

Why lawyers let files stall and how to prevent dismissals

Administrative dismissals occur over and over again when a plaintiff's lawyer does not take timely steps and loses sight of litigation deadlines. Typical reasons for stalled files – and tips to prevent them – appear below. The first three are the most common and costly for LAWPRO:

- **The file has languished because damages are minimal and/or there are difficult issues of liability:** This typically results from a poor evaluation of a file at the time of retainer, or because a re-evaluation didn't occur when circumstances changed as the matter progressed. Proper screening at the time of retainer, and as a file proceeds, can help you avoid investing in a file with limited prospects for success.
- **A lawyer's personal crisis or unexpected hiatus from legal practice leads to the ball being dropped on multiple files, triggering a "cluster" of administrative dismissals:** See page 1, *The worst case scenario: When lawyers drop the ball on all their files.*
- **A junior lawyer is overwhelmed:** This occurs when a senior lawyer assigns responsibility for a file to a junior who is overwhelmed with the workload and is too embarrassed or intimidated to speak up. Senior lawyers may be ultimately responsible for work they delegate to juniors under their supervision.
- **The lawyer is waiting to take prescribed procedural steps in an action pending completion of medical reports, discoveries, or settlement negotiations:** Instead of relying on an opponent's informal or implied waiver, either meet litigation deadlines, or obtain a written agreement from all parties or court order to extend the timeline. While you should diarize a minimum of 30 days before the dismissal date to bring a motion to extend timelines, such a motion is best brought earlier.
- **The lawyer doesn't know or is uncomfortable with his or her knowledge of relevant law:** This is easy to fix – seek help from another lawyer who knows the area of law in question, or refer the matter to new counsel.
- **The lawyer is too busy on other files:** This may be true, but sometimes serves as an excuse to cover one of the other reasons in this list. Make time for stalled files by scheduling a block of time in your calendar.
- **The matter or a step in it may seem too big to tackle:** This reason sometimes goes hand-in-hand with the previous one. Break the work that needs to be done into smaller steps and tackle them one at a time.
- **Opposing counsel is difficult or uncooperative:** Talk to another lawyer for advice and perspective on how to best handle these situations. If opposing counsel is holding up litigation, consider bringing a motion to impose a timetable.
- **The client is very demanding or difficult:** Take control and deal with the client. For help on how to do this, refer to LAWPRO's difficult client resources (practicePRO.ca/difficultclients). If the relationship is truly broken, terminate the retainer.
- **The client won't give instructions:** The clock continues to tick, even when the client and opposing parties are content to let the matter slide. This is also a situation for terminating the retainer.
- **There are unpaid accounts on the matter:** While it makes sense to stop work on a matter you aren't being paid on, the clock is still ticking on the administrative dismissal. If you can't collect the outstanding accounts, terminate the retainer.

Proper termination of a retainer

In any case where you terminate a retainer, you must comply with the *Rules of Professional Conduct*. This means you must ensure time-sensitive steps are taken before termination, and that it is done without prejudicing the client. If a motion to remove yourself as lawyer of record is necessary, do not disclose privileged information.

The most frustrating thing for LAWPRO is that all too often claims arise when there are no systems in place to track a file's progress and the key deadlines that must be met. Without a consistent system or process, files are maintained on a haphazard basis, and no one responds when a lawyer has dropped the ball or has not taken timely steps. These types of claims are easily avoidable. Implement active file management processes (e.g., a file progress plan – see page 7) and good tickler systems to prevent files from stalling for the reasons listed. Consider implementing a practice where the responsible lawyer and – in case the lawyer misses it – a second person do a monthly review of a report on inactive files (i.e., no activity in last 90 days).