



DECEMBER 2013

Transferred Files

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When a file is transferred between practitioners, either internally or externally, Law Claims sees an increased risk that the file will become the subject of a claim against either or both firms involved in transfers. The departure of a practitioner from a firm or extended leave of a practitioner are examples of situations which trigger a claim if the departure of the practitioner is not managed properly. Claims also result from delays in sending or actioning a file that has been transferred externally.

It is crucial that the transfer of files between be managed carefully by a firm.

We suggest you take a fresh look at transferred matters by examining the manner in which a file is handed over, recognising the true cost directly and indirectly to your firm every time a matter is transferred.

Internal file transfers

Law Claims receives a number of notifications arising directly from file transfers internally caused by delay in undertaking thorough review and checks of accurate time critical dates and procedural steps. An example from our database includes the failure of a new firm recognising the wrong defendant had been sued in a personal injuries claim which resulted in a significant payout as the matter was out of time to add a defendant and an extension of time was not granted.

The risks involved in transferring files are obvious but include the following:

- The new solicitor handling the file is unlikely to be aware of the history;
- The new solicitor may be over worked;
- The previous solicitor may have been overloaded with work and may not have kept the file up-to-date;
- There may be pressure with time limitation issues in the file.
- The client may be unhappy with the transfer of their file;
- Complicated legal and factual issues may be involved that exceed the skill and experience of the receiving practitioner.
- No one may have questioned the adequacy or accuracy of the previous work on the file;
- The client may be difficult.

There are of course benefits with transfer, including the following:

- Someone else with a fresh eye can help resolve a difficulty with the file;
- It can be a relief to the practitioner handing over the file as it is no longer in their “too hard” basket and will be more likely to be resolved promptly.
- A junior practitioner may benefit from seeing how a file has been conducted over time.

Firms need to have a clear and timely internal file handover policy for managing the transfer of files to avoid problems arising. Listed below are some of the matters to be considered for inclusion in such a policy:

Transferor to ensure that

- A personal briefing takes place with the new solicitor well before the departing solicitor leaves.
- A written summary and status report is to be completed and placed on the file.
- Limitation dates or looming deadlines and issues requiring urgent attention must be identified.
- Key documents are flagged;
- The file is organised and up-to-date;
- Appropriate amendments are made to the matter / accounts records before being sent to the client.
- The client is informed of the transfer arrangements before departure.

Transferee to:

- Read the entire file (even if time spent doing so is not chargeable);
- Understand the subject matter;
- Review the analysis of the legal issues and strategies;
- Check the critical dates / be wary when taking over a matter shortly before the statute of limitation period is due to expire / check all parties are appropriately joined;
- Review and consider whether engagement arrangements are still adequate;
- Reconfirm instructions with the client;
- Create a useable trail.

Transferring files externally

Once again develop a policy on files that are transferred from other firms that would require you to consider a whole host of issues including, but not limited to the following:

- Consider whether to accept instructions;
- Consider why a file is being transferred;
- Do not accept instructions until the file is received;
- Set up the engagement properly with the client in person and obtain identification;
- Agree the terms and obtain instructions;
- Contact the previous solicitor;
- Keep a comprehensive paper trail;
- Ensure the client meets and approves any new practitioner who will work on the file;
- Supervision issues-who receives these files and how many new files per practitioner are involved?
- Deal with the costing issues-a new engagement letter may be required;
- Use a non-billable time code to encourage practitioners to spend the time needed and/or
- Explain to the client that significant legal cost may be incurred as a result of the transfer, particularly if the matter is complex, has proceeded for some time or has many documents.

A factor that makes transferred matters risky is client dissatisfaction. This dissatisfaction can lead to complaints and claims. It is important to keep a copy of the file if there is an external firm transfer of the matter, in case a claim or complaint to the LPCB requires a response using the file information.

Policies on the transfer of files are fundamental. If you require any assistance in the development of such policies or a transferred matter checklist please do not hesitate to contact the PII Risk Manager, Gianna Di Stefano on 8410 7677 or via email gdistefano@lawguard.com.au.