

# MANAGING FAMILY LAW CLIENTS

There are strategies for dealing with emotionally vulnerable clients.

Family law clients are invariably coping with a range of emotionally charged issues. This can sometimes lead to them being difficult to manage and, even if it is not so apparent, result in clients not comprehending advice they were given or not remembering the advice later. These clients may end up blaming their lawyer for an outcome they later regret. This category of claims has been the largest in family law in the last few years.

There are strategies for dealing with emotionally vulnerable clients, most important of which is to give the client both oral and written information and advice and allow time for the client to process the information. Taking a matter on just before trial means you are not likely to have the time necessary to prepare the matter and also prepare the client to accept the ultimate outcome.

## The last minute example

In one recent matter the client had used five law firms before the final law firm accepted the retainer just three weeks before trial. The lead up to trial was hectic with discovery work and time spent drafting trial affidavits as well as chasing the client for instructions. The client alleged she had made significant contributions to the purchase of the matrimonial property but did not produce any evidence to prove it. Settlement negotiations proceeded on the first day of trial after the judge indicated he was not happy with the parties' behaviour.

A proposal was reached that required the parties to sell the matrimonial home and split the proceeds 50/50. After the barrister discussed the proposal and read through the draft consent orders the client agreed to the proposal and the orders were made. After the deal was done the client was smiling and said she was happy to have the matter finalised and thanked the solicitor and barrister involved.

The client then delayed in signing the documentation to sell the property, supposedly waiting for the engrossed orders, despite advice from the practitioner that there was no basis for the delay and that it could constitute a breach of the orders. The practitioner sent an invoice for work done and the client asked for more details and asked the practitioner to do no more chargeable work. Shortly after that the client alleged she had been coerced into signing the consent orders that she didn't understand and that the law firm's charges were excessive.

## Red flags

This scenario has several red flags common in family law as well as general litigation claims:

- the client had been to multiple law firms
- there were only a few weeks before trial where significant work needed to be done
- the client believed a certain fact scenario but did not have the appropriate admissible evidence to back it up resulting in the client's expectations needing to be adjusted at the last minute
- settlement was negotiated under pressure during the trial.

## Lessons

There are no simple solutions to these scenarios but here are some things to consider.

Should you take on a client when the trial date is only a few weeks away? If faced with that question, ask the client how many law firms they have been to before and why they left. This may give you some indication about what sort of client and case you may be taking on. Consider the engagement habit questions: is this the right client, the right matter and the right time for you and your firm.

Before you take the client and the matter, make sure you have resources available to review the material and do the work necessary to understand and prepare the case as soon as possible. This will enable you to advise the client about the prospects of success and settlement strategies quickly, so the client has some time to readjust their expectations.

Confirm merits advice in writing, including analysis of risks, costs and cost consequences of the potential outcomes.

Try and give the client as much time as possible to decide on settlement offers so their ability to think clearly and remember what was said is not impaired from the "fight or flight" stress reaction. This is not always possible and if you are in a situation, such as the above example, of settlement negotiations during trial consider the following strategies:

- explain to the client the offer and consequences of accepting and not accepting it, including the costs they have incurred or are likely to incur
- where possible write the offer out for the client, as some people take in visual information more easily than oral information
- leave the client alone, even if only for a short time, to process the information and consider the issues
- ask the client to tell you what they have understood and why they have chosen their course of action
- make a note of what you said to the client and what the client said to you
- if the matter settles, confirm in writing to the client the outcome and the client's articulated reasons for the settlement. ■

This column is provided by the **Legal Practitioners' Liability Committee**.  
For further information ph 9672 3800 or visit [www.lplc.com.au](http://www.lplc.com.au).

## TIPS

- Ask the client how many law firms they have been to before and why they left.
- Consider the engagement habit questions: is this the right client, the right matter and the right time for you and your firm.
- Before you take the matter, make sure you have resources available to review the material and do the work necessary to understand and prepare the case.