

you cannot recover barrister's fees from a client without the client's prior informed consent.

This should be obvious but it seems that it is not. Before a practitioner briefs a barrister the client needs to agree. The client must be given the information necessary to make an informed decision. How much detailed information needs to be given It obviously depends on the circumstances. Sometimes the client will be asked for instructions to brief a particular barrister, but on other occasions the choice of barrister might be left to the practitioner. The client must be informed about the basis for the barrister's charges, the scope of the brief, and any other relevant information that is needed so that the client can be properly informed before giving those instructions.

The committee advises that a practitioner who issues a bill to a client for barrister's fees when the barrister was briefed without the client's informed consent could be guilty of unsatisfactory conduct under the *Legal Practice Act 2003*.

Some practitioners may also be unaware that, whether or not the practitioner's client pays the fee on a brief, the practitioner is generally liable to pay the barrister. The guidelines are found in Rule 25.1 of The Law Society of WA's Professional Conduct Rules:

*If not otherwise agreed, a practitioner who instructs another practitioner (including an interstate practitioner) to advise on or to assist in a matter is responsible for the payment of the other practitioner's fees.*

It is prudent for a practitioner to ask a client to pay funds into trust in anticipation of a barrister's fee. It is essential for a practitioner to obtain a client's informed consent before briefing a barrister.

### BRIEFING COUNSEL — THE FIRST STEP Notice from the Legal Practitioners Complaints Committee

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The Legal Practitioners Complaints Committee has received complaints from members of the public who have been charged by their lawyer for briefing a barrister without the client's instructions. Sometimes the client had not known that the barrister had been briefed until a bill arrived from the lawyer. The committee is concerned that some practitioners may not know the basic rule: