



Australian Government

Department of Education, Employment and Workplace Relations

BSALLG503A Attend pre-trial negotiations

Release: 1

Modification History

Not Available

INTRODUCTION

This Unit covers preparing for pre trial negotiations with opposing parties, organising a mutually convenient time when parties can meet and attending the negotiation to offer and/or receive offers of compromise according to instructions.

Note: It may be illegal for a person without a current legal practice certificate to provide legal advice, to sign off on legal work and to receive trust account monies. It may also be illegal for persons to misrepresent their qualifications (ie. claiming to be a lawyer or acting as a lawyer when they are not qualified to do so). Contravening these conditions is illegal and compromises a firm's professional indemnity insurance. Accordingly all litigious work must be supervised by a qualified legal practitioner. Whenever work is carried out on behalf of an instructing legal practitioner, the work must first be checked by the instructing legal practitioner. Whenever clients or parties are contacted on behalf of an instructing legal practitioner, own identity and position must be clearly stated and contact must proceed according to the instructing legal practitioner's advice.

This unit can be assessed alone or in combination with other units making up a job role.

Element of Competency	Performance Criteria
Prepare for pre-trial negotiations	<ul style="list-style-type: none"> • Meeting is arranged with instructing legal practitioner to discuss matter and to develop strategy for conducting pre-trial negotiations • Relevant background information is reviewed and analysed in conjunction with instructing legal practitioner • Instructions are provided to others to organise meeting with opposing party • Points of law are examined in conjunction with instructing legal practitioner with a view to pre-trial settlement or issuing of an offer of compromise and relevant documents are prepared where appropriate
Conduct pre-trial negotiations	<ul style="list-style-type: none"> • Additional assistance from staff is organised for meeting where necessary • Offers of compromise are forwarded to opposing party and relevant authority as advised by instructing legal practitioner and in accordance with legal requirements • Opposing party's offers of compromise are received if presented • Meeting is recorded and transcript is checked for accuracy
Inform client of	<ul style="list-style-type: none"> • Instructing legal practitioner is contacted and opposing party's

pre-trial negotiation
outcomes

offer of compromise is communicated for review

- Opposing party's offer of compromise is interpreted in conjunction with instructing legal practitioner and recommendations are drafted
- Client is contacted on behalf of instructing legal practitioner and opposing party's offer and draft recommendations are explained in simple language

Undertake follow up
action

- Client's and instructing legal practitioner's instructions are received, understood, documented and any follow up action is undertaken
- Where offer of compromise has been rejected and both parties have completed interlocutory steps, Certificate of Readiness is prepared by all parties and filed at relevant court
- Where offer of compromise is accepted, relevant documentation is completed and filed at relevant court

RANGE OF VARIABLES

- Client may be:
- Plaintiff/Claimant
 - Defendant
- Relevant background information may include:
- client's file
 - past cases
 - costs to date
 - strength of case
- Instructions may relate to:
- the file
 - background information relevant to the matter
 - the client
 - the opposing party
 - timelines
 - venue
 - contacting opposing party to arrange a meeting
 - confidentiality and security of information
 - altering appointments
- Relevant documents may include:
- own party's offer of compromise, without prejudice
 - formal offer of compromise
- Offers of compromise may be:
- formal offer of compromise, which must be filed at the appropriate court
 - own offer of compromise, usually without prejudice
- Offers of compromise may involve:
- resolution of costs
 - division of property
 - access rights
 - employment agreement
 - accident damages
 - reinstatement at place of work
 - custodial agreement
 - divorce agreement
 - hospital fees
 - public apology
 - admission of partial negligence

- Relevant authority may include:
- court body
 - tribunal body
 - government body
 - independent body
- Client's and instructing legal practitioner's instructions may involve:
- rejecting the opposing party's offer of compromise
 - further negotiations
 - modifying or expanding a client's offer of compromise
- Follow up action may include:
- filing the relevant notice of discontinuance at court should offer of compromise be accepted
- A firm's policies and procedures may include:
- contacting and liaising with opposing party
 - arranging meetings
 - accepting/making offers of compromise
 - liaising with clients
 - privacy/security/confidentiality procedures
 - time recording procedures
 - interviewing
 - verifying and authorising information
 - recording information
 - protocol for accommodating special client needs, eg. case manager, social worker, parole officer, translator, interpreter
 - information sources
 - undertaking negotiations
- The area of law may include:*
- commercial law
 - corporate law
 - criminal law
 - family law
 - industrial relations/employment law
 - property law
 - tax law
 - litigation
 - wills and probate
- * These are nine common areas of law; the area of law is not restricted to this list. Other areas of law may be applicable
- .

- Requirements may relate to:
- relevant State/Territory/Commonwealth legislation
 - Governing legal practice Acts in each State/Territory
 - the client and a firm (eg. Client Legal Privilege, Consumer Credit Code, Privacy Act, secrecy laws, Codes of Practice, common law and Statutory Duties of Care involving financial relationships)
 - the area of law
 - schedule of fees and duties payable
 - tort, equity and Statute law
 - relevant court rules
 - completion and filing of court documents

- Courts and tribunals may include:
- High Court
 - Supreme Court
 - Federal Court
 - Magistrates Court
 - District/County Court
 - Family Court
 - Children's Court
 - Industrial Relations Court
 - Courts of Petty Sessions
 - Coroner's court
 - State and Commonwealth Administrative Appeals Tribunals
 - Equal Opportunity Tribunal
 - Small Claims Tribunal

NOTE: Names and functions of some courts/tribunals are subject to change and differ between states.

EVIDENCE GUIDE

- Critical aspects:
- a firm's policies and procedures are understood and followed
 - unclear instructions or missing information is checked with instructing legal practitioner
 - instructing legal practitioner's instructions are adhered to
 - roles and responsibilities of person's involved in matter are understood and adhered to
 - actions occur within agreed timelines
 - file/matter notes and relevant documentation are reviewed and understanding of matter is demonstrated
 - where instructing other, instructions are clear with adequate explanation to allow the task/s to be completed
 - where instructing other, supervision is provided throughout the task in relation to:
 - providing advice and assistance with resolving problems
 - ensuring that work is completed within timelines
 - ensuring that recording of interview is accurate
 - checking that interview documents are formatted and filed correctly
 - ensuring that confidentiality and security of information is maintained
 - documentation required at different stages of the legal process is identified
 - the advantages and disadvantages of submitting and/or accepting a formal offer of compromise are understood and can be explained
 - validity of offer of compromise in relation to dates of expiry are monitored
 - offers of compromise are composed in consultation with client and instructing legal practitioner and meet specified requirements
 - client and instructing legal practitioner's authorisation to proceed is sought
 - any difficulties or irregularities are referred to the instructing legal practitioner for approval
 - non-disclosable information is not communicated and where any doubt exists as to the information's status it is not disclosed
 - meetings are conducted professionally and courteously
 - instructing legal practitioner and client are kept up-to-date with all activities, actions and outcomes
 - relevant authority is informed of all bona-fide attempts to settle the matter out of court
 - evidence of an understanding of client's circumstances is demonstrated
 - client's questions and queries are answered in clear and simple language

- all activities, actions and outcomes are documented on file notes and time is recorded
- file/matter number is attached to all relevant documentation and such documentation is filed appropriately
- record of times is processed for client invoicing purposes
- costings are accurate
- all work is conducted within accepted codes of conduct including those relating to: maintaining confidentiality, use of company property, duty of care, ethical behaviours, privacy, non-discriminatory practice, conflict of interests and compliance with reasonable direction

Resource implications: The assessor must have access to appropriate documentation and resources normally found in the work environment and required to allow the job or task to be properly performed. These may include:

- appropriate legislation and regulations relevant to assisting clients and conducting pre-trial negotiations
- workplace manuals and reference materials such as company policy, procedural manuals, checklists and legal dictionaries

Consistency in performance: This unit of competency will require evidence to be collected across a range of events, eg. dealing with different clients and matters, and over a period of time to ensure that situational variables are consistently achieved.

Context of assessment: Evidence of competency can be met in different situations, including:

- on the job assessment
- off the job assessment
- placement in an enterprise
- participation in a New Apprenticeship (traineeship) arrangement
- use of a Practice Firm or simulated work environment
- recognition of Prior Learning, Recognition of Current Competencies (in skill areas where there has been no significant change to work practice in recent times)

Evidence gathering methods may include:

- workplace performance
- role-play
- simulation
- oral presentation
- projects/assignments
- third party reports

Underpinning
knowledge and
skills

Knowledge

- authorised ‘signing parties’
- relevant legal process and current legislation
- broad knowledge of general legal terminology and in-depth knowledge of terminology relating to litigation and the area of law
- preparing offers of compromise
- accepting offers of compromise
- costing offers of compromise
- indemnity insurance
- common law and Statutory Duties of Care

Skills

- literacy: reads and interprets intricate legal procedures and documents; uses legal vocabulary and grammatical structures to achieve precise meaning; prepares and interprets offers of compromise
- follows and provides clear written and oral sequenced instructions
- research: assembles and evaluates evidence and background information
- communication: participates in sustained and complex transactions to explore issues and problems solving; questions to clarify and elicit information; negotiates by establishing common understandings and bringing different points of view together; uses language to influence others
- numeracy: determines costs; keeps accurate recording of files and time
- professional presentation and etiquette
- liaison and negotiation skills

KEY COMPETENCIES

Utilisation of the Key Competencies required in the performance of this unit

Communicating ideas and information	Collecting, analysing and organising information	Planning and organising activities	Working with others in a team	Using mathematical ideas and techniques	Solving problems	Using technology
2	2	3	2	2	2	1

Performance levels:

Level 1	Level 2	Level 3
<ul style="list-style-type: none"> carries out established processes makes judgements of quality using given criteria 	<ul style="list-style-type: none"> manages processes selects the criteria for the evaluation process 	<ul style="list-style-type: none"> establishes principles and processes evaluates and reshapes processes establishes criteria for evaluation of processes