

Supervising Lawyers and Staff Remotely

Loss Prevention Bulletin 20-05

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Over the last five months, law firms and their clients have successfully transitioned to remote working arrangements for most, if not all, of their employees due to COVID-19. While there has been a slow return to the office environment for some, most firms and companies anticipate that a significant percentage of employees will continue to work remotely throughout the rest of 2020 and perhaps indefinitely. It is now the case, more than ever, that “work” is what we do, not where we go.

In our Bulletin 20-01 issued in March, *Ten Risk Reminders for Lawyers Working Remotely*, we highlighted the importance of lawyers with supervisory responsibility for client matters to actively and effectively supervise team members in the remote working environment. Whether lawyers and staff are working in an office or a remote location, partners and shareholders must “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct” and that nonlegal staff’s conduct is compatible with the lawyers’ professional obligations. MODEL RULES OF PROF’L CONDUCT R. 5.1(a) and 5.3(a) (2020) [hereinafter “MODEL RULES”]. Any lawyer with direct supervisory authority over other lawyers and nonlegal staff also must make reasonable efforts to ensure that those individuals act in conformity with the Rules. MODEL RULES R. 5.1(b) and 5.3(a). Embodied in the Rules, of course, are all the core duties that lawyers owe clients—competence, diligence, confidentiality, honesty, and loyalty. Actual or perceived failures in performing those duties trigger most claims against lawyers, with mistakes leading the way in the number of claims and total amount of claims dollars paid. See Aon Loss Prevention Bulletin 20-02, *Exploring the Most Recent Aon LPL Claims Data*, May 2020, at 7–8. Proper supervision and case management—regardless of whether the associated time is billable—is an important tool in avoiding or mitigating claims.

What is not as obvious for those of us who have worked primarily in an office setting pre-pandemic is how best to supervise colleagues virtually. The office experience provides built-in opportunities for communication and knowledge sharing, both direct and indirect. Access to team members and resources is generally more immediate in an office. Being physically present

with team members provides visual cues invaluable to providing context, indicating where clarification is needed or issues for further discussion may lie, and providing insight into our colleagues' wellbeing (and our own). Firm culture and community knowledge develop organically in an office setting and isolation is far less of an issue than it is when team members sit separately in remote locations. But experience shows that remote working is an excellent alternative to the office: productivity and efficiency can increase, and part-time remote work is considered a significant enhancement to our quality of life and overall wellbeing.

Virtual supervision and collaboration are also achievable, but require some adaptations to the medium, method, and frequency of communication among team members and virtual training on key subjects. These goals also presuppose access to appropriate technological tools and the competence to effectively use those tools to manage client matters, client relationships, and professional obligations. In April 2020, the Pennsylvania Bar Association issued a formal opinion on the ethical obligations of lawyers working remotely. Pa. Eth. Op. 2020-300, 2020 WL 2544268 (Pa. Bar Ass'n, Comm. on Legal Ethics & Prof'l Responsibility 2020). That opinion focused on lawyers' duty of technological competence under Pennsylvania's version of Model Rule 1.1, in large part because lawyers cannot meet their duty of confidentiality under Rule 1.6 in a virtual setting without that competence. *Id.* at *8-10.

With these issues in mind, the following checklists offer guidance for both law firms and supervisory lawyers in establishing and maintaining effective supervisory structures and practices for remote working. Although some of these recommendations may seem obvious and many firms surely have implemented most or all of them, they are all worth noting in the name of good loss prevention hygiene.

Checklist for Law Firm Management (Firmwide Supervisory Efforts)

- **Location and Contact Information.** Know where your lawyers and staff are physically working and ensure that all contact information (physical and mailing addresses, home and personal cell phone numbers, and personal e-mail addresses) is current. Require everyone to provide updates on their locations.
- **Hardware, Software, and Internet Access.** Provide hardware and software to lawyers and staff necessary for them to perform their work remotely. Ensure antivirus software and other protections on devices and systems are up-to-date. Confirm that remote workers have adequate internet access at their remote workspace for the tasks they must perform.

- **Technology and Cybersecurity Training.** Provide mandatory training on all technology that lawyers and staff use to service clients. Cybersecurity awareness and protection of confidential information in accordance with Model Rule 1.6, substantive privacy laws, and contractual obligations contained in clients' outside counsel guidelines are integral parts of this training. All lawyers and staff should be specifically instructed on the exclusive use of firm systems for firm work and the appropriate security settings and protocols to follow when using videoconferencing and any collaboration or document sharing applications. Circulate periodic reminders that telephone and video conferences must be conducted out of earshot of other people and smart devices such as Alexa or Siri (or those devices should be turned off).
- **Handling Client Files.** Train lawyers and staff on the firm's retention and management of client files (both electronic and paper), including specific protocols required by clients' outside counsel guidelines. All lawyers and staff should understand precisely how and where on the firm's systems they should store electronic copies of documents, including emails, that comprise the client file on each matter. Physical files, including hard copies of documents, should not be left in plain view when being worked on in remote locations and should be stored in secure folders or cabinets. Printed documents that are no longer needed should be shredded.
- **Training on Firm Policies and Procedures.** Offer webinars for lawyers and staff on firm policies and procedures, including new business intake, conflicts, docketing and calendaring, prompt time entry, and risk and compliance issues. Ensure that policies, procedures, and links to necessary forms or applications are easily accessible via a firm intranet or other shared platform, along with contact information for the individuals to whom any questions about the protocols or policies may be addressed. Issue periodic reminders of where to find policy and protocol information, provide additional one-on-one training or walk-throughs to those who request or need it, and invite lawyers and staff to ask questions or seek help when needed.
- **Policy Compliance and Enforcement.** Consider electronically-tracked compliance checks to assist in policy and procedure enforcement. Examples include click boxes and attentiveness codes to confirm attendance at mandatory training webinars; self-audits through polling questionnaires and electronic affirmations; or individual interviews and affirmations via email or video conferencing. For those who deviate from policy or procedure, timely follow up with appropriate training or counseling.

- **Firmwide News, Resources, and Community Space.** Create a virtual setting for informal collaboration, knowledge sharing, and sense of an “office community.” Share firm, personal, and community news. Post information on wellbeing initiatives (e.g., optional fitness challenges of one form or another) and related resources, including employee assistance programs and information on bar-sponsored lawyer assistance programs. Establish virtual “water cooler” chatrooms where everyone can share news, chat, and ask “does anybody know...” questions (but clarify that the specifics of client-related matters should not be discussed in that forum).
- **Leadership Meetings.** Hold weekly or bimonthly meetings with firm leadership and department heads that include discussion of supervisory efforts, review of productivity and efficiency, wellbeing concerns, client relationships, and potential risk or liability issues. Use time at these meetings to ensure that work is being done by the right people at the firm (to combat dabbling), require information and accountability from all teams (to prevent practice silos), and assess whether workloads are appropriately balanced among team members.
- **Monitor Workload and Quality Through Billing and Timekeeping Data.** Practice group leaders and department heads should monitor reports of lawyers’ billable hours and utilization and realization data. If a lawyer’s billable hours have dropped suddenly, why? If a lawyer’s time is being written off in an amount or at a rate greater than might normally be accepted or expected, why? Is the lawyer performing poorly for some reason or are the write-offs an attempt to mollify a dissatisfied client? If several lawyers’ billable hours have ratcheted up significantly, is it because a matter they are working on has heated up to the point that they may need assistance? Experienced leaders can doubtless think of other questions related to loss prevention that thoughtful analysis of billing and timekeeping statistics might reveal.
- **Licensure Issues.** Lawyers working remotely in a jurisdiction where they are unlicensed likely do not need to be concerned about the unauthorized practice of law (“UPL”) if they are temporarily practicing there due to the pandemic. *See* D.C. Comm. on Unauthorized Practice of Law, Op. 24-20, at 3 (2020) (advising that a lawyer who is not a member of the D.C. bar may practice law from the lawyer’s residence in the District if the lawyer is practicing from home because of COVID-19). But temporary remote work locations may ultimately become permanent or at least regular, making lawyers’ presence there systematic and continuous. *See generally* Matthew K. Corbin, *Navigating the Safe Harbors of Multijurisdictional Practice*, QUALITY ASSUR. REV., Winter 2018, at 1. For lawyers who

anticipate working remotely on a permanent basis in a jurisdiction where they are not currently licensed, the time to begin planning for admission to practice in those jurisdictions is now. 2020 may be a lost year from a UPL regulatory perspective, but no one knows what 2021 holds in this context, and waiting too long to apply for admission to practice in a new jurisdiction is a recipe for serious difficulty and inconvenience at a minimum.

Checklist for Supervising Attorneys (Client Matter Supervisory Efforts)

- **Communication Routines.** Lay the ground rules for the who, what, when, where, why and how of communication among remote team members collaborating on client matters. At the outset, virtual communication routines will feel like overcommunication—especially when discussing all the ground rules *about* communicating. That feeling in the virtual context means communication is more likely at the right level for ensuring consistency, clarity, and efficiency among remote team members.

The “how” and “where” of team communication will largely rely upon the “why,” “what,” and “who” —the reasons or need for the communication. Video conferencing most often works best for team meetings; video conferencing or telephone for one-on-one discussions and feedback; instant messaging or chat room functions for quick or time-sensitive questions and answers; email to exchange lengthier, detailed information; and email or collaboration platforms for the exchange, review, and editing of documents.

The “when” needs to be clearly defined, accounting for the timelines for each matter and everyone’s work schedules. All team members should communicate their unavailability because of competing client deadlines or other commitments or plans. The pandemic has required many people to shift their work schedules or carve out pockets of time during traditional working hours to address new demands, such as overseeing their children’s virtual schooling. Supervisors should lead by example, making their own schedules clear, taking their own time off, and encouraging the team to respect others’ pre-defined time boundaries, crossing them only when required.

- **Assignments, Strategy, and Timelines.** Assign work to team members in detail and with clarity, including expected work product, quality of work, resources to be used, reasonable due dates, and the timeline they should expect for review, turn around, next steps, and feedback. Specify to whom and how work product should be submitted (e.g.,

via email or a collaboration platform). Explain how the assignment fits into the big picture of the matter and avoid arbitrarily tight deadlines for completion.

Take a belt-and-suspenders approach to calendaring and docketing for litigation and transactional matters alike: ensure the team is both using the firm's centralized calendaring and docketing systems and keeping their own calendars for due dates, deadlines, meetings, and hearings. Consider keeping a separate team-wide docket that includes the team's internal timelines and due dates relating to each matter. For more detail, see Matthew K. Corbin, *Strategies for Effective Docketing and Calendaring*, QUALITY ASSUR. REV., Spring 2020, at 12.

- **Team Meetings.** Full team meetings via video conferencing or telephone should be regularly scheduled (e.g., once a week on Tuesday morning), which helps set a rhythm to the work. An agenda and any preparatory reading or research assignments should be circulated in advance of these meetings and team members should be prepared to discuss the topics at issue at the appointed time. Virtual team meetings should include some social time (e.g., 10–15 minutes at the beginning) to combat isolation and encourage the team to continue the formal and informal knowledge sharing that tends to happen naturally in a traditional office environment. Use team meetings to discuss the big picture of the client matter; provide updates on the progress of the case or transaction; hash out possible strategies; examine the matter from various angles to spot issues; and coordinate and clarify objectives, assignments, and timelines, and how each team member's work fits into the overall plan. End meetings with a summary of decisions made and action plans for each team member. Schedule additional impromptu or urgent meetings as needed.

- **One-on-One Meetings and "Office Hours."** Schedule short one-on-one calls with each team member a few times each week to check on work-in-progress, address questions or problems arising on matters, share information, foster spontaneous learning, and provide feedback on completed work. In a virtual environment, positive feedback for a good job is as important as constructive criticism or corrections. Prompt colleagues to call you with questions or concerns. Encourage feedback on what works and what may be posing challenges about the remote work setting itself. Recognizing that lawyers' schedules can easily be disrupted by client and practice demands, to the extent possible consider establishing "office hours" when team members know that you are available via video conference or telephone for quick one-on-one discussions. Be sensitive to the fact that there are some questions that colleagues may be uncomfortable raising during team

meetings, or that they may simply prefer to discuss one-on-one. When lawyers and staff members are together in an office, such conversations are easily and casually had over a morning coffee or during lunch; the remote work environment necessitates some planning for them.

- **Performance Checks.** Monitor team members' performance and productivity by frequently reviewing time entries. Are the right tasks being worked on at the right time by the right people? Is the amount of time spent appropriate for the task? Remind team members of the importance of contemporaneous time entry (ideally no later than the end of the day after the day being billed) and the appropriate level of description for those entries.

Effective supervision rests on effective planning and collaboration, which in turn requires clear, consistent, and frequent communication. Supervising remote teams differs from the office setting only in the technology needed and efforts involved to establish and become accustomed to virtual modes of communication.

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