



Legal Practitioners

Conduct Board

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COMPLAINTS ABOUT NEGLIGENCE OR MISTAKES

The Legal Practitioners Conduct Board is a disciplinary body and looks at whether there is evidence of misconduct on the part of the lawyer. The Board also looks at whether legal fees are reasonable if a complaint of overcharging is made.

The Board can help parties to voluntarily conciliate matters where there is a dispute with a lawyer over something that is capable of resolution by some future action. This does not include any form of compensation or “damages” for past actions. The Board cannot order damages or compensation, including for negligence or poor service.

What is misconduct?

The Legal Practitioners Act, 1981 defines “*unprofessional conduct*” and “*unsatisfactory conduct*”.

“Unprofessional conduct” means:

- a) *an offence of a dishonest or infamous nature committed by the legal practitioner in respect of which punishment by imprisonment is prescribed or authorised by law; or*
- b) *any conduct in the course of, or in connection with, practice by the legal practitioner that involves substantial or recurrent failure to meet the standard of conduct observed by competent legal practitioners of good repute.”*

“Unsatisfactory conduct” means:

“...conduct in the course of, or in connection with, practice by the legal practitioner that is less serious than unprofessional conduct but involves a failure to meet the standard of conduct observed by competent legal practitioners of good repute.”

It is only when conduct falls within these definitions that the Board has power to take disciplinary action. In this information sheet *“misconduct”* is used to describe both *“unprofessional conduct”* and *“unsatisfactory conduct”*.

In determining whether there is misconduct, the Board looks at how individual lawyers conduct themselves in carrying out their professional duties.

The following is not a complete list but provides some examples of the sorts of conduct which may amount to misconduct:

- Unreasonable delay in progressing a matter or complying with instructions.
- Repeated failure to return telephone calls or respond to letters or other communications when there is no reasonable excuse.
- Intimidation or bullying behaviour.
- Deliberately or recklessly misleading you or a Court.
- Mishandling money, especially trust money.

What is the Board?

The Board is made up of seven members. Four members are lawyers and three are not lawyers.

The Board uses its collective experience and knowledge to decide whether the conduct of the lawyer amounts to misconduct and if so, what action should be taken by the Board.

If my lawyer has made a mistake is that misconduct?

Generally, no. A mistake or an error of judgement by a lawyer will not ordinarily amount to misconduct unless it amounts to **gross negligence** or **incompetence**.

The assessment of whether misconduct is gross negligence or incompetence is always a question of degree, and depends upon the circumstances of each individual case.

An example from another profession shows the distinction,

If a dentist is careless and makes an error and accidentally breaks a tooth that would be negligent. If the same dentist was drunk when the tooth was broken that could be misconduct, because it was grossly negligent to attempt dentistry while drunk.

What if I think the legal advice is wrong?

If you are not happy with the quality or content of the legal advice given or work done it will not usually amount to misconduct unless it is so poor that it amounts to **gross negligence or incompetence**.

What if I think my lawyer has been negligent?

In some circumstances a mistake made by a lawyer may be negligent, even if it does not amount to misconduct.

The Board cannot give you legal advice about whether a lawyer has been negligent or whether you have any remedy. It cannot be your legal adviser. It cannot obtain compensation for you for any loss you have suffered. You will need to look to other agencies for assistance in this regard or obtain your own independent legal advice. The Board has no power to assist you in identifying or advancing your legal rights.

Contact Details for Further Assistance

Law Society of South Australia: 8229 0222

www.lawsocietysa.asn.au

For the names of private lawyers from whom you may seek legal advice about potential negligence – but be aware that costs may be involved in obtaining such advice.

Legal Services Commission

Telephone Advice Service: 1300 366 424

Appointments: 8463 3555

www.lsc.sa.gov.au

Community Legal Centres

Telephone the Legal Services Commission and ask for the contact details of your nearest community legal centre. Or go to www.naclc.org.au and click on 'CLC directory'.

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Information Sheets on other topics are available from the Board.