MANAGE TO COMMUNICATE

The key to any good relationship is good communication but this requires good management – especially in law firms.

In last month's column ["Management is real work", November 2009 *LIJ*, page 73] we discussed one of four key objectives set out in the Legal Service Board's self-assessment audit for incorporated legal practices (ILPs).

This month we discuss the second objective that is relevant for all legal practices trying to minimise risks of a claim and create a successful law firm – effective, timely and courteous communication.

Communication is one of five underlying causes of claims that we code.

In the Legal Practitioners' Liability Committee experience, it is clients who have received poor communication from their lawyers, usually in relation to the question of costs, likely outcome and reasons for delay, who are more likely to sue their lawyers.

Conversely, the lawyers who have a good rapport with their clients, who keep them informed and manage their expectations are less likely to be sued if they make a mistake.

We see many claims and complaints to the Legal Services Commissioner where the client feels badly treated by the solicitor, often quoting the fact that phone calls were not returned or delays were never explained.

Keep the client informed

The first "key concept" for this area is "clients are always informed on the steps involved in their matter".

Depending on the type of practice you have, this may be the place for having pro forma brochures or letters to give to the client at the start of the matter which describe what steps are involved.

For many clients the legal process is foreign and giving clients a "road map" of where they are heading is a valuable thing to do.

The LIV has developed brochures for practitioners to give to their clients on different areas of law which may be of use or at least give you some ideas of what to do.

People are used to reading colourful pamphlets and they may look less daunting than a legal official-looking letter.

Ambit of the retainer

This may also be incorporated in the next concept which says "the ambit of the retainer is described precisely in writing to the client and includes a statement of what the practice will do and what the practice will not do".

This is where a checklist or protocol of what must be included in the initial letter sent to the client is needed.

Many claims we see involve a misunderstanding of what the scope of the lawyer's retainer is because it has not been properly articulated (assumptions on both sides are made), or it has not been properly documented or both.

Often the client just wants the lawyer to do the bare minimum in order to save costs. For example, the client asks the lawyer to just advise on the sale of business contract and says he will organise "everything else".

But when the business does not turn out to be the gold mine he expected and there is a problem with the planning permit, he then says he went to the lawyer to protect his interests and the lawyer should have told him about the planning problem.

The lawyer says he was never retained to advise on that issue.

Having a protocol requiring a clear description at the start of the matter about what the firm will do and what the client will do is essential risk management.

Your protocol should also say that the retainer needs to be restated where there is a variation to it.

Time frames and cost

The next key concept is "the likely time frame involved in each matter and the likely cost is disclosed in writing to each client".

Time and cost are the two things that clients are often the most concerned about.

Lay people generally have no idea how long a legal matter can take and while it is difficult even for lawyers to give precise estimates, it is essential that some idea of the time frame be given, with the rider that this could change. When it does change, clients should be updated.

The initial cost disclosure and retainer letter should include this advice. But it should also be on a checklist to be considered and, if necessary, addressed in each subsequent letter to the client.

Some firms have a computer system where they are alerted when the costs reach 75 per cent of the estimate for the matter, giving the lawyer time to review the progress of the matter and advise the client of the likely change in estimate.

Many claims we see involve a misunderstanding of what the scope of the lawyer's retainer is because it has not been properly articulated (assumptions on both sides are made), or it has not been properly documented or both.

Change in staff

The next key concept, "all staff likely to be involved in the matter are disclosed to the client", is an obvious matter to include in the initial costs letter.

Where firms often fall down is forgetting to tell the client when there is a change in personnel. Clients can suffer a crisis of confidence in the firm if they do not know who is handling their matter.

You need some way to track that changes in personnel are promptly communicated to clients. Is it part of your file handover policy?

Two more key concepts will be discussed in next month's article, along with the related objective of "timely delivery, review and follow up of legal services to avoid instances of delay". ●

This column is provided by the **LEGAL PRACTITIONERS' LIABILITY COMMITTEE**. For further information ph 9672 3800 or visit the website **www.lplc.com.au**.