

Opening and Maintaining Client Files

This article was prepared by Jackie Morris and Gayle Myers, former staff
lawyers at the Law Society of BC

Revised by Dave Bilinsky, Practice Management Advisor and Jackie Morris

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The Law Society of British Columbia
8th Floor, 845 Cambie Street
Vancouver, B.C. V6B 4Z9
Telephone: (604) 669-2533
Fax: (604) 669-5232
TTY: (604) 443-5700
www.lawsociety.bc.ca

OPENING AND MAINTAINING CLIENT FILES

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*Jackie Morris and Gayle Myers**
Revised by Dave Bilinsky

I. Organizing Your Practice For Success

You will increase the effectiveness and profitability of your practice and reduce your risks for errors and unhappy clients if you implement file management systems designed for your firm's particular needs.

This paper will help you to achieve your goal of establishing an efficient office, by providing solutions to organizational problems in the areas of file and client management. We review the best options for file management systems, and discuss the advantages and disadvantages of each option.

Most lawyers, even those with well-organized offices, will find helpful advice in this paper for improving the systems in their firm. However, the information is particularly important for any lawyer who is setting up a new office, or for any lawyer or firm experiencing recurring problems in any of the following areas: delays in completing work or returning calls; wasted time looking for files or documents; a backlog of work or filing; disorganised filing cabinets or files; or a cluttered office.

One option is to develop your file and client management systems in conjunction with an electronic case manager. The objective is to automate the processes involved in client, file, and contract management as much as possible, partly for efficiency and effectiveness reasons, and partly because the systems that are the easiest to use and that work well are often the systems that are actually used in a busy office.

The following major topics are discussed:

- (1) Storage Options for Active Files
- (2) File Folders and Organization of File Materials
- (3) How to Open Files
- (4) Maintaining Files and File Progress
- (5) Why Office Systems Break Down

* Jackie Morris is Staff Lawyer to the Practice Standards Committee, Gayle Myers is Staff Lawyer to Professional Conduct and David Bilinsky is the Practice Management Advisor.

II. Storage Options for Active Files

A. Separating Active and Closed Files

Client files should be divided into two main groups — active and closed. Each group should be stored separately. An “active” client file is any client file that is not completed, billed, and closed. In reality, you may have a number of types of active files — those that you are currently working on and billing; those that are inactive for a while; and those waiting for billing or payment. You need to review all your files periodically. Files that have been inactive for a while should be reviewed and closed or reactivated. Completed files should be closed.

This paper deals exclusively with active files. For a discussion of file closing procedures, refer to the document Chapter 17 (Closed Files — Retention and Disposition) in *Managing Your Law Firm* in the June 2000 Update published by the Continuing Legal Education Society of British Columbia (CLE).

B. Where to Locate Client Files

As people say, location is everything! When planning or reviewing your office space, you should ensure that adequate space is provided for file storage. There are two general options for file location, centralized and decentralized, with variations in between.

Centralized filing is the location of all active files in one room or storage space (or more in larger firms), under the control of one or more staff. For example, an option for a small firm located all on one floor might be to store all active files in a central file room. For larger firms, centralized file storage may occur within each department.

Decentralized filing occurs when files are located in a number of locations under the control of a number of people. The most obvious example is locating files for each lawyer near the secretary responsible for that lawyer’s files or near the lawyer’s office. The least desirable situation is to have the active files stored in the lawyer’s office. The lawyer usually does not have the time or inclination to maintain the files properly. Anyone needing access to the file, such as staff, must come into the lawyer’s office to retrieve it, possibly interrupting a client interview or other important work.

In deciding between centralized or decentralized file storage, you should consider the number and proximity of lawyers and staff, the way the work is divided among the lawyers and among the staff, the type of clients represented, and the available space and personnel. For example:

- (1) If you have no room for central or departmental filing, locating files near the responsible staff or lawyer is an efficient and preferred option.
- (2) If your firm represents a few large clients, it may be useful to centrally locate all of the files for each of these clients.

- (3) If you are a sole practitioner sharing space with other lawyers, it is essential for client confidentiality to have physically secure filing cabinets and to ensure that they are locked when you or your secretary are not at work. Your files should be near you or your secretary to ensure security and confidentiality. If you are in a packaged office situation, you may need to store your files in your office for security reasons.
- (4) Some firms have highly sensitive or confidential client files (some examples are potential corporate mergers, controversial divorce files for public figures, and criminal investigations carried out for the Crown) which may require special treatment in terms of location and security. If these files exist, there should be a special place where physical security and confidentiality can be ensured.
- (5) If your firm is organised physically into departments, where more than one lawyer may work on a file, it may be more efficient to have files of each department located together within the department.
- (6) If your firm is spread over more than one floor, it is inefficient to have a single centralized file room for the whole firm.

Whether you choose centralized or decentralized file storage, it is important to designate one or more staff members responsible for the overall maintenance, security, and location of these files. In a centralized system, there may be one or more staff specifically assigned for that purpose. In a decentralized system, the person assigned may be the lawyer's secretary. In each option there should be a clearly defined policy and procedure, preferably written in an office manual, to explain the storage and management of the files. All lawyers and staff should be familiar with the policy.

C. How to Arrange the Client Files

Whether files are centrally or decentrally located within the firm, there are three options to choose when arranging paper files in their storage spaces: alphabetical, numerical and alphanumeric. These options are for storage arrangement only — each file should have the client's name, a reference and an assigned number on the file label. Storage of computer files will also be discussed at the end of this section.

In considering the file naming system, look at your accounting system or electronic case management software and consider what file numbering and classification systems can be automated by this software. In other words, have the software administer the file numbering system — in that way, duplicate file names and numbers are reduced or eliminated.

1. Alphabetical

In this small firm option, files are arranged in alphabetical order according to the client's last name. For example, if your client is Charlene Smith, her file would be located under "Smith, Charlene," behind "Smith, Allen." Each file should also have a reference, for example, "Smith, Charlene re Divorce," which would be filed before "Smith, Charlene re Foreclosure."

This is one of the simplest and most effective types of file arrangements for all sizes of firms. It eliminates the extra step necessary in a numerical system of having to consult the client list to locate the file number in order to find the file. Any staff member who knows the client name can locate the file easily. Most lawyers and staff remember names, not numbers. It enables all files for the same client to be stored together, if desired.

2. Numerical

This option involves filing by an assigned file number. The advantages of this system are that it provides an extra measure of privacy (particularly if the client's name does not appear on the file label, although this is not recommended), as well as a method of inventory control. The main disadvantage is that you have to refer to an alphabetical client list (ideally, located near the file cabinets) to find the number so you can find the file. File lists must also be kept up to date. Documents may have more likelihood of being misfiled in this option, if staff are not careful to check the correct matter to correspond to the client and number.

Variations of numerical systems can include:

- (1) *Straight Numerical Sequence* — Each file is assigned a sequential number when the file is opened, whether or not the client has or had other files with the firm. The number is obtained from the file opening book or computer list. When files are stored using this type of numbering system, the active files for any particular client will not be located together. It does, however, make it easy to distinguish the older from the newer files.
- (2) *Permanent File Numbers* — Each new client is assigned a permanent client number, usually followed by a dash and a sequential number for each new file opened for that client. For instance, Ms. Smith's permanent client number may be 197. Her first file, her divorce, would be 197-1. Her second file, involving a foreclosure action, would be 197-2. Filing by this system has the advantage of having all of the client's active files in the same place, provided that a centralized filing system is maintained. In assigning new file numbers, however, staff must maintain and consult a permanent client list and also determine how many files have been opened for that client. Another consideration is that if the client file number appears on correspondence, people outside the firm will know how many files you have for that particular client.
- (3) *Calendar Numbering* — A two-part number is assigned, usually involving a prefix referring to the year in which the file was opened, and a sequential number for that year. For instance, the first file opened in 2000 for the firm would be 00-001. The second file opened would be 00-002. The advantage for storing files using this number system is that all files for each year, whether centrally or decentrally located, would be together. However, a client's files would not be together.
- (4) *Code or Initial Prefix Numbering* — This method uses a prefix identifying the lawyer, or department, or specific office or specific area of law, followed by a sequential number. For example, all of lawyer Julie Jones' files could be numbered "JJ-(client file #)." All files for the litigation department could start "LIT-(file #)."

3. Alpha-numeric

There are several types of alpha-numeric systems, but few are used. None of these systems work very well, particularly if the firm acts on a number of files for the same client or has a number of clients with similar names. They are also complicated. Examples include:

- (1) *Client Prefix* — A variation on the code system (and the most commonly used of these relatively uncommon systems) is one in which the first three letters of the client name are followed by a sequentially assigned number. For example, Ms. Charlene Smith's divorce file could be "SMI-197."
- (2) *Formal Alpha-Numeric Systems* — This is a system where numbers are pre-assigned to letters of the alphabet, and then an individual number is given to each client. The system is rarely used because it is too complicated.

TIPS: For Easy File Identification and Access

Whether you use an alphabetical, numerical or alpha-numeric system for organizing your stored files, many lawyers find the following extra steps useful:

- (1) *Adding references to identify each client file.* For example, if you act for the Bank of Montreal on a routine basis on mortgage matters, you should label each file with two names, such as "B of M/Smith mortgage." Thus, in an alphabetical or permanent file number system, all Bank of Montreal files would be filed together, sub-alphabetized by borrower name.
- (2) *Storing files by area of law.* This idea is recommended not only for departmental filing, but also when individual lawyers practise in more than one area of law.
- (3) *Colour coding the file folders by area of law.* For example, "Ms. Smith—Matrimonial" could be coded with a yellow file or label, and "Ms. Smith—Fraud" with a red file or label.

4. Storing Computer Files

In most firms, an increasing number of active client files exist in both paper and electronic format. The options here range from:

- (1) simply storing client documents in specific computer folders; to
- (2) adopting an electronic case management program; to
- (3) implementing an office within which all documents — incoming and outgoing — are scanned, digitized, and filed electronically.

A firm may develop a large system of computer folders in which to store its electronic work product, including: frequently-used forms and precedents; client documents that are still in progress; active client file material that may need to be recalled; and client file material that

may become useful later as precedent material for a later, similar matter. The hard drives on the firm's computers, CD-ROMs, or high-capacity storage may be used to store these types of material, and a system may need to be developed to organise the electronic folders and files. Document management software may be used to manage this volume of information.

Firms have tended to develop their own systems for organizing electronic work product, depending on the types of practices involved and the amount and type of information being retained in an electronic form. Accordingly, it is difficult to generalise about the most effective way to organise computer files.

Refer to Chapter 11 (Law Office Design and General Office Functions) page 11.60 in *Managing Your Law Firm* for some advice on naming documents using the features of a standard word-processing system and on how to assess document management systems. For a discussion of the general considerations in developing computer systems in a firms, refer to Chapter 12 (Managing Technology) in *Managing Your Law Firm*; and also refer to H. Salter, "Systems Management for the Small Law Firm," in *The Lawyer's Handbook*, 3rd edition (American Bar Association, Institute of Continuing Legal Education, 1992) or refer to the regular articles in *Law Office Computing* on document management.

D. Other Law Firm Files

Many firms maintain other (non-client) active files for precedents, research and opinions, office administration, and personnel. These files may be stored in a printed format, electronically, or in both formats, depending on how the material came into the firm. These types of information are invaluable to a firm, since work previously done for one file, if easily accessible, can be reused or adapted for another use.

These files may be stored centrally or by department, lawyer, or secretary, depending on the type of file and the organization, size of the firm and the availability of space. However, they should be stored separately from client files. These files should also be organised with some care. A general index of all these files and a "contents" index for each file is a good idea.

Precedent files, research memos, and firm work product (those that can be accessed by anyone, not just the originating lawyer) should contain only the very best material generated by the firm or found elsewhere. Part of the law practice's profitability and efficiency gains will be due to how the firm organises and uses past work product (knowledge management). Accordingly, time and effort should be directed to ensuring that the firm's precedent system is maintained and updated on a regular basis. Needless to say, the client name and other identifying information should be removed for confidentiality reasons. These files should be reviewed periodically to cull outdated materials. A lawyer or staff person should be assigned to oversee this. The same general policy should apply to information stored on the computer.

The "other" files a firm maintains will depend in part on the areas of law practised, but may include files for:

- (1) case law (by area of law and sub-topics);
- (2) precedents (such as pleadings, agreements, and standard form correspondence);

- (3) forms (especially pre-printed forms, although most of these can now be stored on the computer and generated when needed);
- (4) opinions (memoranda of law or sample opinion letters on particular topics);
- (5) countries (specifically for immigration practices);
- (6) office administration and personnel (refer to Chapter 9 (Non-lawyer Staff) in *Managing Your Law Firm*); and
- (7) personal files (such as Law Society complaint files, the lawyer's tax returns, day books, and the lawyer's personal business files).

E. "Where did my File Go?"

One annoying, time-consuming, and money-wasting problem faced by many lawyers or firms is looking for lost documents, files, or missing portions of a file.

Tip: Create a sign-out system for files or parts of files.

The simplest system is to have a distinctly coloured file folder labelled "out" with columns on the cover for the date, the name and number of the file or part of file removed, and the name of the person who took it out. Refer to Appendix 1 for an example of a sign out sheet. You should purchase or make a considerable number of these folders and have them available in all areas where files are kept. The person responsible for each filing area should review the "out" cards periodically in order to be familiar with what is out and for how long and check to see if the file is still with the person who took it out.

This particular system is far superior to the alternative, an index card box system with "out" cards for each file. It is much easier to use and the distinctive folders provide an immediately visible sign that the file is "out."

F. Preserving Office Security and Client Confidentiality

Client file security is often overlooked when lawyers develop a new system for file management. Preserving client confidentiality is one of a lawyer's ethical obligations that encompasses supervision of staff and the handling and storage of client files. While *you* will probably be careful not to violate the client's right to confidentiality and solicitor-client privilege, you must instruct your staff on their obligations in this regard. Some staff are unaware that the client's name, or the fact that a client has retained your firm, may be confidential information. Your staff should be reminded that client matters should not be discussed outside the office, even among themselves, because such conversations may be overheard. This information should be included in your firm's office manual as part of essential office procedures.

Steps should be taken to ensure that client files are stored in a secure and confidential manner. This should also include storage of closed files. For example, most lawyers take steps to ensure that non-staff do not have access to files during the day and that offices are locked at night to prevent unwanted intruders. However, closed files are sometimes stored in a careless manner, such as in a shared basement in an office building to which employees of other businesses may have access. There is always the danger of client documents or files getting into the wrong hands (refer to Chapter 17 (Closed Files — Retention and Disposition) in *Managing Your Law Firm*).

Refer also to Chapter 11 (Law Office Design and General Office Functions) pages 11.13 to 11.17 of *Managing Your Law Firm* regarding security considerations in the design of a law office.

Tips: For File Security and Preservation of Client Confidentiality

- (1) Restrict and supervise public access to offices and files.
- (2) If office-sharing, ensure files are secured in locked filing cabinets or offices.
- (3) Consider your computer security—use log-on and network passwords. Consider establishing separate passwords for sensitive files or information. Change your passwords regularly. Consider establishing levels of password security if necessary.
- (4) Care must be taken for disposal of office paper, such as draft documents, and ultimately for destruction of the files. Consider acquiring an in-office shredder.
- (5) Develop a special policy for storage of valuable documents (such as original wills, powers of attorney, and bonds) that includes storage of documents in a locked, fire-proof space, maintenance of an alphabetical list, and a lawyer's signature before the document can be released.

III. File Folders and Organization of File Materials

A. Types of File Folders and Labels

File folders come in a variety of sizes, shapes and colours. This seemingly minor choice can make a great deal of difference in the ultimate ease with which file material is stored and accessed.

Letter-size and legal-size files are available. There are also multiple-leaf files in either size, but most commonly in legal-size. These have one or more additional inserts in the file, adding two or more extra sides for the division of file materials into sub-files. (For a discussion of advisable sub-files, see “Complex” Client Matters on page 15.)

“Buckets” or expandable file folders are also available for storing the main file and sub-files. Some lawyers prefer binders for portions of the file, especially in preparation for litigation.

Tips:

- (1) Proper organization and maintenance of files is greatly assisted by Acco fasteners or “prongs.” Acco fasteners should be fixed to both the right and left side of the file. The bar that often comes with Acco fasteners is unnecessary and can be discarded.
- (2) You may purchase files with Acco fasteners built-in, saving your staff from having to insert them. Adhesive Acco fasteners that attach to the inside of the file cover are also now available. If metal Acco fasteners are separately inserted, put tape over the back of the Acco fastener and file. This prevents the Acco fastener from slipping out every time you open it up, and from being caught on other files when you pull the file out of the filing cabinet.

You can purchase files that have a space for the label either at the top-edge or side-edge of the file. Your choice will depend on whether the filing cabinet you have is accessed from the top or the side. You may also find it useful to put a label on the front so the client name and other information is easily read when the file is lying on top of your desk or credenza. Labels come in all sorts of colours and sizes. Appendix 2 illustrates a commercially-available gummed label with parts that can be attached to the client’s file and ledger.

B. Organizing Documents in the Client’s File

An organised client file makes it easier to identify the current status of the file and the work to be done, assists in accessing information or documents, and reduces the chance of lost or misplaced material. You can accomplish these goals for either “simple” or “complex” client matters by following the suggestions on the following pages.

1. “Simple” Client Matters

“Simple” client matters include files for most residential real estate transactions, wills, some estates, non-reporting corporate records, some commercial transactions, most criminal matters, and some family matters.

In most “simple” client matters, a two-sided file is all that is necessary. One side of the file should be for communications, and include the file opening sheet, retainer or contingency fee agreement, dated notes of conversations and all correspondence and memos, Acco-fastened in chronological order.

The other side should be for documents or pleadings, and hold all legal documents, such as final copies of real estate documents, searches, copies of executed wills, corporate agreements, pleadings, and so on, Acco-fastened in chronological order.

Both sides make up the main file in a simple client matter. However, if you receive additional documents, such as original or photocopied client documents, expert reports, or appraisals,

they should be placed in a separate sub-file. All drafts of agreements, wills or pleadings should be kept in a separate sub-file as well, at least until the matter is concluded.

If the file is expected to be or becomes complicated, the file should be organised or reorganized as set out in the next section.

2. “Complex” Client Matters

If you anticipate that a client matter will be too complex for a two-sided folder, it is more efficient to organise the file in a different way when the file is first opened. A main file and sub-files should be prepared. A multi-leaf file or binder could be used instead. The main file would contain all of the communications side described above for simple files.

Tip: Coloured Sub-File Folders

Some lawyers find that using distinctively coloured sub-file folders or sub-files with different coloured labels makes access to those files much easier. For example, in a personal injury file, the main file could be white, the pleadings sub-file blue, the medical reports red, and so on. Sub-files should all be labelled with the client name and file number and subject of the sub-file. (Note: If a sub-file is to be removed from the “file,” a sign out card should be used.)

Some of the areas of law which regularly require complex files are listed below, along with suggestions for useful sub-files or divisions.

Civil Litigation — Commonly-used sub-files for civil litigation are “PLEADINGS,” “CLIENT DOCUMENTS,” “OPPOSING PARTY DOCUMENTS,” and “CASE LAW,” if it is a personal injury case, “MEDICAL EVIDENCE,” “WAGE LOSS EVIDENCE,” and “LIABILITY EVIDENCE” are common; other popular sub-files are “EXPERT REPORTS” and “APPRAISALS.” Pleadings are now often on indexed and tabbed binders.

Family — Common sub-files are “PLEADINGS,” “CLIENT DOCUMENTS,” “OPPOSING PARTY DOCUMENTS,” “AGREEMENTS,” “DRAFTS OF PLEADINGS/AGREEMENTS,” “ASSETS,” “LIABILITIES,” “MAINTENANCE EVIDENCE,” “CUSTODY/ACCESS EVIDENCE,” “CASE LAW,” “EXPERT REPORTS” and “PENSIONS.” Pleadings are often on indexed and tabbed binders.

Tip: Trial Book or Pleadings Binder

A trial book or pleadings binder is invaluable when preparing for court appearances (trials or chamber applications) for civil, family or criminal clients, as well as for examinations for discovery. A pleadings binder usually contains an index and a copy of all of the pleadings, fastened in chronological order. A hearing or trial book contains an index with tabbed divisions for “PLEADINGS,” “LAW,” “OPENING STATEMENTS,” “CLOSING STATEMENTS,” “ARGUMENT,” and a division for each witness where notes for direct and cross examination and witness statements or expert reports are placed. Depending on the nature of the case, there are many other useful divisions to make case presentation easier. Electronic trial notebooks are also available. Refer to Chapter 12 in *Managing Your Law Firm*.

Commercial — Sub-files commonly used in commercial matters are “SEARCHES” (including letters to and from the various taxing authorities and registrars), “DRAFTS” and “FINAL DOCUMENTS,” especially if there are to be numerous documents. This last sub-file helps in preparing the brief of documents for the client after the transaction closes.

Estate — Useful sub-files are “ASSETS,” “LIABILITIES” and “TAX AND ACCOUNTING INFORMATION.” Even when you refer tax questions to an accountant, the information provided and report received should be placed in a sub-file, as well as any tax clearance certificate. A pleadings sub-file is usually unnecessary, because probate documentation can be placed on the documents side of the main file, opposite the communications side. However, if the estate is involved in litigation or the will is challenged, an entirely separate litigation file should be opened with its own sub-files. It should be cross-referenced, of course, to the estate file.

Immigration/Refugee — Many immigration and refugee files are “simple” files where use of a single two-sided file will suffice. However, it may be useful to have a sub-file, at least, for country documents in a refugee file. In some immigration files, the client documents may be extensive and should be put in a separate sub-file. A hearing binder or book is also advisable, which would contain an index and divisions for the PIF, client documents, country documents, client references and other essential materials for any hearing.

Tip: What Do You Do With the Previous Lawyer’s File?

When you are the second (or third) lawyer to be retained by the client, you often receive the client’s file from the previous lawyer. Where will you put these documents? Options include:

- (1) reorganize the previous lawyer’s file in a sub-file and divide materials into a communications side and documents side, labelling the sub-file; or
- (2) insert the materials into the appropriate sections in your own client file and sub-files, in chronological order; for example, put pleadings into the pleadings sub-file; correspondence with the correspondence, and so on.

IV. How to Open Files

A. General

Before discussing the details of file opening, there are three important points to consider that are sometimes overlooked:

- (1) Open a separate file for each new client matter. For many reasons, it is not appropriate to simply stuff a number of client matters into one file. Each client matter should be individually opened as a file, recorded in the office's systems, documented, and followed up.
- (2) How many files should you open when you represent two parties in the same matter? You should consider whether you should open separate files for each client or open separate sub-files for their particular documents and correspondence.
- (3) What do you do with "one-time" consultations? These "clients" should be entered into your accounting, case management (and hence your conflicts system), even if no work was done or confidential information received to allow you to search for the name of the potential client associated with a file. If all the names of the "one-time" clients are not entered (or are buried in a "one-time" consultation file) then you will not catch the potential conflict.

B. Use a File Opening Sheet

The first and most important document for a file is the file opening sheet (or new matter report). It should be filled out by the responsible lawyer at the initial client interview. The file opening sheet should contain enough basic information about the client to open the file and enter the client and file information into the various systems in the office. It centralises all of the basic client information for easy future reference.

File opening sheets vary. They should include space for: the client's name; previous name or alias; home address and telephone number; fax number; occupation; work telephone number and address; alternate addresses or telephone numbers (which can be very useful for keeping contact with some family and criminal clients); opposing party name(s); other possible conflicts (refer to pages 22 to 25 for a discussion of systems to check for conflicts of interest); the opposing lawyer's name, telephone number and fax number; the subject matter of the file; the responsible lawyer's name; the date the file is opened; and any limitation dates. Additional information sought may include referral sources, billing information, file closing date and file destruction date. Appendix 3 illustrates a sample of a file opening sheet.

Once completed, the file opening sheet is then given to the staff member responsible for opening files and is fastened to the communications side of the file. That person should then do a conflicts check and, if the result is negative, enter the information in all the appropriate systems—file opening book, computer list or client index card, opposing party database or index cards, accounting system, limitation date system, and so on. Consider having a secretary contact a potential client before the first interview to perform a conflict check.

Tip: “Blank” Files and Client Kits

Some lawyers find it useful to have “blank” files prepared ahead of time for each area of law. These contain the file opening sheet, procedural checklists, interview forms, a retainer letter, and other forms or documents needed at the beginning of the file. Have a **client kit** prepared in advance that contains the following items: a legal file with your business card taped to the front, a firm brochure or information sheet, two copies of a standard retainer letter—one for your client to take home and one copy for your own file, and a very large envelope of sufficient size to contain the folder when it becomes stuffed with paper. Ask your client to take the client kit home and to store all correspondence and documents in the folder and envelope that they receive from your office. This is a way to demonstrate to your client that you are concerned about the client organizing their file as well as your own.

C. Name the File

The responsible lawyer should take care to correctly identify the client on the file opening sheet. The file should be named with the client’s name, followed by a reference and assigned file numbers. Often the key question to determine is “who is your client”? If you are in doubt about who your client is, you have a problem.

Tips: For Naming Files

- (1) If you are acting for the Bank of Montreal in the preparation of a mortgage, the Bank of Montreal is your client and its name should appear on all relevant labels and references to this file. The mortgagor should not appear as the client. However, if you have many Bank of Montreal files, you should use the mortgagor's name as part of the file name (i.e., "BANK OF MONTREAL/SMITH MORTGAGE"), or as the file reference.
- (2) If you are acting for both the lender and the purchaser/borrower in the purchase of residential real estate, either both names should be listed as clients, or separate files opened for the purchase and for the mortgage and cross-referenced.
- (3) In files where the client is a minor or under a disability and must be represented by a litigation guardian, it is the minor or incompetent person whose name should appear as the client and the litigation guardian listed secondarily, for example, "JONES, JANINE/JONES, SUSAN, GUARDIAN."
- (4) When you represent two clients in the same transaction, both names should be listed as clients when naming the file, for example, "SMITH, HARRY AND FREEDA RE WILLS."
- (5) Power of attorney files should be opened under the name of the grantor of the power of attorney, for example, "SMITH, HAROLD RE POWER OF ATTORNEY."
- (6) In estate files, both the estate and the executor or administrator should be used in the file name, for example, "SMITH, DAVID, RE ESTATE OF RONALD SMITH."

D. Label the File

File labels located on the side or top edge of the file should contain the client's name, file number, reference to the subject matter of the file and, if desired, the initials of the responsible lawyer. Refer to Appendix 2 for an illustration of a file label.

File labels located on the front of files would include the same information and may also include other important information such as limitation dates, real estate closing dates or other important time frames, and the client's address and phone number for easy reference.

E. Enter the Client and New File into the File Opening Book or Computer List of Clients and Files

After completion of the file opening sheet, the new file should be entered into the file opening book or computer list. The file opening book or computer list of clients and files provides a chronological record of all files opened in your firm. Traditionally this was a loose-leaf binder or book. It is being replaced increasingly by file opening lists created in accounting programs, case management software, or spreadsheet programs. Ensure that you have a regular backup system in place to preserve this electronic data. Print up a hard copy regularly (perhaps weekly).

Often the completion of the file opening book or computer list is an essential step in assigning a file number (refer to the sections on numbering systems, pages 8 and 9). In most computer software systems, you must open the file to be assigned the next available file number.

The file opening book is usually kept in a central location. Each entry should contain the following information: the file number, the file name, the date the file was opened, the reference or subject matter of the file, the responsible lawyer, and blanks for the file closing date and the closed file number and, perhaps, the file destruction date (the latter three pieces of information added at closing). For computerized systems, the information that you can enter may be determined by your software, but should include the same type of data. If possible, you should also input the client's address and telephone number and opposing party names, so you can create a client list at the same time. Refer to Appendix 4 for a sample "Page from a File Opening Book."

Consider how you will incorporate "one-time consultation" clients into your file and client systems to facilitate your conflict checking. At a minimum, all clients, even "one-time consultation" clients, should be entered into your client list, and your system should reference the location of your notes with these clients.

The file opening book or computer record can provide you with valuable management information, such as the number of files being opened per month, year, lawyer, or area of law, the type of files, and the number of files currently open.

F. Establish an Active File List

The active file list is a regularly updated list of all open files. The most accessible list is arranged alphabetically, although a list arranged by chronological file numbers is useful to point out the oldest files. Your firm can have several types of active file lists: one for the whole firm, for your department, and for each lawyer. These can be created initially from the file opening book or computer list, and then routinely updated. (Sometimes the active file list is also attached to financial information like a work-in-progress list.)

There are five main benefits in maintaining an active file list:

- (1) the firm has a current record of all open files so that this may be reviewed by the partners or managing partner;
- (2) you can use it to remind yourself of the files under your control and as a general reminder of your responsibilities, workload, and source of billings;
- (3) it is useful for discussing files with and delegating work to staff — some lawyers have a monthly meeting with their secretary/legal assistant to review the list to ensure no file has "fallen between the cracks."
- (4) if you store files numerically, the active file list can be used to find the file number and then locate the file (if you store files alphabetically, you do not need to worry about this);

- (5) most computerized accounting programs will produce your active file list and will also show unbilled work-in-progress, unbilled disbursements, money in trust, unpaid receivable, and other valuable file management information.

G. Create Client and Opposing Party Cards or Databases

There are four reasons for maintaining a list of all current and past clients:

- (1) for easy reference to client addresses and telephone numbers;
- (2) as a marketing tool;
- (3) as a management record; and
- (4) to check for conflicts of interest.

If you open files by use of a computer list and include the client's address and telephone number, you will already have created a client database.

If you are only using a traditional file opening book, you will also need client index cards. The essential matters to be listed on the client index card are: client name, address, and telephone number; the date the file was opened; the date the file was closed; the subject matter of the file; the opposing party; and the responsible lawyer. This index is usually filed alphabetically and, as with the computer database, should include all clients, past and present. Often the client card is moved to a "CLOSED" box when the file is closed.

You should also prepare a card or entry into your computer systems for "one-time consultation" clients, whether or not you received confidential information or work was actually done, and preserve this information for later reference for a conflicts check (refer to Section "H" on the next page).

You should also create an alphabetical, opposing party index, either on cards or on the computer. Check your computer software to see if it allows access to both client and opposing party names from the client list. If not, you will need to set up a separate opposing party list on your computer or prepare opposing party index cards. This index lists the opposing party name and provides cross-reference to your client's file (client name, file number, and reference).

The main reason for maintaining an opposing party list is for a conflicts check.

Refer to Appendix 5 for samples of a Client Card and an Opposing Party Card.

H. Check for Conflicts of Interest

1. General

Conflicts of interest can lead to serious ethical and practice problems. You and your firm must know the conflicts rules in the *Professional Conduct Handbook* and have a procedure for

determining whether there is a conflict of interest—preferably this will be done before you commence any work on a file. No one can always remember every client or person connected with a file. Failing to recognize conflicts of interest at an early stage can be extremely costly to both the firm and the client, in terms of time, lost billings, embarrassment, complaints and insurance claims, court applications, and ethical problems.

The options for conflicts-checking systems described in the following sections will only assist you in identifying possible conflicts between current and past clients, opposing parties, and other interested persons, providing they have not changed their names. For example, if you represented Mrs. Smith in 1995 on her motor vehicle accident and in 2000 Mr. Smith, her husband, asks the firm to represent him in his divorce from Mrs. Smith, a basic conflicts system should identify this potential conflict.

The suggestions here will *not* help in recognising conflicts between multiple clients on the same file. Identifying such conflicts involves a review of ethical issues and, often, substantive law. No system alone will help. You are responsible for recognising those conflicts. For example, should you represent both the vendor and purchaser of a commercial business? If you own the office building, should you also represent a future tenant in the preparation and execution of lease documents? Should you represent two injured people in a motor vehicle accident claim when one was a driver who may have some liability?

Refer to Chapter 19 (Conduct and the Law Society) pages 19.14 (Conflicts of Interest) to pages 19.17 (Lawyer/Client Conflicts) in *Managing Your Law Firm* for discussions of the ethical considerations concerning conflicts of interest.

2. Procedure

The first step is to set down a procedure for checking conflicts. No matter which conflicts system your firm uses, conflicts should be checked at least twice (and possibly more often) during the course of a file. First, check for conflicts when a potential client contacts you initially. A preliminary check allows you to decline further discussions, preventing the “client” from telling you confidential information, which may then bar you from acting for another client. Make a second, more thorough, check after the first interview when you should have the names of others connected with the case. Further checks of the conflicts system should occur whenever a new party enters the case, such as the addition of a new defendant.

Assign responsibility for conducting a conflicts check and establish a method for recording that a check was completed. This can be done on the file opening sheet or on the file. Record the procedure for this in your office manual.

The second step in checking for conflicts is for you to identify your client, the opposing party and any other person relevant to the case and place this information on the file opening sheet. This is your responsibility, not that of your staff. While you should easily recognize your client and any opposing party, relevant “others” may be more difficult. To assist you, common areas of law are listed below with illustrations of “others” you may need to include in a conflicts check.

- (1) *Litigation* — other plaintiffs and defendants, insured, insurer, guardian ad litem, spouse, experts, witnesses.
- (2) *Corporate/Business/Real Estate* — owner, spouse, partners, shareholders, directors, officers, subsidiary affiliates, key employees, buyers/sellers.
- (3) *Probate* — deceased's spouse, children, heirs, devisees, guardians, creditors.
- (4) *Wills and Estate Planning* — spouse, children, heirs, devisees, personal representatives.
- (5) *Family Matters* — children, significant others, other family members, key witnesses, experts. Conflict systems in this area must be attentive to the fact that parties may have changed their names—search by prior names, if possible.
- (6) *Criminal* — co-defendants, witnesses, victims, experts.
- (7) *Workers' Compensation* — employer, insurer, witnesses, co-employees.
- (8) *Bankruptcy* — spouse, creditors.

3. Options for a Conflicts System

General

Good conflict systems have similar characteristics:

- (1) The system is integrated with other office systems—that is, the file opening sheet, file opening book, client list and opposing party list. Integrated computerized accounting and case management systems are increasingly popular.
- (2) “One-time consultations” are entered into the system.
- (3) The relationship between clients and others is identified.
- (4) All clients and opposing parties are entered into the system and other relevant people are checked against the lists.
- (5) Conflict searches or checks are documented in or on the file.
- (6) The system provides for easy access to conflict data for everyone in the office.
- (7) Checks are conducted at three key junctures; before consultation (first call), before the new file is opened (first interview), and when a new party enters the case.
- (8) Searches check for different spellings of names, previous names and aliases.

The following are some of the systems currently in use for the detection of conflicts.

b. *Lawyer's Memory*

The simplest and oldest procedure is for a lawyer and the staff to search their memories to determine whether they ever acted for or against the new client or anyone involved in the matter. This system is not recommended because it is based on memory and therefore, unreliable. Lawyers and staff come and go. If you had partners or associates in the past, you *may* not be able to act against any clients they had while working with you. If a complaint is made that you are in a conflict, the “memory system” offers no defence.

c. *Circulation of File Opening Sheets or New File Lists*

Some firms often circulate, on a weekly basis, all new file opening sheets or a consolidated “New File” list. The list should contain the client’s name, along with a reference to the subject matter of the file and a list of all opposing parties and other relevant people. On receipt, all lawyers again rely on their memories to determine whether there might be a conflict. The problem with this system is the risk in relying on memory. Even if current lawyers have good memories, those of former partners or associates will not be triggered. This is best used as a back-up to a more thorough conflicts checking system.

d. *Review of Client and Opposing Party Index Cards or Databases*

Many small firms maintain their conflict system by a system of index cards; other firms use software to do conflict checking. Either way, this procedure requires, first of all, that client and opposing party cards or databases are maintained and kept up to date, as described above. Today most legal accounting systems have, either as an integrated component or optional module, a conflict checking ability. In some cases this is further integrated into a computerized case management system. Doing your conflict management with this software is certainly one of the easiest ways of managing your conflict checks, because any functioning law practice must keep its accounting system up to date. Some firms may not computerise past manual client records. In this case you will require two checks—one on the computerized system and a second of the older index cards.

The procedure is simple. When a potential new client first contacts you, a designated person in the office checks the client’s name and any other relevant names given by client against those names in the index card systems or databases. Any match should be immediately brought to the responsible lawyer’s attention. The fact that a match is found during a conflicts check does not necessarily mean that there is a conflict. You, as the lawyer, must go further and determine whether a conflict exists. If you decide to decline representation, you should notify the new client immediately, and document in writing the decision to refuse the file.

Unfortunately, no conflict check procedure has yet been devised that is fool-proof. Much depends on the thoroughness of the cards or databases maintained. The detail needed to be absolutely thorough may be too staggering in some circumstances (related companies, changes of personal or corporate names, previous spouses, etc.). You will have to take a realistic view of the risk and accept the fact that you may have to give up a file when a conflict comes to your attention, unless the exceptions in Chapter 6, Rule 7 of the *Professional Conduct Handbook* apply.

4. “*Martin v. Gray*” Conflicts

When new lawyers or staff join a firm, the possibility of conflicts again arises between the clients and opposing parties of both firms. Each firm needs to consult their index cards or databases to see if “*Martin v. Gray*” conflicts may exist. Refer to Appendix 5 of the *Professional Conduct Handbook*, and Chapter 20 (Leaving Your Firm) pages 20.74 to 20.85 in *Managing Your Law Firm* for the steps to be taken.

I. Set Up Accounting Records

Accounting records should be established for each new client matter when the file is opened, whether or not a monetary retainer has been or will be received. Most files will generate some expenses, which will need to be documented and paid, and all will need to be billed for your fees.

The information needed for accounting records includes: name of client, address, file number, matter, responsible lawyer, and reference to any particular billing information. For a discussion of accounting records, refer to Chapter 14 (Accounting and Trust Accounting) in *Managing Your Law Firm*.

J. Enter and Follow Up Important Dates with Limitation Date and Bring Forward Reminder Systems

1. General

One of the best ways to keep work flowing (and bills going out) on a file is to have a good reminder system. Such a system also helps you reduce stress and avoid complaints and insurance claims. A good reminder system notes limitation dates, routinely brings forward client files and specific work, and generally keeps track of all your dates, deadlines and obligations. The system should not be dependent on memory or solely dependent on your direction (that is, your secretary should have standing instructions to enter each matter into the system, rather than wait to see if you say so).

Limitation dates are usually those dates for which you or your client are statutorily, contractually, or otherwise committed. Routine bring forward dates are those dates on which all active files and specific matters are routinely reviewed and followed up. The following discussion of reminder systems will apply to both limitation dates and bring forward dates, as similar systems may be used.

Tips:

- (1) Every file should have at least one bring forward notice in your reminder system so that no file can fall between the cracks.
- (2) Every file should be brought forward at least once every month.

The first step in any good reminder system is to identify, early in the work on a file, the dates or matters for which you need a reminder. Limitation periods and absolute dead-lines like real estate closing dates should be obtained at the initial interview with the client, and recorded on the file opening sheet.

Tip: Multiple Reminders for Limitation Dates

For limitation dates in particular, several reminders should be noted besides the ultimate date. A cautious lawyer would note each of the following: one year, six months, three months, two months, one month, two weeks, and daily reminders up to the final date, although some lawyers select fewer dates after weighing the risk. A double reminder system involving both the lawyer and the secretary is strongly recommended for all reminder dates, particularly limitation dates. You may want to distinguish limitation dates from other reminder dates by noting them in red ink, by highlighting them, or by using a different-coloured card. In addition, you may want to highlight the date on the outside of the client's folder.

It is particularly important to ensure that all computer records are backed up and that the backups are periodically tested to prevent a catastrophic loss of data.

Here are some examples of dates you should note in your limitation/bring forward reminder system with sufficient notice of the date to complete the work on time:

Client services

- (1) all limitation dates applicable to the file;
- (2) dates for trials, hearings, examinations for discovery, and meetings;
- (3) due dates for trial records, notices to admit, expert reports, estate proceedings, filings with government agencies, corporate or security matters, appellate briefs, and tax returns;
- (4) service dates for pleadings, notices of motion, and expert reports;
- (5) renewal dates for licences, copyright, trademarks and patents, writs, judgments, leases, insurance coverage, and charters;
- (6) review dates for wills, trusts, and buy/sell evaluations; and
- (7) responses to correspondence and settlement offers, receipt of retainers or instructions, and reminders to do work.

Office management

- (1) due dates for tax returns, GST, PST, Law Society fees and other remittances, and trust account audit reports;

- (2) renewal dates for offices leases, and insurance; and
- (3) review dates for staff evaluations, raises, and accounts receivable.

Next, assign responsibility for establishing and maintaining the system. The co-ordinated efforts of both you and your secretary are normally required to make the system work. Review and follow-up should be developed as essential daily routines for you and your secretary. No system can make up for the lawyer ignoring the reminders.

Tip: Avoid files falling through the cracks—check your system

One way of double-checking that all files have at least one entry per month involves the use of the active file list. As each file is pulled, based on a reminder note, cross the file off your list. At the end of the month any files not crossed off can be pulled, reviewed, and a date added to the system. Secondly, you can also review, on a regular basis, all of the files in your file cabinet to ensure that files have not been overlooked. Lastly, you can do a spot check of reminders to see if your system is up to date and being maintained.

When selecting an appropriate system, there are several options available depending upon your preferences and those of your staff. The system should be kept in a central location, secured at night, reviewed each morning and followed up at the end of each day. Your reminder system should provide for:

- (1) immediate and mandatory entry of reminder dates;
- (2) multiple reminders on the same file;
- (3) the reason for the reminder, not just the file name and number;
- (4) double checking by use of a backup system; and
- (5) sufficient lead time to complete tasks.

2. Options for Reminder Systems

The following systems are currently in use as reminder systems. A double reminder system involving *both* the lawyer and the secretary noting *both* the routine dates and the limitation dates is strongly recommended.

a. Desk Diary

In this system your secretary is assigned the task of making a note of the client name, file number and the reason for the reminder under the appropriate date in a diary (paper or computer). For limitation dates, additional entries should be made so that the file will come

up a number of times ahead of the limitation date to allow sufficient time to do what is required. A second diary (yours) should be used as a back-up system.

Each time a reminder date comes up, the secretary should pull the file, cross off the diary entry, and give you the file along with a note of the reason it is being brought forward. At the end of the day, you should return the file to your secretary with the work done and/or a new reminder date and cross off the date in your diary.

There are some disadvantages in relying solely on this system. Limitation dates may get mixed up with appointments, other dates and deadlines of lesser importance. Your diary may have limited space and not allow room for writing the reason for the reminder, which is a very important part of any reminder system. Secretaries may forget to note the reminder, and if you do not have a duplicate of the reminders in your diary, the date will get lost.

b. Central Diary or Computer Calendar List

Keeping a central paper diary for all limitation and bring forward dates is very awkward in anything but the smallest offices. However, computerized case management systems offer the ability for individuals bring forward and limitation reminders to be integrated into the system for the whole firm. See page 30 under Computer Systems.

c. Index Cards

This reminder system consists of a card box with one set of 1–31 dividers and (optionally) a set of dividers for months of the year. Plain white 3” x 5” index cards or printed forms can be used, listing the reminder dates, client name, file number and reason for the reminder.

These are two ways to use the dividers. In one version you only use the 1–31 dividers. You file cards, for example, for reminders needed on January 1, February 1 and July 1, all behind #1. On January 1 you only pull up the January 1 reminders. This eliminates the need for the monthly dividers. In another version you use month cards as well. Reminders for each month are filed behind their respective months. At the end of each month, all the reminders for the next month are placed behind their date numbers.

There are also two ways to set up the cards. The first way is to have one card per reminder so that any file has at least one card in the system. This first method is preferable. The second way is to have one reminder card for each file. When the card and file are pulled, the date is crossed off, and a new date is entered before the file and card are put away. There are two disadvantages to using one card per file: multiple reminders on the same file are difficult, if not impossible, to note; and if a response is received prior to the reminder, you must have a system to find the card so a new date can be entered.

For limitation dates, there should be an ultimate reminder card (perhaps in a different colour) and three to five prior reminder cards prepared (refer to Section V: [Maintaining Files and File Progress](#)).

Each morning your secretary pulls all the cards filed under that date, pulls the appropriate client files, attaches the reminder card to each, and places them on your desk. Some firms

keep the pulled cards in another location, because lawyers tend to lose them. At the end of the day, you provide your secretary with new dates and reasons for the files to be brought forward, and these are then entered on cards and slotted into the appropriate dates. Your secretary also collects the cards and files not dealt with and re-files them for bringing forward the next day. A client file or reminder card should never be put back until a further reminder date is entered into the reminder system.

The main disadvantage to relying on this system is that staff become preoccupied or overworked and cannot be bothered to do the cards, especially for a file with numerous responses and cards needed (such as an estate file when collecting asset information).

d. Accordion File Folder System

This system requires the purchase of a 1–31 accordion file folder. Your secretary makes an extra copy of whatever you need to be reminded of, such as a letter to be answered or a pleading to be filed. Notes may also be used. The copy or note will usually identify three important points: the client, the file, and whatever you need to be reminded of. Your secretary then writes the (bring forward) (BF) date on the copy, note or document, and files it in the slot before that number in the accordion file. In #1, you may find items for the first of every month of the year. The 1–31 accordion file folder is usually located at the secretary's desk.

Your secretary then pulls the BF copies or notes daily for the appropriate day and month and brings them to you (it is not necessary at this stage to pull the file). If the matter has been attended to, the BF copy can be discarded. Otherwise, you then make a choice of doing the work, following up with a telephone call or another letter, or setting a new BF date. The latter can be done right on the copy or note and refiled in the system.

You can also use this system for limitation dates. For example, if you had a personal injury limitation date for filing a writ on June 5, 2000, you can have *one* reminder noted and filed in the #5 slot (listing these dates to review and cross off: June 5, 1999, December 5, 1999, March 5, 2000, and May 5, 2000, and additional notes in the slots for May 20, 2000 and June 4, 2000).

The main advantage of this system is that it is very easy to use. There is no preparation of a card, or inputting data into a diary or computer. The copy or note tells you at once what you are waiting for. There is no need to pull the file and rummage through it to try to remember what it is you want. It is also very inexpensive, secretaries tend to prefer it, and it works very well for files requiring many reminder dates. If your secretary is away, it is easy for you or another secretary to understand and use.

The disadvantages to this system are few. It is a paper-based system—some lawyers may prefer new technology. It entails some expense for photocopying (but may be cheaper than the card system) and generates a fair amount of paper that will require disposal or recycling.

e. Reminders In or On the File

Reminders may be placed in or on the file itself. Often limitation dates are highlighted or put in red ink on the file cover. Reminder dates and reasons are sometimes placed in columns on

the file cover or on a form inside the file. These are crossed off when the tasks are completed. The benefit of this system is that you are reminded of the date every time you or anyone else picks up the file. However, this system should never be used on its own, as it relies again on memory. You or your secretary must recall that it is time to pull the file or must pull all files several times a month to check for reminder dates. It does not accommodate itself easily to multiple reminders.

f. Computer Systems

There are a variety of computerized bring forward systems. Today, these features are being incorporated into legal accounting packages and case management software so there is no need for separate systems or software. However, you should review candidate software to ensure that multiple dates for the same file and reasons for each reminder can be entered. Computer programs can be networked to facilitate communications between you and your secretary. Communication and efficiency is only enhanced when the information is regularly inputted, checked regularly and, if necessary, printed out. You should also be able to use the candidate system for both routine BF's and limitation dates and, if part of a firm date system, allow checks of impending dates by file and by responsible lawyer's name, in case someone is away.

The person in charge of noting the reminder dates should enter the appropriate information into the computer: the client name, file number, reminder date and reason. Prior dates to the ultimate limitation date (as described above) should also be entered. A report should be run daily, weekly and monthly. The computer database should be regularly backed up.

V. Maintaining Files and File Progress

A. General

Opening a file is only the first, small step in completing all the work necessary for a client. Most of the lawyer and staff time will be spent doing the actual work and managing the flow of work so the client's file proceeds in an orderly and timely way.

Some essential aspects of workflow management have already been discussed, including the internal organization of client files and bring forward reminder systems. The following sections discuss other essential or useful systems, procedures and organizational steps.

B. Time Management (or "Work Smarter, Not Harder")

It is important to learn to make the most of your available time and the time of your staff. Having time to get organised, review files, prepare plans of action and documents, work on special projects, read law, and administer your office is a critical part of ensuring that the work gets done. Time management is discussed in detail in Chapter 13 (Productivity and Timekeeping) in *Managing Your Law Firm*. One way to save time and effort is to acquire a legal case management program. These software packages automate many of the manual systems in place in law offices and reduce the time necessary for administration. In most

cases, they also keep lawyer's billable time as well as maintain limitation and bring forward dates, keep "to-do" lists, do conflict checks, and keep client lists in addition to other functions.

Equally important to managing your time is assisting your staff in managing theirs. Staff are more productive when they can have blocks of time free of interruptions (from you, other staff, and telephones). Much of the advice in Chapter 13 (Productivity and Timekeeping) in *Managing Your Law Firm* can be usefully applied to your staff.

All lawyers have situations arise that require immediate attention. When this occurs, the best efforts to follow through with carefully scheduled time will fail. However, these emergencies should be rare and not routine. If an emergency does arise, do not let the whole system fall apart. Re-juggle the schedule and keep going. The careful scheduling of work allows projects to be completed on time. The office where everything is a last minute rush creates stress for everyone involved — lawyers and staff. Scheduling your work and your day will allow everyone to take a deep breath occasionally. It will also make you, your staff, and your spouse, partner, or significant other happier.

Tip: Get Your Client Involved

In litigation, family matters, estates, and other areas where the client's knowledge is vital, it saves time and the client's money and creates better client relations if the client is assigned some of the work. To assist the client, provide a file folder or binder to collect and keep his or her materials. Refer to page 18 on providing new clients with a "client kit."

C. "To Do" Lists

Using some type of a "to do" list will assist you to schedule work and ensure that files are attended to. There are three basic types of lists: a list of work remaining on each file; a list of files with work to be done immediately; and a list of long-term projects or file work. The first is usually kept on or in the file. If the tasks on it are routine for that area of law, it is best reduced to a checklist (see next topic).

The second type of "to do" list, a list of files and immediate tasks, can be hand-written and prepared each morning or the day before, often based on bring forward reminders. Refer to Appendix 5 Client and Opposing Party Cards" provides an illustration of a sample "to do" list form. Some diary systems also have a space for "to do" notes. The "to do" list can be carried with you or kept on your desk so that new items can be added to it as they come to mind. As jobs are completed, they can be checked off. A new "to do" list can be prepared every day. All items not completed the day before are rewritten on the new list.

Many computerized case management or calendar programs also include a "to do" list. Some of these even show how many days the item has been on the "to do" list without having been

completed. When these items stay on the “to do” list and roll over from day to day, it eliminates the extra time necessary to rewrite items on a new list.

It is a good idea to limit the number of items on your “to do” list. Keep items that you may want to do in the future on a list of future projects and not on the daily “to do” list. On the other hand, if an item continues to roll over on the “to do” list, the necessity of the work should be considered, along with the reason for not doing it. Perhaps the work or the whole file should be referred to another lawyer.

D. Client Information Forms and Procedures Checklists

Good client information/interview forms and procedural checklists are those that are easy to use and thorough (but not too long). They help to ensure that you get pertinent information from the client and take all required steps in a file. Both prevent time being wasted going through a file to find out what information has been received or what needs to be done next.

In order for forms and checklists to be effective tools, they must be kept up-to-date and must cover all of the usual steps for that type of file. If only the first few steps are noted, the checklist will not do you much good in the later stages of the file. On the other hand, checklists that are too long are usually not used. Several Continuing Legal Education Society course publications and practice manuals contain sample information forms or procedures checklists.

The Law Society has produced the *Practice Checklists Manual*, which is an excellent resource for developing or adapting procedural checklists for your particular needs and clients. Procedures checklists are often most useful if they can be kept to one page, so that they can be placed on top of the documents side of the main file or even taped to the front of the file.

Client information/interview forms vary in length. Some are designed for clients to complete and others to assist the lawyer at an initial interview. Procedural checklists are most often used for the following types of files: civil litigation, family, real estate, estates, and criminal law. Client information/interview forms are most common in the following types of files: independent legal advice, wills, estates, real estate, incorporation, family, personal injury, and criminal law (for client background information for sentencing). A few examples are provided in Appendices 6 and 7.

E. Mail Handling

Refer also to Chapter 13 (Productivity and Timekeeping) page 13.6 and Chapter 15 (Client Relations) page 15.26 in *Managing Your Law Firm*.

One efficient way to handle mail is to reduce it. E-mail offers a quick and inexpensive way to communicate information without having to worry about the format, the media, the delay in transmission, or the cost of a courier. Producing a letter on formal letterhead is sometimes necessary — but in most cases an e-mail can be just as effective at a fraction of the cost of staff time and resources.

All incoming correspondence (e-mail, faxes, couriered documents, and mail) should be date-stamped. The date on the correspondence may differ markedly from the date you receive it. Where the time is crucial (for example, real estate or litigation materials that are received too late for filing), the time should also be noted.

Set aside a specific time each day to deal with the mail. The best times appear to be shortly after the mail arrives in the office or at the beginning or end of the day.

If you are a sole practitioner with no staff, put the telephone on the answering machine and devote your entire attention to opening the mail, date-stamping it, and deciding what to do with each item (remember to handle paper just once). Put magazines in a stack to be read later. Glance at junk mail and recycle it, unless it is something you are interested in. If it is, put it in the stack to be read later. Make an immediate decision on all other mail. Pull the files. Promptly note all items that need to be diarized. File all items and place bring forward dates on the files that do *not* need immediate action (for the accordion file bring forward system, make a copy of the letter record and put a bring forward date at the top). Attach mail that needs *immediate attention* to the appropriate files. When the action is taken, you should place the documents in the file. This eliminates loose documents lying around your office or within your files that may be lost or misplaced.

If you have a secretary, use this time to meet with him or her to go over the mail, then bring forward reminders, and the day's calendar and work. Many items can be delegated to the secretary for handling. Remaining items are your responsibility.

Tip: Daily Meetings With Your Secretary

Meeting with your secretary daily not only ensures good communication between the two of you, but allows you to review upcoming deadlines and work schedules together. It is also a convenient time to review the status of files. This enables the secretary to intelligently handle clients' calls, and cuts down on unnecessary interruptions in your workday. Make these meetings early in the day to ensure that time sensitive and important matters are not lost in the shuffle.

F. Filing Correspondence

Procedures should be established in your office for promptly filing incoming correspondence and documents in the main file and in the sub-files. Perhaps the best system is for you to have a two-hole punch and file all incoming correspondence and documents once a reply is dictated, unless copies are required. The secretary should type replies, make necessary copies, and file all correspondence and documents in the main file or appropriate sub-file before returning the file to the filing cabinet. The goal is to never have a stack of material to file, but to return the file to the cabinet once all material is in it and in the right spots (and at least one bring forward reminder has been made).

G. Keeping Clients Informed and Documenting Communications

From the outset of your practice, try to establish and maintain an approach which ensures that full and proper communications are maintained and documented between lawyers, staff, and clients. Every lawyer is required to keep the client informed of the progress of a file (Chapter 3 of the *Professional Conduct Handbook*). Some simple procedures can be adopted to facilitate this.

1. Retainer Letters and Contingency Fee Agreements

It is extremely important to establish an appropriate, professional relationship with the client right from the start. To borrow a phrase from Dr. Steven Covey, “Begin with the End in Mind.” This includes discussing the scope of the work you are to do and what would be a desired outcome from the client’s point of view, your fees and expected disbursements, the time frame for the resolution of the matter, and what would be the form of an expected resolution. Confirm all of this information promptly in writing by use of a retainer letter or agreements. Under ss. 65 and 66 of the *Legal Profession Act*, S.B.C. 1998, c. 9, all contingency fee arrangements must be in writing.

Retainer letters are discussed in the context of the first interview with the client in Chapter 15 (Client Relations) pages 15.15 to 15.19 in *Managing Your Law Firm*. The setting of fees is discussed in Chapter 5 (Lawyers’ Charges and Billing), also in *Managing Your Law Firm*.

Many lawyers, as well as the Continuing Legal Education Society’s Plain Language Project, have developed useful retainer letters and agreements and contingency fee agreements. A few precedents to assist you in developing a form to suit your style and practice appear in Appendix 8.

If any unanticipated changes in the work occur which affect the amount to be charged to the client or the scope of the retainer, you should discuss this immediately with the client and confirm new arrangements in writing.

2. Non-Engagement Letters

If, at any time during the course of the file, you or your client decide not to continue the work or relationship, you should confirm the decision in writing. Three samples of non-engagement letters are provided in Appendix 8. Also refer to Chapter 15 (Client Relations) page 15.19 in *Managing Your Law Firm*.

3. Dated Notes

Documenting conversations is also extremely important. One simple policy to establish is that you and your staff take and file dated notes of all conversations, initial and ongoing. It is amazing how the outcome of many files depends on who said what to whom, especially over the telephone. Proper records of what was said or not said will not only enable you to successfully complete the files, but will prevent some disputes from ever getting off the ground. This is also true of claims against lawyers, which often centre around what precise

instructions or advice were given. One of the fallacies that lawyers fall into is assuming they will not forget a matter and therefore do not have to record it. Can you remember what you had for dinner last Tuesday?

Most case management programs allow you to do a time entry to the file that can double as a note of a conversation, meeting, telephone call, or other communication, if sufficient detail is entered. This means that information does not have to be entered twice and that these notes can be recalled literally at the click of a mouse. Moreover, as the lawyer on the file, you create your time billing record at the same time as you do your note to the file, ensuring an efficient use of your time. Be sure to back up your notes!

You and your staff should, therefore, make a record of every communication. Even one that seemed trivial at the time may assume great significance later on, especially if its scope is misrepresented or the client denies all knowledge of the matters discussed or even that a conversation occurred. Also, if (for instance) you are incapacitated or die, the lawyer taking over the management of your files will not have the benefit of your memory, and the client and the practice will suffer.

Notes need not be taken on any special form, although certain firms have purchased or produced note-paper for taking notes of telephone conversations and meetings with clients or other parties. The important points to cover are: the date and time of the call or meeting; who called or was called or present at the meeting; what information or instructions were received; and what advice was given.

Written notes or hard copies of computer notes should be placed in chronological order on the communications side of the file. Important instructions, information, or advice (such as instructions to cease work on a file, settlement instructions, or undertakings) should be followed up by an e-mail, fax or letter to the person spoken to, with copies to the relevant other people.

4. Standard Form Letters and Brochures

With many types of files, standard forms of correspondence can be prepared in advance for use at certain steps in the file and then be modified as necessary to fit individual client needs. Several Continuing Legal Education Society practice manuals contain precedents on disk and in a printed form for this kind of correspondence. A template for bills pre-pared in advance that ties into the standard reporting letter will reduce the reluctance to bill clients because of the time necessary to draft the bill. Below are examples of letters to consider preparing for certain areas of law:

Corporate — Reporting letter after incorporation; annual report letter and resolutions; other corporate records; and records office agreements.

Criminal — Letter to the Crown requesting information or particulars; letter requesting the balance of the retainer from the client; letters reminding the client of dates for the preliminary inquiry, trial preparation and trial; letter to the Crown with a copy to the client when getting off the case.

Estates — Letters requesting information from the various asset holders; letters enclosing notice, sending filed probate documents to client, advising client of grant of probate or administration, and providing information on taxes, accounts and distribution.

Family — Letters requesting information or documents, providing copies of pleadings or other documents, advising of dates for examinations for discovery and trial, and providing information on litigation procedures.

Personal Injury and Other Civil Litigation Files — Medical and employer's releases; letters to the client, ICBC or the police requesting documents; letters providing copies of pleadings and expert reports, advising of examination for discovery and trial dates, advising the client on how to prepare for an examination for discovery and providing information on these procedures.

Real Estate Files — Refer to the *British Columbia Real Estate Practice Manual* for examples of standard form correspondence such as letters to lenders, initial reporting letters to clients (both a long and a short form letter), payout letters, final reporting letters, and conflict consent letters.

Wills Files — Reporting letter to client after execution of the will, which notes any outstanding concerns (for example, the need for the client to change an insurance beneficiary) and provides information on the effect of marriage or divorce.

Refer to Appendix 9 for a few examples of these kinds of letters.

Tip: Brochures and client information forms

Brochures or client information forms on an area of law or on specific procedures can be prepared in advance and provided to the client at the first interview or at stages in the file. They can save you and your staff time in answering basic client questions. An example, "Steps in a Lawsuit," appears with the Plain Language Project retainer package for personal injury contingent fees in Appendix 8.

5. Correspondence, Documents and Pleadings Copied to Client

You are the solicitor and agent for the client. The client is, therefore, entitled to receipt of a copy of most file material. The client also owns some of the file materials in most files. Refer to Chapter 17 (Closed Files - Retention and Disposition) pages 17.44 to 17.46 in *Managing Your Law Firm*). In addition, you have an ethical obligation to keep the client informed. One of the simplest and easiest ways to do this is by sending clients copies of everything—for example, pleadings, correspondence when received or produced, faxes, and e-mail. Make this an office policy. Some lawyers put a stamp on the material "For your information only—no response necessary." The practice of copying material to the client will help you to avoid complaints to the Law Society about delay or inactivity, and to avoid endless telephone calls from the client asking for a progress report. If the client complains about the cost of copying

and instructs you not to send material, confirm those instructions in an e-mail or letter to the client.

6. Correspondence to Counsel Confirming Discussions and Offers

Whenever counsel discuss settlement terms or make arrangements between them as to dates or other matters, such discussions should be confirmed in writing by one or the other of the counsel. This practice documents the arrangements reached, and allows for counsel to discuss any misunderstandings and deal with them. These letters should be copied to the client.

7. Reporting and Assessment Letters

Another method of keeping the file moving and your clients informed is to send them periodic reporting letters at stages in the file. Precedents should be developed for certain areas of practice, as noted on page 36. All litigation clients, including clients in contested family matters, should receive at least one assessment letter, providing an analysis of the strengths and weaknesses of the case, reference to relevant statutes or case law, and recommendations as to settlement options. Such a letter forces you to review the file and prepare a plan, and keeps the client realistic about the case.

Any time your client changes your instructions or provides you with new instructions (for example, an amount for a settlement offer), the change or new instructions should be confirmed in writing to the client. If you do not agree with the instructions, you may also restate your reasons for disagreeing and, if there is time, give the client a chance to reconsider. Many lawyers, when they strongly oppose the instructions (for example, if they are contrary to their client's best interest, such as giving up a claim to a family asset in a matrimonial dispute), also have the client countersign the letter in which the instructions (and reasons for opposing the instruction) are stated.

8. Interim Statements of Account

Few lawyers fail to provide their clients with a final statement of account. However, a client's willingness to pay decreases in inverse proportion to the length of time it takes for the lawyer to send out the account. More and more lawyers are recognising the value both to themselves and to their clients of providing regular billings or interim accounts. Interim accounts can assist you with your cash flow and are a method of keeping clients informed of the work you have done since the previous billing. You will also more quickly know when the client is unable to pay, be able discuss this concern with the client and, possibly, terminate the relationship before investing too much more time in the matter. From the client's point of view, he or she gains a better understanding of the efforts being made by you and can also better budget and more promptly pay smaller accounts.

9. Returning Telephone Calls

One common reason for complaints at the Law Society is the failure of the lawyer to return the client's telephone calls. Often the reason the client is calling stems from a deeper problem, namely that the lawyer has not adequately explained both in person and in writing

the various stages or procedures required, or has not adequately kept the client informed of the progress, inherent delays or difficulties with the file or opposing side.

When the clients call, they are either told or assume the lawyer will call back fairly promptly and will often not leave their home or office for fear of missing the call. There are several ways for you to avoid problems relating to telephone calls:

- (1) Advise your receptionist when you will be returning calls received in your absence (and then return the calls as planned).
- (2) Instruct your receptionist *not* to say, “I will have the lawyer return the call,” but to simply say that the client message will be passed on to you.
- (3) Advise your clients that they may speak to your secretary or legal assistant, who may be able to answer their inquiries or, at the very least, pass on a sufficiently detailed message to you. At the initial interview, introduce the client to your secretary or legal assistant.
- (4) Mention in your retainer letter and initial discussions with the client that you are sometimes not available to take telephone calls due to court appearances, document preparation, or meetings with other clients, but that you have a policy to return all calls within 24 hours (reminding them that it is acceptable to speak to your secretary or legal assistant).
- (5) Instruct your secretary to make an appointment for the client who is frustrated and has not been able to reach you.
- (6) Case management software can track and log your calls and provide space to note what was discussed during those calls. Moreover, it keeps a list of all unanswered calls—ensuring that those pink slips are not lost. It will also generate a time and billing entry for each call—incoming and outgoing. It is an effective way to keep on top of your calls.
- (7) Use e-mail. One problem with telephone calls is the wasted time spent playing telephone tag. Send the other person an e-mail instead. It takes little time, it produces a record of your communication (which can be printed and placed on the file), and it can be replied to quickly and easily at the convenience of the other party. E-mail ends the frustration inherent in trying to contact someone who is in court or just as busy as yourself. End telephone tag by not starting it in the first place.

Also refer to Chapter 15 (Client Relations) page 15.26 in *Managing Your Law Firm*.

VI. Why Office Systems Break Down

So you go to the effort of establishing the office systems recommended in this paper and three months later find that some of them are not being maintained. What happened, and what can you do about it? There may be three basic reasons:

(1) The systems were inappropriate for you or your staff.

Even though a system may sound good in theory, it may not work for you or your staff. You should discuss the problem with your staff, along with the possible alternatives, and try to come to a mutual decision about what to try next.

(2) The systems or procedures were not adequately explained.

The systems and procedures you want your staff to follow should be written down and placed in an office manual. This is becoming standard procedure. The Workers' Compensation Board now requires each office to have an office manual. When problems occur, you and your staff can consult the manual to see whether there is a system or procedure in place or to see if the system is still being followed as described. Also, any new staff can be referred to the manual so there is a continuity in office procedures. The manual should be reviewed, updated and revised regularly.

(3) No one is reviewing the systems and making sure they are being adhered to.

You should be familiar with all systems in place in running your office, although it may be much more efficient to assign a member of your staff to carry out the procedure or oversee it. You should conduct spot checks of particular systems, such as conflicts or limitation dates and bring forward reminder systems, and meet with the responsible staff person whenever you note that systems or procedures are not being adhered to. For instance, if your secretary is not filing material in the correct places in your files, you should point this problem out immediately and have your files reviewed and the filings corrected as soon as possible so that the difficulties are minimised. If you are in an office with an office manager or managing partner, that person could be responsible for overseeing systems, but your files are still your responsibility and you should deal with any problems you find.

VII. Further Resources

This paper should be read in conjunction with Chapter 12 (Managing Technology), Chapter 13 (Productivity and Timekeeping), Chapter 15 (Client Relations), and Chapter 17 (Closed Files—Retention and Disposition) from *Managing Your Law Firm*.

Note also the following:

- (1) At the Law Society of British Columbia (telephone: 669-2533 or toll-free at 1-800-903-5300), the Practice Standards Counsel and Practice Management Advisor are both available to answer questions pertaining to the issues discussed in this paper.
- (2) The Canadian Bar Association, British Columbia Branch, maintains a list of lawyers with expertise in certain areas of law who are prepared to assist other members as a service to the profession; these "practice advisory panels" are found in the *B.C.*

Lawyers Directory (Vancouver: Canadian Bar Association) starting on page 25 (2000 edition).

- (3) J. Côté et al., *Safe and Effective Practice*, ed. by B. Vogel, Q.C. (Calgary: Legal Education Society of Alberta, 1990), distributed by the Canadian Lawyers Insurance Association (1992), contains helpful tips in a readable format.
- (4) G.A. Munneke and A.E. Davis, *The Essential Formbook: Comprehensive Management Tools for Lawyers* (Chicago: American Bar Association, Section of Law Practice Management, 2000) is a best-selling American resource.

VIII. Precedents

Note: All of the following are *examples only* of forms or precedents and most of them are appendices attached to Chapter 16 in *Managing Your Law Firm* or are available upon request. Their suitability will depend upon a number of factors, such as the current state of the law and practice in each area of law, your writing style, your needs and what your clients prefer to receive. Some may need to be modified to correspond to current law and practice.

If you require a copy of the precedents please contact Joanne E. Hudder at the Law Society of British Columbia at ☎(604) 669-2533 or fax (604) 687-0135. Please note that some precedents may be accessed through the Law Society of British Columbia's website: www.lawsociety.bc.ca.

1. Sign Out Sheet
2. File Label
3. File Opening Sheet
4. Page from a File Opening Book
5. Client and Opposing Party Cards
 - (a) Client Card
 - (b) Opposing Party Card
6. Client Information and Instruction Forms
 - (a) Real Estate Client Information Sheet
 - (b) Wills Information and Instruction Sheet
 - (c) Incorporation of a Company Client Instruction Form
 - (d) Motor Vehicle Accident Client Information Sheet
 - (e) Personal Injury Client Information Sheet
 - (f) Family Law Client Information Sheet

- (g) Criminal Client Background Information
- 7. Procedural Checklists
 - (a) Litigation Checklist
 - (b) Real Estate Purchase Checklist
 - (c) Estates Procedures Checklist
- 8. Retainer Letters and Agreements
 - (a) General Retainer Letter
 - (b) Plain Language Retainer Agreement Package — Personal Injury Contingent Fee
 - (c) Retainer Agreement — Estate Administration
 - (d) Family Law Retainer Agreement — Legal Aid Client
 - (e) Retainer Letter — Paying Criminal Client
 - (f) Non-Engagement Letter (Confirming Conversation)
 - (g) Non-Engagement Letter (After Consideration)
 - (f) Non-Engagement Letter (Conflict of Interest)
- 9. Reporting Letters
 - (a) General Reporting Letter
 - (b) Reporting Letter — Wills
 - (c) Reporting Letter — Incorporation of a Company
 - (d) Clauses for Family Law Reporting Letter