
Legal Practitioners Complaints Committee

Recent matters

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Taking care with correspondence to third parties about Family Court orders

The Committee recently considered a letter written by a practitioner to a school about the terms of a Family Court order. The practitioner acted for the father who had residence of the children. A Family Court order provided the mother with contact on certain days. None of the contact periods were during normal school hours and the order did not mention the children's school.

A dispute arose about the mother's occasional visits to the children at school during school hours. The practitioner wrote to the children's school advising the school that there was no provision in the order for the mother to visit the children at school and that by visiting the school the mother was in contempt of court. The practitioner also stated that by allowing the visits the school was assisting the mother to be in contempt of court.

In considering the letter, the Committee was concerned the practitioner may have misrepresented the effect of the order to the school. Section 61 D(2) of the *Family Law Act 1975* (Commonwealth) provides that a parenting order (which includes a contact order) does not diminish any aspect of parental responsibility unless expressly provided for. The Committee noted that in the absence of a court order restraining a parent from contacting a child at school parents are generally permitted to attend at their children's school and have contact with their children to whatever extent considered appropriate by the school. The Committee reminds practitioners to take care when corresponding with schools or other third parties about Family Court orders to ensure that the correspondence accurately reflects the order in place.

Specifying GST in cost agreements

The Committee recently considered a complaint that GST was not specified in the hourly rate of a costs agreement. The practitioner had acted for the complainant in a family law matter. The practitioner had provided the complainant with a costs agreement which referred to an hourly rate but which was silent on the issue of GST. The practitioner had also provided the complainant with the Scale of Costs from the Family Law Rules which clearly indicated CST was included. The complainant then assumed that the practitioner's hourly rate included GST. However, when the complainant received an account from the practitioner, the practitioner had charged the complainant GST in addition to the hourly rate specified in the costs agreement, adding an unexpected \$2,300 to the complainant's account.

In considering this matter the Committee was of the view that it was most undesirable that the position in relation to CST was not made absolutely clear to the client. The Committee reminds practitioners that costs agreements should clearly set out the position in relation to GST — either that GST is included or that it is additional to the hourly rate. If GST is claimed from a client it should be explicitly stated and clearly set out in any costs agreement and, if it is not, practitioners cannot assume that CST is claimable.

Dealing with letters of complaint

The Committee recently considered a matter where a partner in a law firm had failed to respond to a letter of complaint about the work of an associate within the firm. The associate acted for the client in relation to an employment law matter. The client later wrote a letter of complaint to a partner within that firm detailing a number of complaints about the associate. The partner spoke with the associate about the complaint and, after

receiving a detailed memorandum from the associate, was satisfied that the associate had properly dealt with the matter. However, the partner overlooked actually responding to the letter of complaint.

The Committee reminds practitioners that letters of complaint should be responded to promptly. Dealing with a complaint promptly increases the chance of the complaint being finalised at an early stage. Not responding to a letter of complaint is likely to further aggravate an already difficult situation and may result in the complaint being forwarded to the Committee for investigation and determination.