



Communication: Courts and Clients

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Practice Advisor Webinar Series Part 2
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Introduction

An extremely important aspect of what we do as lawyers is communicate; whether it is oral or written communication and whether it is communication with the Courts, with clients or with other lawyers.

Courts and Administrative Tribunals

The place to begin when deciding to present a client's case to a judicial or quasi judicial body is to review the official Rules of that particular body to see the Rules that must be followed to present your case. The Rules of that particular body, whether it be one of the Courts or any other of the number of administrative tribunals, are the basis of how and within what time frames lawyers must communicate with those bodies. These Rules dictate the formal pleadings that must be used to properly frame the client's case and also dictate the times within which documents and notices must be served and filed.

It is also important to note that once the official Rules have been reviewed, there may be other directions which will assist with matters not in the rules or which clarify some of the more general rules. For example in the Court of Queen's Bench from time to time the Court issues both Practice Directives and Administrative Notices which may be of assistance to practitioners in a broad variety of areas, but more specifically for our purposes in the area of communication with the Court.

The Chief Justice of the Court of Queen's Bench issued an Administrative Notice on the 20th of June, 2013, entitled: Correspondence Addressed to Judges Related to Proceedings Before the Court and Filing Letters and Documents in a Proceeding. This Administrative Notice deals with specific circumstances, however, it begins with the basic rule "...that it is not appropriate to correspondence or attempt to correspond directly with a Judge that relates to a proceeding before the Court." All communication should be directed to or through the Local Registrar unless a judge specifically orders otherwise. To review Administrative Notices or Practice Directives one should review the Courts of Saskatchewan website at <http://sasklawcourts.ca>.

Clients

The Code of Professional Conduct adopted by the Law Society of Saskatchewan effective July 1, 2012 (hereinafter referred to as the "Code"), in Chapter 2 speaks to a lawyer's obligation with regard to communication with his or her clients.

In Chapter 2 of the Code, Rule 2.01(1) defines a competent lawyer as follows:

"... a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including: ...

(d) Communicating at all relevant stages of matter in a timely and effective manner;"

The Code provides, therefore, that an element of competence is the effective and timely communication by the lawyer to the client. This element of communication is also listed in Chapter 2.02(1) entitled “Quality of Service.” This Chapter sets out practices which are expected to fulfill the obligation to provide a high quality of service.

In the Commentary under Rule 2.02(1), the following are some of the “expected practices” by which the quality of service is measured:

- (a) Keeping a client reasonably informed;
- (b) Answering reasonable requests from a client for information;
- (c) Responding to client’s telephone call;
- (d) Keeping appointments with client, or providing a timely explanation or apology when unable to keep such an appointment;
- (e) Taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;
- (f) Making a prompt and complete report when the work is finished or if a final report cannot be made, providing an interim report when one might reasonably be expected;

Chapter 2.02(2) deals with what information must be provided to the client. It specifically reads:

“...a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.”

When communicating with clients, it is important to remember that all clients are not created equal and the obligation remains on the lawyer to communicate in an “effective manner”. This means the obligation remains on the lawyer to communicate in a way that the client understands regardless of language, culture or disability.

Chapter 2.02(9) deals with the circumstances of a client with diminished capacity. It reads as follows:

“When a client’s ability to make decisions is impaired because of minority or mental disability, or for some other reason, the lawyer must, as far as reasonably possible, maintain a normal lawyer and client relationship.”

Maintaining a normal client relationship means that the lawyer is responsible to act in a competent manner and provide the quality of legal service that is expected of lawyers in all circumstances (see above). This means that the obligations to communicate and keep the client informed and take instructions from the client all still exist, but the lawyer is under the added obligation of ensuring that the client is as fully informed as any other client in any other circumstance.

An area which is fraught with conflict between a lawyer and the client is the area of fees. Chapter 2.06(1) reads:

“A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion.”

The Commentary under this particular Chapter reads as follows:

“A lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest, as is reasonable and practical in the circumstances including the basis on which fees will be determined.”

In conclusion, it is important to note that communicating with one's client is not merely a public relations matter. A lawyer's obligation to practice in a competent manner is determined in part by that of communication. Knowing this, it is important for a lawyer to deal at the very outset of the solicitor/client relationship with how communications will be dealt with for the duration of the file. The circumstances of each case will dictate in many ways how that will be handled, but the important part is that it *must* be handled. The lawyer and client should both walk away from the initial interview with as much information as necessary to fulfill the lawyer's obligation and to make the lawyer feel comfortable that those obligations can be met throughout the file. If one looks at the new CLIA Loss Prevention Bulletin Issue No. 57, Bulletin #215, entitled 'Back to Basics: Competence in Communication'; this article is a good reference and is worth reviewing.

It is important to remember that clients have a right to receive ongoing communication during the course of the file. It is also important to know that clients expect to receive communication. There is no such thing as too much communication from the lawyer to a client and even often more importantly, when that communication is bad news, it is essential that the lawyer provide that information to their client.

As practice advisors we see complaints that often contain some element of a lack of communication from the lawyer. In my experience, I have never seen a complaint that the lawyer communicated too much even when it was not necessarily news the client wanted to hear.