

The Buck Stops Here: Setting Expectations Through Effective Communication

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INTRODUCTION

Effective communication is a critical component of any client engagement. It allows practitioners to set clear expectations with clients, to outline strategy for cases and to ensure the overall success of working relationships. While the advantages are obvious, are you and your team able to identify the signs of ineffective communication and how it impacts your work and your business? Poor communication can translate into spending valuable time on the phone with clients or waging never-ending email discussions in which you may even find yourself answering the same questions over and over. Ineffective communication leads to frustration for client and lawyer; reduced overall client satisfaction (which can lead to future business loss); and utilization of resources that would otherwise be used for productive work and can lead to missing important deadlines and benchmarks. The solution to this common problem? Creating and implementing an effective communication policy that ensures streamlined communication, sets clear boundaries while giving clients the space to ask questions and raise concerns, and ultimately reduces stress and frustration levels for both you, your staff, and your

clients. In this article we will explore simple and modern ways to engage with clients and creating a cohesive communication strategy, regardless of your practice's size and resources.

HOW TO COMMUNICATE BETTER, GENERALLY

Ever hear the saying why use two words when you can use 20? Often lawyers share too much in-depth information and over communicate with clients. This can cause confusion and result in follow-up questions that require further communication, time, and effort to resolve a client concern. Legalese is better left to litigation lawyers, as immigration lawyers we need to keep things simple and practical and think about the overall user experience. So how do you communicate better?

The first consideration is to **communicate clearly**, a concept which involves several key elements. To start, be clear, direct, and concise. Furthermore, ensure the important points you are trying to convey are contained at the top of each communication. This simple act captures the reader's attention by placing information, quite literally, front and center, which is especially important in today's world where people are bombarded with information. Never make your clients search for important information by burying your main points deep in a paragraph, by which time, many will have lost interest before reaching the crux of the matter you are bringing to their attention.

Furthermore, **communicate honestly**. If a client's case is going to take a lot of time or has a low chance of success, honest communications help avoid timely confrontation and confusion on the back end. Furthermore, if you make a mistake, put up your hand and explain how you will fix it. This simple act has the powerful effect of demonstrating one's integrity and showing that one is committed to doing the right thing even under uncomfortable circumstances. At the end of the day, honesty is a key component in building relationships, and a necessary act to begin the work of repairing damage to a client's interests. Honest communication also ensures that your reputation as a reliable practitioner remains intact.

Additionally, as we all learned in law school, **avoid legal jargon**. While legal jargon may be required for some legal documents and agreements, such terminology is almost always best avoided when communicating with clients. Laypersons simply do not understand and find it difficult to follow legal jargon, hence why attorneys are hired. Avoiding legal jargon allows your message to be readily understood and reduces the possibility of misinterpretation, and, consequently, the need to have clarifying conversations.

Another key component to effective communication is **active listening**. Active listening allows you to fully understand your client, contextualize your clients' needs, and respond to their requests more efficiently by asking pertinent questions and/or refining your answers. Hearing and understanding what is being said and what is **not** being said, allows practitioners to understand what a client's end-goal is- even if it is not fully communicated at that particular moment. When we listen actively to clients, we are able to create comprehensive strategies for individual and corporate clients that benefit them in the long term. The best solution for the immediate problem may not necessarily be the most effective solution for the client's "bigger picture." Actively listening also demonstrates to your client that you are truly their most zealous advocate and that you have their best interests at heart.

Relatedly, effective communication strategies, all which are aimed at fostering trust, are crucial for **relationship building**. It fosters a deeper, mutual understanding and respect for both lawyer and client's time and resources.

Last, but certainly not least, effective communication requires **updating your clients regularly**. This demonstrates your commitment to your client, and consequently, reduces frustration, anxiety, and future conflicts. Even when there is no update to report, simply saying to the client “there is no update at this time” shows the client you did not forget their case which will inevitably create a more positive and successful working relationship with your client. Every client should feel that their matter is important to you, regardless of how complex or simple the matter is.

HOW TO CREATE AN EFFECTIVE COMMUNICATIONS POLICY

A written communications policy contains several elements, with many components that should be meticulously considered.

To start, the written communications policy should clearly articulate its “*raison d’etre*” - its reason for existing. Inherently, the reason will vary from practice to practice, but it could generally be stated that such policies help organizations achieve their objectives more effectively by spending less time on client interface/administration and more on what it has been hired to do: legal work. To this end, the written communications policy should identify its scope, and more specifically, what sorts of communications are being covered under the policy – e-mail communications, website communications, internal communications, social media, and/or other external communications.

Of course, there are other important practice-specific particulars that should receive very detailed attention. Here are at least a few examples of the types of particulars that your policy may want to include:

- **Roles and responsibilities:** Delineating who has to respond to what helps avoid internal confusion and time expenditure figuring out who is responsible. For example, who in the organization is responsible for responding to client questions related to billing? Depending on the size and structure of the law firm, this answer will vary, some law firms having a dedicated billing department, others delegating these tasks to associates, paralegals, and legal administrators. Furthermore, who is the primary point of contact for a client account? Many law firms have an internal chart delineating client “ownership”, with dedicated lines of escalation when client relations sour. Moreover, what is the communications protocol in place for when an attorney discovers an ethical, conflict, or compliance issue? Who is the point of escalation? Should the attorney dealing with the matter respond themselves, involve a more senior associate or Partner, or even ethics counsel? These responsibilities, and more, should be adequately detailed and presented to the client in a simple “who to go for what” format.
- **What does it mean to communicate in a timely manner?** The answer is hyper-specific to the law firm, field of practice and communication type. Whereas many law firms have a Standard Service Agreement (SLA) of 24-hour response time policy, there is no “one-size-fits-all” solution. Further, if a client receives a notice of request for evidence or audit, is there a pre-agreed timeline in place as to when a document checklist will be out to the client, when a first draft of the response will be ready, when the final response will be ready? Clarity in these fields is key, as it will help you manage relationships, expectations, and time more effectively.

- **In Person Meetings.** The client should be made aware of the firm’s policy on in person meetings. Does the firm meet with clients in person or only virtually? If in person meetings are allowed, how does the client request such a meeting? Does the firm ever allow unscheduled walk-ins, even if not to meet with the attorney or staff (e.g., to pick up their approvals or documents)? If so, during what hours or operation? The policy should consider the firm’s culture and work schedule (whether in person, hybrid or virtual) and make sure clients are aware of when they are and are not able to come in person.
- **Document Submission.** It is also important to clearly communicate how the firm expects the client to submit documents and information. Can clients mail or drop off documents? Will the firm accept documents in any form, or does it prefer or require that documents be submitted electronically via a preferred Case Management System (CMS)? While it may be hard to stop certain clients from sending you dozens of e-mails containing individual scans, having a policy and clearly communicating your preferences up front may at least minimize the number of submissions received outside of your preferred method.
- **Off Hour Communications.** Setting boundaries with respect to off-hour communications is extremely important, for several reasons, not the least of which includes avoiding employee burnout, dissatisfaction, and non-retention. Further, it helps employers avoid legal issues, such as wage and hour violations. Importantly, it helps everyone, including clients, be more productive during the hours that firm employees are operating. With this in mind, are there client-based or employee-based exceptions to communicating outside of normal business hours? Is there a firm contact person for emergencies outside of regular business hours? Who is allowed to respond to e-mails on the weekends, and what matters rise to the level of “urgency” that requires a response on weekends or nights? In addition, it is critical that both the client and the lawyer are aware of the time zone of the individual with whom they are communicating. As global remote work becomes increasingly common, an individual in Australia should not expect a same-day answer from someone in New York. These are all important parameters to consider in a written both an internal and external communications policy and protocol.
- **Email signatures and disclaimers.** Email disclaimers are works of art, adapted to every firm's particular practice, jurisdiction, and state bar rules. Further to the above, consider adding times of availability, with day and time zone information.
- Issues to be considered with respect to email signatures vary greatly, including, but not limited to confidentiality disclosures, privacy disclosures, bar admissions disclosures, limited liability disclosures, and/or a statement that a communication is or is not legal advice. To the extent possible, it is recommended that law firms consult with outside counsel to discuss the disclaimers, if any, that law firms owe to clients and non-clients alike, whether it be via e-mail, social media, or another communicative medium.
- **Who and how may individuals contact you?** Clearly explain to your clients how you expect to communicate with them. For example, who may contact you via e-mail or phone, and who must go through your firm’s case management tool? Furthermore, who is authorized to contact your law firm directly? If a client, for example, is a corporation with thousands of employees, which employees may contact you directly and which must get authorization from in-house counsel, human resources, and/or senior leadership? This issue, of course, relates closely to another: setting clear expectations of what communications and/or which individuals are protected by attorney-client privilege, and

which are not. If, for example, you represent a corporate client, it is important that at all understand that you represent the corporate entity and that some category of communications made to you may not be protected from revelation. It is critical that attorneys consult the ethics board and general counsel to ensure that matters of dual representation are thoroughly vetted and documented.

- **Texting policy.** In a smart phone world, lawyers and other legal professionals are increasingly texting with clients. But what are the limits? For example, many messaging applications do not offer encrypted messaging, meaning that client communications to you may be less protected than they anticipate. Does your bar and/or in-house policy mandate that encrypted messaging be used? If not, what disclosures, if any, are due to the client? Furthermore, even if no additional encryption or disclosures are required, should firm employees be limited from disclosing certain information via text and/or using their personal phone numbers? What about inadvertent disclosures through cloud applications (e.g., message is sent to an iPhone that also appears on an iPad linked to the same account)? Protecting your law firm from this ethical and cybersecurity minefield is key, and thus, requires a well-defined texting policy. When in doubt, it is best to prohibit all text communication, especially on devices that are not issued by your firm's IT department.
- **Billable communications.** It goes without saying that clients should, at all times, be aware of what communications are billable, and those which they are not. Defining scope and instead watching out for scope creep is vital. If the matter looks like it is going to go beyond scope (if fixed fee arrangement) it's important to tell the client upfront and they approve the additional charges. Furthermore, how much does time at your law firm cost (e.g., managing partner, junior partner, senior associate, associate, law clerk, etc.)? Even if you are fixed fee, it's important to place a value on time. So, you know how much a service costs you to deliver. There is nothing worse than receiving a call from a client that they are frustrated with their bill, placing the firm in an awkward and confrontational position with their client. Defining billing parameters ensures transparency, efficiency, and promotes client trust. Providing context on why something is anticipated to take a certain amount of time, tends to help with the messaging on fees as it again attaches value to the end service.
- **Disseminating the communication policy.** Prudent firms will disseminate their communication policies to clients, which sets clear expectations from both sides at the onset of the representation. Well prepared engagement letters should outline the process for what occurs when there is a breakdown in communication, and how a client can escalate a grievance. For example, who are the client's point of contacts at the firm when, for example, an associate has forgotten to set their out of office reminder? What happens if the firm fails to deliver on a pre-agreed timeline? Also, what if the client fails to timely and adequately communicate with the firm – has the firm protected itself by including a clause that would allow it to disengage in these circumstances? The client should be aware of what the attorney expects from them and vice versa. This is the only way to ensure that there are no “surprises” when an escalation arises.
- **End of service policy.** When the firm has concluded a matter, it should consider what communications, if any, are required to inform the client that future communications are out of scope and that representation has ended. Many firms adopt a standard format, whereas others tailor this sort of message on an ad hoc basis. Again, ethical obligations require that an attorney outlines when they are no longer representing a client, and a client should know when the relationship has clearly ended.

The present does not profess to propose an exhaustive rendition of the conditions and terms that should be included in a written communications policy. At a minimum, the above represent at least some of the considerations a firm should consider in crafting their own policy. More broadly, however, the above highlights the importance of adopting a uniform communications architecture, rigid enough so that clients understand how the firm and client will carry forth the representation. While flexibility, adaptability and commercial awareness are key to maintaining client relations, once a policy is in place, the firm should adhere to its policy to avoid client confusion. Deviations from the policy, of course, should be memorialized and communicated as soon as possible to optimize both sides' experiences, and practitioners should be open to adjusting communications to meet individual client's most urgent needs.

MAKE FRIENDS WITH TECHNOLOGY

The lawyer of tomorrow must ensure that they keep up with the latest technology advances. Long gone are the days where large paper files could be kept in never ending alphabetized archives. Law firms, no matter how small, must have an IT department – either in house or outsourced – to support modernization and streamlining of record keeping and digital files organization. One of the many lessons of the COVID-19 pandemic was that the legal industry's traditional resistance to technology had to be eradicated to ensure survival. When the world shut down, practitioners had to be nimble and adapt – ensuring that the lawyers, paralegals, and all support staff could have access to files to move work forward while working remotely. Technology is absolutely critical and must be embraced by any practitioner who wants to grow their practice and continue to be relevant in the market. Governments are also responding to these changes, albeit some at different speeds.

One of the most wonderful advances of modern technology for today's lawyers is automation. Creation of templates or outlook "traffic lights" for most common communications (e.g., intro emails, fact gathering emails, etc.) allows for communication to be streamlined and for valuable hours of staff to be saved by not having to "reinvent" the wheel. If you have the capacity, either create an operations person/team that can assist with automating straightforward standard communications, or hire consultancy IT services that can assist with integrating standard communications to your Case Management System (CMS) such as INSZoom, Lawlogix, etc.

Embracing your CMS using it to its full capacity allows for automation of communication, case tracking, reporting and implementation of changes. Certain case management system software even affords your client a "client view" where they can independently track case progress, see what documents have been drafted, provide signatures electronically. Updating milestones and benchmarks as the case progresses is critical as it reduces the client's need to email or call the attorney to ask for case status update. It is also critical that you ensure that your Case Management System grows with your practice and continues to serve your clients' needs. Case Management Systems must also maintain the highest standards of security and data privacy.

Law firms and individual practitioners can also greatly benefit from the integration and adaptation of bots and Artificial Intelligence (AI). These tools, when properly utilized, can save lawyer and staff time by answering common questions and providing clients with general guidance. Attorneys must ensure, however, that they abide by ethical obligations and that these tools **do not substitute** sound legal advice. Practitioners need to remember that they may be legally and ethically liable for anything that is said by their bots or AI assistance.

Automation also applies to marketing and large mailers. Client alerts and mailers can serve to provide large updates on legal or procedural changes that affect an area of practice / law. Rather than sending an individual email to each client, law firms and practitioners can easily create a mailing list for these kinds of updates. This is also a great marketing tool as it allows prospective clients to see that you are an expert in your field, and you are able to respond and react swiftly to changes in your area of practice. Along with this, however, it is critical that lawyers ensure that all client contact information is up to date, and that all mass communications comply with data retention and data privacy policies and regulations. It goes without saying that clients should **never have access** to the personal information and e-mail addresses of other clients.

Last and certainly not least, the issue of “out of office” or “automated replies” can be used beyond the traditional “I am out of the office at this time” message. During particularly busy times (think a tax lawyer in early April), you can set automated replies so that clients are aware that you are not responding within the “normal” time frame. Be careful with the wording of your automated messages so that you do not set unrealistic expectations for yourself that cannot be met.

LEGAL TRIAGE AND MANAGING COMMUNICATIONS

Any effective communication strategy requires delegation, prioritizing, and time management. If you will not be able to timely and thoroughly respond to a legal question, you must ensure that your client is aware that you received their communication, that you are working on it, and provide them with a realistic and palatable deadline for when you will provide them with a full answer. If you need more time, rather than hoping the client didn’t notice (I promise you they did), ask for more time. Ensure that you prioritize communications and that staff is aware of what issues require immediate attention, and which can wait longer. Delegating communication that does not include legal advice to support staff can save valuable lawyer hours. That “who to contact for what” sheet comes in handy- clients should be introduced to other team members who can facilitate communication. You can still own the client relationship but do not need to be the **only** person communicating with the client.

In addition, and as noted previously, every effective communication strategy requires setting boundaries from the outset. Clients should be aware of and approve the strategy through which you will try to solve their legal problem. It is critical that all phone conversations outlining plans are memorialized in writing that can be referred to down the line – both by your team and the client. Timelines should be outlined, and setbacks must be communicated to clients timely. Along with setting boundaries, it is the responsibility of the lawyer to manage excessive communication with the client. Excessive communication can lead to frustration, confusion, and delays in producing work. Clients should be aware of when communications are out of scope or when they are about to incur additional fees. As a general rule, after three (3) emails, it is probably best to set up a call to speak live on the matter as the client may not be understanding what you are trying to communicate. A 20-minute conversation can potentially save you hours of emailing, and once again, puts the client’s needs front and center.

Lastly, it goes without saying, it is critical that you **know your area of law inside out**. Remember that clients are placing their trust (and resources) in you, and it is your responsibility to ensure that you are able to answer all client questions in a concise, timely and accurate manner. Use technology to your advantage and make sure that you have the tools at your disposal that allow you to communicate with your clients as quickly and efficiently as possible.

Be sure to attend regular Continuing Professional Development classes to ensure that your legal and soft skills remain up to date. The world is changing- faster than ever before – and your clients are looking to you for guidance and expertise.

CONCLUSION

The world has changed around us not only for our staff but for our clients, so being relevant is vital. Today the user experience is just as important as the legal advice. Quite simply, within a quite complex environment less can often be more, since information and advice need to be clear and concise. Using technology and more efficient ways of operating, is not only worth considering from a user experience perspective and adapting to the demands of the Z generation, but also helps to increase margins and reducing administrative burdens on the teams, so the lawyers can concentrate on the lawyering.

Communication, communication, communication...defining clear policy so that junior staff understand their roles and that client's expectations are set from the outset. Requesting client feedback can help shape policies and keep them fresh. The primary take away is being proactive, so that clients feel that the relationship is a partnership rather than a transaction.

ADDITIONAL RESOURCES

- <https://www.linkedin.com/pulse/why-client-expectation-management-important-how-achieve-palani/>
- <https://www.creativeboom.com/tips/how-to-manage-client-expectations/>