

# Legal Profession Complaints Committee

## Current Issues

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### Supervision of Junior Practitioners

The Committee has recently expressed concern about the level of supervision provided to some junior practitioners by their principals. Is it essential that practitioners in their restricted year and in their first few years of practice are provided with an appropriate level of supervision and support from their principals? Such supervision should involve regular examination of their work to ensure appropriate standards are being met and provide sufficient direct contact to afford junior practitioners the opportunity to discuss issues (such as legal, procedural and ethical issues) and to seek guidance on them to ensure the continuation of their development in the legal profession.

Principals should be aware that if a complaint is made to the Committee, which appears to have arisen from a junior practitioner not being provided with an appropriate level of supervision, the Committee may well examine the conduct of the junior practitioner's principal with a view to considering whether the failure to provide adequate supervision demonstrates unsatisfactory professional conduct on the part of the principal.

### Threats of Defamation

Recently, a matter came before the Committee where a practitioner, when faced with a complaint to the Committee, had threatened defamation proceedings against the complainant. The ability to make a complaint to the Committee without fear of legal action is an important feature of our self-regulated profession. Indeed, the courts have recognised that a complaint made to the Committee is arguably protected by qualified privilege and may even attract absolute privilege.

When a complaint is made, the Committee is required to notify the practitioner concerned of the complaint and provide the practitioner with the opportunity to respond. If the practitioner wishes to challenge the complaint, then the practitioner should provide a detailed response to the complaint, which will be carefully considered by the Committee. Threatening defamation proceedings will not necessarily result in a complainant withdrawing their complaint and is highly likely to heighten any ill feeling the complainant has towards the practitioner. It also does not assist the complaint handling process. Even if a complainant does withdraw their complaint, the Committee retains the ability to launch a conduct investigation into the matters of concern. Further, the Committee reminds practitioners that threatening to commence defamation proceedings against a complainant unless the complainant withdraws their complaint to the Committee is likely to be viewed by the Committee as unsatisfactory professional conduct or professional misconduct.

### Terminating a Retainer

As outlined in Professional Conduct Rule 19, a client is entitled to terminate his or her retainer with a practitioner at any time without reason and the practitioner must, subject to the satisfaction of any lien, take all reasonable steps to facilitate that change (for example, by arranging for the file to be forwarded to the client's new solicitor).

However, a practitioner's right to terminate a retainer with a client is more restrictive. A practitioner may only terminate a retainer, without cause, if it will cause no significant harm to the client's interests and the client is fully informed of the consequences and agrees to the practitioner ceasing to act (PCR 19.3(1)). Practitioners seeking to terminate a retainer without cause should be particularly mindful of the stage that any court proceedings are at and whether there are any upcoming court appearances. The possible cost implications of the change should also be explained to the client.

Practitioners may terminate retainers for cause in a number of circumstances, for example:

- if a client commits a significant breach of a written agreement in relation to fees
- if a client materially misrepresents the facts of a matter
- if a conflict of interest arises.

The Committee encourages practitioners to address any issues that may affect the working relationship with a client in writing, so that the client is clear as to his or her responsibilities and, if the circumstances so require, the reasons for any termination and when that termination takes effect.

The Committee also encourages practitioners, when terminating a retainer, to take all reasonable steps to avoid disadvantage to the client by:

- promptly notifying any relevant court of the practitioner having ceased to act (and, if necessary, applying for leave to be removed from the court record)
- promptly providing the client or their new solicitor with any necessary papers (subject to the satisfaction of any lien)
- should there be any remaining money held in trust, promptly providing that money to the client or their new solicitor (subject to the satisfaction of any lien).

### Summary Conclusion

Recent matters dealt with by the Committee in the exercise of its summary conclusion powers include:

- A practitioner failed to lodge superannuation guarantee charge statements with the Australian Taxation Office and failed to pay superannuation guarantee charges in respect of an employee, contrary to the requirements of the *Superannuation Guarantee (Administration) Act 1992*. The practitioner was fined \$200.
- A practitioner failed to contact the other party in proceedings to clarify the contents of a facsimile proposing a settlement and failed to provide to the client or advise the client of the receipt of that facsimile. The practitioner was fined \$250.
- A practitioner knowingly applied funds held in his trust account to the payment of outstanding legal fees when he knew that the Family Court had ordered that specified liabilities of the parties be discharged from those funds. The practitioner was fined \$1000.