

This article provides the views of a former practitioner, (now Associate Mediator and Consultant with the Singapore Mediation Centre) as well as the Law Society's perspective on the plus points of mediation as a tool for navigating the rocky path of solicitor-client discord.

Nipping Client Issues in the Bud Through Incorporating Mediation Clauses in Letters of Engagement

Although lawyers may hesitate to recommend mediation to clients, mediation could well go a long way in saving solicitor-client relationships.

Early in my legal career, my boss rigorously impressed upon me the reality that despite our best endeavours, lawyers do make mistakes and clients can be very unhappy with our work. In that sense, clients can potentially be our worst enemies. As my years in practice progressed, I realised that what she said was so true. I have heard of reports of the gripes and grouses against new and even well-established lawyers, such as exorbitant legal charges, wrong advice and ignoring clients' calls. In the process, I unfortunately witnessed several lawyers' careers jettisoned after the trauma of legal suits. Were these mistakes the result of inexperienced lawyers not receiving proper guidance? Or lawyers juggling too many cases and skimming through the facts and research for each case? How often have lawyers billed clients for procedural mistakes of their own doing, assuming clients would never be able to see through the esoteric legal jargon?

The fact is, mistakes will be made. However, there may sometimes be credible, forgivable reasons behind these mistakes, if only the clients were willing to hear them out. It is crucial that clients' concerns and grouses are carefully handled otherwise the end result can often be quite painful for the lawyer. Mediation allows the avenue for clients to voice their unhappiness and more importantly perhaps, for lawyers to explain themselves. Such avenues pave the way for parties to work out win-win solutions for both sides. Thus, it is even more crucial that mediation clauses are incorporated into engagement letters.

When disputes are directed towards mediation, there is hope. Rather than fight tooth and nail to the end, situations can be salvaged, compensation offered, apologies made and accepted, and all of this done confidentially. Even

though negotiations between clients and their former lawyers may fail, a skilled mediator is trained to help parties steer through the emotions and fixed positions, to allow clients to vent their frustrations, and at the same time, the lawyers can explain their version of events. In most instances, clients just need a forum to fully air their grievances, and a means to right the wrong they perceive they have suffered. If genuine mistakes were made on the lawyers' part, mediation allows a safe, secure, private and confidential, and without prejudice forum to admit to those mistakes and offer recompense. Any settlement reached is sealed in a confidential settlement agreement. Frequently, claims are lodged out of misunderstandings that were not addressed. In such cases, mediation offers the ideal forum for parties to air their grievances against each other and that can just about do the trick.

The Singapore Mediation Centre ("SMC") provides a neutral forum for mediation to take place. Established in 1997, it has facilitated the resolution of over 2,500 matters, and in 2014, registered a record caseload of 337 matters that were mediated. The largest quantum mediated to-date is \$209m. SMC offers a wide panel of mediators of diverse expertise and cultural backgrounds to meet parties' specific needs.

The benefits of mediation are:

1. Privacy and confidentiality. Lawyers will not want their good names tarnished in the media, nor will clients want their disputes made public.
2. Control over process and outcome. Mediation sessions are less formal than Court procedures, and allows for parties to come up with their own solutions.
3. Saves time and expense. Seventy three per cent of mediations at SMC are settled, and of these, more than 90 per cent are settled within a day. Compare

this statistic with the length of time and cost involved in bringing a case to trial.

4. Able to choose mediators with specific experience and skills. A mediator familiar with the particular area of practice in dispute will better understand the pressures and idiosyncrasies of the industry.
5. Opportunity to salvage the relationship through hearing each other out and understanding the source of friction.

In a nutshell, only lawyers will stand to benefit from including a mediation clause in their engagement letters. Otherwise, the obvious corollary when their relationship with their clients sours will be a negligence suit and/or complaint to the Law Society.

Take heed and adopt SMC's mediation clause today.

The Law Society's Compulsory Professional Indemnity Scheme (the "Scheme")

Members may recall that the Scheme has recently been renewed for this practice year at a good premium discount of 12.5 per cent. The premium reduction came about after tough negotiations with the Scheme insurers. The Scheme's insurance broker, Lockton Companies (Singapore) Pte Ltd was instructed by the Professional Indemnity Committee of the Law Society to secure best possible terms for members from the Scheme insurers.

Whilst attractive premium rates are no doubt welcomed, it is incumbent on the membership to do much more to improve on the claims history of the Scheme. Continued training and education as well as constantly improving on internal risk management systems are critical to ensuring that members' claims exposure is controlled as best as possible. Further improvement in premium rates will depend largely on whether the claims record of law practices show positive results in terms of the quantum of claim payouts.

As stated earlier in this article, mediation is a means through which client claims can be resolved speedily and in a more cost effective way with lesser chance of permanent damage to the solicitor-client relationship. Mediation opens the way for open and frank communication which is often stifled in a litigious and acrimonious setting. By its very nature, mediation allows the opportunity for parties to understand the underlying and often unspoken concerns of parties and thereby allows for effective communication. As aptly put by Mr Peter Drucker, a renowned management consultant and author, "The most important thing in communication is hearing what isn't being said".

When working out a risk management policy for your law practice, it is, therefore, critical that issuing a letter of engagement to clients be adopted as a consistent protocol that is implemented seriously and consistently. These letters of engagement, which will provide the basis on which the client retains your services, should in turn include a clause for disputes to be referred for mediation. Such a provision will encourage expeditious resolution of potential claims through the open channel of communication unique to mediation. In this way, the claims payouts will be reduced by keeping the legal costs, including party and party costs, down. Lower claim payouts will in turn lead to better chances for negotiating improved premium terms for members.

Members are reminded of the following Notice sent earlier through the Law Society's e-bulletin, *eJus News* on the incorporation of mediation clauses in Letters of Engagements or Warrants to Act.

The sample mediation clause highlighted on the next page in the said Notice is the latest version provided by SMC.

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Law Society Notice

The Law Society understands that not all members currently have a practice of getting their clients to sign a Letter of Engagement or Warrant to Act.

Members are encouraged to adopt a consistent protocol of requiring clients to sign a Letter of Engagement or Warrant to Act setting out basic terms of the retainer namely the scope of work, explanation on fees, description of stages of work to be carried out etc.

In addition, members are advised to include in the Letter of Engagement or Warrant to Act a provision that all disputes having the potential for civil remedies must be referred for mediation before any civil proceedings can be commenced in Court.

The Law Society and the appointed brokers of the Law Society's Compulsory Professional Indemnity Scheme, Lockton Companies (Singapore) Ltd are of the view that such a provision will encourage the expeditious and amicable resolution of claims and result in enhanced claims management. This could reduce costs being incurred in the defence of such claims and thereby assist to reduce the quantum of claims paid under the Law Society Compulsory Professional Indemnity Scheme (the "Scheme").

The end result is that in addition to the more expeditious and amicable settlement of claims, there will also be overall benefit to members as lower claim payments will allow for better chances of negotiating for lower insurance premiums under the Scheme. The likelihood of adverse publicity from such claims will also be reduced.

Members are reminded that the terms of the Letter of Engagement or Warrant to Act including the provision on mediation as a form of alternative dispute resolution must be clearly explained to the client to ensure that the client fully understands the consequences of the provision mandating mediation as a form of dispute resolution. If, as provided in the sample clause below, you opt to prescribe that the mediation be administered by the Singapore Mediation Centre, then you will need to ensure that the client understands the consequences of the same.

Members can insert the following **sample mediation clause** into their Engagement letter or Warrant to Act:

Dispute Resolution and Governing Law

This Engagement shall be governed by and construed in accordance with Singapore Law.

Any dispute arising out of or in connection with this Engagement must be submitted for mediation at the Singapore Mediation Centre (SMC) in accordance with SMC's Mediation Procedure in force for the time being. Either/any party may submit a request to mediate to SMC upon which the other party will be bound to participate in the mediation within [45 days] thereof. Every party to the mediation must be represented by [senior lawyer, of at least the seniority of a Partner] or its equivalent, with authority to negotiate and settle the dispute. Unless otherwise agreed by the parties, the Mediator(s) will be appointed by SMC. The mediation will take place in Singapore in the [English] language and the parties agree to be bound by any settlement agreement reached.