

RECOVERY OF OUTSTANDING FEES

7 June 2017

1. The reasons for non-payment of a barrister's fee may vary. There may be dilatory behaviour on behalf of the solicitor amounting to a breach of his or her professional obligation. There may be some disagreement between the barrister and the solicitor as to the terms of the arrangement made concerning the barrister's fees or the conduct of the barrister in the provision of services. In such circumstances, failure to make payment may not amount to professional misconduct on the part of the solicitor.
2. The Western Australian Bar has a long-standing practice of assisting barristers to recover fees or resolve any dispute with an instructing solicitor in relation to fees. This policy records the usual approach adopted by The WA Bar where a member raises a concern in relation to payment of fees.
3. Barrister's fees should be paid promptly. The policy applies in circumstances where there has been undue delay in payment, normally for a period of more than 60 days from the date on which the account was rendered.
4. A member seeking the assistance of The WA Bar should inform the President of the Association of the relevant circumstances in writing stating details of the unpaid fee, the period that the fee has been outstanding, the work to which the fee relates and details of any communications with the instructing solicitor seeking payment (including any explanation provided to the barrister by the solicitor for non-payment).
5. Upon receipt of the information, the President will usually write to the solicitor inquiring as to the reasons, if any, for non-payment of the fee and requesting a reply within 14 days.
6. In the absence of a reply raising a dispute (and in appropriate cases after a letter of reminder) the President may:
 - (a) make formal complaint to the Legal Practice Board; and
 - (b) advise all members of the fact that the solicitor has not made payment and has not responded to correspondence.
7. If the solicitor does reply raising a dispute the President shall inform the member of the reply and encourage the member and the solicitor to submit the dispute to mediation or arbitration.
8. If the parties agree to submit the matter to mediation or arbitration then the President will assist the parties to appoint a mediator or arbitrator.

9. Members should not to make a complaint to the Legal Profession Complaints Committee in relation to unpaid fees without first taking the steps provided for in this policy.
10. In communications with solicitors in relation to unpaid fees the President will, where appropriate, remind the solicitor of the professional obligation to make payment of counsel's fees and to do so irrespective of whether payment has been received from the solicitor's client.