

Use of threats in correspondence



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From time to time both the Ethics and Professional Conduct Committees are required to deal with complaints which involve practitioners making threats — either to a fellow practitioner or the opposing party.

There is no Professional Conduct Rule specifically dealing with this issue, except Rule 18.1, which has general application and states:

A practitioner shall treat his professional colleagues with the utmost courtesy and fairness.

It must be remembered that matters pertaining to professional conduct are not promulgated in the form of a code. The conduct of legal practitioners is based on what may be classified as acceptable behaviour in any given situation. Therefore, the conduct of a practitioner may not come within the provision of a particular Professional Conduct Rule but, nonetheless, the conduct of the practitioner may be subject to disciplinary procedures.

In general terms, the issue of a threat to a fellow practitioner is **discourteous** (Professional Conduct Rule 18.1) and to issue a threat to the opposing party is not acceptable conduct on the part of the practitioner.

A common example of the latter is a letter of demand being sent to a debtor. There is a well-established principle that:

When writing a letter before action, a solicitor must not demand anything other than that recoverable under the due process of law, nor should a solicitor acting for a creditor threaten the debtor with any action other than court action if the debt is unpaid.

This principle embraces the requirement that a practitioner must not ask for the costs of the letter, which is specifically covered in Professional Conduct Rule 16.2. The reason for this requirement is that costs claimed for the letter may not be legally recoverable.

Similarly, it will be unprofessional conduct if a threat appears in a letter of demand; for example, if the letter states that, in the event of the debt not being paid, the creditor will go to the media or the debtor's employer. In addition, where a threat is involved one must be careful of any criminal implications.

Set out below are some more specific examples of matters which have come to the notice of the Law Society:

- Where the plaintiff in an action is a practitioner suing for fees, the practitioner acting on behalf of the defendant cannot threaten to lodge a complaint against the plaintiff to the disciplinary authority if the plaintiff does not accept a settlement proposal.
- It is inappropriate for a practitioner who acts on behalf of a barrister to demand the payment of the barrister's fees from the barrister's former instructing solicitor if that demand includes reference to the solicitor being reported to the disciplinary authority in the event of payment not being made.
- It is not permitted to submit a proposed settlement on the basis that, if it is not accepted, then confidential information will be revealed or, alternatively, that certain matters will be referred to the taxation authority.
- Not infrequently, instructions are received to recover monies for goods and services supplied where the cheque in payment has 'bounced'. The practitioner will be guilty of **unprofessional conduct** if, in demanding payment from the debtor, reference is made to reporting the debtor to the police in the event of payment not being made.

It is a matter of being vigilant to ensure that those involved in this area of legal activity are not over-zealous in their endeavours to serve the best interests of their clients.

