

Fact Sheet 16 - Opposing Legal Representatives

July 2015

The role of legal representatives is to protect their own clients' interests, within the boundaries of professional conduct rules and standards. They advise their own clients on the best course of action and act on their own clients' instructions.

A lawyer for one side has no responsibility for the interests of other parties. On the contrary, our *adversarial system of justice* (where disputes often produce a winner and a loser) means that:

- your lawyer can be expected to say or do things which go against the interests of other parties, and
- other parties' legal representatives can be expected to say or do things which go against your interests.

You cannot interfere in the professional relationship between another party and their legal representative, even if you disagree with:

- the advice that the opposing legal representative is giving the other party, or
- the instructions that the other party is giving their legal representative.

On occasion you might believe that the opposing legal representative is not carrying out the other party's instructions. For example, the legal representative might reject an informal agreement that you believe you have reached with the other party. This might be because the other party's legal representative has convinced them that the agreement is not in their best interests, and they have therefore instructed the legal representative to reject the agreement. You can only complain about an opposing legal representative's course of action if you have evidence that they are not acting on instructions, or are acting on instructions that they know are untrue or unethical.

The lawyer for the opposing party might say something or state a fact that you disagree with. The lawyer has probably made that comment on the basis of his or her client's instructions. You should take this into account before complaining or suggesting that the opposing lawyer has done something wrong.

Communicating with the other side's legal representative

Lawyers are not allowed to communicate directly with another lawyer's client except in very limited circumstances. At court, in court proceedings or generally a lawyer must not deal directly with the opposing lawyer's client unless:

- the opposing legal representative has consented, or
- the circumstances are urgent and the communication would not be unfair to the opposing legal representative's client, or
- the communication is solely to ask if the person is represented and, if so, by whom.

Unrepresented litigants

Lawyers must exercise great care when communicating with unrepresented parties. They must avoid any suggestion of undue influence, duress or the use of unfair advantage. If the opposing legal representative is reluctant to communicate directly with an unrepresented party, this could be for the unrepresented party's own protection – not a sign of discourtesy.

Behaviour in court

You might consider that the opposing legal representative's behaviour in court is aggressive or rude. During cross-examination, when the other party's legal representative is challenging your evidence, the questioning might be particularly direct and forceful. This is not necessarily inappropriate – in fact it might be required in order to protect the interests of the legal representative's client.

Conduct in court is under the control of the judge. Your own legal representative can object if the opposing legal representative's language seems unnecessarily offensive or intimidating, or if their behaviour could interfere with the process of justice. The judge will decide if the language and behaviour are acceptable.

Similarly, there is nothing improper in a legal representative filing documents and presenting evidence in a way that presents their client's case in the best possible light. If you disagree with the facts presented on behalf of your opponent, it is up to you to put different evidence to the court. The judge will then decide which evidence to prefer.

Sometimes settlement negotiations begin or continue at court. Lawyers can advise their clients about settlement, but the decision rests with the client. If the opposing legal representative's attitude to settlement appears to be "hard" or their demands are high, they might simply be acting on their client's instructions.

Opposing lawyer's duties at court

The Advocacy Rules for lawyers govern their dealings with their opponents at court. These rules include the following principles:

- A lawyer must not knowingly make a false statement to the opponent in relation to the case (including its settlement).
- A lawyer must take all necessary steps to correct any false statement unknowingly made by the lawyer to the opponent as soon as possible after the lawyer becomes aware that the statement was false.
- A lawyer does not make a false statement to the opponent simply by failing to correct an error on any matter stated to the lawyer by the opponent.

In addition, lawyers should not make unsupported or irrelevant allegations or engage in insults or intimidation. Lawyers also have a duty to the court to be frank, honest and independent. It is professional misconduct for a lawyer to knowingly mislead the court.

Complaints about opposing legal representatives

Under the *Legal Profession Uniform Law (NSW)*, the NSW Legal Services Commissioner is unable to reach conclusions about the truth or otherwise of evidence presented in court by your opponent's lawyer. This is because a client's instructions to their legal representative, and the legal representative's advice to the client, are protected by the client's legal professional privilege.

The NSW Legal Services Commissioner can examine whether or not a lawyer has deliberately and knowingly misled a court or tribunal.