

MANAGING CLIENT EXPECTATIONS

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For:

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When you take away the romantic or oft-romanticized notion of the life of lawyers as portrayed in film and television, we must face the reality that lawyers are basically in the customer service business. So, one might think that managing client expectations for lawyers would be straight forward using strategies/approaches touted as effective in business.

Annie Pace Scranton, a public relations professional in New York City, writing for Forbes Magazine sets out her top 5 tips for managing client expectations:

1. Be Honest from the get-go;
2. Under-promise, over-deliver;
3. Anticipate the client's needs *before* they know their own need;
4. Constant communication; and
5. Reports (of work done).²

Ms. Scranton suggests that effective client management strategies promote healthy and rewarding relationships with clients, a positive reputation, a calmer work day and higher levels of productivity; all of which are desirable to a practicing lawyer.

Consider:

The old adage "the customer is always right."

Managing Client Expectations in the Practice of Law

The role of a lawyer within a lawyer-client relationship however, creates unique challenges with respect to managing client expectations.

Clients come to us looking for a service and expect us to provide that service. However, the actual service to be provided is not always easily defined or fully understood by the client. Clients go to

¹ Thank you to Leslie Taylor, Student-at-Law for her invaluable assistance in the researching and drafting of this paper. We thank the lawyers at Vogel LLP for their ideas and input.

² Annie Pace Scranton, "The Top Five Tips for Managing Client Expectations" (July 22, 2013), online: *Forbes* <<https://www.forbes.com/sites/85broads/2013/07/22/the-top-five-tips-for-managing-client-expectations/#48dfd92cc58e>>.

their lawyers for a myriad of reasons: to assert or protect legal rights; to defend against a wrongful claim; for compensation for injury. To achieve their objective, the client must understand or at least appreciate the relevant law related to his or her circumstances. Clients must also understand (and give instructions related to) the procedural nuances in respect of advancing a matter forward: filing pleadings; preserving claims; settle/don't settle; negotiate/litigate; mediate or mediate/arbitrate; Question or don't Question.

Client expectations begin when they enter a lawyer's office (or even before). At the initial interview, clients have expectations of certainty and clarity, however, this must be balanced with the fact that lawyers must obtain sufficient information before being able to provide such clarity. Certainty, on the other hand, is frequently difficult to provide in the legal profession.

Depending on the client, it is a tall order for a client to fully understand all the legal ins-and-outs of their matter - some savvy and sophisticated clients may well fully understand and have a very specific set of expectations for their lawyer. This leads to challenges of a different sort. Others come needing to have all aspects of the legal process (both generally and specific to their matter) explained to them by their lawyer on an ongoing basis. Provision of information is foundational to being able to manage clients' expectations.

Consider:

A fellow comes to a consultation after a 30+ year marriage with him being the primary breadwinner. His wife did not work outside the home. He states: "I am not paying one cent of alimony; she leaves with nothing; she can leave with all her belongings in a paper bag."

Tools for Lawyers

For lawyers, managing client expectations is not merely a recommended business practice. Rather it is required by our governing body. The Law Society of Alberta *Code of Conduct* ("Code of Conduct") and *Rules of the Law Society of Alberta* ("Rules") set out standards a lawyer must follow with respect to managing client expectations, failing which, a lawyer may be subject to disciplinary proceedings. As a starting point, Rule 3.2-1 of the Code of Conduct sets out the universal expectation with respect to the quality of service owed by lawyers to their clients:

Quality of Service

3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.³

Rule 3.2-1 is a demanding comprehensive standard of practice with respect to managing client expectations which lawyers are required to meet.

³ See Appendix "A" for Rule 3.2-1 commentary including a list of expected practices.

Consider:

A client who sends numerous e-mails a day and calls her lawyer every second day. When she doesn't receive a same day response, she complains that she is not receiving adequate legal representation. The same client regularly challenges her legal bill.

Consider:

During a court application you recognize the judge is not compelled by your arguments. Your client watches as the matter takes a turn for the worse.

The Legal Education Society of Alberta provides direction with respect to managing client expectations in the context of the lawyer's duty to the profession:

1. Address expectations early

"Lawyers must be clear about their role. They are responsible for realistically assessing clients' cases, objectively advising them of their risks, and guiding them to an optimal result that factors in legal and non-legal risks. It is not the lawyer's role to give clients everything they want. The result sought must necessarily factor in legal and non-legal risks, such as emotional stress on the clients and impact on any children involved [in the context of family law]."

While clients may repeatedly request certainty and promises about the result, they are both impossible to give. Lawyers must not assume responsibility for guaranteeing results.

Be courageous about giving bad news – lawyers are obliged to be honest and objective with clients, even when devastating.

2. Provide updates

Regular communication is essential in order for clients to obtain the information necessary to make informed and appropriate decisions with respect to their matter.

Note: One of the most common complaints to the Law Society involves clients concerned that their lawyer has failed to keep them apprised or failed to respond to their questions.

3. Confirm advice and instructions in writing

Do not assume clients understand legal advice, appreciate the instructions to be given in response to that advice, or that they will recall the specifics of those instructions later. Clients may selectively recall events depending on their interests.

4. Consider mental health issues.

Failing to refer clients to community resources may compromise the ability of lawyers to fully serve the needs of their clients.⁴

⁴ LESA – Alberta Family Law Practice Manual 2018.

Rather than removing emotional and psychological issues from legal proceedings, lawyers are now being encouraged to address such issues. Lawyers are encouraged to review the legal needs of their clients within the context of a larger picture of the conflict, including referring clients where necessary, to address psychological, financial or other needs. Lawyers should be looking to identify sources of anxiety, depression, etc. that are a consequence of the legal proceedings, and providing referrals to clients with respect to same.⁵

Consider:

A client who after two years of high conflict matrimonial proceedings begins to cry, telling you that she had always wanted children but her husband did not? She blames him for taking this opportunity away from her. You now understand this issue is underlying your client's unreasonable expectations but you also know there is no legal remedy to address her problem.

William A. Eddy, of the High Conflict Institute in Scottsdale, Arizona, has identified warning signs of high conflict clients:⁶

- Lots of all-or-nothing thinking;
- Unmanaged emotions;
- Extreme behaviors, including extreme language; and
- Preoccupation with blaming others/Refusing to take responsibility.

Mr. Eddy warns that often high conflict clients surprise us in the middle of a case, however, what is a lawyer to do when a client is demonstrating warning signs of unreasonable expectations or high conflict personalities at the initial meeting?

There are times of "high risk" when high conflict personalities tend to emerge, often relating to clients' heightened feelings of loss, including abandonment (or feelings of abandonment) by someone important, loss of self-esteem or humiliation, loss of control over another person, loss of control over events or loss of a pet or item they are very attached to.⁷

Consider:

A client insists on seeking vengeance against an ex-spouse and pursues legal proceedings for the primary purpose of meeting out punishment.

Certain legal matters are more likely to have high conflict personalities involved. John Edwards, also of the High Conflict Institute, comments that he is surprised when there is *not* a high conflict

⁵ Julie MacFarlane, *The New Lawyer: How clients are transforming the practice of law*, 2nd ed (UBC Press: Vancouver, 2017) at Chapter 6: The Lawyer/Client Relationship.

⁶ William Eddy, *Red Flags for Lawyers and All Professionals: Spotting High Conflict Clients and Opposing Parties* (2015), online: High Conflict Institute <<https://www.highconflictinstitute.com/free-articles/2018/3/7/red-flags-for-lawyers-and-all-professionals-spotting-high-conflict-clients-and-opposing-parties>>.

⁷ *Ibid.*

personality in a probate matter or a condominium association matter, as in these matters the “issue” is in fact often the personality of one of the individuals involved in the matter.⁸

Amongst other relevant strategies for managing expectations of high conflict clients or clients with mental health disorders, Mr. Eddy recommends “giving them your E.A.R.”:⁹

1. Empathy – tell them you empathize with their frustrations;
2. Attention – tell them you will pay attention to their concerns; and
3. Respect – tell them you respect their efforts.

Consider:

You are providing a client with legal information, you can tell he is becoming agitated, he begins physically posturing, he stands up, moves towards you and makes threats.

More recently, an increased focus on conflict resolution has shifted the practice of law from a lawyer-in-charge model to a partnership wherein the client is participating in the decision-making process. Whereas, historically clients have taken on a passive role in the lawyer-client relationship trusting the lawyer to take control.

In the world of self-help and self-empowerment, clients are demanding a more active role in their legal proceedings. Clients are now likely to have (or believe to have) more pre-existing knowledge than previously. This belief raises consumer expectations and changes the landscape for client management. Clients are looking for greater involvement in decision making and empowerment regarding issues that are important to them. In today’s culture, clients are less likely to accept that their lawyer knows best and should function autonomously.¹⁰

In today’s age, “self-empowerment” includes obtaining information from social media, Google and through talking with friends. The provision of legal information now often requires correcting or clarifying mis-information. Moreover, clients are becoming increasingly concerned with costs of litigation and are scrutinizing accounts rendered by their lawyer. Generally, clients are looking for steps they can take themselves to control and manage their costs.

In Julie MacFarlane’s “The New Lawyer”, she provides 4 strategies for managing the expectations and meeting the needs of the modern client:

- (1) Share planning and strategic decision making with the client;
- (2) Discuss financial choices and alternatives with respect to litigation;
- (3) Prepare for client participation in the settlement process; and
- (4) Practice affective lawyering.¹¹

⁸ John Edwards, *High Conflict Personalities in Civil Litigation* (2015), online: High Conflict Institute <<https://www.highconflictinstitute.com/free-articles/2018/1/12/high-conflict-personalities-in-civil-litigation>>.

⁹ William Eddy, *Understanding and Managing High Conflict Personalities*, as presented at the Federation of Law Societies, 2008 National Family Law Program.

¹⁰ *Ibid.*

¹¹ *Ibid.*

See also Appendix “B” – A Tool Box of Client Management Strategies recommended by practicing Calgary lawyers and provided by various secondary sources.

Consider:

The unique circumstances of a paralegal professional who receives information and instructions from both the client and the lawyer, often times such information being in conflict.

Consider:

A client who instructs the lawyer to draft and file a statement of claim on the basis that they “feel” wronged or want to “get back” at a former employer, despite the fact that it does not appear the employer engaged in a “legal wrong”.

Managing a reasonable client’s expectations is not that difficult, rather managing an unreasonable client’s expectations is what is difficult.

The Code of Conduct establishes expectations for all lawyers - irrespective of the client or the legal issue, for example a corporation engaged in a merger or a family law client in the trenches of a divorce. The expectations or instructions of clients can sometimes come into conflict with the standards of practice set by the Law Society. For example, lawyers are expected to avoid engaging in legal actions which are motivated by malice all the while they are expected to represent the client resolutely and honourably within the limits of the law. Lawyers are expected to encourage settlement while at the same time they are to advocate zealously for their client. Consider the following rules of the Code of Conduct:

Encouraging Compromise or Settlement

3.2-10 A lawyer must advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings.

Fraud by Client or Others

3.2-13 A lawyer must never:

- (a) assist in or encourage any fraud, crime, or illegal conduct,
- (b) do or omit to do anything that assists in or encourages any fraud, crime, or illegal conduct by a client or others, or
- (c) instruct a client or others on how to violate the law and avoid punishment.

Advocacy

5.1-1 When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy and respect.

5.1-2 When acting as an advocate, a lawyer must not:

- (a) abuse the process of the tribunal by instituting or prosecuting proceedings that, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;

- (b) take any step in the representation of a client that is clearly without merit;
...
(d) knowingly assist or permit a client to do anything that the lawyer considers to be dishonest or dishonourable; ...

Consider:

A client who instructs the lawyer to “do nothing”, but doing nothing will put the lawyer in conflict with the “duty as a lawyer”.

Consider:

A client who wants to agree to a term of an Agreement that results the loss of money to him by way of giving up an interest in his ex-spouse’s pension. The amount of the loss is substantial and you do not believe you can take such instructions.

Managing a Strained Relationship

Lawyers will frequently find themselves in a position where difficulty in managing client expectations has resulted in a strained lawyer-client relationship. Within a strained lawyer-client relationship there is real risk of a referral to the Law Society by a dissatisfied client. Continuing a strained relationship is problematic for the lawyer in that he or she is more likely to delay or fail to respond to the client or act without proper instruction. By continuing a strained relationship, a lawyer risks trauma or burn out. Consider the following:¹²

Take a time out – Avoid making snap judgements or decisions. Take time to review the file as a whole, independent of any negative feelings which have arisen.

Straightforward conversation – If the issue is that the client is taking an unrealistic position, discuss risks and costs associated with same.

Be responsible – Recognize when stress is impacting your performance.

Determine if representation is possible – Take time and give the client time to consider if an ongoing lawyer-client relationship is reasonable in the circumstances.

Cease to act – If it is clear that a client will not be satisfied by the lawyer’s representation, ceasing to act may be the only realistic option

But consider Rules 3.7-1, 3.7-2 and 3.7-5 of the Code of Conduct:

Withdrawal from Representation

3.7-1 A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.

¹² LESA – Alberta Family Law Practice Manual 2018.

Optional Withdrawal

3.7-2 If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.

Obligatory Withdrawal

3.7-5 A lawyer must withdraw if:

- (a) discharged by a client;
- (b) a client persists in instructing the lawyer to act contrary to professional ethics;
- or
- (c) the lawyer is not competent to continue to handle a matter.

Note also 3.7-4 with respect to withdrawal from criminal proceedings.

Managing our own expectations

Managing our own expectations of our clients (and other lawyers) is where we, as lawyers, have the most control and influence. Keeping those expectations realistic is a powerful stress-management technique.

How can we manage our own expectations?

1. Understand where the client is coming from and work from there;
2. Don't assume your client understands all aspects of the legal process - check in;
3. Confirm instructions and understanding in writing;
4. Develop good boundaries and don't "own" your client's problems;
5. Have a comprehensive Retainer Agreement and refer back to it (as needed); direct your client back to it as well;
6. Seek support and assistance of others: senior lawyers in your firm, mentors, the Law Society Practice Advisor, ASSIST; do not shy away from asking for help;
7. Prepare yourself to have difficult conversations with clients: about money, outcomes, risk, the strength of the case, chances of losing, court costs, etc.;
8. Take time to self-reflect - how can you do your job better or differently to be more effective in managing your client's expectations?;
9. Structure your work and be sure to plan time for responding to clients - this prevents client complaints;
10. Keep it all in perspective.

Appendix “A” – Code of Conduct Rule 3.2-1

Quality of Service

3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

Commentary

[1] This rule should be read and applied in conjunction with Rule 3.1 regarding competence.

[2] A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service.

[3] A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions. A lawyer must use reasonable efforts to ensure that the client comprehends the lawyer’s advice and recommendations.

[4] A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about his or her options, such as whether to retain new counsel.

Examples of expected practices

[5] The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

- (a) keeping a client reasonably informed;
- (b) answering reasonable requests from a client for information;
- (c) responding to a client’s telephone calls and emails;
- (d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;
- (e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;
- (f) answering, within a reasonable time, any communication that requires a reply;
- (g) ensuring that work is done in a timely manner so that its value to the client is maintained;

- (h) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;
- (i) maintaining office staff, facilities and equipment adequate to the lawyer's practice;
- (j) informing a client of a proposal of settlement, and explaining the proposal properly;
- (k) providing a client with complete and accurate relevant information about a matter;
- (l) making a prompt and complete report when the work is finished or, if a final report cannot be made, providing an interim report when one might reasonably be expected;
- (m) avoiding the use of intoxicants or drugs that interfere with or prejudice the lawyer's services to the client;
- (n) being civil.

[6] A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in handling a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

Appendix “B” – A Tool Box of Client Management Strategies

- Identify client expectations;
- Define and re-shape needs, wants and expectations of clients using knowledge and experience;
- Suggest alternatives which could better meet client’s needs or more effectively accomplish client’s goals – be creative and innovative;
- Educate the client;
- Discuss pitfalls of client’s desired course of action;
- Explore likelihood of client’s expectations being met;
- Outline the process;
- Define the scope of work;
- Explain rates and fees;
- Find out your client’s budget;
- Exceed client expectations
- Under-promise and over-deliver;
- Know your client’s deadlines;
- Deliver before a deadline;
- Anticipate client’s wants and needs;
- Provide easy access to firm staff and answers when needed;
- Providing extra resources or introductions to others that can help in the areas you can’t;
- Screen your clients;
- Review the file;
- Do not act for family and friends;
- Try to understand why a client is difficult – mental health, over whelmed, resentful, scared;
- Establish ground rules and stick to them;
- Establish a preferred method of communication;
- Be transparent;
- Over explain;
- Reshape expectations when necessary;
- Be proactive; and
- Diarize communication with client.¹³

¹³ Allison Shields, “Managing Clients’ Expectations” (July 19, 2012), online: *Lawyerist.com* <<https://lawyerist.com/managing-clients-expectations/>> ; Kevin Cheung, “10 Ways to Deal with Difficult Clients” (October 10, 2016), online: *Canadian Lawyer* <<https://www.canadianlawyermag.com/author/kevin-cheung/10-ways-to-deal-with-difficult-clients-3406/>>; Stacey Leeke, “A Guide to Managing Client Expectations: Unrealistic to Realistic” (May 26, 2014), online: Thomson Reuters Legal Insight <<http://insight.thomsonreuters.com.au/posts/guide-managing-client-expectations>>.