

**ESTABLISHING EFFECTIVE MEANS
for CLIENT COMMUNICATION**

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INTRODUCTION

Good client communication is critical in the context of a personal injury file. An abundance of information must be gathered accurately from the client and must flow effectively and efficiently to the law firm during the handling of the file. An abundance of information must also flow effectively and efficiently from the law firm to the client so the client can properly understand the claims process, make reasonable and informed decisions, and provide clear instructions to the firm. Communication is a two-way street. This paper will look at some of the criteria lawyers, paralegals, law clerks and staff should consider in establishing effective means of client communication to ensure that client expectations are met, quality services are provided and that essential professional obligations are satisfied.

THE CONTEXT OF CLIENT COMMUNICATION – THE *RULES*

As we know, the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* establish standards for the legal profession. Lawyers have a duty to carry on the practice of law and to discharge all responsibilities to clients with integrity and in a way that is honourable. This includes communications with clients.¹ Paralegals have a similar duty.² Both are required to be honest and candid when communicating with and advising clients.³

¹ *Rules of Professional Conduct*, Rule 1.03 (1)(a).

² *Paralegal Rules of Conduct*, Rule 1.03 (a).

³ *Rules of Professional Conduct*, Rule 2.02 (1), and *Paralegal Rules of Conduct*, Rule 3.02 (1).

Competency within the Context of the Client Relationship

Under the *Rules*, both lawyers and paralegals are required to communicate to clients in a timely and effective manner at all stages of a matter in a way that is appropriate to the age and abilities of the client.⁴ Lawyers are required to perform all functions conscientiously, diligently and in a timely and cost-effective manner.⁵ It is interesting to note that paralegals, under the *Rules*, are specifically required to answer all reasonable client requests in a timely and effective manner.⁶ These are minimum standards. They speak to the importance of establishing effective means of client communication.

Confidentiality within the Context of the Client Relationship

In terms of confidentiality under the *Rules*, both lawyers and paralegals are required to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and they are required not to divulge or disclose any such information unless expressly or impliedly authorized by the client or required by law to so do.⁷ The Commentary under this section of the *Rules of Professional Conduct* is useful in terms of client communications. It states as follows:

Commentary

A lawyer cannot render effective professional service to the client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client's part, matters disclosed to or discussed with the lawyer will be held in strict confidence.

This rule must be distinguished from the evidentiary rule of lawyer and client privilege concerning oral or documentary communications passing between the client and the lawyer. The ethical rule is wider and applies without regard to the nature or

⁴ *Rules of Professional Conduct*, Rule 2.01 (1)(d), and *Paralegal Rules of Conduct*, Rule 3.01 (4)(e).

⁵ *Rules of Professional Conduct*, Rule 2.01 (1)(e).

⁶ *Paralegal Rules of Conduct*, Rule 3.01 (4)(f).

⁷ *Rules of Professional Conduct*, Rule 2.03 (1), and *Paralegal Rules of Conduct*, Rule 3.03 (1).

source of the information or the fact that others may share the knowledge.

A lawyer owes the duty of confidentiality to every client without exception and whether or not the client is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client, whether or not differences have arisen.

Generally, the lawyer should not disclose having been consulted or retained by a particular person about a particular matter unless the nature of the matter requires such disclosure.

A lawyer should take care to avoid disclosure to one client of confidential information concerning or received from another client and should decline employment that might require such disclosure.⁸

It follows from the commentary, above, that all communications received from a client must be held in strict confidence – this means that the mechanisms by which those communications are received must be private and secure. It goes without saying that office doors should be securely shut when meeting with clients to discuss aspects of a file. Doors should also be shut when telephone conversations take place.

But the expectation and enforcement of privacy in client communications goes a step further. If client communications are to be exchanged electronically, by e-mail or other forms of internet communications, it is important to first obtain the client's permission or consent to engage in that type of communication. This is because electronic communications are not always secure. The client should be advised of the potential privacy breach if the communication is sent over the internet but does not arrive at the correct destination. Once advised of the risks, the client can make a choice about the form of communication that they wish to use and can instruct the firm accordingly.

⁸ *Rules of Professional Conduct*, Rule 2.03 (1), Commentary.

THE CONTEXT OF COMMUNICATION – THE *PRACTICE MANAGEMENT GUIDELINES*

The *Practice Management Guidelines*⁹ are practical tools made available by the Law Society to assist lawyers and paralegals in assessing, maintaining and enhancing their quality of service. They provide a general framework for conducting various aspects of legal work. Of importance for the purposes of this paper is the *Client Service and Communication Guideline* (hereinafter “the *Guideline*”) which forms part of the *Practice Management Guidelines*.

The *Guideline* views client service as an agreement, explicit or implicit, between the lawyer and the client wherein the lawyer and the client agree on what the client may expect from the lawyer and the lawyer promises to meet those expectations. According to the *Guideline*, clients have expectations about many aspects of their lawyers’ services, ranging from the legal results to be achieved to the frequency of reporting. The *Guideline* suggests that successful lawyers are those who are able to manage and then meet client expectations.¹⁰ Effective and efficient communication with clients is obviously critical when it comes to managing and meeting client expectations.

Commencement of the Lawyer-Client Relationship

The *Guideline* recommends that at the commencement of the lawyer-client relationship, the lawyer should:

- a) determine who is or who are the clients;
- b) identify and verify the identity of the client and third parties, where necessary, in compliance with Part III of By-law 7.1;
- c) ascertain the client’s objectives; and

⁹ The *Practice Management Guidelines* can be found on LSUC’s website at www.lsuc.on.ca >> For Lawyers >> Manage Your Practice >> Practice Management Guidelines.

¹⁰ *Practice Management Guidelines*, s. 2.1.

d) obtain relevant information about the matter.¹¹

It is essential that accurate and complete note or record taking occur during the commencement of the lawyer-client relationship. Pre-prepared standard intake forms can be of assistance in gathering essential information at the initial client meeting, but of more importance is ensuring that all pertinent and relevant facts and information are gathered from the client in an effective and efficient manner. It is important to listen carefully to the client to properly understand his or her needs, regardless of whether the initial meeting is conducted by a lawyer, paralegal or law clerk. It is also important to accurately “read” clients and to be sensitive to client signals to determine what messages the client is actually trying to convey at the initial meeting. In-person meetings are preferred over telephone calls as the vehicle through which information can be obtained and exchanged at the initial client meeting.

Also important at this stage of the client-lawyer relationship is the business of conveying important information to the client about the claims process, about what the firm will or will not be doing on the file, and about what is expected from both the firm and the client going forward. This is also a wonderful opportunity to assure the client that the lawyers, paralegals, law clerks and/or staff at the firm (as the case may be) are competent and credible, and that they have the requisite knowledge, skill and trustworthiness to fulfill their duties and obligations to the client in a professional and competent manner. It is at this stage of the relationship that the client can learn a bit about the law, the claims process and what is to be expected going forward.

Lastly, it is important at this stage of the relationship to instill a sense of confidence in the client and to provide reassurance to the client that he or she has made a wise choice in coming to your firm to discuss their legal issue. Empathy is a key ingredient in achieving and maintaining client satisfaction.

¹¹ *Practice Management Guidelines*, s. 2.2.

Effective communication is important to receive and convey all of these ideas and issues with the client.

Essential Terms of the Retainer

The *Guideline* also recommends that if a lawyer agrees to provide legal services to a client, the lawyer should discuss with the client the essential terms of the engagement. Relevant factors to discuss may include the type, urgency, complexity or scope of the legal services to be provided, as well as whether the client is a new, current or former client.¹²

To avoid any misunderstanding between the lawyer and the client, the *Guideline* suggests that lawyers consider whether the terms of the engagement should be reduced to writing, and if so, whether a retainer agreement should be signed by the client.¹³

In my experience, the retainer letter is also a wonderful opportunity to summarize the initial meeting(s) with the client, to confirm certain facts and evidence in support of the client's claim, and to discuss some of the challenges the client will face going forward.

Client Objectives and Expectations

In terms of client objectives and expectations, the *Guideline* suggests that lawyers discuss with their clients:

- a) the specific legal services the client will receive from the lawyer;
- b) the specific results the lawyer is likely to achieve for the client;
- c) the costs associated with achieving those objectives; and
- d) the time required to complete the legal services and achieve the results.

¹² *Practice Management Guidelines*, s. 2.6.

¹³ *Practice Management Guidelines*, s. 2.7.

Outlining client objectives and providing a detailed explanation of what is expected from both the client and the firm throughout the life of a file can also easily be incorporated into the initial retainer letter. This effectively provides for a “one-stop” document at the outset of the file that can be looked to in the future by both the client and the firm in regards the establishment of objectives and expectations. In terms of expectations, the letter can contain a checklist outlining the steps that must be undertaken to complete a matter. This informs the client about what is involved in completing each step in a matter. The letter can also provide a timeline in terms of expectations going forward.

Client Instructions

In terms of client instructions, the *Guideline* recommends that lawyers discuss with their clients:

- a) the choice of options or strategies the client instructs the lawyer to pursue;
- b) the impact of choosing particular options or strategies; and
- c) the estimated fees and disbursements relative to those instructions.

Client instructions should ideally be reduced to writing and confirmed in a letter to the client each and every time they are given. For important instructions, such as settlement instructions, it is a good idea to have the client sign a direction or authorization to the firm outlining the amount of the settlement instructions and the terms, if any. For less important instructions, it may not be necessary to confirm things in writing to the client on each occasion but in those circumstances it is important to keep accurate notes of the client’s instructions.

Legal Advice

In terms of advice given to the client, the *Guideline* suggests that lawyers discuss with their clients:

- a) the options recommended;

- b) an explanation of the law; and
- c) a potential referral to other professionals, if necessary.

Course of Action

In terms of a course of action, the *Guideline* recommends that lawyers discuss with their clients:

- a) the strategy to be undertaken by the lawyer; and
- b) the estimated length of time to complete the strategy.

Limitation Periods

In terms of limitation periods relevant to the matter, the *Guideline* recommends that lawyers discuss with their clients:

- a) what the limitation period(s) is;
- b) the legal effect of limitation periods on the client or matter; and
- c) a preliminary plan or outline of steps to meet the deadline.

Including applicable limitation periods, to the extent they may be known, in the initial letter to the client (either in the form of a retainer letter or a non-engagement letter) is an easy way to ensure that the client has been properly advised of the importance of these dates.

Risk Analyses

In terms of risk analyses, the *Guideline* suggests that lawyers discuss with their clients:

- a) the client's potential liability for court costs, if the matter relates to litigation;
- b) the risks or benefits associated with the matter; and

- c) the lawyer's, and if different from the lawyer's, the client's assessment of whether or not the likely outcome is justified by the expense or risk involved.¹⁴

Timelines

In terms of timelines, the *Guideline* suggests that lawyers discuss with their clients:

- a) the estimated length of time it will take to complete the engagement or matter, including *i)* an account of the assumptions, facts, or circumstances on which the time estimate is based, *ii)* an indication of the potential or foreseeable facts or circumstances which may alter the time estimate and how the time estimate will change in light of these facts or circumstances, and *iii)* if relevant, an indication of appropriate milestones;
- b) follow up requirements such as *i)* actions or next steps to be taken by the lawyer, *ii)* actions or next steps to be taken by the client, including requirements for further information or documentation from the client and/or funds from the client on account of fees and disbursements;
- c) the actions or next steps to be taken by third parties such as investigators, experts or other agents of either the client or the lawyer;
- d) the instructions to be provided to third parties; and
- e) a clear indication that if necessary action or next steps are not taken by the client or third parties, the lawyer will be unable to commence or continue with the retainer.¹⁵

¹⁴ *Practice Management Guidelines*, s. 2.9.

¹⁵ *Practice Management Guidelines*, s. 2.13.

Timely and Effective Lawyer-Client Communications

In terms of timely and effective lawyer-client communications, the *Guideline* suggests that lawyers discuss with their clients:

- a) the manner of communication between the lawyer and the client and whether communications will be primarily by *i*) telephone (and if so, the telephone number or numbers to be used and the person or persons with whom messages may be left), *ii*) e-mail (and if so, the e-mail address or addresses to be used), *iii*) mail, courier and/or priority post (and if so the mailing address to be used), and *iv*) facsimile (and if so, the facsimile number or numbers to be used);
- b) how the lawyer will keep the client apprised of the matter on an ongoing basis including *i*) correspondence including e-mail communications sent and received, *ii*) pleadings or other court documents, *iii*) other documents relating to the matter, and *iv*) memos to the file confirming communications or attendances with the client and/or third parties;
- c) how the client will keep the lawyer apprised of the matter on an ongoing basis;
- d) the frequency of reporting to the client including *i*) formally in writing, and *ii*) on an informal basis; and
- e) the estimated time it will normally take for the lawyer to respond to client calls, e-mails, letters or other communications.¹⁶

Keeping the Client Informed

In terms of keeping the client informed, the *Guideline* suggests that lawyers advise clients of the progress of a matter at appropriate intervals, having regard

¹⁶ *Practice Management Guidelines*, s. 2.14.

to a) the requirements of the particular matter or proceeding, and/or b) any agreement between the lawyer and the client respecting the frequency of progress reports to be provided to the client. If little or no progress has been made, the *Guideline* suggests that lawyers a) advise the client accordingly, b) indicate to the client the reason(s) for the delay, c) advise what, if any, steps may be taken to ensure progress on the matter continues, and d) outline the costs, risks and benefits associated with taking those steps.¹⁷

One suggestion to keep the client informed is to give him or her copies of every piece of paper that comes in or out of the office, including all litigation documents, correspondence, memoranda to file and documents received through the discovery process. This can be time consuming and expensive. If this is an option the client wishes to exercise, he or she should be advised at the outset that it may result in substantially increased costs in the form of disbursements, something for which the client will ultimately be responsible if they cannot be reimbursed when the claim settles.

Another option is to only provide the client with copies of pertinent documents such as important correspondence, copies of expert reports and written settlement offers.

Obviously all documents should be reviewed carefully before copies are provided to the client.

It is important to manage client expectations, and in this regard it is always wise to attach caveats to the provision of certain documents such as pleadings or settlement proposals which may contain inflated values of the client's claim. It is important to provide an explanation of why an inflated value may appear in a particular document in order to prevent client confusion in the future. At our firm, we have a policy of telling clients, for example, that the amounts claimed in their

¹⁷ *Practice Management Guidelines*, s. 2.15.

Statements of Claim do not necessarily reflect our opinion of the value of their claims but are, instead, inflated to protect their future negotiating positions.

Responding to Client Communications

In terms of responding to client communications, the *Guideline* recommends that lawyers respond in a timely fashion and in accordance with any time estimates agreed to with the client. In the event the lawyer is unable to respond to the client's contact in a timely fashion or within the time agreed upon, the *Guideline* suggests that:

- a) if the lawyer has support staff, the lawyer should instruct support staff to respond to the client's communication and indicate to the client *i)* that the lawyer is unable to respond personally to the client, *ii)* the reasons for the lawyer's inability to respond in a timely fashion, and *iii)* when the client may expect to communicate with the lawyer personally;
- b) if the lawyer does not have support staff, the lawyer should ensure that any firm notices or voice mail messages indicate to the caller when a response may be expected; and
- c) the lawyer should contact the client in accordance with the amended time estimate given.

If the lawyer is unable to promptly respond to voice mail or e-mail messages because the lawyer is out of the office for an extended period of time, the *Guideline* suggests that the lawyer ensure that his or her voice mail or e-mail contains a notification advising of his or her absence and when the lawyer is expected to return or respond to messages.

The *Guideline* recommends that lawyers consider implementing a firm policy that requires:

- a) a lawyer or support staff to respond to all client communications within twenty-four (24) hours;
- b) that all messages marked urgent be dealt with on a priority basis; and
- c) that all telephone attendances or conversations be documented or confirmed by way of written memo to the file.¹⁸

It is also suggested that the lawyer and/or paralegal be available to accept calls at frequent times during the day. In the alternative, specific times during the day can be blocked off to manage telephone communications, to return calls or to be accessible for incoming callers.

Confirmation of Changes to Essential Terms of the Engagement

The *Guideline* recommends that lawyers consider confirming in writing any changes to the essential terms of the engagement. In particular, the *Guideline* recommends that the following should be confirmed in writing:

- a) changes in the client's instructions;
- b) changes in the risks or benefits associated with the matter;
- c) acceptance or rejection by the client of any offers to settle; and
- d) changes to the client's address or other contact information.¹⁹

CONCLUSION

As can be seen from the above, establishing effective means for client communication is important to ensure that all essential facts and pieces of information and evidence are gathered accurately from the client and provided to the law firm in an effective and efficient manner. It is also important to ensure that information and advice is given to the client by the law firm in a clear, effective

¹⁸ *Practice Management Guidelines*, s. 2.16.

¹⁹ *Practice Management Guidelines*, s. 2.17.

and efficient manner. Effective client communication ensures that expectations are properly managed and met on both sides of the table and that the client is ultimately satisfied with the legal services provided by the lawyer, paralegal, law clerk and staff.