

# LITIGATION MANAGEMENT

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## The Language of Leadership

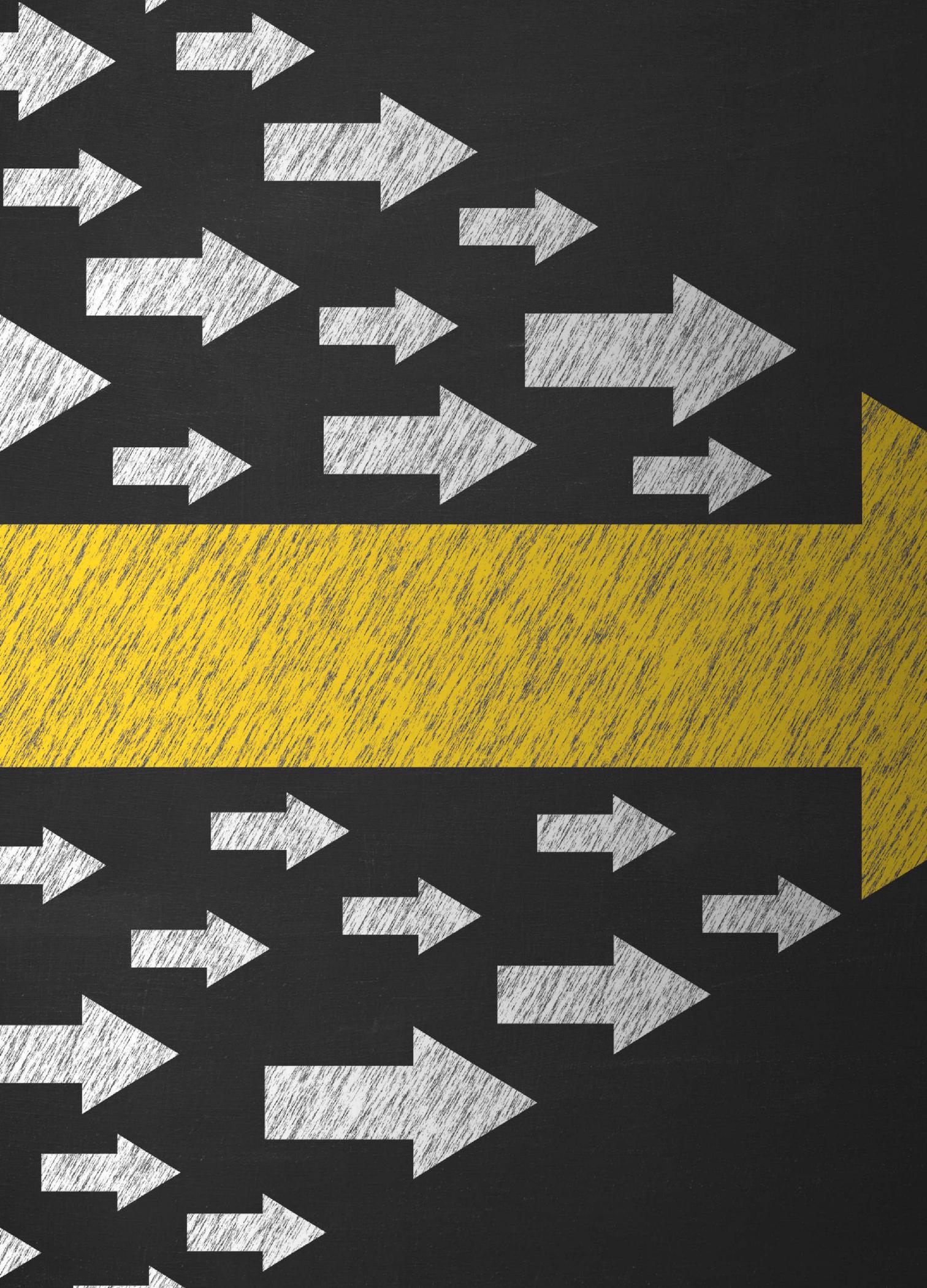
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# The Language of Leadership

## Effective and Meaningful Communication

By Mike Zeoli, Dwayne Hermes and Erica Lay

Communication is a necessary and natural part of our job and lives, possibly the most important part. We cannot perform, nevertheless be successful in our work and lives without it. Effective and meaningful communication makes us more efficient; poor communication leads to just the opposite.

In managing claims and litigation, communication is the single most important driver to success. Effective communication regarding every stage of the case is key. If an anticipated poor end result of a case is not communicated in a timely manner, the end result seems even worse. No surprise is a good surprise, and usually when there is a surprise forthcoming, it is not because of the outcome itself, but a matter of the outcome not being communicated.

The expectation is that communication be meaningful, clear and concise.

### Breaking It Down

While good communication seems so simple and straightforward, it gets missed much more often than we may think. The breakdown is usually in the lack of meaningful communication. The information that really matters is the

assessment, strategic plan, and recommendation. Too often this information is either not provided, unclear, or buried in a communication that is too lengthy. To prevent the breakdown or surprise, we have to improve how we communicate. In 2016, we are communicating in ways that could not have been imagined 20 years ago. There are many in our industry who did not even have email at work when they first started their careers. Now we receive hundreds of emails a day. Twenty years ago if you received fifteen pieces of snail mail, it was likely that all fifteen pieces were important and needed to be fully read and acted upon. Now we are tasked with trying to sort through hundreds of emails and identifying the ones with important information.

Email is only one of the vehicles we now use to communicate. We all have numerous communication vehicles including the office phone, cell phone, text messages, instant messaging/skype, social network, and company intranet board. We work in a high volume and fast-paced communication world. However, as claims and litigation professionals, we are trained to be thoughtful, thorough, and careful in evaluating our files and assessing the risks. The fast-paced communication environment directly conflicts with the time and focused attention required for careful review and understanding of policies, facts and legal issues.

There is, of course, some onus on all of us to effectively manage our communications. We must determine what is important and prioritize accordingly. But that is not the focus here. Here we focus on how we can better communicate to our partners in the claims and litigation world.

### Content and Recipients

This is where we get back to the simplicity of good and meaningful communication. When we communicate,

we should understand the information that we need to deliver and the relevance of that information. The days of the eloquent and Shakespearian letters are long gone. This does not mean that communication can be unprofessional or grammatically incorrect, but communication does not need to be fancy. It needs to clearly and concisely present the message and the impact/value of the message. In addition, the message should be presented in a way that if it is cut and pasted or forwarded there is no concern with regard to the format, content, or tone. The email should be self-standing. Think about where and by whom the message may be received down the line as the intent of our communication is to not cause additional issues.

We also need to understand who should be receiving the message. There should be sensitivity to the recipient and their needs, their volume. It is easy to carbon copy more recipients, but we should be thoughtful of who should be included. If someone has asked to be copied, that is easy. However, it is important to remember that when individuals are carbon copied, most feel a responsibility to review the communication.

### Communication Vehicle

It is also important to know the vehicle in which to communicate. We have lots of options. Some are inherently less formal, such as a text and email, and others are more formal, such as a letter (usually as an email attachment). They all serve a different purpose, so think about how and why you send your communication when determining the vehicle of the communication. In addition, we can all agree that while there are many means to communicate, when it is most needed and valued, the best way to be effective and get the most accomplished is the old fashioned way — in person or on the phone. Those are usually the best vehicles to build relationships as well.

### Timing of Communication

Another consideration is the speed of communication. Some communications require immediate distribution or action and others can wait. The vehicle by which we communicate will be dictated by the urgency, in concert with the content being communicated. A reduced demand while the jury is out is deserving of an immediate phone call. However, a receipt of a request for additional time to respond to discovery is more appropriately a one-line email.

### The Recipient

What does the receiver want or need? Has the receiver specified a particular vehicle, certain timing of communication or certain format for written messages? All of these considerations are dictated by the recipient's explicit or inferred requirements or preferences. If we are seeking to be more effective communicators, we have to take steps

to learn about our audience and be willing to adjust our practices accordingly.

For example, working with individuals who are in another country or in different time zone creates certain challenges because of the time differences. Recognizing that a person is probably not going to be at his/her best in the wee hours of the morning demonstrates the importance of determining the best time and vehicle in which to communicate.

Consider this true example of ineffective communication. A case is set for trial in a week, and a key witness deposition is scheduled five days prior. The attorney takes the deposition and delivers to the claims professional an in-depth summary of the testimony. However, the claims professional only needed the meaningful information, namely, the following:

- How did the testimony affect liability?
- How did it affect assessment of value?
- What is the recommended plan/strategy?

Unfortunately, this information was buried in a 10-page summary that was provided a day and a half after the deposition took place. What the claims professional needed was an email immediately following the deposition stating that the testimony was adverse to the insured/client's version of the events, the witness appeared credible and will appear as such at trial, that settlement is recommended, and that increasing the offer should be considered given the likelihood of plaintiff prevailing on liability.

While this example highlights an attorney's missed communication opportunity, recognize that there are instances where claim professionals have done the equivalent on their side of the file.

### Claims Professionals

Claims professionals can help attorneys on a micro communication level by communicating to attorneys the preferred communication method. The more detail, the better. This should naturally occur when attorneys and claims professionals work together over multiple matters. On a macro level, when the attorney knows the carrier and claims professional's key performance metrics, the attorney is in a much better position to invest and build on the relationship and achieve an end result that is favorable to the carrier and the claims professional.

### Attorney Communication Strategies

One of the main communication challenges that attorneys face is the need to prioritize and balance between communications with multiple carriers, clients, courts,

and vendors. There is no magic rule for juggling all of these competing interests and responsibilities. However, for an attorney to be an effective communicator, he/she must be able to balance communications with the various interests without jeopardizing any one relationship.

As the attorney's focus should always be on client satisfaction, there is a strong preference for verbal interaction with clients where possible and where merited by content, rather than just one-way "missiles" associated with text or email. Interaction by phone or in person allows the attorney to gauge the client's nonverbal cues about the subject matter. Also, scheduling important calls in advance can help to avoid the unproductive phone tag.

Another strategy for attorneys is to institute a scheduled series of communication with the carrier/insured at the outset of case assignment. Communication, while always important, is crucial at the outset of the case assignment as it lays the foundation for the handling of the file thereafter.

Attorneys may choose to publish their own internal metrics as a means of facilitating partnership discussions rather than merely transactional discussions. However, it is not just providing metrics as part of the communication, but understanding what metrics the carrier wants and in what format the metrics should be reported. Intra-firm communication regarding the requested metrics will help drive the behaviors that lead to improved results. The more the defense team understands why the client wants the information and how it affects the client, the more they will be motivated to deliver the results.

Effective communication always involves a feedback loop. As attorneys, it is important to get feedback from the claims professional to confirm understanding and context. Verbal communication either in person or on the phone allows the client to give immediate feedback without having to take the time to draft a written response. A client feedback survey periodically and at the end of major case work is another method for ensuring that the feedback loop is completed. The attorney can also help facilitate a feedback loop by providing results on key metrics at the conclusion of an assignment.

Finally, the internal culture of law firm communication sets a tone and precedent for external communication. Attorneys should practice in a smart, transparent, and meritocratic environment that is then reflected in the service and support that clients receive. A firm that encourages and facilitates relationship building, intra-firm feedback and overall high-quality communication with-

in the firm is empowering its attorneys to deliver that same level of communication to the firm's clients.

### Bringing It Together

So how does this all tie back into claims and litigation management? The usual end result of effective and meaningful communication during the course of a case is a unified defense — an agreed or understood defense and resolution plan for both the legal and claim file. There may be differences of opinion. However, ensuring that all litigation management personnel are on the same page leads to few surprises, if any. Where there is poor communication there is usually not a joint plan, and these are the cases that are more likely to be problematic.

The message to both claims professionals and attorneys is that you are each drivers of the case. Providing effective and meaningful communication in case handling leads to a joint strategy with clear direction. These are the cases that generally resolve within the plan and end with a favorable and expected result. Seek to make your communications thoughtful and deliberate. We want our communications to be well-received and to add value to the relationship. Effective communication is one of the bedrocks for success for defense firms and carriers individually and as a partnership. [LM](#)

### Communication Dos and Don'ts\*

- DO change the email subject line when the subject changes
- DO communicate next steps in writing so the response can simply be agreement
- DO follow up voicemail with email
- DO document verbal communication
- DO establish consistent format for similar communication
- DO make expressly clear when action is required
- DO make phone call immediately after hearing or deposition
- DO confirm agreed upon action, deliverable and due date in writing
- DON'T communicate bad news in writing as a means of avoiding a difficult conversation
- DON'T include carbon copied recipients without determining necessity

\* *Subject to client preferences*

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