



Humans communicate from the time they are infants until the day they die.

At its heart, communication is all about the same thing – whether we speak, write, gesture, sign, listen, or tweet. It’s a way of telling someone something.

So why, if lawyers have been communicating for as long as they have, are the majority of LAWPRO claims related to communication issues? In 2010, for example, the broad category of communications accounted for about 35 per cent of claims reported and 45 per cent of claims costs.

LAWPRO breaks that broad category of communication claims into three categories of errors: failure to obtain consent or inform (often a lack of two-way conversation), failure to follow a client’s instruc-

tions (often this is a disagreement over what was agreed upon), and poor communication (for example, unreturned phone calls).

Ontario lawyers aren’t the only ones facing these communication challenges. Insurance companies and law associations in the United States, Australia, and Great Britain have noticed the issue as well.

According to a 1994 survey done in Australia, the majority of mal-practice claims in that jurisdiction are caused by lawyers not listening to the client, not asking appropriate questions or not explaining relevant material.¹ LawCover, the professional indemnity program for lawyers in the New South Wales, found 51 per cent of clients were dissatisfied by information provided by the lawyer, 67 per cent felt they had no control over the outcome, and 80 per cent wanted more participation in the legal process.

A different study, done in Great Britain, found that communication problems were an “important source of client dissatisfaction.”² The



study found that bad communication on the part of lawyers wasn't just a matter of sloppy practices or unreturned phone calls. The study emphasized the importance to clients of understanding and being understood.

Is it that lawyers can't communicate?

It isn't that simple an issue. In fact many excel at certain forms of communication.

Lawyers are often applauded by their peers and the judiciary for their excellent advocacy skills.

So if lawyers are highly effective communicators, why are there so many communication-related claims? And why does this seem to be an issue among lawyers, irrespective of jurisdiction?

To answer that question, LAWPRO canvassed a number of people – inside and outside the profession – who are known and respected for their communication skills and expertise. We also examined research studies on the broad topic of client engagement and communication.

What we learned is that communication is an issue for any service provider. Moreover, the problem may lie in the *way* lawyers

communicate with their clients – that is, in the customer service experience. To the extent that the overall experience is positive, the communication that is integral to that experience is also seen as successful; but a bad customer experience often defaults into an allegation of communication failure.

The client service experience

It's been said before but it's worth repeating: The world has changed from the days when there was blind, unflinching faith in professionals such as doctors and lawyers. Clients today are more likely to be educated, and want to be involved and understand the process. They also have access to the Internet – so inevitably are more questioning if not more knowledgeable about a subject. And they have higher expectations – of the information they will get, the service they will receive, and the overall customer experience.

Eighty-four per cent of Canadians believe a single experience can make or break a relationship with a service provider, according to a survey done by TD Bank in 2008. What makes a positive relationship? According to the same survey, 64 per cent of Canadians want friendly, helpful staff, convenient hours, and quick service, regardless of whether they are visiting their lawyer or doctor or a retail store or bank.³

Moreover, people need to feel engaged in the process, says Dilip Soman, an expert in client satisfaction. A professor of marketing and communication strategy at the Rotman School of Business, Soman has focused extensively on the field of behavioural economics, the application of human behaviour to business and marketing models, and the effect of emotions and memories and how they influence experiences with service providers.

According to Soman, engaging a service provider can either be rational – for example, it fulfills a functional need such as pipes being replaced – or emotional – for example, a service based on calming anxiety or fulfilling a desire, such as a wedding or divorce, a new home or the sale of a business.

When customers and clients are dealing with a purely rational need, they can easily hand over the reins to the professional. They do not need to feel involved or engaged in the process, says Soman.

When the issue is emotional people feel like they need to have some control over the outcome of the issue. People want to control their own destiny.

If something goes wrong, the response from the customer or client isn't necessarily rational. Emotional issues tend to produce emotional responses. Anger, frustration, anxiety, low self-worth, and defensiveness can be common reactions when an emotional situation goes awry.

The numbers say what?

The following statistics are from a study done by the Australian insurer LawCover on the issue of communication claims:

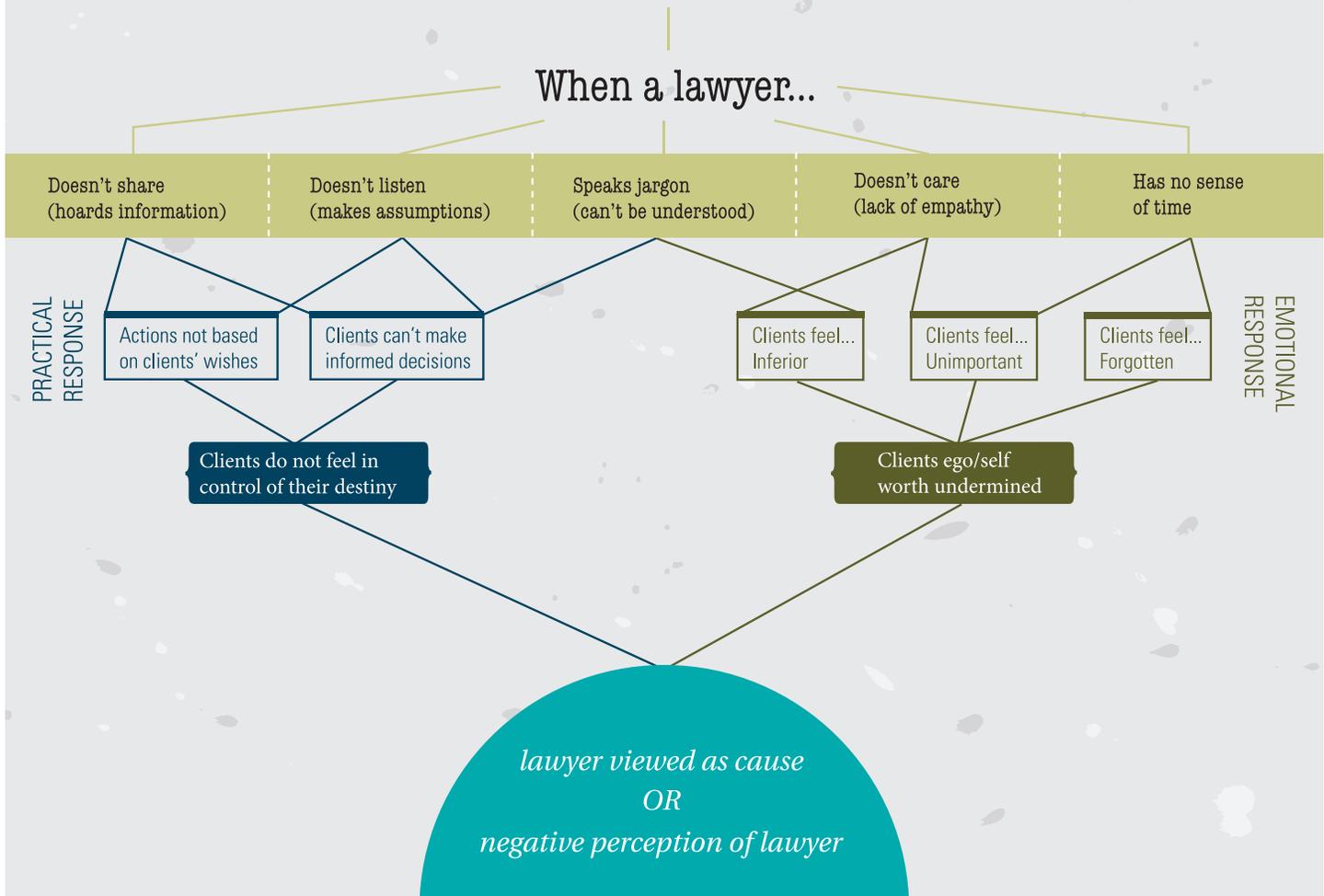
51 per cent of claims in New South Wales were based on a client's dissatisfaction with the information provided by the lawyer.

67 per cent of these same clients did not feel they had control over the outcome.

64 per cent of these clients thought the system was unfair.

80 per cent wanted more participation.¹

The communication breakdown



This is a graphic representation prepared by LAWPRO of the typical points at which communication breakdowns occur in a lawyer-client relationship based on the points made in the accompanying article.

In essence, good customer service *is* good communication with the customer, and the type of service a person is looking for will determine how much communication and engagement is necessary.

Soman argues that almost everything lawyers deal with has some emotional component to it; Therefore clients are generally more vested in the outcome of the entire process.

Engaging the client and showing empathy becomes even more important for lawyers, Soman says, as a breakdown in either will increase a person's dissatisfaction with the situation. Lawyers should take note because generally speaking, happy clients don't sue their lawyers. They are also more likely to promote a lawyer to family and friends and retain the lawyer's services longer.

A lack of empathy, or the appearance that a lawyer is not listening and providing information in an understandable and timely fashion, are the main ways communication can break down, says Soman. This can lead to very emotional responses (a feeling of inferiority, for example) or very practical responses (an inability to make decisions because of a lack of information). The result: Further breakdown in the relationship with the client.

To best understand the communication breakdown, put yourself in the client's shoes to think about customer service and communication from your perspective as a customer as the lawyers on the following pages have done. With their help, we break down the communication breakdown.

Breaking down communication breakdowns

When a lawyer... doesn't care

Appearance matters: Empathy is important

How can lawyers understand what clients truly want if they don't listen? And how can lawyers listen if they are distracted by other files or aren't accessible to their client in the first place?

Not caring and appearing to not care are the same things in customers' eyes. In other words, it's all about perception. Being unreachable and distracted gives the appearance of disinterest, says Soman.

"If it is easy to access my service provider, I feel that provider is more in tune with my needs," he says. "For example, I received an email from my car dealership the other day saying 'it's time to service your car,' and I emailed them back and I got a message saying this 'email address isn't functional, you have to call us.' If I get an email I expect to be able to email back."

This type of breakdown can give the perception that the service provider doesn't really want to hear from the client at all. And people pick up on it when the service provider doesn't *really* want to be helping with a problem, says Soman.

"You *know* that they don't want you there. You can sense they wish you didn't exist, but because they're a customer service agent they have to be there," he says.

When a lawyer... doesn't listen

Effective communication requires attentive listening skills

A study for the Law Society of England and Wales by Hilary Sommerlad, quoted in "What Clients Want" by Clark Cunningham, found that 50 per cent of clients polled had worked with lawyers they did not like.

The study concluded it was, more often than not, the way lawyers interacted with clients that was the issue. Indeed, the paper describes a true situation "where a specialist lawyer with a 'big reputation' had interrupted the client because she believed she had heard enough to 'get the picture.'"

This had the unintended consequence of leaving the client too frightened to speak up in future meetings, and resulted in the lawyer not fully understanding the situation and what the client wanted.

"Listening is not something we as lawyers do particularly well," says Judith Huddart, collaborative family lawyer at Dranoff and Huddart, Barristers and Solicitors.

When lawyers don't listen or make assumptions of what the problem is without letting the client finish his or her side of the story, they

The lawyer may be dealing with more than 100 files of varying importance, but as far as the client is concerned, there's only one file that matters – and it's that of the client.

Early in his career, Stephen Pike, now firm managing partner, external, at Gowling Lafleur Henderson LLP, had a client pull him aside and say "I know I'm not your only client, but can you treat me like I am."

"I never forgot that," he says. Now he makes sure clients know they are the most important part of the business, which Gowlings holds as a vital value in its client services model.

Nobody likes to be put on hold or made to feel ignored or unimportant, so the solution is relatively straightforward.

"Needless to say there should be no interruptions during a consultation. This means turning off email and the phone, and asking staff not to interrupt unless it is an emergency," says family, wills and estates lawyer, Lawrence Pascoe of Mirksy Pascoe LLP in Ottawa. "If you are expecting an interruption, then you should warn your client beforehand that you may be interrupted."

LAWPRO Executive Vice-President Duncan Gosnell adds: "Ultimately if the advocate doesn't seem to care, what confidence should the client have in the advocate?"

run the risk of ignoring what the client really wants.

The England and Wales study showed effective communication also involves actively listening, which in turn boosts rapport, trust and mutual respect between the lawyer and client.

The study participants had more positive responses when they felt their lawyer listened to them. It allowed the lawyer to better understand the needs of the client and address them accordingly.

Stephen Pike points to a recent bike-buying excursion with his wife to illustrate the point. They had done the research beforehand and had walked into the store convinced they knew what they wanted. The salesperson began asking them questions about how they planned to use the bike. After some extensive questions and answers – and attentive listening – the salesperson suggested a less expensive bike more tailored to the Pikes' needs.

"It turned out to be perfect," Pike says. "It was exactly the right bike."



Judith Huddart

When the lawyer... doesn't share

Be transparent and generous with information to your clients

After getting some work done on his cottage, Dale Orlando, partner at McLeish, Orlando LLP in Toronto, had a dispute with the contractor over fees.

“He was doing work that needed to be done but without clearing it with me first,” Orlando says. As a result the project went over budget. “I should have been communicated with before the work was done, not afterwards.”

Imagine going for surgery without the doctor telling you where they will be cutting. That would be unthinkable. Similarly, why should the client allow the lawyer to proceed without knowing what was being done?

Clients need information so they can make decisions that work for them. Not knowing what is happening in a file can cause people stress and anxiety, Soman says.

“I’ve had clients come in from other lawyers and say ‘I have no idea what’s happening with my file, I don’t understand a thing about it,’” says Huddart. “And I say ‘Bring your documents,’ and I look at it and say ‘You know you have to be in court next week,’ and they say ‘Well nobody told me that.’”

With the Internet making information readily available, people have come to expect the same level of information availability from their lawyers, says Soman. Simply sharing information throughout the case can help a person feel engaged in the process.

People who feel involved in the decision-making process are more likely to take ownership of the outcome, be it positive or negative.

When a lawyer... has no sense of time

Their time is as important as yours. Give clients a sense of control over timelines

A few years ago, Huddart had to visit the doctor. She checked in, provided her health card and settled in with a book. Patients who came in after her came and went.

“I suddenly realized there was no one left in the waiting room. An hour had gone by and I was still sitting there. When I got up and looked around – which I probably should have done earlier – I realized there was no one around at all,” she says. The doctor had left and when she asked what happened, she was told she should have spoken up, and that she “got missed.” The experience left its mark.

“I felt like I was nothing,” she says. “I had no value, I wasn’t important. It was just ‘oh well, too bad for you, I have no sympathy for you.’ And I’ve never forgotten that.”

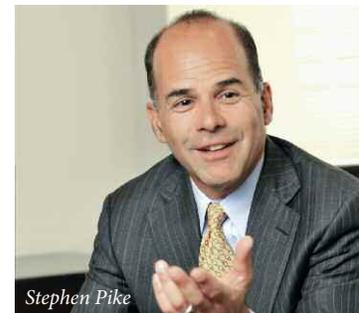
When that sense of ownership is taken away, there is a feeling of helplessness and a lack of control over one’s own destiny. And should the matter take a negative turn or end unfavourably for the client, the client is more likely to blame the lawyer for the actions taken, since it was the lawyer’s “decision,” not the client’s, that resulted in the unfavourable result.

Take the example of a lawyer’s fee structure, says Soman. Lawyers should lay out exactly how they plan to bill a client: Does a meeting with the senior counsel on the case cost X, but with the junior associate cost half that? Is an email response equivalent to 15 minutes of docketed time, but a phone call is docketed by the minute?

“Information gives [clients] more control,” says Soman. “Once I have control, it is my choices that affect how much I pay. It’s my choices that affect what I get. Whereas if I don’t know, it’s the lawyer’s choices that affect what I get and what I pay.”

That is not to say lawyers should allow clients to take the reins on their files: lawyers still have a responsibility to reasonably manage a client’s expectations. But sharing information also includes ensuring the client has realistic goals and expectations, and understands what can and can’t be done, and how long things will likely take. This gives clients choices.

“As a client, I want the good with the bad,” says Huddart. “Trust me enough to tell me the bad news.”



Waiting is inevitable in law. It may be months before a court date is set.

Weeks can fly by before a discovery.

Lawyers may understand this, but clients, who rarely have dealings with the legal system, may have no way to gauge timelines.

However, lawyers may want to remember the old FedEx slogan: “Waiting is frustrating, demoralizing, agonizing, aggravating, annoying, time-consuming and incredibly expensive.”

Some ways to make the waiting period less agonizing that Soman suggests:

- 1) letting clients know a file has been received and is scheduled for appropriate action; and

2) providing an idea of how long – roughly – the whole process will take and what steps to expect.

The goal, he says, is to find a way to soothe the client's inevitable anxiety.

He points to a recent study he conducted at a Canadian hospital of wait times to see an oncologist. There is a standard time lag of five to six weeks for someone with non-life threatening cancer to get a first appointment with a specialist. Soman and his team looked at ways hospitals can calm patients and make waiting a more pleasant experience.

"People felt anxious because they didn't know if anyone had seen the files; in their eyes, this was a life-threatening event but the doctor's office didn't seem to think that was the case."

The solution: have a nurse call patients as soon as the referral is received and the appointment date set, a step that used to take place a week before the appointment. As well as taking basic information (age, weight, height, etc.), the nurse now asks the patient if he or she has any questions. This is followed up with reminders about the upcoming appointment. By moving this call up in the process, the hospital gives the appearance that the patient is "in the system," says Soman.

When a lawyer... uses jargon

Speak in a language clients understand: Drop the legalese

"We're [McLeish, Orlando LLP] in the process of retaining an ad agency for some of our marketing," says Orlando. "And it's really frustrating when they use acronyms we don't understand. You don't want to ask because it seems like everybody else in the room knows what that means, so maybe I should.

"One agency came in to talk about a service agreement, and they were trying to explain to us the services they were going to provide. After listening for 30 minutes I still had no clue what they were going to be doing." Needless to say, Orlando did not retain that agency.

Speaking in code is an easy trap to fall into. It is the language lawyers use daily with their peers, so to talk in legal terms with a client seems totally natural.

This can create two problems. First of all, when clients don't understand what is going on, they aren't in a position to make informed decisions.

"I like it when a doctor explains things on my layman's level as I am not a doctor. We forget our clients are not lawyers," says Pascoe. "I like it when my doctor makes it even simpler by drawing a diagram to explain my medical problem." It may seem rudimentary, but it

There's a lesson in this for lawyers, says Soman. As a matter of good practice, clients should get prompt acknowledgement their file was being handled and then a timeline or estimation of how long a file would take to resolve. The reasoning behind the latter is simple, Soman says: "Anticipated waits are more bearable."

People who have a sense of how long they will have to wait for their appointment will consistently rank their experience as more positive than those who aren't told how long the wait will be.

"I recently worked with my lawyers on a real estate transaction," Soman says. "They gave me a timeline and set out expectations – I got a flowchart. I loved it!"

Not all timelines are easy to predict, but even acknowledging it is difficult to determine the waiting time has a soothing effect on anxiety and dissatisfaction, Soman says. However, when timelines can't be predicted, lawyers should check in regularly with clients, to let the client know the status of the matter or next steps (even if next steps are on hold because of delays or a pending event).

Gosnell adds that clients are able to plan their own lives better too: They do not need to keep the calendar open for possible unanticipated court dates.



Lawrence Pascoe

works. Understanding *why* something is the way it is makes it easier to accept and rationalize rather than just being *told* that's the way it is.

The second problem, Soman says, is emotional: When someone speaks 'above' a customer's understanding, it makes the client feel inferior.

"It puts the lawyer on a pedestal," he says.

No one wants to be talked down to or made to feel stupid, but when they don't understand, it isn't always easy to ask for an explanation. As Orlando said, there is a perception that everyone else at the table "gets it," so those who don't are not as smart as the others.

"We tell our new staff that good communication isn't based on what the communicator says but what the listener understands," says Gowlings' Pike. "Talk in the language the client understands."

Ditch the jargon and speak plainly. Make things as concise as possible and ask questions to make sure the client understands.

The final word

Solid, two-way communication involves actively listening to clients and clearly explaining issues at hand. It doesn't require new technologies or serious investment, Soman says.

"It's the small things that matter," he adds. Little, positive experiences will have a much longer-lasting effect on the entire process. Think of the last trip you took: Did you have a good time? Was it raining or sunny the entire time? Was the staff friendly or rude? The entire trip may be coloured by a single positive or negative event.

Creating a positive experience for your clients can result in client loyalty, brand recognition, free marketing as clients tell their friends and family, and a deeper relationship based on trust and respect.

The benefits of great communication outweigh the cost. In fact, Soman says, communication is probably one of the easiest processes to fix because the solutions to "bad communication" don't cost much (if anything) at all.

"Making people aware of what is going to happen is the single biggest and easiest solution to avoid a communication breakdown." ■

Megan Haynes is communication coordinator at LAWPRO.

¹ As referenced by, Cunningham, Clark: "What clients want," Aug 3 2006 <http://law.gsu.edu/ccunningham/PR/WhatClientsWant.pdf>

² *Ibid*

³ TD Media Room; "Show me good service- most Canadians want companies to thank them with good service." <http://td.mediaroom.com/index.php?s=43&item=75>

⁴ *Supra Note 1*

TitlePLUS lawyer service goals: **An old idea whose time has come (again)**

Innovation has always been one of the strengths of the TitlePLUS title insurance program.

More than a decade ago, the then-new TitlePLUS program published a set of service commitments to which TitlePLUS lawyers were encouraged to commit.

The 12 pledges that comprise the "I will endeavour" commitments – which found their way onto a plaque which TitlePLUS subscribers could display in their law offices – are as (if not more) relevant today as back in 2000. Nor do they apply only to real estate lawyers: Given the consistently high proportion of claims that arise out of communication issues, the following may be food for thought for any practitioner:

I will endeavour for all my real estate clients:

To be committed to the care and understanding of your needs;

To develop long-term relationships and build confidence while providing excellence in legal services;

To discharge all my duties with loyalty, dedication, honesty and good faith;

To bring care, skills and knowledge to the performance of the professional services which I have undertaken;

To keep confidential all information about you and your business that I acquire through our professional relationship;

To explain legal issues and procedures in understandable terms;

To discuss fees before starting any work;

To obtain instructions from you on all material issues and to follow them, so that I do not act without your authority;

To keep you informed about the progress of your file;

To have your phone calls returned expeditiously;

To report to you promptly after completion of your file;

To appreciate your feedback on our service and to make your satisfaction my goal.

Chatting with the pros

Here are some tips from Huddart, Pike, Orlando and Pascoe on how they make communication work for them:

- 1) **Give your clients some homework:**
Give them a checklist of things they will need to do and should want to do to help keep the case moving forward.
- 2) **Give them a “manual”:**
This doesn't have to be as thick as a car manual, but it could offer basic information about the type of law you will be helping them with, a breakdown of the processes involved and, when possible, timelines or estimated timelines.
- 3) **Treat each client as if she is your only client and your business depends on her:**
This doesn't mean worshipping the ground she walks on. It means turning off your phone, not checking your email and putting all your attention on the file before you – not the file sitting on your desk upstairs.
- 4) **Remember the little details:**
Take a minute to familiarize yourself with the file or documents before you meet with the client. Try to remember some more personal details about the client as well – his family details, hobbies, or job. Try connecting on a personal level.
- 5) **Practice the art of (partial) silence:**
When a client first comes in to discuss a matter, let the client do the talking, at least at first. Ask appropriate questions to get to the heart of the matter. What exactly does the client need you to do and why?
- 6) **Don't assume the client understands:**
When you are explaining something, ask the client if she understands what you are talking about. Take it a step further and have her explain it back to you.
- 7) **Be up-front about costs:**
To the best of your ability, lay out how the client will be charged. Is he going to be charged a flat rate? Will you charge by the hour? Do follow-up phone calls “count” towards that hour? How much is the retainer and how will it be replenished? Be open.
- 8) **Find out the best way to communicate with the client:**
Rather than force the client to call you on your schedule, find out if email is a better way of keeping in touch with the client.
- 9) **Spell out your return correspondence policy:**
Let clients know you will always get back to them in a certain time frame, even if it is just to say – “a tad busy now, but will get back to you tomorrow.”
- 10) **Provide regular updates:**
Keep the client informed with what is going on in his file. This is especially important when the file has a long shelf life and there may be long periods of inactivity.
- 11) **Acknowledge when you receive new information from the client:**
Your client needs to know you have that new document in your system and it hasn't been lost in the mail.