

LAWYER FACT SHEET

Family law and complaints – a guide for lawyers

At the Victorian Legal Services Board and Commissioner (VLSB+C), we receive a high volume of complaints about family law practice.

Family law is an undeniably challenging professional environment for lawyers. The work is demanding and there's a risk of vicarious trauma from continued exposure to the distressing experiences of your clients.

This fact sheet highlights trends in the complaints we receive and provides practical guidance on best practice conduct for family lawyers – so clients receive quality legal services, and you avoid complaints.

The requirements in this fact sheet reflect the [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](#) (Solicitors' Conduct Rules), the [Legal Profession Uniform General Rules 2015](#), the [Legal Profession Uniform Law](#) and the [Federal Circuit and Family Court of Australia \(Family Law\) Rules 2021](#).

Communicate clearly

Clear communication is the foundation of strong professional relationships, with both the client and the other party in family law matters. In many complaints we receive, ineffective communication has led to clients developing unrealistic expectations about potential case outcomes, and misunderstanding court processes like compulsory mediation and other conferences.

The best practice suggestions in this section should help you avoid common mistakes we see leading to complaints.

At a minimum, you have the following duties

- To provide clear and timely advice to assist your client to understand relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of the engagement.¹
- To follow your client's lawful, proper and competent instructions.²

Tips for best practice

- All formal processes, especially court processes, are mapped out in plain language that is easy for your client to understand before you progress any matter.
- Frequently check in and make sure your client understands the advice and information you have shared with them.
- Make sure your client understands the effect of the instructions they're giving you – it's often better to check in before taking action.
- Provide clear, written advice to your client at each stage of their case, including when things change or when matters arise that could impact your client's prospects of success. A good lawyer-client relationship based on clear expectations can usually withstand the disappointment of an unwanted case outcome.
- Explain the requirements for, and benefits of, compulsory conferences in family law proceedings.

¹ *Solicitors' Conduct Rules* r 7.1.

² *Ibid* r 8.1.

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- Provide follow-up letters to confirm court outcomes and outline the reasoning as to why particular orders were made – to make sure your client has not confused or misunderstood the complexities of their hearing.
- Clearly explain your role to the other side if they are unrepresented. We often receive complaints from unrepresented litigants in family law cases who expect help with court dates, processes and documents from the other party's lawyer.

Explain when costs change

Across a variety of practice areas, many of the complaints we receive relate to costs that increase significantly from the original estimate, often without warning or explanation.

Family law is no exception. It's an area of practice that involves many processes dictated by the court, which can result in costs going beyond original estimates quite quickly. Legal fees are important to both clients and lawyers. To make sure your client understands the most up-to-date information about the legal fees they're facing, it's important to regularly discuss the costs disclosure and fee estimates as the matter progresses, and promptly notify clients of changes in writing.

For more information, please see our [website information on costs disclosure](#).

At a minimum, you have the following duties

- You must provide a costs disclosure statement to your client where costs (excluding GST and disbursements) are anticipated to exceed the sum of \$750.
- Disclosures made to your client or anybody else responsible for the costs must be in writing, be provided as soon as practicable,

include a basis for the costs and contain a clear cost estimate.

- Update estimates in a timely manner.³
- Disclosures made to the client or anybody responsible for the costs must include information about the client's right to:
 - a) negotiate a costs agreement
 - b) negotiate a billing method
 - c) receive a bill and request an itemised bill
 - d) seek the assistance of the local regulatory authority (VLSB+C) in the event of a dispute about legal costs.

Tips for best practice

- Provide a costs disclosure statement in every circumstance.
- Provide this statement and fee estimate to your client as soon as possible.
- Make sure any updates to the estimate are given to your client in writing and in a timely manner, explaining the reason for the increase.
- Ensure the costs disclosure statement clearly informs the client of their rights.

For more information, please see our [website information on costs disclosure](#).

Be transparent about money held jointly in trust

Many complaints in family law practice arise from confusion about money held jointly in trust by law practices in accordance with court orders, and a lack of understanding about how this process works.

If you are holding money in trust for both parties in a family law matter, you can avoid causing anxiety and confusion by taking the time to clearly communicate the process, thoroughly recording all dealings with the money and proactively providing transparent

³ *Legal Profession Uniform Law* s 174(1)(b).

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records to your client on request (see [Legal Profession Uniform Law General Rules s 55\(2\)](#)).

At a minimum, you have the following duties

- Keep a record of all dealings with the money to which the law practice, approved clerk or associate is a party.⁴
- Keep records of all supporting information in relation to the dealings in a manner that enables the dealings to be clearly understood.⁵
- Ensure the money is used only as directed by the court pending the resolution of the matter.⁶

Tips for best practice

- Record all dealings with trust money in a ledger-style document.
- Keep all supporting information, including the power or authority, as part of the law practice's trust records (bank statements, information supporting any withdrawal and cheque books), for a period of seven years.⁷
- Where there are two law practices and only one bank statement, the law practices can, by agreement, allocate the task of record keeping to one law practice but ensure the other receives a copy of the records at least monthly.
- Make sure any withdrawals are done with clear authority from the beneficiaries.

Maintain professional boundaries

We often receive complaints because lawyers have blurred their professional boundaries. We discuss the importance of setting boundaries and

maintaining them in our [website guidance on professional boundaries](#).

This section focuses on three potentially problematic areas, namely:

- acting for friends and family in family law disputes
- blurring the lines between the roles of lawyer and counsellor
- providing informal advice to clients.

At a minimum, you have the following duties

- To avoid any compromise to your integrity and professional independence.⁸
- Not to engage in conduct which demonstrates that you are not a fit and proper person to practise law,⁹ or is likely to a material degree to be prejudicial to, or diminish the public confidence in, the administration of justice.¹⁰
- To act in the best interests of your client.¹¹

Acting for family and friends

Lawyers are often asked by family and friends to represent them in their legal matters. While you are not specifically prohibited from acting in these scenarios, we do discourage you from doing so due to the inherent risk of conflict of interest. We discuss this in more detail on our [web page on acting for family members](#). This risk is even more acute in family law where emotions may be high, and you may even find you have a material interest in an outcome, such as in finances or property that is the subject of proceedings.

Tips for best practice

- Don't act for your family members and friends in family law proceedings.

⁴ *Legal Profession Uniform Law General Rules* r 55(2)(a).

⁵ *Ibid* r 55(2)(b).

⁶ *Legal Profession Uniform Law* s 141 (1).

⁷ *Ibid* s 147(2)(d).

⁸ *Solicitors' Conduct Rule* r 4.1.4.

⁹ *Ibid* r 5.1.1.

¹⁰ *Ibid* r 5.1.2.

¹¹ *Ibid* r 4.1.1.

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- Help a family member or friend find legal representation through a referral, or programs like the [LIV referral service](#). If you think they might be eligible for legal assistance, give them information about community legal services and legal aid.
- Offer to help a family member or friend with administrative or non-legal tasks related to their matter, such as gathering evidence or preparing chronologies or documents.

If you do decide to act for a family member or friend, the [Queensland Law Society](#) provides valuable guidance.

Don't be a counsellor

Clients in family law proceedings may be vulnerable or traumatised and, in some cases, need professional counselling. From their perspective, you may be someone they feel they can rely on for emotional support. Even though you may have great sympathy for your client, allowing this line to blur can impair your judgement and compromise your ability to act in their best interests. You will best serve your client by remaining focused on your role as their legal advocate.

Tips for best practice

- Explain your role to your client at the start, including things you can and cannot do for them. Explain to them your obligations to act in their best interests and how you can best achieve that by remaining focused on the relevant legal issues and strategies.
- When communicating with your client, keep the conversations purposeful and relevant to their legal matters. Avoid spending too much time talking about personal matters with your client.

- Avoid disclosing to your clients too much about your own personal life. This may give your client the perception that your relationship is one that goes beyond the lawyer-client relationship.
- Help your client seek appropriate support through referrals to their general practitioner, counsellors, social workers or other psychological support services.
- If your client is experiencing a crisis, refer or assist your client to contact a crisis support service if necessary.

Avoid giving advice in informal settings or formats

Clients depend on their lawyers to provide clear and timely advice that helps them understand the legal issues related to their case and make informed choices. When communicating in informal settings (e.g. at your client's home) or via informal communication channels (e.g. text or direct messaging), it's much harder to communicate in a fulsome way, which risks undermining the quality of your services. In these settings it's also difficult to document the advice you've given after the fact, leaving you more vulnerable to misunderstandings with your client and complaints.

Tips for best practice

- Resist the temptation of providing advice through informal means, such as via text message – even though it's convenient.
- Keep records, including copies or file notes of any advice you have given (including those via informal channels) on your client's file, including by attaching text message or a record of verbal advice you've given.
- If you have given advice to a client via an informal channel, ensure that you provide

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your client formal written advice as soon as possible.

- Try to discuss legal matters with your client only in professional settings and limit legal conversations and the giving of advice in social settings.

Don't be deputised into the fight

We regularly receive complaints about aggressive or overzealous advocacy from an opposing lawyer (e.g. personal attacks about the opposing party or their character, the use of emotional or inflammatory language etc.).

For people who have experienced family violence and made a complaint to us, this kind of advocacy can make them feel as though the opposing lawyer is continuing to perpetrate abuse against them on behalf of their former partner. You must be alive to coercive control red flags and take into consideration that many litigants in family law proceedings may be more vulnerable. They may also be self-represented, which can add to their vulnerability.

It is unacceptable for lawyers to act on instructions to behave unreasonably or aggressively towards the opposing party.

Family law cases are personal and emotional. There is a risk of becoming so involved in your client's case that you develop a personal interest in the outcome or become vulnerable to pressure from your client to act aggressively towards the other party. However, as a lawyer, it's your duty to never go beyond legitimate advocacy in pursuit of your client's interests (see [Solicitors' Conduct Rules r 34.1](#)). Doing so may amount to unsatisfactory professional conduct or professional misconduct under the Uniform Law.

At a minimum you must

- Always keep communications with the opposing party appropriate and professional (see [Solicitors' Conduct Rules r 4.1.2](#)).

Tips for best practice

- Avoid protracted and unnecessary arguments with the opposing party.
- Identify and stick to the legal issues.
- Present facts, arguments and evidence objectively, without distorting information to manipulate or disadvantage the opposing party.
- Foster open communication with opposing counsel, and encourage constructive dialogue with a view to facilitating resolution between the parties wherever possible.
- [Prioritise your mental health and wellbeing](#). This will help you separate yourself from your client's emotions and focus on your role as lawyer.
- Keep in mind your fundamental duty to be [courteous in all dealings](#), and to fulfil your [obligation to the courts and administration of justice](#).
- If your client is putting pressure on you to act aggressively or in ways you're not comfortable with, understand when you can terminate your retainer. Your retainer agreement should set out the circumstances in which you'll terminate your retainer and cease to act. Make your client aware of these terms at the outset of your engagement.

Conduct to watch out for

- Making or relaying threats to the opposing party, using inflammatory language or resorting to personal attacks.
- Employing tactics to delay or frustrate legal proceedings, causing distress or further cost to the opposing party.
- Threatening litigation if the opposing party doesn't comply with your client's demands.

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- Knowingly or recklessly providing misleading evidence to the court in an attempt to paint the opposing party in a negative light.
- Exploiting trauma experienced by the opposing party to manipulate their emotions with the aim of gaining an advantage for their client.
- Communicating with an opposing party personally if they are represented by another lawyer.

Keep affidavits to the facts

The [*Federal Circuit and Family Court of Australia \(Family Law\) Rules 2021*](#) requires that an affidavit must be “confined to facts about the issues in dispute” and “confined to admissible evidence”.

Despite this, we receive complaints that lawyers are including inappropriate and irrelevant content in affidavits. Your client may see an affidavit as an opportunity to air grievances about their relationship or paint it in a certain light. But what your client sees as relevant may not align with the purpose of an affidavit. Your role is to assist your client to put their best case forward by drafting factually relevant affidavits that go to the heart of the issues in dispute.

Tips for best practice

- Explain to your client the purpose of the affidavit you are preparing, and remember that its contents should only include relevant facts and evidence.
- Carefully identify the relevant issues and consider which stage of a proceeding they are at, and tailor the affidavit to best achieve that objective.

Caveats

We’ve recently seen several cases of lawyers improperly lodging caveats over property on behalf of their clients to frustrate the proceedings or agitate the opposing party. We included this issue in our

Risk Outlooks in [2023](#) and [2024](#), and it continues to be of serious concern to our office.

Improperly lodged caveats can cause significant expense to parties. If a caveat needs to be removed urgently, the opposing party will need to make an application to the Supreme Court to seek its removal.

If you’re found to have improperly lodged a caveat, you may face disciplinary action, including suspension or cancellation of your practising certificate.

Tips for best practice

- Familiarise yourself with the relevant case law before you lodge a caveat over a property.
- Do not follow your client’s instructions to lodge a caveat over a property without exercising independent forensic judgement. Satisfy yourself that there is sufficient evidence that your client has a caveatable interest in the property.
- Understand that caveats serve a legitimate purpose. Do not lodge a caveat merely to frustrate proceedings or agitate the opposing party.
- Consider whether there are other means through which you can protect your client’s interest in a property, like applying for an interim injunction.

Always exercise forensic judgement

As a lawyer, your paramount duty is to the court and the administration of justice. Fulfilling this duty requires exercising forensic judgement. We receive a lot of complaints where there is an allegation that a lawyer did not use their forensic judgement, and where there is a perception that they’re acting as a ‘mere mouthpiece’ for their client.

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Tips for best practice

- Stick to the facts. Don't include matters that are inadmissible, inappropriate or irrelevant to the proceedings. Never include:
 - allegations that cannot be substantiated by evidence or facts
 - hearsay evidence (unless an exception applies)
 - irrelevant details that don't address any of the legal issues in dispute.
- Seek to verify your client's evidence.
- Keep up to date with developments in family law and best practice, and continue to upskill and remain aware of your obligations.

Ceasing to act at the last minute before a hearing

Many complaints in the family law practice area relate to clients alleging that their lawyer has ceased acting for them right before a court hearing. Under certain conditions, ceasing to act for a client is an available option, but there is a right way to do it. You must provide clear reasons, and enough notice to not harm your client's matter and for them to seek alternative representation. You can find more information about deciding to cease to act on the [Legal Practitioner's Liability Committee website](#).

When you enter a retainer with a new client, it's not possible to avoid risk altogether, but with good systems in place, the risk can be lowered. Clarifying and agreeing on your expectations at the outset of your engagement with a client provides a reference point for both of you as the matter progresses.

Tips for best practice

- Undertake a conflict of interest check at the first consultation to avoid the potential need to terminate for this reason.

- Outline clearly in your retainer agreement the conditions in which you will cease to act for a client.
- Set out your expectations of the client at the outset of the engagement, such as how you wish to communicate, how instructions are to be given and when to pay accounts.
- If you do need to terminate an engagement in a matter currently before a court, inform both the client and the court so they can arrange alternative representation. In doing so, make sure that you are clear about the reasons why you are ceasing to act and provide supporting material.

Duties once you cease acting for a client

Lawyers have obligations upon ceasing to act for a client, regardless of whether the lawyer or their client ended the retainer. We often receive complaints about a lawyer's conduct at the end of their engagement.

You have the following duties

- To ensure that your former client is given any client documents (or if they are electronic documents, copies of those documents) as soon as reasonably possible when requested to do so.¹²
- If exercising a lien for unpaid legal costs over a former client's documents, to deliver up the documents:¹³
 - to another solicitor acting for the former client:
 - if the second solicitor undertakes to hold the

¹² Ibid r 14.1.

¹³ Ibid r 15.

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- documents subject to the lien and maintains reasonable security for the unpaid costs or
 - if the first solicitor agrees to the second solicitor agreeing to pay, or entering into an agreement with the client to procure payment of, the first solicitor's reasonable costs upon completion of the relevant proceedings or
 - to the former client, upon receiving reasonable security for unpaid costs.
- If retaining copies of a former client's documents, not to destroy those documents until seven years has elapsed since the termination of their engagement (except where there are client instructions or legal obligations to the contrary).¹⁴

Remember, circumstances may arise that require you to produce a former client's file after your engagement has concluded. For example, your former client may make a complaint to our office alleging that you did not progress their matter in a timely manner, or that you charged them for work which you did not complete. In these cases, we often ask lawyers to produce the full client file so we can review the work completed on it.

Complaints may be made about conduct which occurred within the period of three years immediately before the complaint is made,¹⁵ but our office has discretion to waive the time requirement if it is just and fair to deal with the complaint or if the complaint contains an allegation of professional misconduct and it is in the public interest to deal with the complaint with the extension of time.¹⁶

¹⁴ Ibid r 14.2.

¹⁵ *Uniform Law* s 272(1).

Tips for best practice

- Check whether your client wants their file returned to them or for you to retain it, keeping in mind you may want to retain copies of certain documents for your own records.
- Provide documents as soon as possible once your client requests them (see [Solicitors' Conduct Rules r 14.1](#)).
- If you retain your former client's file, keep it for a period of seven years following the completion or termination of the engagement.
- Never refuse to return your former client's file without a proper basis.
- Render an invoice at the end of your engagement if you intend to exercise a lien over your former client's file, so that your former client is clear on what your outstanding fees are.
- Never charge for storage or retrieval of documents, unless your client agreed to it.

Your wellbeing

Your wellbeing as a lawyer is central to your ability to practice ethically, sustainably and in line with the [Solicitors' Conduct Rules](#). But [research shows](#) that poor lawyer wellbeing is common across practice areas, including family law. Our [Lawyer Wellbeing Program](#) was developed because we have observed the significant impact of this poor lawyer wellbeing on lawyers, clients and the reputation of the profession itself.

We acknowledge that workplace wellbeing needs to be addressed at a system level, but everyone needs to play a role in maintaining their own wellbeing, and making sure poor wellbeing doesn't negatively impact legal work. These [practical steps](#) are

¹⁶ Ibid s 272(2).

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designed to help you improve your own wellbeing at work, and understand when and how to get help.

If you're experiencing poor wellbeing, including a mental health condition, we strongly encourage **seeking help as early as possible**. Early help-seeking is the best way to limit the negative impacts a mental health condition can have on the professional and personal spheres of your life. Our [Mental Health Policy](#) is clear about when you need to tell us about a mental health condition you're experiencing – only when it affects your ability to practice.

Find out more about safe work culture and strategies to set you up for long-term wellbeing on our [wellbeing resources](#) page.

Other support

You can seek assistance in understanding your ethical obligations by calling the Law Institute of Victoria's Ethics Support Line on **(03) 9607 9336**.

We take concerns regarding a lawyer's mental health seriously. We have set up arrangements where lawyers are able to access tailored support if a lawyer is experiencing distress due to regulatory action. This support is both confidential and free.

We strongly encourage lawyers to access this Specialised Practitioner Support Service by:

- calling AccessEAP (1800 818 728 – available 24/7). There is both a booking service, and immediate crisis support available
- visiting the app, AccessMyEAP
- visiting the [AccessEAP website](#).