

Accounting to clients: How transparent are you?

By the Forensic Investigation Team of the Attorneys Fidelity Fund

In terms of the rules of the various law societies, there is a requirement on the part of all practitioners to account to their clients (see: Cape Law Society – r 13.11 and r 13.12; Law Society of the Free State – r 16.8 and r 16.9; KwaZulu-Natal Law Society – r 20(7) and r 20(8); and Law Society of the Northern Provinces – r 68.7 and r 68.8). The rules can be paraphrased as follows:

Every firm shall within a reasonable time after the performance or earlier termination of any mandate account to its client in writing; each account shall contain –

- details of all amounts received by it in connection with the matter concerned appropriately explained;
- particulars of all disbursements and other payments made by it in connection with the matter;
- fees and disbursements raised against the client and, where any fee represents an agreed fee, a statement that such fee was charged and the amount so agreed;
- the amount due to or by the client; and
- the firm shall retain a copy of each such account for not less than five years.

A firm, unless otherwise instructed, shall pay any amount due to a client within a reasonable time.

Why it is crucial for practitioners to account to their clients?

The word ‘account’ has several meanings including –

- a record or narrative description of past events;
- a statement of recent transactions; and
- the resulting balance.

Accounting goes beyond just maintaining proper records of accounts, but also focuses significantly on relationship management through the provision of a record of events. A firm’s clients are important stakeholders who have great influence on the continued existence and sustainability of the firm. Without clients, no practice can exist.

It is imperative for practitioners to keep their clients abreast of activities and events surrounding the use of their funds. Needless to say, the money in the trust account does not belong to the attorney but to the client. Practitioners should pay only to or on behalf of their clients from trust funds. It is prudent to disclose to the owners of those funds where and how their funds were applied, as they have the right to know if their funds were applied appropriately. This ensures transparency on the part of the practice towards its clients and, therefore, enhances its reputation and engenders trust from the clients and the broader public. It also provides an opportunity for clients to follow up and inquire on unclear issues, thus managing possible false and improper reporting against the practice. Reputation is about beliefs and opinions that are generally held about someone or something and can be perceived.

It is well known that some practitioners appoint bookkeepers or accountants to write up and balance the books of the practice. The bookkeepers or accountants will also, as part of their duties, prepare accounting statements to clients. In such instances, where the accounting statements are prepared by bookkeepers or accountants, the process of preparing statements also provides practitioners with an opportunity to review transactions on the various clients’ accounts and to identify and follow-up on irregular transactions and misrepresentations made to clients.

These trusted ‘resources’ – bookkeepers and accountants – can commit fraud. Fraud occurs where the following elements exist, referred to as ‘GONE’:

- **Greed** – An excessive desire to acquire or possess more than what one needs or deserves, especially with respect to material wealth.
- **Opportunity** – Circumstances that allow you do to something you would like to do.

- **Need** – A motivating force that compels action for its satisfaction.
- **Lack of Ethics** – The basic concepts and fundamental principles of decent human conduct.

Considering the tough competition in the legal industry and with many new entrants joining the profession every year, it is difficult for firms to compete without a solid reputation, hence the need for practitioners to build and maintain solid relationships and a favourable reputation with their clients.

What can happen?

No matter how well-intentioned your staff may be, or how organised your business is, mistakes are inevitable, and even when there is nothing apparently wrong, not all clients will always be totally satisfied. When you are dealing with reasonable, rational people, most issues can be handled with a personal, sincere response and immediate remedial action. This should, at the very least, leave the client feeling satisfied that you care and that you are prepared to make things right.

Many clients will not immediately make their grievances known. Some may prefer to discuss the matter with friends or relatives before bringing it to your attention. Others may not say a word to you at all – for any number of reasons. Some people say nothing to avoid confrontation at all costs while others may be mum because they are planning something more vindictive.

Besides that, one may be dealing with a client that is not reasonable or rational. One tweet, one Facebook status update or one short comment on a web page is all it takes, and what took a few cents and a few minutes to create will not be cheap or quick to remove. Organised reputational harm caused by a vindictive client, disgruntled ex-employee or a competitor can be extensive and devastating. You could find page after page of believable (but false) complaints, damaging comments and harmful fabrications in the most popular and trusted media spaces. This can be done at relatively little cost, in a very short space of time and from anywhere, with dire consequences for the firm.

Cases of lack of accounting to clients have been reported to the regulatory law societies from time to time. As soon as such reports are filed, an immediate suspicion arises that the firm could be hiding something from the client and scrutiny of the firm's records may be required. This scrutiny of records can cause discomfort for the employees and practitioners in a firm and it can give a sense of not being trusted. Needless to say, the reason clients report these to the regulators stems from the perception that the firm could be misappropriating their funds. Relationships between firms and their clients are ruined due to lack of accounting to clients and can have long-term consequences for the firm and practitioners involved.

Furthermore, it is important for practitioners to strive for favourable audit and/or inspection reports by complying with laws, rules and regulations, prescribed practices and accounting standards on proper accounting for trust monies. Failure to comply can lead to reputational damage, limited business opportunities, reduced expansion potential and an inability to attract new work. Good audit and inspection reports enhance the positive views about the firm. If it is perceived to be conducting business ethically and transparently, it has a good chance of being rated as low-risk. This sends a strong and positive message about the firm. Credibility is not only about the firm, but it extends to credibility of the individuals behind that firm, and *vice versa*.

Prevention is better than cure

Based on the above, accounting to clients can serve as a deterrent to false reports that may harm the reputation and therefore the sustainability of a firm. This is possible because as the harmful news flourishes, clients can refer to the transparency with which the firm has deals with them and ignore the rumours or allegations. Clients that recognise and appreciate the firm's transparency may even stand up for and protect the firm against destructive publicity. Practitioners should

always ensure that they disclose transparently to the owners of the funds, what they did with and how they applied their funds. In this way the risk of an appearance of improper behaviour by an attorney is properly managed and possibly prevented.

Practitioners should, therefore, strive for positive publicity and ensure that their prospective clients are seeing positive information when they conduct a search on a practice. As already alluded to above, word of mouth can still be the top driver of success or failure in business. Word of mouth now also encompasses online reviews. By taking control of your firm's branding you can minimise negative connotation and increase your trust factor, which results in gaining more clients.

What to do?

Practitioners should always consider the costs of not accounting transparently to their clients. Lack of transparency and accountability can and will cost the practice dearly, and can lead to closure of the firm. With the ever-changing business environment – even in the legal profession – client relationship management has become critically important. Practitioners need to take a long-term view and outlook on their businesses. It is important for firms to strive towards building solid relationships with their clients, which relationships are enhanced by transparency.

Reputation management may all too often be considered an intangible benefit by practitioners, but if left unmanaged, its shockwaves leave tangible terror.

It is in your best interest to account to your clients. Reputation is all you have to keep you in business.

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