Note to file: Am I doing a good enough job?

It’s trite advice: Lawyers should adequately document client files as a claims-prevention measure.

So why are we bringing it up? Because our claims experience suggests that many are not paying attention.

While many lawyers hear the basic documentation message in law school or while articling, by the time they face their first malpractice claim (and 80 percent will have a claim), their actual documentation habits and practices have often eroded. Sometimes the gaps are minor; but in a worrisome percentage of cases, the lack of documentation in a lawyer’s file significantly impairs LAWPRO counsel’s ability to defend the claim.

Consider this a back-to-basics primer for creating the well-documented client files that can help us help YOU in the event of a claim.

Why am I doing this, again?

Adequate documentation of client files serves a number of very important purposes, including:

- provides written confirmation that key steps have in fact been taken. Especially if you work in a fairly narrow area of practice, your ability to remember whether or not you have completed “routine” steps will decrease over time. Document these steps;
- creates at-a-glance reference materials for the preparation of billings and reporting letters;
- provides a roadmap for the support staff or junior lawyers with whom you work;
- acts as a time-saving resource for re-acquainting yourself to a file after a period of inactivity;
- provides supporting documentation for legal aid billings, if you do this work;
- creates an invaluable record of the details of your client’s instructions, your advice based on those instructions, and steps taken on the client’s behalf: this will often be the foundation for your defence in the event of a claim.

Can’t afford the time?

Faced with pressure to contain fees, some lawyers argue that they simply can’t afford the time it takes to make detailed notes to file.

There are two defences to this argument:

1. If you make an initial investment of time to develop efficient note-taking skills and learning documentation strategies, you will likely discover that your documentation efforts require less time than you expect.
2. There are many simple strategies that you can use to document a file almost automatically. Make these a part of your regular routine. Research suggests that it takes approximately three weeks of repetition to create a new habit. Consciously develop some key file documentation habits, and stick with them. What frustrates you more? Taking the time to put your glasses, keys or passport in an established location, or endlessly wasting time searching for these items? Good habits save your time instead of wasting it.

Documentation methods:

Establishing the following basic practices can go a long way to helping you paper your files with minimal effort. Are there any of these you DON'T do?

- **Intake form:** develop and use a standardized client intake form that captures not only basic client information, but also summary details about the matter, and initial instructions from the client.

- **Checklists**: Save yourself some ink (and the need to make follow-up calls) by creating forms or checklists that make it easy to record the completion of steps, decisions made, and interim results. Using a checklist will make it possible for you to identify at a glance any gaps in information or service. Separate checklists can also be useful for particular stages in a matter: for example, when reviewing disclosure or when closing a file.

- **Calls log**: maintain (or teach your assistant to maintain) a log of all incoming and outgoing calls to clients. Log entries should include the date, time and purpose of the call; whether you in fact reached the client or left a message; details of any message left, and a brief summary of the discussion. Some offices use systems that log calls electronically; a paper form next to the phone can work just as well.

- **Email folders and storage**: sort and store your email by client name or file number. It takes about three seconds to create a folder for each new client or matter, and three weeks (remember the habit-building rule!) to train yourself to move incoming and outgoing messages to the correct file. Some lawyers choose to later print these emails and place them in the physical file, others simply store them electronically. If you store them electronically, be sure that you have an adequate back-up routine in place. (If you DO have a hardware failure that causes you to lose some email messages, remember that they may be retrievable from your email service provider's server. Check out the details of this access when choosing a provider.)

- **Memos from staff, juniors and others**: if you are lucky enough to benefit from the support of others – whether they be law clerks, articling students, or juniors – be sure to request written memoranda of research assignments, the results of title or corporate searches, disclosure review work, or any other assistance. It's fine to receive this information verbally, but if you also ask for it in writing, you have a document ready for the file. The same goes for information from outside sources. Read a helpful decision online? Print or download it for your file. Dealing with an outside expert to establish an industry standard or a market price? Consider making your request via email (the reply email should go right into the client email folder).

- **Doodling**: Remember, notes are notes, whether they are formally set out in a memo, or scribbled in the margins of a document. Keep a pad of paper next to your phone. Get into the habit of marking proposed changes directly on your draft documents. Going over a settlement offer with a client? Make a photocopy and sit down with a pen so that you can detail the client's comments and instructions directly onto the document. These notes will be invaluable when it comes time to draft your counteroffer. Put the annotated draft in the file.

- **Use "track changes" and save drafts**: Learn to use the "track changes" feature of your word-processing program to electronically annotate documents (changes by multiple users can be saved in this way). Before finalizing a document, create it as a copy. Save the annotated version as a draft, because it contains clues about the issues you addressed on your way to the final form. Most of these programs allow you to add "comments" – make use of this feature to leave yourself (or your client) notes about instructions, advice, or strategic considerations. Presto – a record of your efforts.

- **Try taking voice notes**: Not a doodler? Your notes need not all be written. Investigate voice notation software, available for both computers and smartphones. Save these notes to your electronic files, and make sure you back-up routinely.

- **Record audio** of client meetings or phone conversations – with the client's consent, of course. Not all client conversations will benefit from recording, but consider recording a conversation in which you're taking down a large volume of information (a description of inventory, for example); or receiving information you don't fully understand (like the details of a diagnosis) that you plan to investigate later.

Developing a solid set of documentation procedures will help ensure that the information you need accumulates in your files almost automatically, with little extra effort on your part. Well-documented files will make it easier for you to manage the day-to-day routines of your practice: You'll be better prepared to get up to speed on the status of a matter after a delay, to delegate work to others in your office, and to prepare reporting letters and bills. It can also put you in the best possible defence position should one of your files result in a claim. Why not take at least one step today toward improving your documentation habits?