



Legal Practitioners

Conduct Board

FREQUENTLY ASKED QUESTIONS BY THE PUBLIC

L3,33 Franklin Street, Adelaide SA 5000

GPO Box 230, Adelaide SA 5001

P (08) 8212 7924 – F (08) 8231 0747

Toll Free 1800 337 570

E lpcb@lpcb.com.au – www.legalcomplaints.com.au

Q. What can I do if I am unhappy with the account that I received from my lawyer and believe I have been overcharged?

- A.** You can raise your concerns directly with your lawyer. If your lawyer works in a large firm they may have a Managing Director or Office Manager who deals with cost and service issues. Many lawyers are prepared to explain or negotiate their costs. If you deal directly with your lawyer you may be able to quickly, and without incurring further legal costs, resolve the matter.

If you are unsure, or unable to assess whether the account given to you by your lawyer is reasonable, you can request an itemised account within 6 months of being provided with your final account. An itemised account should be provided upon request, at no cost to you.

The rate that you are charged for the legal work will depend on the “*retainer*” or “*cost agreement*” that you have with your lawyer. You may be charged on an hourly rate. If there is no cost agreement, you should be charged only on the Court scale relevant to your matter.

Once you have considered the itemised account together, with the basis on which you agreed to be charged by your lawyer, and you still have concerns, you should raise those concerns directly with your lawyer.

If you are not able to resolve the cost dispute directly with your lawyer, the Legal Practitioners Conduct Board has jurisdiction to deal with lawyer/client cost matters. You will need to complete the Board’s complaint form setting out your concerns about the costs charged by your lawyer. Attach a copy of the account indicating which items are in dispute.

If you have any questions you can contact the Board’s Enquiry and Information Officer on (08) 8212 7924 or by email enquiries@lpcb.com.au.

Q. If I am not happy with my lawyer can I change to another lawyer?

- A.** If you are not happy with your lawyer, you can change lawyers. You will first need to terminate your instructions to your existing lawyer. You will then need to request an account for work done to date. You will need to either pay, or negotiate the payment of, the outstanding account. Once the account has been paid, or arrangements have been made for payment, you can collect your file or arrange for your file to be transferred to the new lawyer.

If you are not able to immediately pay your previous lawyer's account, you will need to make arrangements for payment of that account. Your new lawyer may be able to negotiate an agreement with the previous lawyer for payment of the account, to enable the file to be transferred to your new lawyer.

If you do not pay your previous lawyer's account, they have the right to claim "*a lien*" over the file. If a lawyer claims a lien over the file it means that they can hold the file until the account is paid, or satisfactory arrangements have been made for the future payment of the account.

If you have any questions you can contact the Board's Enquiry and Information Officer on (08) 8212 7924 or by email enquiries@pcb.com.au.

Q. What can I do if my lawyer takes legal action to recover their legal costs?

- A.** A lawyer is entitled to take legal action to recover their reasonably incurred legal costs. If legal proceedings are instituted you may wish to obtain legal advice in relation to those legal proceedings. The Board cannot provide you with legal advice.

If you have lodged a complaint with the Legal Practitioners Conduct Board in relation to your lawyer's costs, the investigation of that complaint will usually be deferred while the matter is before the Court. The Court may offer mediation to parties in an attempt to resolve the matter before it is listed for trial.

If both parties consent, and where appropriate, the Legal Practitioners Conduct Board can offer conciliation to resolve costs and service issues.

Sometimes if the cost issues are resolved at conciliation the issues in the legal action may also be resolved. Conciliation is voluntary. Refer to the Board's Fact Sheet No. 5 in relation to Conciliation.

Q. Do I have to pay for legal advice if I am not happy with that legal advice, or if the legal advice was incorrect?

- A.** The role of a lawyer is to give legal advice to their clients. Your lawyer must seek to advance and protect your interests to the best of their skill and diligence. Your lawyer must advise you of your rights and obligations, to ensure that you have sufficient understanding of your legal position to instruct your lawyer as to which course of action to take.

If you do not understand the legal advice given, ask your lawyer to explain the advice again. Your lawyer may on occasions give you legal advice with which you are not happy. Your lawyer has a right to charge for their services and for providing legal advice in accordance with any cost agreement in place between the parties.

Generally, a mistake or error of judgment by a lawyer will not amount to “*misconduct*” unless it amounts to gross negligence or incompetence. The assessment of whether “*misconduct*” arises from gross negligence or incompetence on the part of the lawyer is determined on the facts of each case. Refer to the Board’s Fact Sheet No. 6 in relation to Complaints about Negligence and Mistakes.

If you are unhappy with the legal advice or believe the legal advice resulted in extra costs being incurred, you should raise this directly with your lawyer.

Q. Can the Legal Practitioners Conduct Board ensure that my lawyer follows my instructions and acts quickly and efficiently in my case?

A. The Legal Practitioners Conduct Board does not advocate on behalf of a client who is unhappy with the service provided by their lawyer. Raise any concerns you have directly with your lawyer. If you receive no response, put your concerns in writing. If your lawyer is in a large or medium sized firm, there may be a Managing Partner or Office Manager who is responsible for client service issues.

Q. Can the Legal Practitioners Conduct Board tell me if a lawyer has a history of disciplinary matters to assist me in determining whether to engage that lawyer to act on my behalf?

A. No. A lawyer’s disciplinary history is confidential except where the matter is in the public domain, such as disciplinary proceedings against a lawyer before the Legal Practitioners Disciplinary Tribunal or the Supreme Court.

FAQ’s by the General Public
July 2010



Legal Practitioners

Conduct Board