

Oversee, don't overlook

The importance of active supervision in legal practice.

Supervision of solicitors and support staff is often seen as a 'soft skill', or a task that can be put to one side when things get busy or more important matters arise.

Failure to adequately supervise staff is a prominent theme in many professional negligence claims against solicitors. Lawcover often encounters claims where the underlying cause is identified as a "lack of supervision of staff". Claims range from alleged frauds, in which staff are directly implicated, to those that arise from an inexperienced and unsupervised solicitor being left to flounder.

The recent case of *Victorian Legal Services Commissioner v Ibidapo Olayemi* [2019] VCAT 1283 is a reminder of how adverse consequences can arise for the client, the law practice and the solicitor in the absence of appropriate supervision.

Facts

A solicitor was employed as a graduate at a busy migration firm. He had carriage of a visa application matter for a client. The solicitor completed the application and submitted it to the Department of Immigration.

The department sent the solicitor a letter refusing the clients visa application. Upon receipt of this letter, the solicitor noticed that a mistake had been made on the application - he had selected the wrong category from the online drop-down menu. The mistake had a fatal effect on the success of the application.

Rather than informing the client of the decision and sending them a copy, the solicitor created new documents, deleting parts of the substantive reasons and adding in new, false reasons for the decision, which effectively covered his error. He then sent the false documents to the client.

The client noticed that the documents were false and confronted the solicitor. The solicitor confessed his actions to the firm's principal and was dismissed from his position.

Disciplinary proceedings were brought against the solicitor by the Victorian Legal Services Commissioner for professional misconduct.

Decision

The solicitor was found to have engaged in conduct which would reasonably be regarded by Solicitors of good repute and competence as disgraceful and dishonourable. The solicitor was reprimanded, precluded from applying for or being granted a practising certificate for 18 months, and thereafter placed under supervision for two years. He was also required to complete eight hours of Ethics and Responsibility and ordered to pay costs of \$6,000.

In evidence given on the penalty, his former employer stated that when the solicitor told him that he had fabricated the document, he was astounded. In his opinion what happened said more about the pressures the solicitor had been under than it did about his character. The former employer admitted that he had been piling pressure on as the practice grew and that he understood that the solicitor had not been well. He also admitted that his level of supervision of the solicitor had been lacking and should have been more active. The former employer also openly encouraged the solicitor to return to legal practice and stated that he would not hesitate to employ him again. The Senior Member was impressed by the former employer's evidence including his recognition that supervision of young solicitor not only about supervising their work but also keeping an eye on their well being.

It is important to remember that, supervision is a two-way relationship and, to be successful, it must have the cooperation and agreement of both parties.

As a principal/supervisor, what can you do?

Supervision is not a one size fits all approach. You need to consider the individual along with their experience, personality, qualifications, education level and role in your practice.

- ▼ Mutually agree with staff the systems and procedures which will be supervised, particularly external communications by mail and email
- ▼ Think about how you communicate with your staff and how that communication could be more effective

- ▼ Seek feedback and suggestions from your staff regarding your 'supervision style'

- ▼ Regularly monitor workloads

- ▼ Regularly review files and meet with your staff

As an employee/staff member, what can you do?

- ▼ Seek regular feedback on your work– it's important that your supervisor provides you with constructive and regular feedback. You can't improve if you don't know what you need to improve upon

- ▼ If you don't know the answer, ask a question. Don't be afraid to speak up

- ▼ Take notes. Always make contemporaneous, and comprehensive file notes after all client interactions and when seeking feedback on your work

- ▼ Be upfront and candid when a mistake is made

Remember, supervision doesn't work unless both parties are actively involved.

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