

Payment of third party fees

By Ros Burke, Director, Professional Standards

The non-payment by solicitors of fees to "third parties" such as counsel, medical and other experts, risk assessors and process servers is of growing concern.

Solicitors are asked to make careful note of Australian Solicitors' Conduct Rule 35 and the Medico-Legal Joint Statement between the AMA(SA) and the Law Society of South Australia, which set out the relevant ethical standard in such cases.

In general, unless a specific agreement is reached between the solicitor and the third party at the point at which the engagement is entered into, solicitors are personally liable for the payment of that third party's reasonable fees.

This means that solicitors are required to:

- pay all such fees in a timely manner and with reference to accepted commercial standards (eg within 30 days of receipt of the invoice);
- raise any objections or questions about the service provided and/or the fees charged in a timely manner (eg within 30 days of receipt of the service and/or invoice);
- not use the non-payment of a disbursement account by the client as an excuse for non-payment;
- not raise an objection about the services provided or the amount charged as a means of delaying payment.

In addition to the above requirement, solicitors have a general ethical obligation to act professionally in all their dealings with third parties and the services they provide. The following scenarios are not uncommon and are examples of unethical conduct by the solicitor concerned:

- A solicitor engages a medical expert for an examination and opinion. Due to the fault of the solicitor, the patient does not attend the examination and the expert charges a cancellation fee. The solicitor fails to pay the cancellation fee and/or passes the cost on to the client.
- A solicitor requests a report from a treating medical expert. The report is prepared in a timely fashion and the medical expert requests payment in advance of the provision of the report. The solicitor decides that it would be better and cheaper to obtain the required information by summoning the expert's medical notes and states

that the report is not required and refuses to pay for it.

- A solicitor engages counsel for a matter and does not alert counsel at that time to the fact that payment of counsel fees will be met personally by the client. Counsel bills the solicitor a reasonable fee for the services and the payment of the bill is unreasonably and significantly delayed while the solicitor seeks payment of the cost from the client.

It is entirely appropriate for solicitors to request monies be placed in trust for their clients to cover the cost of a reasonable anticipated disbursement, or to come to an arrangement with a third party whereby the third party agrees that the solicitor is not personally liable for the payment of the account. However, unless these steps are taken, a solicitor will generally be required to personally bear the financial burden of the third party's fees. **B**

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