

# Where's the Beef?

by Mark Bassingthwaighte, mbass@alpsnet.com

A number of years ago this line was made famous in a Wendy's commercial that still makes me chuckle. An elderly woman and cohorts went into a burger joint. She bought a burger, removed the top bun, saw a tiny little burger and promptly exclaimed, "Where's the beef?" Today this commercial sticks in my mind because I view it as making a statement about quality control. In the burger joint that served with a cavalier attitude puny burgers on great big buns, there was no quality control. At Wendy's, rest assured, you would always get a big meaty burger served on a big bun. This point was well-made by virtue of the staying power of that one line over all these years.

A question that I often ask law firms during a risk visit is, "What are your quality control processes?" More often than not, I get blank stares. One principal quality control process that I look for in a firm is an established file review process. I am looking for a process that seeks to ensure any legal work that is accepted by a firm will be completed in a timely and thorough manner. What guarantees can you offer that no file is sitting in a cabinet or desk drawer at your firm completely forgotten about? That's the quality control issue.

There are more approaches to file review than I could possibly list. The point is not to suggest one particular way to accomplish file review. The point is to encourage you to establish a file review process, if such a process is not already in place. The lack of a file review process has and will continue to lead to claims within our profession. That said, let me share two basic file review processes in order to demonstrate the gist of what malpractice carriers look for.

You might institute a strict policy that provides that no active file can be filed away by anyone without a future date in the calendar or tickler system. If no other date is already in the calendar or tickler system within the next thirty to forty-five days, place a file review date into the calendar or tickler system for thirty to forty-five days out. This will ensure that every file is touched on a regular basis. Many case management systems are designed to do this automatically, and the program will allow you to set the frequency with which you wish to

conduct file review. The key to making this work is that all files, regardless of type of matter, must be entered into the system—even flat-fee work such as a simple will or a small-business formation.

An alternative method of preventing a file from being overlooked is to develop a list of active files by attorney. Sometimes this can be accomplished by printing out a list of active files for each attorney from the time-and-billing program. Be careful, however, because a number of time-and-billing packages will not automatically print out the names of files that have had no work done on them during the most

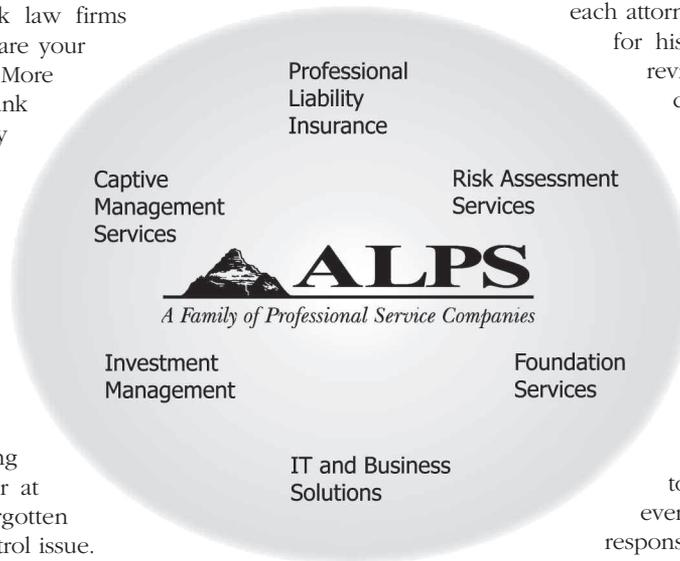
recent billing period. Once the list is created, each attorney will need to be responsible

for his or her own list. During the review cycle, every time a file comes across an attorney's desk,

the attorney will check off that name. If a new file is opened, the attorney will add that name to his or her list. If a file is closed, that name should be removed from the list. At the end of the cycle, a few files may be unchecked and these files should be located and reviewed. Again, this ensures that all files are touched at least once during every cycle. A staff member is often responsible for updating and providing clean copies of all lists each review period.

Some attorneys will go one step further on these unchecked files and place a call or send a letter to the client, even if nothing is happening. Clients tend to appreciate the brief update and this could help limit the number of incoming calls from clients who may feel things have stalled.

Another quality control process that I value greatly is peer review. This really can be an effective method of continuing to improve a firm's ability to provide outstanding customer service. I recommend that every year, at a minimum, every attorney at a firm should have two or three closed files randomly selected for review by a committee or another attorney at the firm. This is not a process meant to train the associates. All attorneys in the firm, regardless of seniority, should participate. The review should focus on the entire course of representation. The file should document the conflicts check, critical date calendaring, client decisions, client communication and client satisfaction. There should be an



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engagement letter and a letter of closure. The file should be reviewed for timeliness of work, work product, billing decisions and procedural choices. The purpose is not to look for mistakes, but to identify ways that representation or service could have been improved in order to provide higher quality representation and service to the next client. These discussions can be incorporated into a monthly meeting of attorneys. The attorney or attorneys being reviewed can rotate month to month so that every member of the firm is reviewed and conducts a review at least once a year. The value of this process is even more significant given recent American Bar Association statistics that identify 47 percent of all malpractice claims resulted from a substantive legal error. Few risk reduc-

tion practices address this area of concern as well as a peer review process.

There are certainly other appropriate procedures that a firm could implement; however, the two processes outlined capture the essence of quality control for a law firm. File review seeks to prevent a matter from falling through the cracks. Peer review seeks to ensure compliance with firm standards as well as continued professional development of all attorneys at a firm. Granted, it is unlikely that a client will ever utter the words, "Where's the beef?" in a law firm. With quality control processes in place, however, you hopefully won't ever hear statements such as, "What happened here?"

*ALPS is the endorsed legal malpractice insurance carrier of the Virginia State Bar.*