

Communicating with the Clients

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COMMUNICATING WITH CLIENTS

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UNDERSTANDING YOUR CLIENTS' BUSINESS OBJECTIVES AND OPERATIONS

1. Obtaining Instructions - First Meeting

- The first meeting with a client is important because it will allow you to form the basis of your future relationship.
- A solicitor should come prepared for the meeting (i.e. business cards, pen, note pad etc.).
- Clear and concise notes should be taken.
- The client should be made aware if more than one solicitor will be working on the matter and if so, why more than one person will be involved on the transaction.
- All relevant personal information from the client (i.e. phone and fax numbers, address and email address) should be obtained.
- Confirm the client's preferred method of communication - there's no point in sending urgent emails if your client doesn't check emails on a regular basis.
- Find out if there are any other parties involved in the transaction and what their role is. It is important to establish where instructions will be coming from (i.e. are there any other directors/partners who will be providing instructions).
- Begin by asking the client to provide you with a general overview of the matter and what it is that they hope to achieve. It is important for you to have a clear idea of what your client wants so that you can manage their expectations.
- Once you have a general understanding of the transaction, ask the client any questions to clear up any issues that need clarification. You should control the

conversation and make sure that it's kept on point, but at the same time, also ensure that your client is given a proper opportunity to explain their issue.

- When you have all the relevant information, consider whether you have the ability or capacity required to carry it out. Try to consider the matter objectively based on your skill set and areas of expertise and if you feel the matter is beyond your capabilities, refer them to a solicitor you consider more appropriate for their matter.
- If you determine that you have the ability to assist your client, the next step is to provide the client with initial comments setting out the range of outcomes from the matter and the consequences of those outcomes (including worst case scenarios). This should be subsequently confirmed in writing. For example, in a situation where your client owes a disputed amount to a creditor, you might advise them that they may be able to negotiate a settlement amount but that if they are taken to court, they may end up paying the full amount of the claim plus costs. It is also important to let your client know how long the matter may take to resolve.
- If there are issues which you wish to think about further before providing advice, advise the client that you will consider the issues and will confirm your view in writing.
- Consider how you can help and how much is achievable (or likely to be achievable).
- Consider whether you should be involving / briefing other professionals i.e. barristers, architects, builders or town planners.
- At the conclusion of the meeting, make sure the client is aware of what the next step in the process is going to be and what will be required from them.
- You should provide your client with an estimate of the costs involved in the matter. Make sure that the client knows how the work will be charged (i.e. at an hourly rate or as a fixed fee for the transaction).

2. Initial correspondence to client

The initial correspondence subsequent to the first meeting should address the following items:

- The client should be sent a cost agreement letter, which contains an estimate of the costs. They should be asked to sign the letter and return it to your office. If there is likely to be an issue with the costs, it is better that the issue is addressed earlier before you spend considerable time on a file.
- The brief of instructions should be confirmed in writing. This includes identifying the instructions given, the questions to be answered and any exclusions / issues which you are not advising on. This is important for several reasons:
 - Although you may be focussed on the particular matter at the time, once you go back to your office and deal with other matters, the information may be forgotten.
 - If another lawyer (who was not at the initial meeting) works on the file it can be difficult for them to get the full picture from subsequent correspondence and formal documents - notes from the initial meeting and subsequent meetings / phone calls are often the source of important information and generally give context to the matter.
 - Risk management - If there is a claim by the client, detailed file notes and the initial correspondence, which confirms the instructions provided may become vital in evidencing what was said. This may include qualifications you may have made, advice given, warnings and the information the client gave you at the time.

3. Business Operations

- Consider the nature of the business and the client's priorities to give you an idea of the context.
 - What kind of environment does the business operate in?
 - Who are the owners?
 - Are they litigious or commercial?
 - How long has the business been operating?
 - Have they been involved in litigation previously?
- It is important to understand the nature of the business so as to assess the role that your services will play.
- Understanding the business operations and nature of a business is important when determining the approach to be taken. Some factors to consider are:
 - How much bargaining power does the company have?
 - What strategy should be adopted? Consider the case of a claim against a major supplier or customer; a litigious approach may not be appropriate if the client wishes to preserve a relationship.
 - Privacy / confidentiality concerns - The client may prefer that the matter be kept confidential with minimal disturbance to the business - e.g. arranging a settlement rather than litigating or involving authorities.
 - What is the value of the transaction or claim? You should ensure that the client is aware that you will not be spending as much time on say a \$20,000 claim as you would on a \$1,000,000 claim. It is important to point out to clients that in some cases, the costs to run the matter may be more expensive than the claim itself.

Consider whether the business requires the type of services you've been asked to provide – for example, a seasoned property developer will be familiar with contracts for sale of land and town planning issues and may be less reliant on your advice. A restaurant with a claim for food poisoning would presumably be much less familiar with the dispute resolution process and their options and would therefore need more comprehensive explanations and thorough advice.

- Small matters can be very important to clients. Don't underestimate the impact it can have on a client.

KEEPING CLIENTS UP TO DATE

- Make sure that at all times during the transaction, you keep the client up to date with how the matter is progressing.
- Deadlines should be recorded. You should also diarise a date before it is due or have a reminder sent well in advance so the task is accomplished in time. This should also be communicated to the client so that they are aware of any deadlines they will be required to meet.
- Sometimes it is necessary to follow up a client – i.e. sometimes you ask the client for information and they may be slow in responding - it is important to diarise dates to follow up clients so your client is aware of what they need to do and also realises why you haven't proceeded to the next step.
- A client should be contacted before and after any crucial steps in a matter are taken. Confirmation must be sought before undertaking any steps in the matter - usually it will be necessary to send a draft of the document you wish to send/lodge.

CLEAR LINES OF COMMUNICATION

- It is important to remember that communication is a two way process. It is not only important to communicate your requirements to the client, but to listen to their concerns in return.
- If two solicitors are working on a matter make sure it is clear who will be contacting the client.
- When instructions have been varied, make sure to always communicate clearly with the client and confirm it in writing.
- Send progress bills.
- If you are briefing a third party and require money in trust, explain the process to the client and request that the funds be provided.
- When sending documents to a client, depending on the complexity of the document, an explanation of the document may be required (which may have to be adjusted according to your client's ability to understand legal documents).
- Use plain English in all correspondence. Avoid legal jargon. There is no point in writing to a client with an explanation of the situation if they do not understand what you have written.
- Once you've taken a critical step, notify the client – i.e. sent a contract to be signed by the other side or issued proceedings.
- Ensure that you notify the client when a response is received, what it says and your advice – in this way, you keep the matter moving.
- If a matter is taking a long time, provide a progress report to keep the client informed.

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INTRODUCTION

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OVERVIEW

- ❖ Understanding your client's business objectives and operations
- ❖ Keeping clients up to date
- ❖ Clear lines of communication



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FIRST MEETING

- ❖ First Impressions
- ❖ Be prepared
- ❖ Take notes
- ❖ Contact information
- ❖ Preferred form of communication



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FIRST MEETING

- ❖ Parties involved in the transaction
- ❖ Does client have authority
 - i.e. husband instructs to sell wife's property
- ❖ Client to provide general overview
- ❖ Ask questions
 - Ensure client understands you
 - Example



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FIRST MEETING

- ❖ Managing expectations
- ❖ Look at body language
- ❖ Referrals
- ❖ Initial comments
- ❖ Costs



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INITIAL CORRESPONDENCE

- ❖ Cost agreement letter
 - Signed and returned
 - If you are going to have a fight about costs – have it earlier
- ❖ Brief of instructions
- ❖ Confirm in writing



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INITIAL CORRESPONDENCE

- ❖ Identify the instructions, questions to be answered and exclusions
 - Dealing with other matters / distractions
 - Another lawyers picks up file who was not at the meeting
 - Risk management



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Example

- ❖ Husband owns property. Wishes to transfer to wife. Requests advice on stamp duty.
- ❖ Husband & wife are both at meeting.
- ❖ No stamp duty payable and you are instructed to transfer property (which you do).
- ❖ Potential issues?



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BUSINESS OPERATIONS

- ❖ Nature of the business
 - ❖ Who are the owners?
 - ❖ Are they litigious or commercial?
 - ❖ What kind of environment does the business operate?
 - ❖ Have they been involved in litigation?



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Example

- ❖ Client tenant leases property. Lease is near completion. You negotiate a new lease for the client at the same premises.
- ❖ Agent for landlord offers a rental figure with no mention of GST. The rent is deemed to be “GST inclusive”. Tenant agrees to rent.
- ❖ HOA is signed. Before the lease is signed, Landlord’s solicitors insist on adding GST to rent.
- ❖ Client asks for advice – Legal vs commercial advice



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Example

- ❖ Client has paid \$80,000 deposit to developer for property.
- ❖ Mortgagee takes possession of property and client loses deposit.
- ❖ Client wishes to sue developer.
- ❖ Developer has “tainted” history and is litigious.
- ❖ Do you want to fight?
- ❖ Understanding the nature of the client will help you to make a decision



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BUSINESS OPERATIONS

- ❖ Confidentiality / Privacy
- ❖ Can you provide the required service?
- ❖ Value of transaction and time spent on matter
- ❖ Small matters are important.
 - Speeding ticket vs development



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KEEPING CLIENTS UP TO DATE

- ❖ Communicate regularly
- ❖ Provide progress reports
- ❖ Diarise reminders and deadlines
- ❖ Follow up



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CLEAR LINES OF COMMUNICATION

- ❖ Communication is a two way process.
- ❖ Provide advice
- ❖ Listen to client's concerns.



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COMMUNICATION EXAMPLE

- ❖ Client rings you twice whilst in meeting
- ❖ You ring back and leave a message
- ❖ He rings again and leaves another message
- ❖ When you finally speak, he abuses you about “not being available”.
- ❖ How do you respond?



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COMMUNICATION EXAMPLE

- ❖ The wrong approach
 - You are not so easy to catch either. I rang you back twice and you were not available.
 - I had some very big and important urgent matters which I had to address.



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COMMUNICATION EXAMPLE

- ❖ The better approach
 - I am sorry you couldn't get hold of me
 - I am available now
 - If you can't get through to me, please also feel to discuss with my associate
 - Let's put in place a procedure to address this issue.



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CLEAR LINES OF COMMUNICATION

- ❖ Be clear about the contact person
- ❖ Confirm varied instructions in writing.
- ❖ Send progress bills
- ❖ Use plain English / no legal jargon



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PLAIN ENGLISH EXAMPLE

- ❖ I hereby give and convey to you all and singular, my estate and interest, rights, claim, title in and to the said round orange coloured fruit to be referred to as “the orange” together with all rights to its rind, juice, pulp and seeds.....
- ❖ I give you this orange.



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THANK YOU -