IMPROVING COMMUNICATION THROUGH TECHNOLOGY

AND POLICY:

A.   **The Communication Problem for Lawyers**:   "A study completed by the American Bar Association Standing Committee on Lawyers Professional Liability reported that 17% of all malpractice claims are the result of a poor attorney-client relationship. Approximately 75% of all grievances filed against lawyers are the result of poor communication."[1]   Here are a couple of ways communication breakdowns can negatively impact your practice:

1.   **Poor Communication with Clients**:   The ongoing status of a matter, how a process/transaction typically works, and setting expectations for possible outcomes are all communication issues that can cause dissatisfied clients if they're not handled properly.

2.   **Failure to Respond Timely**:   Many lawyers are routinely overwhelmed with the volume of email and telephonic communications they have to respond to or deal with. If a client emails her lawyer and doesn't get a response for 4 days, the client is just as offended as if they had called and not received a response for 4 days (even though we often don't think of email as having the same urgency as a phone call). Of course, the client doesn't know or care that her attorney is trying to field and deal with over 100 emails a day.

3.   **No Engagement Agreement or Inadequate Engagement Agreement**:   If a lawyer doesn't even use an engagement agreement, then it's pretty easy for the client to misunderstand the nature of the representation and there's nothing to refer back to in the event there are issues.   An engagement agreement should communicate clearly to the client all aspects of the engagement (including payment); and it must comply with the various Rules of Professional Conduct that are applicable to attorney/client relationships. Any engagement agreement which doesn't

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[1] <u>Attorney-Client Agreements Toolkit</u> from Lawyers Mutual Liability Insurance Company of North Carolina. See http://tinyurl.com/lbcdmbu for the entire publication.

meet these objectives would be considered inadequate and can certainly cause problems later.

4. **Inadequate Discovery or Investigation**: Did you gather all of the information you needed up front? Did you ask all of the questions you were supposed to? Do you have and did you follow a due-diligence check-list? Did you fully understand you client's concerns and needs? Blowing any of these issues can result in a dissatisfied client.

5. **Dropped Balls**: Here are some examples of how internal communication breakdowns can cause problems:

    a. **Responsibility Mistakes**: You thought someone else was handling a particular thing and they thought you were handling it. As a result, no one ended up doing it and you didn't realize it until there was a problem.

    b. **Supervision Mistakes**: You thought someone else was handling a particular thing and for whatever reason, they didn't do it. However, you were so busy that you didn't follow up to make sure it was getting done.

    c. **Process Mistakes**: Most transactions involve a series of steps that have to occur and there are often multiple people involved in the execution of those steps. Sometimes, there are so many cases and/or so many steps that one of them is inadvertently skipped. A missed step that negatively impacts the outcome or causes unnecessary delay often goes undiscovered until it's too late.

6. **Failure to Obtain Client Consent**: This is often just a communication break-down between lawyer and client. In other words, the lawyer often *thought* the client authorized a particular thing, but the client's recollection isn't consistent with that. Things we discussed orally, but nothing was written down and now what the lawyer remembers as having been agreed to isn't what the client remembers as having been agreed to.

B. **How To Improve Internal Communication**: Here are some ideas for improving communication in your office:

1. **Read and Apply The Checklist Manifesto**: There is a best-selling book called <u>The Checklist Manifesto: How To Get Things Right</u> by Atul Gawande[2] ($12.30 on www.amazon.com). The book illustrates the critical importance of checklists in many professional fields but doesn't spend much time talking about the legal applications. However, there's an excellent Law

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[2] Atul Gawande is a surgeon, writer, and public health researcher. He practices general and endocrine surgery at Brigham and Women's Hospital in Boston, and is Director of Ariadne Labs, a joint center for health systems innovation. He is Professor in the Department of Health Policy and Management at the Harvard School of Public Health and Professor of Surgery at Harvard Medical School.

Review Article from Jennifer Murphy Romig at Emory University School of Law which discusses the application of the ideas within The Checklist Manifesto to the practice of law. You can read it here (http://tinyurl.com/qztlxrf) and I would highly recommend it. As I'm sure you'll agree if you read The Checklist Manifesto or the aforementioned law review article, there is high value in compiling checklists for all significant practice areas you're involved with. Checklists and written protocols are important for business continuity and as part of your business succession plan. They also allow you reduce errors, ramp up new employees more quickly, and to delegate tasks to support staff that you may have otherwise had reservations about delegating.

Ideally, checklists should be used for every process. By "used," I mean that the items on the checklist are actually checked off (on paper or electronically) as they are completed; and someone actually verifies or certifies that all steps were followed at the end of the process. This could be a simple paper checklist which someone follows and it is then signed and dated at the end. At that point, it could be scanned into the file if you're trying to reduce paper.

2. **Start Documenting Processes**: The steps involved in any particular legal process cannot (safely) *only* reside in someone's head (yours or someone else's in your office). This doesn't have to be terribly complicated. The idea is to write down the steps involved in the main work-flows which occur in your office. You want to note what tools are used in each step (software or hardware or whether steps are completed manually), who performs it, and very importantly, how long each step typically takes. You also want to know how often the process occurs each month.

   a. **What You Can Use to Document**: Most people do this in the word processor by simply numbering and describing the steps involved in any particular process. If you want to graphically represent the process, then you could use programs like SmartDraw[3] or Microsoft Visio[4].

   b. **Example - Open a Probate Estate**: Let's say a firm opens new estates approximately 3 times per week. Here are the steps:

      i. **Client Contacts Us**: We normally receive a call from a loved one of the decedent and it is typically a spouse or child who will be appointed the fiduciary of the estate. The initial calls can last anywhere from 15 to 60 minutes depending upon how many questions they have. We schedule an initial meeting during this call normally for 2 weeks out. The call

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[3] See www.smartdraw.com

[4] See http://office.microsoft.com/en-us/visio/

is always handled by one of the attorneys (Robert, Sarah or Paul).

ii. **Creation of Paper and Electronic File**: Amy fills out a new file form and submits it to accounting (Michelle) electronically so that the matter will be created in the accounting system. Once Michelle emails Amy the client and matter ID, Amy creates the paper file (red rope with sub folders), labels the file with decedent name, client & matter ID. This entire process normally takes 45 minutes to complete.

iii. **Initial Client Communication**: Print initial fiduciary questionnaire, cover letter and list of items to bring to the initial meeting and mail to fiduciary. Process completed by Amy and normally takes 20 minutes.

iv. **Prepare Engagement Agreement**: This is handled by Amy with instruction from the attorney in advance of the initial meeting and the printed engagement agreement is added to the file. This usually takes 20 minutes.

v. **Initial Meeting with Fiduciary**: These usually last one hour and one of the attorneys handles it. The attorney goes over the information provided by the Fiduciary, creates a list of any additional items needed and has the fiduciary sign the engagement agreement. Amy makes a copy of the agreement for the client and we keep the original.

vi. **Probate Forms Completed**: Amy completes the following forms using the fillable PDF forms available from the Probate Court. This is slightly inefficient because the same information has to be re-entered in each form; and some of the forms don't have enough space to type everything so must be printed and finished in a typewriter.

- Form 1.0 - Surviving Spouse/Next of Kin

- Form 2.0 - Application to Probate Will

- Form 2.1 - Waiver of Notice of Probate of Will (if required)

- Form 2.2 - Notice of Probate of Will (if required)

- Form 2.4 - Certificate of Service of Notice of Probate of Will (if required)

- Form 3.0 - Appointment of Appraisers (if required)

- Form 4.0 - Application for Authority to Administer Estate

- Form 4.5 - Entry Appointing Fiduciary - Letters of Authority

The foregoing forms are printed and signed by the attorney where applicable. Amy then drafts a cover letter to the fiduciary, a postage-paid return envelope and mails the forms and letter to the fiduciary to sign and return. This entire process takes about an 2 hours.

vii. **Open The Estate At Probate Court**: Once the forms have come back signed, Amy fills out a check request form for the deposit necessary to open the estate and obtains the check from Michelle. She also makes two copies of each form and puts them in the file. The attorney then takes the entire file to the Probate Court, deposits the initial fee, files all of the original forms, obtains time-stamped copies of the copies, obtains the certified Letters of Authority and returns to the office. This process takes 2 hours on average.

viii. **Return Pleadings to Client**: Amy takes one set of the time-stamped pleadings, drafts a cover letter and sends them to the fiduciary. This process takes 15 minutes on average.

c. **What Could Be Improved About The Foregoing Process?** A lot of little things could be done to improve the foregoing. For example:

i. A pamphlet could be created which is sent to new clients explaining the probate process. If this could be sent to the client, it would cut down on the time involved in the initial client phone conference and initial client meeting.

ii. The file could be maintained exclusively electronically rather than both paper and electronic.

iii. Many clients may be happy to receive an emailed PDF copy of pleadings and filings. This would save on sending out hard copies and drafting correspondence.

iv. Templates could be created for all of the standard correspondence which would speed it up; and those templates could be linked to Outlook or a case management program which automatically pulls in the client's information so that it doesn't have to be entered again into every letter.

v. A program could be used to generate the probate pleadings which would be much faster than using the court's PDF forms. Information would only have to be entered once and it would transfer from form to form.

d. **Benefits of Written Processes**: Writing down what is supposed to happen at each step and who is responsible for it creates accountability. It also significantly reduces the possibility that a step will be omitted; and it makes it much easier to train new employees.

3. **Consider Practice/Matter Management Software**: One of the primary benefits of case/matter management programs is that they facilitate communication among attorneys and support staff within a firm. Everything can be shared from matters to contacts to calendars, and all practice information is stored in a common database. Hence, case/matter management programs at least establish a system whereby members of a firm can better communicate with one another, share information about cases, and help one another out.

4. **Schedule Regular Case Meetings**: No one likes meetings, but regular meetings during which case statuses are discussed can be really important for making sure everyone is on the same page. They can be timed and it should be someone's job to ensure that meetings stay on track.

5. **Create a Complete Electronic File**: This may not seem like an obvious way to improve internal communication, but it definitely is. If all of the information related to a matter is buried in a paper file, whoever has possession of the file is the only person who can answer questions about it or typically work on it. If the file is electronic, then everyone in the office can be in the file at the same time. The file is easily sharable and can be transported. Overall, electronic files provide better and faster information access for everyone.

6. **Gain Access to Your Electronic Calendar, Contacts, Tasks & Email From Anywhere**: With Microsoft Exchange (hosted or in-house) or Google Apps for Business, you can synchronize your calendar, contacts, tasks & email from Outlook or Google, respectively, with any computer, tablet or phone. If you're relying on an electronic calendar (as you should), then it's critically important that you can get to that calendar from whatever device you're using. Of course, Exchange and Google Apps also let you *share* your electronic calendar, contacts, tasks & email with anyone else in your office you'd like to share with.

7. **Improve Task Management**: Unfortunately, there's no panacea when it comes to task management. What works for one person doesn't work for the next. However, there are some principles that everyone can put to use.

a. **Read Getting Things Done**: <u>Getting Things Done: The Art of Stress-Free Productivity</u> by David Allen is $9 on amazon.com. Mr. Allen is not a techie, but his ideas can be translated to any analog or digital approach for tracking tasks.   In terms of task management, the concepts are solid.

b. **Remember the Hit By A Bus Rule**: It's a little morbid, but the hit-by-a-bus rule dictates that if you disappear tomorrow, others in your office should be able to figure out what is on your task list so balls aren't dropped and malpractice claims done ensue. I've talked to lawyers who track their tasks by "how they arrange things on their desks" and lawyers who use random sticky notes, cryptic hand-written notes in their Day Planner or who send themselves emails to remind themselves about things to do. These techniques will convey little useful information to anyone else and should be abandoned in favor of task management techniques that reasonable people can decipher. Whatever system you use, at least one other person in your office should be able to translate it. Case/matter management programs can make this a lot easier on everyone involved because they standardize the methods by which tasks are tracked.

c. **Your Inbox Is Not a To Do List**: Unfortunately, lots of people feel that their inbox is a way of reminding them of things they need to do. The problem is that the subject line of an email often has nothing to do with the underlying task. Secondly, if you have a lot of email, you can only see a certain number of them on the screen at once. If an email gets pushed off the bottom of the screen and you can't see it, then it can't remind you of anything. In view of these things, it's important that you NOT use your inbox as a to-do list.

8. **Formalize File Follow Ups**: Here's the rule: every active matter should have a follow up date or a "next task to be completed." Failing to adhere to this rule is exactly how balls get dropped. The problem is, how does one track this? Manual systems can actually work well to solve this problem if users are diligent and have some means of setting files for future follow-up. On the other hand, case/matter management programs all have a means of handling file follow-up. Not only can you typically set up a task that reminds you of files that need attention, but there is often a report solution to the issue. In many case/matter management programs, there is a report called something similar to the "Last/Next Report." You can select all active matters to run it and it will display the last thing that was done and the next thing that needs to be done. Obviously, if you run a Last/Next Report on all active matters and the "next thing to be done" column is empty for any active matter, that would be a red flag.