

WESTERN AUSTRALIA
LEGAL PROFESSION COMPLAINTS COMMITTEE

FACT SHEET
OPPOSING LEGAL REPRESENTATIVES

The role of legal representatives is to protect their own clients' interests, within the boundaries of professional conduct standards. They advise their own clients on the best course of action and act on their own clients' instructions.

A legal practitioner for one side has no responsibility for the interests of other parties. On the contrary, our *adversarial system of justice* (where disputes often produce a winner and a loser) means that:

- your legal representative can be expected to say or do things which go against the interests of other parties, and
- other parties' legal representatives can be expected to say or do things which go against your interests.

You cannot interfere in the professional relationship between another party and their legal representative, even if you disagree with:

- the advice that the opposing legal representative is giving the other party; or
- the instructions that the other party is giving their legal representative.

On occasion you might believe that the opposing legal representative is not carrying out the other party's instructions. For example, the legal representative might reject an informal agreement that you believe you have reached with the other party. This might be because the other party's legal representative has convinced them that the agreement is not in their best interests, and they have therefore instructed the legal representative to reject the agreement. You can only complain about an opposing legal representative's course of action if you have evidence that they are not acting on instructions, or are acting on instructions that they know are untrue or unethical.

The legal practitioner for the opposing party might say something or state a fact that you disagree with. The practitioner has probably made that comment on the basis of his or her client's instructions.

You should take this into account before complaining or suggesting that the opposing practitioner has done something wrong.

Communicating with the other side's legal representative

Legal practitioners are not allowed to communicate directly with another practitioner's client except in very limited circumstances. At court, in court proceedings or generally a practitioner must not deal directly with the opposing legal practitioner's client unless:

- the opposing legal representative has consented, or the circumstances are urgent and the communication would not be unfair to the opposing legal representative's client; or
- the communication is solely to ask if the person is represented and, if so, by whom.

Legal practitioners must exercise great care when communicating with unrepresented parties. They must avoid any suggestion of undue influence, duress or the use of unfair advantage.

Behaviour in court

You might consider that the opposing legal representative's behaviour in court is aggressive or rude. During cross-examination, when the other party's legal representative is challenging your evidence, the questioning might be particularly direct and forceful. This is not necessarily inappropriate – in fact it might be required in order to protect the interests of the legal representative's client.

Conduct in court is under the control of the judge. Your own legal representative can object if the opposing legal representative's language seems unnecessarily offensive or intimidating, or if their behaviour could interfere with the process of justice. The judge will decide if the language and behaviour are acceptable.

Similarly, there is nothing improper in a legal representative filing documents and presenting evidence in a way that presents their client's case in the best possible light. If you disagree with the facts presented on behalf of your opponent, it is up to you to put different evidence to the court. The judge will then decide which evidence to prefer.

Sometimes settlement negotiations begin or continue at court. Legal practitioners can advise their clients about settlement, but the decision rests with the client. If the opposing legal representative's attitude to settlement appears to be "hard" or their demands are high, they might simply be acting on their client's instructions.

Opposing legal practitioner's duties at court

These duties include the following principles:

- acting with due courtesy to the court;
- using best endeavours to avoid unnecessary expense and waste of the court's time;
- not making unsupported or irrelevant allegations; and
- not engaging in insults.

It is professional misconduct for a practitioner to knowingly mislead the court.

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LPCCWA

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ADDRESS CORRESPONDENCE TO: Post Office Box Z5293, ST GEORGES TERRACE, PERTH WA 6831
2ND FLOOR, COLONIAL BUILDING, 55 ST GEORGES TERRACE, PERTH WA 6000

TEL (08) 9461 2299 / FAX (08) 9461 2265 / EMAIL lpcc@lpbwa.com / FIND INFORMATION ON-LINE AT www.lpbwa.org.au