

Indeed, a number of law firms have already identified the opportunity to commercialise their knowledge in a new way by creating a packaged commodity.

Many have heard about the national firm that prepared a Taxation Law CD ROM for its key clients as a subscription service some years ago. Clients could browse the content, search for key concepts and print out articles, all without incurring time based legal fees. The fee structure was entrenched in subscription revenue.

Perhaps the most potent example we have seen in recent months, however, is the law firm specialising in plaintiff personal injury litigation that is launching an on-line service to deliver quantum assessment information to other PI lawyers. The service will be updated daily. It includes powerful search tools and plaintiff profile facilities. The service can be located at [www.themis.com.au](http://www.themis.com.au)

This is a firm that has truly leveraged its skill set to define a new product for a new market that even comprises its com-

petitors. Professor Susskind suggests that this model - specialist lawyers servicing other lawyers - will become increasingly prevalent as our profession adapts to meet new commercial realities. Is it any surprise that plaintiff lawyers are among the first to actually do it? ■

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# File management and maximising party/party costs

## The humble file note

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*This article discusses a simple strategy which can maximise costs on a party and party basis. Whilst this area of practice is not the most onerous or complex, it is an area which is often overlooked in the face of other work pressures.*

The starting point to recovering costs both on a party/ party basis is good file management. A file must be well organised in order for the costs to be recoverable. The starting point to a good file management is the file note.

The real nemesis of the busy practitioner is the need to adequately file note work. Time and time again we have all been told that we must contemporaneously file note every transaction. The usual answer is - who has the time? Perhaps the question is better asked - Can you afford not to?

For example, under the New South Wales Assessment system, a Costs Assessor has a wide discretion to allow or

disallow claims made for costs. The difference between having costs allowed or disallowed may be the evidence provided by a file note which substantiates the claim. Similarly, the file note can also be used as an effective tool to substantiate verbal communications between practitioners and between practitioners and their clients.

Deciding what to file note within time constraints can be difficult enough. In order to begin to adequately file note you need to have a system in place. There are numerous ways to prepare file notes, on computers or the hand written file note. With written file notes, design a standard pro-forma file note for use throughout your office. File notes must also be kept in the file. If you do not already have a system in place, implement one through consultation with partners and staff. Obviously the system that you choose must be as practical as possible or

it will ultimately fail. Call a meeting and ask all your staff members how they record and what they record, decide what is most appropriate for your staff and make the necessary arrangements for its implementation.

Most staff members will file note regularly if they know what they need to file note and why they should be doing it. In this respect it is advantageous to discuss the positive benefits of file noting as well as the consequences of failing to make file notes:-

- someone picking up your work when you are ill or on vacation will not know what you are up to in the matter;
- you will forget your own work - how many of us can remember all the phone calls we made yesterday? What chance have we of remembering the attendances that took place months or years ago?



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- you may be unable to justify your fees;
- you may find yourself in the hugely embarrassing situation of being unable to defend an unfair allegation against you of professional negligence.

Ideally, you should write a contemporaneous file note of every single thing that you do on every file - including for example, phone calls made to people who were not available.

As a guideline the kinds of things that should be included in file notes you should record:-

- to whom you spoke
- in as much detail as time permits, what you spoke about;
- how long it took: often overlooked
- the date and time of day of the attendance

As a test of how good your diary notes are, add up the time recorded separately on each diary note and see what the daily total is. It's easy to charge block times against a file but are these block times supported by individual file notes?

File notes are not just about phone calls. Everything should be file noted, for example:-

#### *Phone conversations*

Always take a diary note of every single call, even unsuccessful calls.

We once had to cost a matter for a firm. We found over 150 phone calls recorded on the computerised billing system for which there was no note on the file. In the end, the law firm instructed us to write off these 150 calls because they could not remember what they were about. Just making a computer time sheet note, or a note that says "phone call to Smith" will not be enough.

#### *Drawing documents*

You cannot tell how long a document took to draw just by looking at it. However, often lawyers keep no records of how long it took to draw a particular document - the result: lower costs recovery.

#### *Drawing long letters*

If you draw a long or detailed letter, make a separate diary note recording how long the letter took to draw.

#### *Court attendances*

Often, lawyers will go to court for many days instructing counsel and yet make no diary note of these attendances.

#### *Travelling*

Travelling to court, or to conferences, is a recoverable cost. Make a separate file note of the time taken in travel.

#### *Waiting*

If the court requires you to attend at a particular time and you find yourself waiting around for some time before getting on, that waiting time may be claimable - make a file note of this attendance.

#### *Internal conferences*

Often, lawyers discuss a current matter with a peer in the office these attendances are frequently not recorded. Always make a diary note of internal conferences discussing a matter if the time taken was reasonably spent, the attendance may be claimable.

#### *Researching facts and law*

Time spent on researching facts and law if often not recorded.

#### *Discovery*

Sometimes, months can be spent organising documents for discovery/inspection. Many attendances will be required - eg. solicitors in conference with each other allocating tasks, conferences with the client taking instructions or clarifying certain matters, attendances to organise paralegals or other support staff, and many hours of attendances to collate documents and to draw up a List of Documents. A diary note that says "Discovery - 8 hours" is insufficient. More particularisation is required if these attendances are to be upheld.

Remember, the humble file note when properly utilised can be the foundation of not only a good file but great case. ■

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# 700 sought in hepatitis scare

By **DARREN GRAY**

Up to 700 people are being traced by Victorian health authorities to find if they have contracted the potentially fatal hepatitis C virus from pre-1990 blood transfusions.

The blood and blood products of donors now known to be carrying hepatitis C have been traced by workers from the Australian Red Cross Blood Bank, Victoria.

These people donated blood between 1986 and 1990. Screening tests for hepatitis C became available in Australia only in early 1990.

The blood and blood products have now been identified and the painstaking task of searching hospital records to trace the recipients has also been conducted.

It is understood that many of the 700 identified recipients have been contacted. Some have died from age-related or other diseases.

Hepatitis C is a blood-borne virus that can cause serious disease of the liver, such as liver cancer and cirrhosis (degenerative disease of the liver). It is estimated that nearly 200,000 Australians have hepatitis C, with about 145,000 of them thought to be chronically infected.

The virus is more infectious and more widespread in the Australian community than HIV. It is mainly spread through intravenous drug use.

The Victorian Department of Human Services is spending nearly \$1 million on the research, known as Lookback.

A spokesman for the department said the search for the recipients was an enormous task.

Blood banks around the world were faced with the same problem, he said.

He could not say how many people who received the suspect transfusions were actually hepatitis C-positive.

The Australian Red Cross Blood Bank would not comment on the investigation yesterday.

Potentially contaminated blood transfusions have sparked litigation around the country.

The law firm Slater and Gordon has acted successfully for more than 100 Victorians who received blood transfusions between 1985 and 1991. A partner, Mr Andrew Grech, said health authorities reacted to the hepatitis C spectre too slowly.

"These people in our view do have substantial compensation rights," he said.

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