional liability risks?

If your firm's main focus is on practice support staff and business risks then you might like to give some more thought to professional liability issues and practice support staff.

Some firms don't seem to realise there is a small but significant group of professional liability claims that arise from 'negligent' acts or omissions by practice support staff – hence, the potential for negligence by practice support staff often receives inadequate attention in claims prevention programmes.

Any firm that characterises professional liability as a 'lawyer only' problem could be in for a nasty surprise and find itself vulnerable to claims involving practice support staff.

Negligence claims involving practice support staff

When you take into account the heavy responsibilities and workloads of many practice support staff, it is probably remarkable that there are not more claims involving 'errors or omissions' by them.

While in some cases poor delegation or supervision by the lawyers may well be an additional factor, the kinds of claims and claims prone situations involving practice support staff, particularly secretarial staff, include giving legal advice and undertakings without authority, ignorance of the significance of deadlines and statutory time limits and a variety of procedural failures involving documents, files and communications. Following are some examples.

Giving legal 'advice' and undertakings

Sometimes practice support staff overstep their role and provide advice or counsel that turns out to be wrong. This can happen if staff have a misplaced



The five steps in teaching an employee new skills are preparation, explanation, showing, observation and supervision.

Bruce Barton

belief in their own ability or scope of authority, or if they are trying to be helpful or are under pressure from a client, especially if the lawyer is not available for long periods. Examples could include:

- advice to a purchaser that 'yes, it's OK to exchange contracts today without the pest report', when later the pest report shows the property is riddled with white ants;
- advice to more than one purchaser to buy as joint tenants when a tenancy in common is more appropriate;
- giving undertakings on settlement without lawyer/client instructions that are not capable of being performed by the firm or which the client then refuses to honour; or
- advice to family and friends based on what staff have heard the lawyers say to clients.



The one great enemy of employee morale is boredom-monotonous, humdrum work.

James Cash Penney

Ignorance of the significance of deadlines

The difference between 'negotiable' and 'drop dead' deadlines is not always readily apparent to support staff, with the result that deadlines can pass without being brought to a lawyer's attention. Examples could include:

- telling a plaintiff that 'yes, it's OK to return the documents next week', when the documents need to be filed the next day;
- telling the mail room that 'if you are short staffed today then I guess it's OK if you file the documents tomorrow', when in fact today was the last day for filing; or
- giving low priority to 'unclaimed mail' so that a time limit passes before the internal reference is identified.

Poor document management, admin failures and short cuts

Many little things can have big consequences when routines and controls are inadequate or practice support staff don't follow procedures.

Client interests can be damaged in a variety of ways from seemingly minor events such as:

- incorrect photocopying (for example, double sided originals copied single sided and annexed to contracts with pages missing);
- miscommunication (for example, a letter in the wrong envelope, faxes and emails sent to the wrong person);

- document processing errors (for example, typographical errors and inadequate version control);
- failure to request, follow up or check certain searches and inquiries;
- giving out confidential information to the other side;
- deciding there is no need to do a conflict check;
- forgetting to send out costs disclosure documentation; and
- poor file management (for example, not keeping copies, slow filing, lost paperwork and sloppy file archiving).

However, it is not only secretarial staff who can get the lawyers into trouble with clients, as can be seen by the following.

- Accounts staff have been known to expose a firm to liability by converting funds into the wrong currency.
- Marketing staff have been known to be overzealous in touting a firm's expertise and capabilities, exposing it to 'misleading and deceptive conduct' allegations.
- Technology staff have been known to prematurely delete email addresses and directories of people who have left the firm, resulting in incoming instructions going into cyberspace and depriving the firm of potentially important records.
- Knowledge management/library staff have been known to be slow in updating legal information, with the risk that lawyers use out of date material.



An employee's motivation is a direct result of the sum of interactions with his or her manager.

Bob Nelson

Preventing negligence by practice support staff

Given that so many areas of practice support can expose a firm to professional liability risk, here are some questions you can ask yourself to check whether you are involving your practice support staff effectively in your claims prevention efforts.

Risk induction and orientation for new practice support staff

Do you adequately induct staff who are new to the legal environment (for example, induction about special legal obligations and their impact on day to day practice such as fiduciary duties of loyalty/good faith, confidentiality, conflicts of interest, duties to the court, trust accounts, costs disclosure and so on, and how these translate into dealings with the client and office procedures)?

Do you adequately orient staff who have previously worked in a law firm to your

particular approach and work practices with regard to managing professional risk?

Risk management communication about preventing negligence

Do you adequately inform and educate practice support staff about negligence traps that involve them, such as the risks mentioned earlier as well as new risk trends?

Do you adequately inform and educate the lawyers and practice managers about the risks of practice support staff negligence?

Risk controls relating to practice support negligence

Do you have in place adequate controls to address potential practice support negligence (for example, documented policies and procedures, and quality assurance processes to make sure policies and procedures are being followed in relation to the risks mentioned earlier or risks you have identified as specific to your firm)?

Do you have in place adequate controls relating to lawyer behaviour that increase the potential for support staff negligence (for example, controls to deal with abrogation or poor delegation and lack of supervision)?

Decision making about practice support resources

Are you adequately resourced with regard to practice support staff (for example, do you have adequate support staff numbers and skills)?

Do you consider professional liability risk in decisions about future practice support staff resources, training and so on (for example, do you properly balance commercial imperatives to contain or cut costs with maintaining 'safe' service levels and do you consult staff or is it purely a numbers game)?

Healthy risk culture

Do you actively promote a healthy risk culture between practice support staff, lawyers and practice managers where the norms of behaviour include:

- inclusiveness, not 'them and us';
- compliance with policies and procedures, not wilful non-compliance or short cuts;
- 'confession' not 'cover up' of mistakes;
- solution orientation, not blame, when mistakes occur; and



You can delegate authority, but you cannot delegate responsibility.

Byron Dorgan

- openness and responsiveness to concerns and suggestions by practice support staff about risk issues, not dismissive or punitive behaviour if people speak out?

You can't tackle every risk at once, but by making yourself more aware of the potential for claims involving practice support staff and actively including them in your risk management agenda you can be more confident you are reducing your professional liability exposure.

Safe practice!

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