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A A R E B C

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■ Bulletin # 215 Back to Basics: Competence in Communications

Communication-based claims against lawyers remain remarkably common despite the increased ease of communication with clients using modern media. For this reason, it is imperative that lawyers not forget to comply with the basic rules of communication.

Strong and effective communications between lawyers and their clients are an essential component of the lawyer-client relationship. Some of the issues that might be flagged as problematic in a communications based claim include:

- Failing to obtain and follow a client's instructions;
- Failing to keep a client informed of progress, or lack of progress in complying with instructions
- Failing to advise a client of all settlement offers
- Confusion as to the scope of the retainer
- Misdirected communications
- Misunderstandings as to legal advice provided

Not surprisingly, the recently developed National Entry-Level Competency Profile for Lawyers and Quebec Notaries (the "National Competency Profile") produced by the Federation of Law Societies includes a number of communication-related skills among the wide range of competencies all new lawyers must possess on entry to the Bar.

For example, the National Competency Profile requires that applicants must demonstrate competency in oral and written communication skills including:

- Identifying the purpose of the proposed communication
- Using correct grammar and spelling
- Using language suitable to the purpose of the communication and the intended audience
- Eliciting information from clients and others
- Explaining the law in language appropriate to audience
- Obtaining instructions
- Effectively formulating and presenting well-reasoned and accurate legal argument, analysis, advice or submissions

It seems safe to assume that competency in those same skills would be required of

lawyers already called to the Bar, at the same standard if not higher. Yet, as claim statistics bear out, many lawyers continue to struggle in the area of effective client communications. Law society complaints statistics would bear this out.

Challenges in communications are not limited to those between lawyers and their clients; issues can also arise in communications between counsel, and in communications with third parties, including witnesses, experts and service providers. Effectively communicating in the course of a legal practice is essential to avoid claims and complaints, no matter the medium of communication or the person with whom you are communicating.

Whether you're using the telephone, meeting face to face, corresponding by letter or email, following these ten simple tips will go far to enhance communications with your clients, your colleagues and others you connect with in the course of your practice:

1. Return phone calls and respond to voicemail messages within a reasonable time period. If you or your firm has an established practice in this regard, adhere to it rigorously.
2. Reply (but not Reply All) to email requests, even if only to acknowledge you're working on whatever is the subject of the request.
3. If you need some time or must first obtain instructions, provide a courteous follow-up to that effect and fix a date by which you'll respond fully.
4. Keep your client informed – about what is or is not happening on a file.
5. Speak your client's language, not the language of law – legalese confounds and confuses. Use language appropriate to your client's literacy and competency, not your own.
6. Ensure your communications are clear and to the point (see Bulletin #196). Don't obfuscate.
7. Use retainer or engagement letters (see Bulletins #173 and #200) to inform your client about communication standards and practices and then adhere to those standards.
8. Don't forget to pick up the phone and call when it is appropriate to do so.
9. Use in-person and onsite meetings to make real human connections. Don't rely wholly on electronic communication tools and recognize that in some circumstances, in-person contact is necessary.

10. Check, check & check again: spelling, grammar, address and terms of address should all be reviewed and edited before sending out written communications, whether paper or electronic.

■ Bulletin # 216

When Work & Life Collide

One of my go-to blogs on the topic of lawyers and their clients is *What About Clients?* by Dan Hull, et al., of U.S. firm Hull McGuire. The blog frequently includes posts on the modern obsession with work-life balance and asks hard questions about whether this is at all feasible for lawyers properly focused on meeting and serving the needs of their clients. For example, in *Wanted: One Hunting Dog*, Hull wrote:

Life and Work do cruelly collide. You are sick. You are exhausted. Depressed. Your wife just left you. You were in a bad car accident two weeks ago. A close friend suddenly dies. Your boyfriend just confessed that he's been cheating on you. Your husband loses his job....

These things will be part of anyone's--everyone's--life at work. And for a professional, and those key people who assist them, you can't call in and say "sorry, just too much life today--I can't make it".

The unexpected, the jarring, the tragic or the just plain annoying happens to you. This is part of the "terrain" of being a professional. No unemployed pseudo-consultant, or W-L balance proponent, can look you in the eye and tell you that, at those times, you can ever separate Work from Life....

But know this: On those very same days, you will have a deadline, an appearance in court, a deal, or a promise to keep. And the only prayer a good client may have is you. You are it.

Balancing professional and personal obligations is at the core of most work-life balance discussions. As a working mother, these are issues I think about frequently, but for me as for many lawyers, the questions move beyond balancing obligations and into prioritizing competing passions. When you love what you do, whether at home, at the office or in the community, it is easy to do a lot of it and sometimes the question becomes what most requires your attention at any given moment.

None of us is equipped to work 24/7 year-round; there must be times of rest and opportunities to shift focus. But being a good lawyer requires serving our clients according to their needs and always with an eye to exceeding the minimum requirements of our professional obligations. Law is a service profession, after all.

In *Embrace Work-Life Imbalance*, author Tomas Chamorro-Premuzic illustrates this point as follows:

If you are lucky enough to have a career — as opposed to a job — then you should embrace the work-life imbalance. A career provides a higher sense of purpose; a job provides an income. A job pays for what you do; a career pays for what you love. If you are always counting the number of hours you work (e.g., in a day, week, or month) you probably have a job rather than a career. Conversely, the more elusive the boundaries between your work and life, the more successful you probably are in both. A true career isn't a 9-5 endeavor. If you are having fun working, you will almost certainly keep working. Your career success depends on eliminating the division between work and play. Who cares about work-life balance when you can have work-life fusion?

Work-life fusion is perhaps more achievable for professionals than the ever-elusive target of work-life balance. If work and life are not viewed as mutually exclusive, the questions shift from how and when to do both to finding ways to fully engage in whatever you're doing to the best of your ability. Full engagement becomes the goal and is what sets you apart, whether in your role as a parent, a volunteer or a professional.

When you are fully engaged and committed to your cause, work doesn't seem like "work" and the reward of satisfaction in a job well done is within reach. Clients are also more likely satisfied, as lawyers who are fully engaged in their work are best able to meet and serve their clients' needs.

The challenge for some, however, is in achieving that level of engagement, whether due to personal circumstances, a workplace situation that may not be a good fit, or other factors.

It is important to remember there are numerous resources available to lawyers who are struggling to balance their professional and personal responsibilities and obligations, including resources available through law societies, the Legal Professional Assistance Conference (www.lpac.ca) and as referenced in earlier issues of the Loss Prevention Bulletin:

- Fall 2012: #212, Lawyers Are Vulnerable Too
- Fall 2010: #199, Helping Lawyers Cope

Sources:

Wanted: One Hunting Dog, What About Clients?, June 15, 2009 (accessed June 3, 2013 at: http://www.whataboutclients.com/archives/2009/06/wanted_one_hunt.html)

Embrace Work-Life Imbalance, Harvard Business Review Blog, February 12, 2013 (accessed June 3, 2013 at http://blogs.hbr.org/cs/2013/02/embrace_work-life_imbalan.html)