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Trans-Tasman IP Attorneys Board

Practice Note – Keeping File Notes

Keeping contemporaneous file notes and proper documentation of advice provided to clients and client instructions is a core part of a competent attorneys' practice¹. Attorneys should be in the habit of keeping file notes to record the details of meetings or conversations that are not captured in other records like letters and emails.² This Practice Note is published by the Board to help registered patent attorneys and registered trade marks attorneys (**collectively, 'registered attorneys'**) understand their obligations to keep adequate file notes.

Why keep file notes?

- **Maintain a consistent record** - File notes can be a useful way for an attorney to record what conversations have occurred, what advice has been given, and to allow an attorney to refresh their memory of events. As matters may stretch over the course of years, it can be very useful to have contemporaneous notes to confirm the details of conversations that have occurred, particularly when client contacts and/or attorneys may change over time.
- **Aid in efficient transfer of matters** - File notes can also be useful when work on a file needs to be transferred to a colleague within a firm or to another firm, especially when the circumstances do not allow the original attorney to provide a comprehensive hand over. Since events such as illness are unpredictable, an attorney should make it a habit to always keep thorough file notes.
- **Client relationship** - Keeping file notes can also be helpful for the attorney to inform the client.
- **Evidence in the event of a complaint** - When the Board is investigating complaints it is common that the recollection of events and advice given differs between an attorney and their client (or former client). In these circumstances, an attorney who has kept detailed file notes will be able to provide comprehensive documentation to assist their response to a complaint. Failure to keep adequate file notes may make responding to a complaint more difficult, and in some circumstances could even contribute to a finding of unsatisfactory professional conduct against an attorney.³

What information should a file note contain?

A file note should include the following information:

- **WHEN** – the date and time of the meeting or discussion, and its duration.
- **WHO** – the names of the parties present at the meeting or discussion.
- **WHAT** – a record of the matters discussed, including any advice given and instructions received, and any further action to be undertaken.

¹ *Trans-Tasman IP Attorneys Board and Massang* [13 July 2023] at para 125

² *Ibid* at para 124

³ *Ibid* at para 92(b) and para 122

The content of a file note and its detail will depend on the complexity of the issues discussed and the preference of the attorney in preparing the file note.

The more detailed the file note is, the more useful it will be, and small details may be important for future clarification.

File notes should be legible if written by hand, and in plain language that can be understood by readers other than the author. Part of the value of file notes is that they explain the course of a matter, to others who may work on the file in the future or in the result of a complaint.

When to keep file notes

When an attorney discusses a matter with a client and provides advice, or takes instructions verbally, it is best practice to confirm the advice and/or instructions from the client in writing. However, if this is not possible or practical, an attorney should record the advice in a file note. The file note should be made as soon as possible after the advice and/or instructions are provided.

File notes can also be used to capture additional context that is not otherwise immediately obvious from other documents. For example, a file note can be used to record why the attorney took a particular action on a particular date, such as where action was taken to preserve a client's rights. The attorney's file note could also record instances where a client may decide to take action contrary to the advice of the attorney, and which may not be reflected in correspondence confirming the steps taken by the attorney at the client's instruction.

Format and storage

File notes may be kept in a variety of formats depending on personal preference and practicalities. What is important is that file notes are stored securely and preferably retained together with other relevant file records, where they can be easily located and accessed if ever required.

If you have any questions or concerns, please contact the Secretary, Trans-Tasman IP Attorneys Board at: secretary.ttipab@ipaaustralia.gov.au