



Legal Practitioners

Conduct Board

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FACT SHEET 3

THE ROLE OF THE LEGAL PRACTITIONERS CONDUCT BOARD WHEN LEGAL ACTION HAS COMMENCED

What is the role of the Board?

- The Legal Practitioners Conduct Board receives and investigates complaints of “*unsatisfactory*” or “*unprofessional*” conduct by lawyers. It can also investigate allegations of overcharging by lawyers.
- The Board is independent of the Law Society of South Australia and is an impartial complaints handling authority. If the Board is satisfied that there is evidence of unprofessional or unsatisfactory conduct, it can decide to either take action against the lawyer (if the “*misconduct*” is relatively minor) or refer the matter on to the Legal Practitioners Disciplinary Tribunal in more serious matters.
- In relation to complaints about overcharging, the Board can **recommend** that a lawyer reduce their fees or gives a refund to a client. The Board **cannot order** a lawyer to do these things.

What if legal proceedings have commenced?

- A lawyer or client may take legal action against the other independently of a complaint being made to the Board. For example, a lawyer may sue a client for an unpaid bill, or a former client may claim, or counter claim, damages for professional negligence. The matters that are the subject of a complaint to the Board can also be the subject of court action - for example, issues relating to conflict of interest or the release of files.
- Where legal proceedings between the parties have commenced, the Board will generally defer its own investigation until the outcome of the court action is known.
- If court action has been commenced, either by the lawyer or the complainant, both parties will need to seek their own independent legal advice. The Board cannot provide legal advice.

Why will the Board defer its investigation?

The Board recognises that its practice of waiting for the findings of a court or tribunal before investigating a complaint further may be a cause of frustration to some complainants and lawyers. The Board cannot take over the role of the court or tribunal which is already looking into a matter and generally cannot intervene in the proceedings.

What happens when the court action is finalised?

The decision or outcome of the court action, or settlement reached in the court action, may resolve the complaint. If it does not, the Board may continue its investigation to determine whether there is any evidence of unprofessional or unsatisfactory conduct.

Conciliation

- For some complaints, even if court action has commenced, the Board may consider arranging conciliation to try to resolve the dispute. Participation in conciliation is voluntary for both the lawyer and the complainant.
- Conciliation is a flexible process which can be conducted by the exchange of letters, by shuttle negotiation between the parties, by telephone conference, or by face to face conciliation (referred to as a Conciliation Conference).
- The aim of conciliation is to assist both parties, explore the allegations raised in the complaint and brainstorm options for resolution.

Refer to the Board's Fact Sheet for more information on conciliation at the Board.

Fact Sheet 3
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Information Sheets on other topics are available from the Board.