



LEGALLY SPEAKING

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When the Ants Come Marching In How communication failures turn disputes into lawsuits

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Special to Minnesota Lawyer

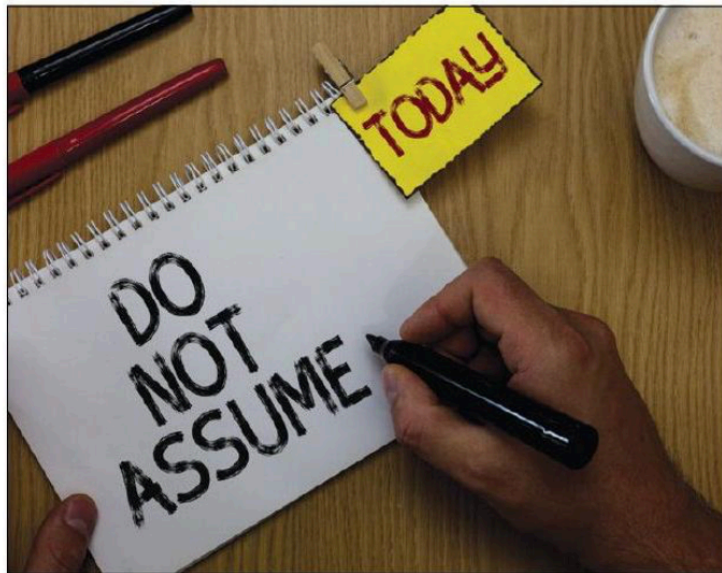
Summer has a way of reminding us that the smallest problems rarely remain small. Picture a warm July afternoon. A ripe watermelon sits in the middle of the picnic table waiting to be sliced. Family and friends are talking, children are running through the yard, and everything seems exactly as it should. Then you notice a single ant making its way across the table. One ant hardly seems worth worrying about. It is easy to brush aside or ignore altogether. Ignore it long enough, however, and that lone ant is soon joined by another, then another, until what was meant to be the centerpiece of the gathering becomes something no one wants to touch.

Disputes often begin the same way. Very few lawsuits begin with one dramatic event that everyone immediately recognizes as the point of no return. More often, they begin quietly. A phone call is not returned. An email goes unanswered. A meeting ends with two people believing entirely different decisions were made. Someone assumes another person understood what was meant while the other leaves believing no explanation was ever given. A difficult conversation is postponed because everyone is busy, uncomfortable, or convinced there will be a better time to have it. Like that first ant, the problem seems insignificant and easy enough to ignore. Until it isn't.

As lawyers, we naturally focus on legal problems. We analyze contracts, evaluate evidence, interpret statutes, prepare motions, and advise clients about risk. Yet by the time a dispute reaches our office, the legal issue is often only the final chapter of a much longer story. Long before anyone files a complaint, communication between the parties has usually begun to deteriorate. Expectations have diverged. Assumptions have replaced conversations. Frustration has quietly hardened into certainty, and certainty has become conflict. The lawsuit may be new, but the dispute rarely is.

Every lawsuit has two timelines

After years of practicing law, I have become convinced that every lawsuit has two timelines. The first is the legal timeline. Lawyers know it well because it is the one we manage every day. It begins with contracts, transactions, policies, or events that eventually



DEPOSIT PHOTOS

give rise to legal claims. It continues through demand letters, pleadings, discovery, depositions, mediation, motions, settlement negotiations, and, if necessary, trial. It is documented in calendars, court files, scheduling orders, and exhibits. It is visible, organized, and familiar.

Running alongside the legal timeline, however, is another timeline that rarely appears anywhere in the court file. This second timeline is the communication timeline. It often begins months, or even years, before the legal timeline becomes visible, with the conversation that never happened, the explanation that was never given, the concern that was dismissed too quickly, or the misunderstanding that no one believed important enough to clarify. It includes the email that was interpreted differently than it was intended, the text message that felt abrupt, the meeting where everyone left with different expectations, and the difficult conversation that everyone agreed could wait until another day. By the time lawyers become involved, those seemingly insignificant moments have accumulated into something much larger than anyone appreciated at the time.

Over the years, I have seen this pattern repeat itself often enough that I no longer believe it is the exception. I have worked with clients whose legal positions appeared straightforward when viewed through the documents alone. The contracts were clear, the correspondence was organized, and the legal claims were well-developed.

Yet as we worked through how the dispute had unfolded, an entirely different story emerged. One client was less troubled by the alleged breach than by the months during which he believed the other party had intentionally stopped returning his calls. Another had become convinced that silence reflected disrespect when responsibility for the project had simply changed hands without anyone explaining the transition. The legal issues remained the same, but understanding the communication timeline changed how everyone evaluated the dispute. It became clear that the lawsuit was driven not only by legal rights and obligations, but also by months of assumptions, unanswered questions, and conversations that never occurred.

When assumptions become facts

Communication failures rarely announce themselves with flashing lights. Instead, they quietly invite people to fill in the gaps.

Consider a construction project. An owner notices work that appears incomplete and sends an email asking for clarification. The contractor reads it between jobs, intends to respond later, and forgets. Several days pass. The owner concludes the contractor is intentionally ignoring the concern. When the contractor finally responds with a brief email, he believes he is simply being efficient. The owner reads the

very same message as dismissive and disrespectful. Lawyers are retained, experts are hired, and litigation follows. On paper, the lawsuit concerns defective construction. The relationship often began deteriorating because assumptions filled the silence long before legal positions were established.

The same pattern appears in employment matters, family businesses, partnership disputes, health care conflicts, and countless other cases. A supervisor assumes an employee understands the business reasons behind a difficult decision. The employee assumes the decision was personal. Brothers who once made decisions over coffee begin communicating only through accountants. Parents postpone difficult estate-planning conversations because no one wants to create conflict, only to discover years later that avoiding the conversation created the very conflict everyone hoped to prevent. Although the facts differ, the progression is remarkably similar. Small communication failures accumulate until they reshape the relationship itself.

One experience from my practice has stayed with me for years. During a case, I asked counsel to show me the email they believed had "started everything." They confidently handed it over, convinced it contained the turning point in the dispute. After reading it, I realized the problem was not what the email said. The problem was everything both sides believed it meant. Each party had assigned motives, intent, and meaning to a message that, standing alone, was remarkably ordinary. Months of litigation had grown from assumptions attached to a handful of carefully chosen words.

There is a reason this happens. Psychologists have long recognized that people are uncomfortable with uncertainty. When information is incomplete, our brains instinctively fill in the missing pieces. We assign motives. We infer intent. We connect unrelated events into a story that makes sense to us. Once that story begins to take shape, confirmation bias quietly takes over. We begin noticing the facts that support our conclusions while discounting those that challenge them. Before long, assumptions begin to feel like evidence.

Lawyers are not immune from this tendency. If anything, our training sometimes makes us exceptionally skilled at defending the narratives we have constructed. We gather facts, build

Legally Speaking

Continued from page 2

legal theories, and advocate vigorously for our clients. Those are essential skills. Yet they can also make it easy to overlook the possibility that the dispute we see in the pleadings is only part of the story. Understanding the communication timeline requires us to look beyond what happened and ask how the parties came to believe what happened.

Seeing both timelines

One of the most valuable questions a lawyer can ask is not simply, “What happened?” It is, “When did the communication begin to change?” The answer often reveals far more than another review of the documents. As lawyers, we spend countless hours reconstructing events, developing legal theories, and evaluating evidence. Those tasks are essential. Equally important, however, is understanding how the parties arrived at this point. Somewhere along the way, assumptions replaced conversations, expectations went unspoken, and each side began interpreting the other’s conduct through an increasingly skeptical lens.

Every litigator has experienced the deposition that changes a case, not because of a dramatic admission, but because someone finally asks the question that should have been asked months earlier. “What did you understand that email to mean?” “Why didn’t you respond?” “What did you think was happening?” The answers often reveal that people were reacting not to facts, but to assumptions that had quietly become accepted as truth. Likewise, anyone who has participated in a successful mediation has probably wit-

nessed the moment when someone says, “I didn’t know that’s what you meant,” or “No one ever explained it to me that way.” Those statements rarely eliminate every legal issue, but they often change the trajectory of the discussion because they expose the communication timeline that had been hidden beneath the legal one all along.

Understanding the communication timeline does not make anyone less effective as an advocate. It makes advocacy stronger because it provides a more complete understanding of the dispute. Lawyers who recognize both timelines are better equipped to evaluate risk, advise clients, negotiate effectively, and identify opportunities for resolution. They are also less likely to mistake assumptions for evidence and more likely to ask the questions that uncover what is truly driving the conflict.

The next time a new file lands on your desk, study the legal timeline carefully. Then look for the communication timeline that preceded it. Often you will discover that the lawsuit did not begin with the filing of a complaint. It began much earlier, with a conversation that never happened, an explanation that was never given, or an assumption that quietly became accepted as fact.

Communication is never neutral

There is an important lesson here regardless of practice area. Effective advocacy requires more than mastering the law. It requires curiosity. The best lawyers ask what assumptions have been made, what conversations never occurred, what expectations were never discussed, and what each side believes the other already knows. Those questions often reveal more about the trajectory of a dispute than another hour spent reviewing documents because they expose

arguments are fully developed, the underlying conflict has often become far more difficult to resolve because the parties are no longer arguing only about facts or law. They are defending stories they have been telling themselves for months, or even years.

The ants were never really the problem. They were simply evidence that something valuable had been left untended. Communication works much the same way. Rarely does a lawsuit appear out of nowhere. More often, the legal dispute is the visible result of months, or even years, of misunderstandings, assumptions, unanswered questions, and conversations that never occurred. By the time the complaint is filed, the communication timeline has often been shaping the case far longer than the legal timeline.

This summer, if you notice that first ant wandering toward the watermelon, you will probably do something before there are hundreds more. You understand what that first ant represents. Lawyers should develop that same instinct, not because every misunderstanding can be prevented, but because recognizing the earliest signs of communication breakdown often changes everything that follows. Some of our greatest opportunities to serve our clients come from recognizing the communication timeline before the ants come marching in.

The lawyer’s opportunity

Paying attention to the communication timeline will not prevent every lawsuit. Some disputes genuinely belong in court. Others deserve to be tried. But many cases become longer, more expensive, and more personal because no one recognized the significance of the first small communication failure: the unanswered email, the misunderstood conversation, or the assumption that went untested. By the time legal

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