

## File reviews: a simple and effective risk management tool

In a recent Lawcover claim, a solicitor was instructed to file for default judgment in proceedings which had been issued by his client for recovery of a sizeable debt.

A Notice of Motion seeking default judgment and supporting affidavit were prepared and filed by the solicitor, however the Court rejected the Motion as the affidavit had been sworn by the solicitor and not his client as required by the Court rules.

The solicitor rang his client and requested that he attend the solicitor's offices to swear an affidavit which would allow for default judgment to be obtained. The client did not make an appointment to attend the solicitor's offices and he disputed that the conversation had occurred. The solicitor overlooked following up the client regarding the affidavit and took no further steps in the matter.

Two years passed and the debtor became bankrupt. The client pursued a claim for damages against the solicitor when his Proof of Debt was rejected by the debtor's Trustee in Bankruptcy as it was not supported by evidence of a judgment debt. The client had assumed that default judgment had been obtained by the solicitor in accordance with his instructions.

A review of the online Court system revealed that the client's claim had been placed in the inactive list and subsequently dismissed by the Court for want of prosecution.

Had the practice had a process in place where all files were periodically reviewed, it is likely that this claim would have been avoided.

Claims arising from a failure to act within a specific time frame, such as missed limitation periods, comprise a significant percentage of the professional negligence claims reported to Lawcover. With a busy practice, it is easy to overlook inactive files as more pressing matters demand attention.

Implementation of systematic processes and procedures can help manage the risk and minimise the likelihood of an important date or event being missed or a matter simply not being progressed in accordance with the client's instructions.

These include:

- ▼ Periodic file audits;
- ▼ Peer file reviews;
- ▼ Calendar reminders and deadline alerts; and
- ▼ Electronic diary and file management

**The implementation of these processes and procedures is a simple but effective way to manage the risks of claims arising from oversights.**



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**File Note Template**  
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