A Protocol for Increasing Client Communication and Successful Case Outcomes:

Replicating the Medical Model of Service Delivery in a Remedial Practice

By Richard Alexander, Esq.

During 1983-88, as a county bar association president and as a member of the Board of Governors of the State Bar of California, exposure to disciplinary complaints against lawyers confirmed that consumer dissatisfaction in substantial part arose with clients seeking remedial services. Many complainants were unsophisticated purchasers of informational-based services, who had unrealistically high expectations in an outcome in their favor and who placed complete trust in their lawyers to remedy their problems. Most common of all complaints was lack of communication: the lawyer "never tells me what is going on with my case" and "never returns my phone calls."

Complaints against lawyers are generated at a rate of 5,000 a month against only a portion of California's 125,000 lawyers. With virtual certainty, purchasers of non-remedial services, such as creative legal pre-planning, generally do not complain to the State Bar about their lawyers. Neither do the clients of government lawyers (city, county, state, and federal), single client lawyers in legal departments, insurance companies, unions or large organizations, and large firm attorneys. After excluding retired, inactive, and out-of-state licensees from California's bar, the estimated number of actual practitioners generating complaints is probably 70,000 attorneys. Seven percent, or 1 in 14, are the source of the monthly 5,000 calls to the State Bar, which now has an 800 number and a full bank of operators to take calls from people who are angry about their lawyers' failure to communicate and who should be equally angry with their lawyers' failure to properly teach them how to communicate with an information professional.

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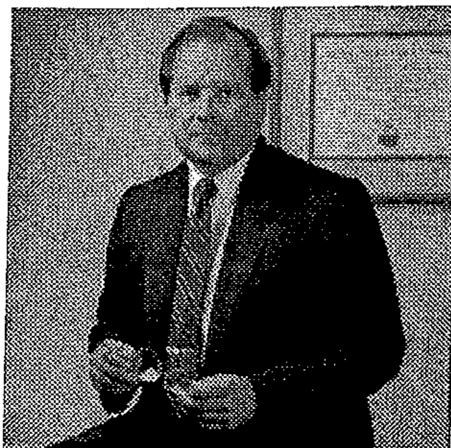

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Inherent in these complaints is the client's well-intended reliance on the attorney to be completely in charge, the client's reluctance to take active responsibility for setting follow-up appointments to review progress, the expectation that communication would always be initiated by the lawyer, that telephone calls are the only method for learning about their legal matter, the failure of the bar to properly educate unsophisticated clients how to communicate with lawyers and the reluctance by lawyers to adopt systems that include clients in the management of their case.

Anyone with an active litigation practice knows that keeping in good contact with clients is extremely difficult. Returning telephone calls is a Herculean task and sending copies of pleadings or correspondence to the unsophisticated client is guaranteed to generate a telephone call requiring the lawyer to literally read the letter, repeat what it reports, and explain the patently obvious.

The telephone, while providing excellent communication, has severe operating restrictions for legal practitioners. Telephone use most benefits, and is actively promoted by, telephone companies to promote revenues. Unfortunately, it requires two people to be available at the same time. The unsophisticated client does not know that active lawyers are in their offices only 40 to 50 percent of the time and, even when there, cannot accept unscheduled calls during depositions, client conferences, and deadline periods for pleadings and briefs. The bar also creates major expectations that cannot be met when it falls prey to the brainwashing media advertising of the telephone industry and promises new clients that, "if there is a problem, just give me a call."

The telephone problem is compounded by the fact that many clients can only be reached by telephone when they call or are at home. Returning such calls is hit or miss and many times the client does not have an answering machine or a second line, thereby denying the lawyer credit for having returned a call to an unanswered or busy phone. Similarly, the answering child takes poor messages. Those clients who refuse to provide more than one number where they can be reached, who require a call during specified times, who cannot leave a substantive message, or who cannot accept the response of a trained and informed legal secretary, are also doomed to no contact. For those attorneys who valiantly return calls from courthouses, airports, and car telephones, many times the exchange is handicapped by the absence of the client's file.

All in all, the telephone is a great invention for communication which has severe operational constraints, all leading to terribly unachievable expectations of clients,

which, when denied or lost, result in complaints to the State Bar.

Curiously, the number of communication complaints against physicians is extraordinarily low. Medical malpractice claims are virtually nil against the general practitioner or the family doctor, even when there is a failure to meet the standard of care.

In understanding the delivery of medical services to unsophisticated patients lies the key to enhancing client communication. Attorneys who adopt a client relations protocol similar to the medical format will teach clients to maximize communication by using the lawyer's office like the doctor's office, will have greatly increased communication with their clients, and will enjoy more successful outcomes and improved relationships with clients.

In medicine, the prospective patient first is qualified for medical services, either by referral or economic guidelines. In either situation, screening occurs by other professionals or staff. The new patient completes a history and meets the professional staff for obtaining additional history and data collection. The physician's first inquiry is designed to elicit the primary complaint. It is a genuine expression of interest in the patient and a positive approach to problem solving. The investigation is begun, further data collection is ordered, and the order to follow-up is given: "I want to see you in three weeks."

In a grossly cynical sense, the patient is a "case" and the doctor has to have the case returned to the examining room to practice medicine. The patient understands that a cure requires them to return and it is their responsibility to assist in data collection and to make the return appointments. Each meeting with the doctor is a working session. The chart is reviewed, status ascertained, recommendations made, or work plan continued. In working together, both parties continually redefine what is expected of them and they work toward an agreed outcome. As part of the process trust is generated.

Over the past five years, implementation of a modified medical model in a plaintiffs' personal injury practice has assisted in the "front end" evaluation of liability and damage issues, assured prosecution of cases, increased client-attorney communication, and enhanced overall satisfaction for both client and lawyer.

Here is how it works. The initial interview, after a primary screening by telephone with the lawyer, is structured to be an extended working session. Two to three hours is usual. At this meeting, a history is obtained, investigation and records are ordered, and a claim or complaint is drafted. Client education topics include how a lawyer works, how to best communicate with the lawyer, and the need for the client to be active and integrally involved in the educational and decision-making process.

While some practitioners find they can complete an in-take interview in one hour, experience with three major personal injury trial firms has proven that the initial meeting is probably more important to the lawyer than the client. Here the expertise of a senior partner determines whether this particular case should be accepted. To increase overhead and decrease profitability, defer this judgment to the least experienced junior attorney.

At the first meeting, a standardized intake sheet and standard list of initial file orders is followed. This allows staff assigned to the file to easily locate necessary information quickly and check the completion of initial orders for medical records, investigation, notice letters, requests for information, complaint preparation, and the contents of the confirming letter to the client.

Before the client is asked to sign the fee agreement, the attorney explains that the case will not be accepted if the client expects the lawyer to be solely responsible for the successful outcome of the case or if the client expects that the lawyer will always be in the office to immediately respond to telephone calls.

In direct English the client is taught that when it comes to successful attorney-client relations the telephone does not work for the reasons explained above. In other words, if the client wants an experienced trial lawyer preparing and making decisions on this case, demand telephone calls will not be the practice. To say, "your case is too important to you and to me to be handled by telephone" or "I am simply too scheduled to return all the calls I receive" makes the point. The attorney's schedule for the month is shown to the client. Motion and settlement conference appearances, depositions, client meetings, field investigations, expert consultations, bar meetings, continuing education courses, commitments to children's sport events, office staff meetings, the 5:30 p.m. doctor's deposition that usually lasts until 6:45 p.m., and lost time traveling substantial distances, are all instructive to the client whose only exposure to the demands of practice has been via television. Real lawyers are busy. It is not that the attorney does not want to speak by telephone, but playing telephone tag is unnecessarily stressful and unproductive. Reporting on a file from the airport pay phone is not how to practice law. That is why the client must agree to regularly meet with the attorney to follow-up on the work that has to be done to get the best result.

Tell the client that you cannot be available by telephone, but promise you will meet every 30 to 90 days in person to make sure that the case is properly prepared. When the client understands that hiring an information professional, whether it is a doctor or lawyer, requires a commitment to working office sessions with the professional, the first step toward good relations is taken. After obtaining the client's commitment to work with the lawyer, the time for executing the fee agreement has arrived.

Having enlisted the client in the investigation and follow-up process, the next step is to introduce the support staff who also will be working on the file: associates, legal secretaries, investigators. These individuals also are sources of information if the attorney is not available and in an emergency should be contacted. In the presence of the staff, explain to the client that your job involves obtaining information from government agencies, medical care providers and that you do so through photocopying services and investigators. The client and the attorney working together decide what work needs to be done, but the actual execution will be by the staff. Occasionally work does not move forward as expeditiously as planned because of uncontrolled events.

To make sure the client's case moves forward, at the end of every working session the last item of business will be to dictate a brief letter to the client confirming the next meeting. In the event the client does not receive that letter within

seven to ten days after the last office meeting, they are expected to call and gently inquire of the staff.

This is an excellent time to praise your staff and let the client know that you depend on your employees and place great trust in them, many of whom know more about your special field of practice than the state's best law professor or even the chief justice of the nation's highest court. Clearly hyperbole, but in large part true. This assures clients that they are in good hands and identifies your assistants as important people to whom the clients can look for guidance.

After excusing the staff, explain to your new client how good nursing care is equal in importance to having the best doctor if you are a hospital patient. The same is true in the law office. The relationship is three-cornered. The attorney's job is to provide expertise and information for decisions. The staff is there to execute orders and assist. The client monitors the process to help make sure work is completed in timely fashion. To accomplish this, the client needs to have a friendly working relationship with the staff. If clients do not receive a follow-up letter after the meeting, it is important for them to be friendly and supportive of your assistants when they call to inquire. They will be told the work has already been done and is awaiting the attorney's signature or "it is on the top of the stack." In either event, the important area of focus is on getting the work done. With friendly nudging the staff is the client's greatest asset.

When the follow-up meeting is set, it is understood it will be a working session to jointly review the investigator's reports, records from state agencies, medical records and other work initiated at the first meeting. It is the best way to have continual review, isolates the attorney to complete a one hour project uninterrupted by calls, and accomplishes continuing client education of the legal process and the case. Two or three such meetings normally will precede the decision to file and serve. Having already completed a draft complaint at the initial meeting helped to focus on identifying the correct defendants and helped accomplish a quick filing if required by an approaching statute; it also minimizes malpractice exposure.

Making sure the client is aware of the statutory deadline is important. Scheduling an office meeting one month before the statute will expire is a further commonsense preventative measure.

Attending the return review meeting is the client's responsibility. Explain that because the trial lawyer's calendar is controlled by opposition counsel and courts, occasionally meetings will need to be rescheduled, so the client and staff should always confirm meetings beforehand. When a meeting is continued, both client and staff are responsible for setting a new date and time.

Realizing your client will telephone you with questions or information, instruct them to leave a detailed substantive message providing information or making a specific request. In either event, the attorney's staff can use the information directly, answer the question, or get the answer more quickly and easily than the lawyer. Be sure they never simply call and leave their name and telephone number. Only real messages help move their case forward. Everything else is wasted motion.

In the past, once a case proceeded to active litigation it was forced to advance toward completion by defense discovery and the discipline of filing an at-issue memorandum. Today, fast-track assures the court also will be an active participant in advancing the file. This process assures further contact with the client to finalize interrogatory answers and to prepare for a deposition.

Since your client will be required to answer a standard set of Judicial Council interrogatories, be sure to provide them with a set at the first meeting, even if the decision to litigate is still in the offing. It is far better to have the "embarrassing" information provided to you at the second meeting than to file, serve, and learn later that a negative aspect of the case is uncovered by your opponent's first set of interrogatories. Get the answers early and avoid the pitfall.

Using this protocol, by the time of the pre-deposition meeting both client and lawyer should know and appreciate the pluses and minuses of the case. At settlement conferences there will rarely be a variance in opinion as to settlement goals since working meetings throughout the case will have resolved most miscommunication.

This protocol, while not the answer for everyone's practice, invests the client in a team approach, empowers the client to achieve meaningful communication, and assures informed decision-making.

Every lawyer wants to do what is right and to have a happy client, but good intentions alone will not promote this result. A good protocol is not the only answer. Establish a protocol that fits your practice. Train your staff and educate your clients with their responsibility for bringing about the preparation and communication needed to achieve a good result. After that, scheduling the work and getting it done is the easiest part of the process and the chances for a satisfied client and the best possible result are clearly optimized. ■

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