

LAWPRO Webzine



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Don't be part of the administrative dismissal claims spike

The number of claims we're seeing based on the administrative ([Rule 48](#)) dismissal of an action continues to grow at an alarming rate, as do the costs for these claims.

As the new procedure for these dismissals becomes old news, courts are becoming less amenable to our repair efforts. The list of acceptable excuses for delay continues to shrink; the incidence of delay does not.

Lawyers need to have reliable systems in place to identify languishing files, and need to take the initiative to move those files along.

Our analysis of claims reveals certain factors and patterns that contribute to administrative dismissals. One factor is insufficient supervision of junior lawyers.

In some cases, a senior lawyer who is ultimately responsible for a file delegates it to a junior who is overwhelmed by his or her workload, but may be too embarrassed or intimidated to speak up. The junior lawyer misses deadlines, but the senior lawyer is not supervising him or her closely enough to notice.

Another dangerous scenario arises when a lawyer's unexpected hiatus from legal practice (for example, due to an illness, injury, or family emergency) triggers a "cluster" of administrative dismissals. When we see these clusters it appears that the lawyer's active files are not being monitored by a staff person or not transferred to colleagues for interim handling. Has a colleague or peer taken an unexpected leave? Be nosy and find out what is happening with his or her work-in-progress. Also, ask yourself if your office systems would catch an inactive file or make sure any necessary steps would be taken if necessary. Your inquiries may help ensure that your colleague does not return to an overwhelming mess and a large number of costly claims.

In an article published in the *Lawyers Weekly* in August 2012 (available [here](#)), I summarized five steps, suggested by LAWPRO counsel, for managing stagnant files:

- When filing a claim, ensure that the client understands the obligation to keep the litigation moving along and knows the potential consequences of delay.
- Diarize the 180-day period, and ensure that your system provides an action prompt well in advance of the deadline. Don't rely on receipt of status notices as your prompt. These have been known to go to the wrong lawyer, to disappear in the right lawyer's inbox, or to be misfiled.
- Instruct staff to bring status notices to your immediate attention.
- As soon as you're prompted of the approaching deadline, remind your client, in writing, of the obligation to move the matter forward. Explain what instructions, documents, etc., you need from him or her to be able to do so.
- If you don't receive instructions from your client, take immediate steps to get off the record.

Another tip, not mentioned in that article, is to use the "inactivity monitor" function in your litigation-management software to flag these files in the first place.

That article built upon three others. [The first](#), by new claims unit director and counsel Domenic Bellacicco, advised that lawyers contact LAWPRO for help as soon as they discover that an action has been dismissed. In a [follow-up article](#) in the summer of 2011, Bellacicco reviewed new case law developments in the area and summarized the key points that must be addressed in the materials a lawyer prepares (with LAWPRO's help!) to support a motion to set a dismissal aside. In a [practice tip](#) in Fall 2011, senior claims counsel Dale Herceg reminded lawyers not to allow progress in settlement negotiations to distract them completely from the running of a limitation period. Negotiations can fall apart unexpectedly, and discovering that the underlying action has been dismissed is a nasty –but completely avoidable – surprise.

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