

Draw clients a roadmap to avoid communication claims

Our readers should now be well aware that problems with lawyer-client communication are the number one cause of malpractice claims. Managing communication takes patience and effort: at one extreme of the spectrum, responding to calls and messages from clients who want constant contact can be frustrating; while at the other end, trying to get absentee clients to update instructions or produce necessary documents can be time-consuming. How can you get the lawyer-client exchange off on the right foot from the beginning of a retainer, so that you don't feel either bombarded or ignored?

It helps to remember that the reason clients may communicate too much – or too little – can be that you've left them in the dark about how their matter is likely to proceed.

As lawyers, we sometimes forget that many clients have no frame of reference – other than movies or television – for what will happen in a typical legal matter. They may not know what the steps are, how long it will take, or how much it will cost. Common assumptions that lawyers make based on experience – for example, that the chance of an action going to trial is less than 20 per cent (or whatever it might be, in your practice area) – are not common knowledge to many clients. It's not surprising that, when the progress of a matter turns out to be slower, different, or more complicated than the client had expected, the phone starts to ring or the inbox to bulge.

You can improve your communication with clients and at the same time avoid malpractice claims by making the effort, at the beginning of each retainer, to provide the client with an overview or “roadmap” of how the matter can be expected to proceed. A good overview includes the following information:

- The typical steps and stages involved in the particular type of matter. Remember that a client may have had occasion to obtain

legal services before, for a completely different type of matter, and may be assuming that this one will work the same way. You may find yourself explaining that a labour grievance is as similar to estate litigation as a goat is to a gorilla... they're both mammals, but beyond that...;

- An explanation of with whom the client will work at each stage. For example, if your legal assistant typically assists in the data-and-document-gathering stage of matters, let the client know that she will be hearing from the assistant; or if you handle family law agreements but refer away cases headed for trial, make sure the client knows this;
- A description of the assistance and participation you will need from the client (will she need to obtain documents from her employer? Undergo a medical examination? Attend at discoveries?);
- How long *on average* it takes to complete each stage in the particular kind of matter – as well as what the short and long ends of the range might be – and whether there are delays the client should know about (for example, clients may not know that a court can reserve a decision at the end of a trial, and may be shocked that they won't know the outcome until weeks or months later);
- Information about the impact of certain strategic decisions on the complexity, duration, and cost of a matter. Make sure that a client understands that time is money, and he should take into account the costs savings associated with early settlement when assessing the adequacy of settlement offers;
- The difference between fees and disbursements, and the general range for the expected overall costs (but be careful – many clients may hear and remember what you say about the lower end of the range more clearly than they remember the high end!); and

- The fact that, in a litigation matter, an unsuccessful party may be required to pay part of the successful party's costs.

This is just a suggested list, and deciding what belongs in the roadmap you draw will necessarily vary depending on what kind of legal work you do. For clues about what you need to include, pay attention to what kinds of questions you find yourself answering over and over in your communications. If you do legal work that follows a fairly predictable pattern (for example, residential real estate), you may even want to commit portions of this roadmap discussion to writing, in the form of a client handout – as long as you realize that handouts can never replace personal communication. A handout eliminates some opportunities for clients to raise important questions, and skimming on personal communication may make a client feel ignored – a recipe for trouble. For an example of a client handout precedent, see Hon. Carole Curtis' (former family lawyer, now a Justice of the Ontario Court) “Administrative Information for New Clients,” available at practicepro.ca.

Finally, regardless of the content of your overview, you can improve the quality of your communication with clients by remembering to communicate just two pieces of information at the conclusion of every communication. No matter the reason for the call, visit, or email, always be sure that by the end of the contact, the client knows the answer to these two questions: ‘what happens next?’ and ‘when will I hear from you?’ Even if the answer is merely ‘now, we wait; you'll hear from me when the other party makes a move’, knowing where things are going reduces uncertainty, leaves the impression that a strategy is unfolding, and reaffirms that the lawyer will be in touch. ■

Nora Rock is corporate writer and policy analyst at LAWPRO.