

Common complaints (and how to avoid them) Part 2

Part 1 of this article dealt with the complaint of costs/overcharging. This article looks at the next most common ground of complaint ie delay/failure to communicate.

Outlined below are common complaints about delays and a failure to communicate.

Clients cannot access the practitioner when they telephone.

Explain to your client at the initial interview that you will not always be accessible because of your other commitments and that non-urgent matters can be discussed with your secretary.

Phone calls are not returned.

Do not ignore the fact that your client is trying to contact you. Allocate a specific time of the day to return phone calls eg between 4 and 5pm. Some firms have a '24 Hour' policy ie phone calls will be returned within 24 hours.

Explain that you will contact them when there is something to report. Unnecessary communications costs them money.

Also, let them know that your secretary is competent and can take detailed messages in relation to something the client wants to tell you.

If it is something the client wants you to tell him or her then you must return the call.

General lack of communication.

Professional Conduct Rule 10A.1 provides that the practitioner must keep the client informed at regular intervals or upon request of the progress or lack of progress towards resolution of the client's matter.

If the file is moving slowly or there has been difficulty obtaining relevant information, advise the client in writing.

Review the file regularly, at least every three months. Use a re-submit system to call up the file to check progress and to follow up matters which have not been attended to. Diarise specific tasks and deadlines.

If other practitioners will be handling the file, and that appears common

practice in medium to large firms, explain that to the client.

If you are babysitting the file whilst the usual practitioner is on leave, tell the client.

Some General Tips

ALWAYS confirm your instructions in writing.

This is a cardinal rule and it cannot be overstated how important it is.

This should be done at the very beginning of the file in the very first letter you send the client. It should also be done routinely throughout the file, particularly following receipt of verbal instructions, whether by telephone or in person.

The client may not always remember what they instructed you. If you have misheard the instructions then confirming them in writing will give the client an opportunity to correct any misunderstanding.

ALWAYS confirm your advice in writing.

This is the other side of the coin to the above tip. Confirm in writing what action you will undertake as a result of the client's instructions, what that means in terms of the conduct of the file and what it is likely to cost.

If there is any dispute later about what action you have taken, how the file has turned out or the costs then you have confirmation that the client was properly informed. And don't be afraid to repeat or refer to earlier advice.

Make legible file notes.

If your writing is poor, dictate. Even those with elephantine memories have difficulty recalling the finer details which are usually what end up in dispute.

Apart from costing purposes, file notes confirm communication, its content and its frequency.

Date and sign the file note. It is not much good without either.

Record how long the conversation/interview lasted.

Do use plain English.

Without treating your client as a simpleton, keep it simple. Use paragraphs. Use headings to highlight a specific subject matter.

Place yourself in the position of the recipient of the letter and ask yourself whether it simply and adequately explains what is happening on the file.

You may find it helpful to refer to or enclose copies of previous correspondence.

I have investigated a number of complaints over the last two years against one particular practitioner which, in my view, all largely resulted from poorly drafted letters where paragraphs and punctuation were inexplicably absent.

Do not ignore the client's complaints.

It costs time and money to deal with complaints once they reach the Law Society stage, so the quicker the matter is resolved the better.

Don't be afraid to apologise if you have stuffed up. Offer to rectify the situation. Clients will more often than not accept that, particularly if you do not duck for cover but address the complaint head on. After all, every one makes mistakes and it is costly to take the file elsewhere.

If the mistake is potentially negligent then you must reserve your insurer's position but at the same time advise your client you can no longer represent them.

Do not persist in charging your client for your error as that merely adds insult to injury.

If the complaint is more about systemic issues (court delays or processes, the adversarial system, insufficient legal

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Parole Board reform cont...

could jeopardise the process by refusing to grant parole to any prisoner serving time for murder, Attorney-General Peter Toyne pointed out that the Parole Board is chaired by a Supreme Court judge.

"In fact, the Chief Justice is the nominated Parole Board Chair. He can, in turn, delegate the responsibility to one of the other justices but, one way or another, a Supreme Court Judge will be sitting as the Chair of the Parole Board when these decisions are made," Dr Toyne said.

"I have great confidence, not only in the leadership of the chairperson of this new Parole Board once it is formed, to make reasoned and informed decisions regarding the decision to release or not to release applicants before them, but also will be very careful to appoint people to that Parole Board who are reasonable and thinking people – not people who are hell-bent on an emotive mission," he said.

"To the degree that the Parole Board has already demonstrated that it can make consensus decisions, I have no doubt that, if the evidence is strong enough that the prisoner has shown remorse and success in their rehabilitation programs and clearly not going to constitute a further danger to the community, that you will see releases under these new arrangements."

Further to this reform package, the Government is also reviewing crimes of manslaughter and causing death by a dangerous act.

"The government is also looking at closing loopholes that see manslaughter charges used as plea bargaining to escape the murder charge. We are also commencing a further review of manslaughter and dangerous act offences," Mr Henderson said.

"When we reviewed the sentencing outcomes for the crime of murder, manslaughter and dangerous acts – and seeing some of the circumstances under which those crimes were committed – there is no

doubt in this government's mind that we have a serious problem regarding how the various charges are applied and the plea bargaining process," he said.

"There is no doubt in my mind that, over many years, people who have managed to escape with a lesser sentence, being convicted under the dangerous acts provisions, on the face of it could and should have gone for a murder charge."

Professor Paul Fairall, Dean of Adelaide University Law School is conducting the manslaughter and dangerous act offences review on behalf of the Department of Justice.

The review will focus on:

- * Whether the offence of dangerous act should be abolished;
- * Whether standard minimum non-parole periods should be introduced for manslaughter, if dangerous act is abolished, given many dangerous act offences would move into the manslaughter offence;
- * Whether a form of manslaughter resulting from recklessness as to serious harm should be introduced;
- * Whether an offence of dangerous driving causing serious death should be introduced; and
- * Whether other offences need to be introduced to cover the elements of the current dangerous act offence which relates to grievous harm rather than death.

Submissions to the review close at the end of February 2004, however there is still no time line for the results to be released. ①

Complaints (and how to avoid them) Part 2 cont...

aid) explain how it works and offer suggestions as to whom they might complain eg the Attorney-General, Chief Justice or their local Member of Parliament.

When the client complains:

* Do not ignore the client. Offer a face-to-face interview to discuss the complaint.

* Accept the complaint whatever its apparent merit. It can tell you a lot about how your personal performance is perceived or point out office procedures which may need re-assessment.

* Assess your handling of the file objectively. Ensure objectivity by involving another person who had no connection with the matter. If you are satisfied the file was appropriately handled there may have been a communication failure, either on your part or that of your client.

* Where the complaint is without merit or its cause is personality based, consider whether it makes commercial sense to resolve it sooner rather than later. You could apologise, offer a reduction in the bill or suggest the client find alternative representation.

Remember: satisfied clients tell a few people (about three) how good you were. Dissatisfied clients tell everyone they know (about 23) how bad you were. In small communities word of mouth referrals are important.

Please feel free to comment on this article or make suggestions about future articles. I welcome an open debate on any of the issues raised. The next article will refer to some of the Law Society's more recent Ethics Rulings.

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