

Advocatus

There are some excellent solicitors in Sydney. Solicitors who are well-organised, thoughtful, take responsibility for the matter, seek input from counsel on important issues without requiring counsel to settle (or redraft) every document generated, and who understand and consider the relevant legal issues. Unfortunately, too few of these solicitors brief me.

I seem to attract the other kind – the disorganised, nervy, demanding, argumentative or overly relaxed kind.

My years of experience at the bar have caused me to consider that the least desirable solicitors fall into three main categories, the Expensive Post-box (and its smaller relative, the Inexpensive Post-box), the Loose Cannon and the Nervous Nellie.

The Expensive Post-box is a team of solicitors commonly found in large firms. It is recognisable by the fact that its members do as little substantive work on the matter as possible, relegating that role to counsel. Their role is essentially to email correspondence from the other side to the barrister, or from the client to the barrister or vice versa under the covering email, 'Please see attached just received. We will consider in parallel. We look forward to hearing counsel's thoughts'. Translated, that means 'Over to you. Tell us what it says and what we need to do so that we can tell the client. We won't turn our own minds to it.' That is confirmed by the fact that the results of the Expensive Post-box's 'consideration' are never communicated to the barrister.

The Expensive Post-box's second common task is to schedule video conferences between the client and counsel. In those conferences, the members of the Expensive Post-box (and there are usually three of them – partner, senior associate or special counsel and junior lawyer) offer no independent thought on the matters under consideration. Instead, they act as a sort of MC or convener of the conference. If they're feeling particularly helpful, they create an agenda and announce each item of the agenda at appropriate points in the conference, never descending to the point of offering an independent view on the matters discussed but merely confirming that client and counsel have both said everything on the topic they wish to say. When pressed for their own thoughts, they tend to agree with counsel, which is not unhelpful, but is of little comfort or utility to counsel when it appears that they haven't considered the matters under discussion. One gets the sense that the client is paying a larger fee for what is essentially an administrative service than is warranted.



The Inexpensive Post-box is found in small firms, often small practitioners. It operates the same way as the Expensive Post-box but without any pretence of actually performing any work. The Inexpensive Post-boxes do not use grandiose and misleading phrases such as 'we will review in parallel'. It's clear at all times that they are relying on counsel to do everything. While frustrating, the Inexpensive Post-box does suffer from a lack of resources and so its position garners more sympathy than that of the Expensive Post-box.

The Loose Cannon can be found in firms of all sizes. He or she is characterised by a refusal to seek and follow the advice of counsel as to the conduct of the matter. Sometimes this manifests itself in the outright expression of opposition to counsel's views, which is preferable to the alternative, as at least counsel is forewarned. At other times, the Loose Cannon may appear to accept the advice offered or direction given, leaving counsel with the impression that a notice to produce will be issued or a witness spoken to and a draft affidavit prepared, only to discover later that the Loose Cannon decided he or she knew better and opted not to follow that advice, but without informing counsel of that fact. Often, by the time counsel discovers that, it is too late for anything to be done about it. One apparent advantage of the Loose Cannon is that he or she tends not to bother counsel too often with requests to settle correspondence. The barrister, no doubt busily occupied on other matters, may be tempted to think that matters are in hand and that the Loose Cannon is busily and responsibly progressing the required work. This is a trap. If the Loose Cannon is working on the matter, he or she is almost certainly writing letters to the other side of the court which are inappropriate or harmful to his or her client's case or the overall strategy of the matter.

The Nervous Nellie is almost the polar opposite of the Loose Cannon. The Nervous Nellie is incapable of taking a step on the matter without counsel's input and assent. While this means that the mistakes of the Loose Cannon are avoided, it is incredibly burdensome on the barrister, not to mention irritating. A typical day on a matter with a Nervous Nellie might involve a call to discuss a proposed response to a letter to the other side. On the call, the barrister dictates in broad terms what the letter should say. The Nervous Nellie then prepares a draft of letter for counsel to settle. This is in itself irritating given that the Nellie has already been told what the letter should say. Sometimes the letter might be accompanied by a Dropbox link or Zip folder containing numerous documents that the Nellie considers relevant to the letter, for counsel to review. Counsel reviews the letter (which doesn't bear as close a resemblance to that dictated by counsel only hours earlier as it should) and sends back marked-up changes. The Nervous Nellie then phones counsel to discuss the changes. If the client then wants further changes to the letter, this process can repeat. On one day in a matter with a Nervous Nellie involving several pieces of work, for my own amusement I added up how many calls I had received from the Nellie. The total was 28.

Some Nervous Nellies have their own thoughts about the matter. This type are not too bad, provided they are not a cross-breed of the Loose Cannon in that they both bother counsel incessantly and don't accept counsel's advice when given, and bother counsel again to argue about it.

My characterisation of these solicitors may be thought unduly harsh. Of course, like barristers, solicitors are under many pressures from clients and other sources. Like us, they have competing matters, deadlines and priorities, both professional and personal, and different personalities with corresponding strengths and weaknesses. I try to remind myself of this when frustrated with them, and that I too was once a solicitor (and a very junior one at that) who must have driven mad the barristers I briefed, although they very generously didn't make me aware of it. Whenever I am tempted to complain to more senior colleagues of the irritating behaviour I experience from solicitors, they remind me that without these people, I wouldn't have a practice. They feed the bar, particularly the junior bar. I'm grateful for that. I just wouldn't mind if they could keep feeding me briefs while also working on their own deficiencies. **BN**