

WESTERN AUSTRALIA
LEGAL PROFESSION COMPLAINTS COMMITTEE

RESPONDING TO COMPLAINTS
BEST PRACTICE FOR LEGAL PRACTITIONERS

DEALING WITH THE LEGAL PROFESSION COMPLAINTS COMMITTEE

What does the Committee do?

The Legal Profession Complaints Committee ('the Committee') supervises the conduct of legal practitioners. Part of that role involves enquiring into the conduct of legal practitioners.

There are two types of enquiries conducted by the Committee. The first results from a complaint received by someone (usually a client or an ex-client) about a legal practitioner. The second is a conduct investigation – something about a practitioner's conduct that has come to the Committee's attention which the Committee has chosen to investigate. Either form of investigation may result in the Committee writing to you and requesting you to provide certain information. Ultimately, this information will assist the Committee in determining the complaint or conduct investigation.

I've received a letter from the Committee, what should I do?

Practitioners have a duty to respond to enquiries by the Committee in a conscientious and timely manner. The State Administrative Tribunal has commented on this duty, saying that:¹

'A practitioner's obligation to respond to a professional disciplinary body is a serious obligation. If the public is to continue to have faith in the extent to which the legal profession regulates its member's professional conduct, then it must be satisfied that practitioners respond in a timely manner, produce any documents requested, and otherwise give full co-operation into any enquiry into their conduct by the Committee'.

Practitioners often respond personally to correspondence from the Committee. However, in more complex situations, a practitioner may want to seek the assistance of an experienced practitioner to respond on their behalf. In either case the Committee asks that you respond to the investigation in writing.

Practitioners who find it difficult to respond are urged to seek the assistance of a professional colleague in answering a complaint, for example, a member of the Senior Advisors Panel of the Law Society or another legal professional association.

Some points to consider when responding to the Committee include:

- Read the correspondence from the Committee carefully. In the case of a complaint from an individual, usually the Committee will provide you with a copy of the complaint form or letter that has been sent to the Committee by that person. In the case of a conduct investigation, the

¹ *Legal Practitioners Complaints Committee v Richardson* [2006] WASAT 251 at pp65.

Committee will outline what the matter of concern is that has been brought to the Committee's attention.

- Provide a full response. Ensure that you have answered each point of the complaint or conduct investigation. Failing to answer a particular point will only result in the Committee writing to you again and the resolution of the complaint being delayed.
- Be frank. If a mistake or difficulty has arisen, it is far better to be open and cooperative with the Committee. Ensure that your response does not mislead the Committee in any way or you may find yourself facing a separate complaint.
- Be courteous. The Committee recognises that dealing with a complaint or conduct investigation is a stressful process. However, the Committee is a professional disciplinary body and should be treated accordingly. Also, be mindful that in cases of a complaint a copy of your response will generally be provided to the complainant so ensure that any reference to the complainant is appropriate.
- Respond in time. The Committee will generally impose a time limit for your response. However, the Committee is aware of the demands of legal practice. If for some reason you can't comply with the time limit imposed then contact the Committee as early as possible to discuss the matter and it is possible that the time for your response may be extended. Be aware that not responding to correspondence from the Committee may result in an additional complaint against you.

Forwarding your response to the complainant

The Committee's view is that a fair and proper airing of a complaint usually requires that correspondence to the Committee from either party to a complaint be published to the other party. For this reason it reserves the right to forward a copy of a practitioner's response to a complaint to the complainant. If there are exceptional reasons why this should not occur the Committee will consider the reasons given by the practitioner and then determine whether or not it is appropriate to forward.

The Committee wants my file, why?

Often the best way to resolve a complaint is to examine the practitioner's file. The Committee can then get a full picture of what has occurred during a matter.

The Committee may make a written request to examine a file or, if necessary, will issue a summons. The Committee will usually ask that the original file be provided. The Committee will then take a copy of the file and return the original to the practitioner.

As with responding to a complaint, being timely is important. The sooner a file is provided the sooner a copy can be taken by the Committee and the complaint can be progressed. If a summons is issued it should be treated the same way as a Court subpoena and should be strictly complied with.

Can I speak to the Committee about their correspondence?

Yes. All correspondence from the Committee contains the name of the Legal Officer dealing with that particular enquiry. You are able to contact the Legal Officer for reasons such as an extension of time in which to respond, an update on the investigation or clarification of a request from the Committee.

Review of your office procedures

A complaint can often assist the practitioner if approached in a positive way – the practitioner might review communications with the aggrieved client to see how they might have been improved, or costs practice, or how file management systems might be improved. The Committee's legal officers are happy to discuss with practitioners how the firm's policies and procedures might be improved to avoid future similar complaints.

Practitioners should have in place procedures that:-

- There are clear retainer agreements with clients;
- There is clear costs disclosure to clients;
- There is effective file tracking and checklists to ensure client matters are progressed in a timely way and clients are kept informed of progress;
- Client oral and written communications are promptly and adequately addressed;
- Client complaints are appropriately dealt with in a timely manner.

It is suggested that practitioners establish a system for dealing with complaints and conduct investigations referred by the Committee's office. For sole practitioners this might involve requesting that a fellow practitioner from another legal practice assist with such matters.

In general, the Committee's legal officers are able to discuss aspects of the complaint with you, but are not able to give legal advice.

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