

# RPA Alert

## Regulation. Prosecution. Action.

*Alert to all practitioners from the Legal Services Commissioner and the Legal Services Board*

### **RPA Alert 6, November 2013**

\*This email has been delivered to you because you have actively requested, or previously consented to, receiving intermittent email messages from the Board or the Commissioner about matters of importance to lawyers.

### **Play the ball, not your opponent.**

Recently my office has seen an increase in the number of complaints made by lawyers which allege threats of legal action being made against them personally by a lawyer for the other side. Typically these complaints emerge when opposing lawyers advise on disputes between their respective clients.

Examples of such complaints include:

- Accusations of 'professional misconduct' for writing a letter of demand;
- Threats to pursue costs and damages personally from the lawyer acting for the plaintiff;
- Threatening to cause a criminal investigation against the opposing lawyer's client in employment law matters; and
- Accusations of blackmail when a notice of intent to issue proceedings is served (often invoking section 87 of the *Crimes Act* 1958, and accompanied by a threat to report the matter to the police or the Office of Public Prosecutions).

The aggressive and personal tone of interactions between lawyers evident in these complaints demonstrates professional conduct which falls far short of the standard expected of members of our profession, and is of significant concern to the regulator.

Lawyers who use emotive and intemperate language, threats of legal action against the opposing lawyer, allegations of blackmail and personal attacks against their counterparts may be in breach of the *Professional Conduct and Practice Rules* 2005. Rule 21, which deals with communications, expects lawyers to take all reasonable care to maintain the integrity and reputation of the profession by ensuring that communications are courteous and avoid offensive or provocative language or conduct.

Additionally, Rule 30 established standards of conduct expected of lawyers. Specifically it states that a lawyer must not engage in conduct which is calculated or likely to be prejudicial to the administration of justice, diminish public confidence in the administration of justice, or adversely affect a lawyer's ability to practise according to the Rules.

Without passing judgment on whether the above list of examples are in contravention of the Rules and would amount to a disciplinary breach, they are nonetheless a poor tactic to rely on and risk bringing the profession into disrepute. Such poor conduct invites complaints against those who display it, and seriously compromises the professional courtesy that is so important to the satisfactory resolution of disputes between clients.

I would remind all lawyers of the importance of retaining appropriate professional detachment to deal with the issues in contention between them: they must play the ball, not their opponent.

**Michael McGarvie**

Legal Services Commissioner  
CEO Legal Services Board

**Contact Us**

Phone: (03) 9679 8001

Email: [RPAAAlerts@lsb.vic.gov.au](mailto:RPAAAlerts@lsb.vic.gov.au)