

MANAGING THE “D-GRADE” CLIENT

Lawyers faced with badly behaving litigation clients need strategies to manage them.

In last month's column we described the “dissatisfied litigant” and how you need to manage them – and their often bad behaviour – very carefully if you decide to act for such clients.

Such clients can be identified by their “D-grade” characteristics. They:

- are Dissatisfied;
- are Desperate/Destitute;
- are in Dispute with their previous solicitors;
- have Deadlines looming;
- have Dubious or Difficult claims; and
- often have their matters Delegated by the firm to a junior lawyer.

Here are some ways they can be kept in check.

The retainer as a shield

At the most basic level, the retainer identifies the client and prescribes the services expected of the lawyer. The retainer should set out, in writing and in simple terms, what you have been retained to do and the basis on which you have agreed to act.

That could be limited in the first instance to obtaining the file from your predecessor, after which advice will be given as to the merits of the underlying matter. Retainers are contracts and, carefully drafted, can limit the possibility of dispute.

Where a solicitor is instructed by multiple parties the retainer agreement can anticipate and avoid or limit potential conflict, such as from whom instructions are to be provided, to whom the solicitor is to report and who is liable for costs and whether that liability is joint or several.

The issue of access to the documents in the event of dispute or after the retainer is terminated should also be addressed. Where a solicitor is acting jointly for two clients, their legal professional privilege is joint, so both clients must consent to its waiver.

These issues can be addressed in the terms of the retainer to avoid subsequent disputes over documents and your continued involvement in that dispute as a stakeholder. Where there is more than one client, ensure

that all clients sign and return a copy of the retainer agreement.

Lawyers advise, clients decide

Remember not to make yourself responsible for the client's predicament. You give them the options, the pros and cons of each, possibly a recommendation, but the client must decide. Your advice should be confirmed in writing, as should the client's decision.

Professional Conduct and Practice Rule 12.2 requires that a practitioner must assist their client to understand the issues in the case and the client's possible rights and obligations sufficiently so as to permit the client to give proper instructions.

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Communicate key issues

Key things to communicate with the client include any change in personnel at your firm that affects the client, evidence obtained that goes for or against their case and costs.

Some key issues like evidence and the progress of the case need to be communicated face to face. Do not underestimate the value of face-to-face communication at strategic times during the matter.

It is important to have a face-to-face meeting with the client in good time (up to several weeks) before a mediation. This gives clients enough time to fully consider the strengths and weaknesses of their case and what will be asked of them at the mediation, particularly where the evidence collected has not been as good as the client first anticipated.

A meeting immediately before the mediation starts does not allow enough time to manage a client's expectations, particularly a difficult client, if the issues have not been canvassed well beforehand.

Communicate about costs

Send accounts on a regular basis. An account can be a reality check, reminding the client that litigation is expensive and also that your firm is unable to fund the matter indefinitely.

Firms that have changed their billing practice from one bill at the end of the matter to regular monthly invoices (for the client's information and not necessarily to be paid at the time) have found that clients are less likely to complain about paying the bill at the end of the matter.

Keeping the client informed about how the costs are accumulating, what work is being done and the cause of any delay goes a long way to managing the client's expectations of what is involved in running the matter and the likely outcome.

Act decisively if the client does not pay

Where possible, obtain funds on account of disbursements well before trial. Failing to prepare for trial or to brief a barrister until the last minute because the client has not paid you will not, ultimately, go down well with the client, the Legal Services Commissioner or the courts when the litigated outcome is not what the client wanted or expected.

Set a time by which the funds have to be provided, after which you should stop acting and remove your firm from the court record. Ensure this is clearly articulated to the client well in advance.

Summary

Most lawyers will quickly sense which clients will be difficult or “D-grade” clients. Once you realise a client is going to be difficult you need to decide if you want to act “for this client, in this matter, at this time”.

If you decide to act, you need to then ensure you proactively manage the client to minimise the effect of their bad behaviour on everyone. ●

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