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Are You And Your Clients On The Same Page?

It is a truth universally acknowledged that a man cannot be in two places at once. However, some of the notifications received by the Scheme Policy, have shown that clients can sometimes make this impossibility a reality – they are physically present at court, nodding at and agreeing with their counsel's advice, but their minds and hearts are actually elsewhere. (Whether said counsel experience the same phenomenon is a serious question, and we explore this in the following two scenarios).

A Divorce

Jane represented a client in her divorce proceedings. The client and her former husband had undergone judge-led mediation with both parties' counsel. At the last session, Jane, her client, the client's former husband and his counsel were all present in the judge's chambers. After some negotiations, the judge recorded and read out the consent order regarding how the parties were to deal with the matrimonial flat: Jane's client was to pay the former husband a certain sum for him to transfer his interest in the flat to her such that she would be the sole owner.

Several weeks later, after the order of court was finalised, Jane's client claimed that she had actually only agreed to pay a lower amount than what was recorded. Jane checked her records of her discussions with her client – alas – they showed that the client was right. Jane's client had indeed only agreed to pay the lower amount, but Jane failed to object when the judge read out the higher amount.

Jane wrote in to court to ask for a clarification mediation session, which parties attended, but the judge informed parties that her records only showed the amount she had read out.

It is certainly not proper to hurry your client into accepting an offer which he seems reluctant to accept.

Settlement at the courtroom door

In another matter, Daniel, a lawyer, represented his client in her personal injury claim arising from a motor accident. The matter was set down for trial. A few minutes before the trial was scheduled to start, and whilst all parties were waiting outside the courtroom, the defendant's lawyer made one last offer to Daniel. The client, Joey, was present, waiting to give evidence at the scheduled trial. Daniel brought the client to the other end of the corridor and informed her of the offer. He recommended accepting the offer, which she did after a minute's consideration.

Daniel informed the defendant's lawyer that Joey accepted the offer. Both lawyers went into the judge's chambers and recorded a consent judgment. Then they went to the bar room and had coffee together to celebrate their unexpectedly free morning.

For Daniel, the best of times quickly turned into the worst of times. Three days later was a Monday. Daniel received an email from Joey:

Dear Daniel,

I thought about this case over the weekend. I don't want to settle my case. I think the amount is not very fair to me and you pressured me into accepting. I don't accept the offer. Since I haven't signed anything, please resume the claim.

Joey

Tips

- To avoid the above outcomes, it may be appropriate to stand down the session, translate any legalese into plain English (or your client's conversant language), and ensure your client fully understands what he/she is about to agree to, and that he/she knows the implications of such agreement.
- It is certainly not proper to hurry your client into accepting an offer which he seems reluctant to accept. He is more likely to feel that you pressured him into accepting it. You also run the risk that he later alleges you failed to act in his interests.
- Right after the session, it is good practice to follow-up with an update to the client in an email or letter, even though the client was physically present throughout.

Be Smart – Manage Your Risks

Limited scope retainers are a tricky area, even if you spell out what you have agreed to work on in a letter of engagement. There may be some duties owed by a lawyer to his or her client that cannot be contracted out of. Also, the client may get the impression, or harbour the assumption, that he is entitled to a larger scope than what you agreed to provide.

Loan agreement not explained

The Scheme settled a claim for a lawyer's failure to advise on the risks of an agreement. The lawyer, Felix, was tasked to record a loan agreement between a borrower and a lender-client. The parties informed Felix that the terms of agreement were already agreed, and Felix's role was only to give formality to the agreement by way of drafting the contract documents. Felix followed up with a letter of engagement. This was a fresh new client for the lawyer, introduced by one of his contacts. He had met the client only once in a meeting with the borrower, arranged by the contact.

Later on, the borrower defaulted on the loan, and the client commenced a claim against Felix for failing to advise him on the risks and implications of the loan agreement. One allegation was that Felix did not fully explain the poor loan recovery prospects in the event of a default. It certainly did not help Felix's case that the client had a secret audio recording of the meeting. As the likelihood of a successful defence was low, the claim was eventually settled.

Rejection of a clearly difficult client is not a reflection of your competence as a lawyer, as the most communicative and sound lawyer may not be what a particular client expects.

CPF monies not available

Another notification concerned an amicable divorce by consent. The parties, Allison and her husband, agreed to the interim judgment terms, including an order that Allison was entitled to some monies in the husband's CPF account. The lawyer, Leia, obtained the final judgment for Allison. Later, Allison called Leia and informed her that the CPF Board required the interim judgment before they could carry out the transfer of monies to her. However, by this time, Allison's former husband had already turned 55 years old and the monies in his CPF account were not available to be transferred.

Allison claimed Leia had agreed to serve the interim judgment on the CPF Board to enable the transfer of monies. When Leia checked her file, she found no record of whether she had agreed to take steps to effect the transfer of monies as part of her scope of work. Her letter of engagement did not mention this. There were no records of her advising Allison to do so. Her memory drew a blank, yet Allison seemed adamant that Leia said she would.

Tips

It is difficult to fully predict what legal requirements and entitlements crop up as a matter progresses. In this sense, a limited letter of engagement would not be able to capture and exclude everything a lawyer would ordinarily be expected to carry out. It may be appropriate to advise your client about legal requirements which you are not carrying out, and that they have to do it themselves, and by when. Of course, keep a record of such advice. It also helps to ask yourself whether a particular task, which would ordinarily be carried out by a lawyer, can be safely left to the client.

If you find it difficult to apportion responsibilities between yourself and the client, it would probably be difficult to manage that client's expectations. In such a case, you may wish to consider declining that client. This may be especially true for family law matters, where the individual clients can be emotional and have whimsical expectations, or only wish to spend a certain amount of money on a limited amount of work.

Rejection of a clearly difficult client is not a reflection of your competence as a lawyer, as the most communicative and sound lawyer may not be what a particular client expects. On the contrary, actively considering whether you are able to manage a particular client means that you are smart about containing risks. ■