



Australian Government

Department of Education, Employment and Workplace Relations

BSALLG502A Appear in court

Release: 1

Modification History

Not Available

INTRODUCTION

This Unit covers presenting information in court under instruction. Individuals performing this task without a legal practice certificate are permitted to carry out instructions but are not permitted to represent a client at a court hearing.

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

Performance Criteria

Attend court

- Meeting is arranged with instructing legal practitioner to discuss matter and prepare court appearance strategy
- File is reviewed and documentation is prepared for court
- Limits of own responsibility are understood and adhered to
- Court is attended on designated day at designated time
- Information is presented to court where appropriate
- Requests are submitted to court

Clarify uncertainties

- If an uncertainty arises, bench or opposing party is asked for an explanation where appropriate
- If proceedings become more complex than anticipated, request for matter to be stood down is submitted and instructing legal practitioner is contacted immediately for further instructions

Interpret rulings

- Judge's rulings on matter, costs, penalties and damages are received, understood and documented
- Judge's rulings on matter, costs, penalties and damages are communicated to instructing legal practitioner
- Clarification is sought from instructing legal practitioner if necessary

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|---|---|
| Communicate outcomes | <ul style="list-style-type: none">• Outcome, including judge's rulings on matter, costs, penalties and damages, is explained to client in simple language where appropriate• Client questions and queries are answered satisfactorily• Feedback from client and instructing legal practitioner is obtained and respective recommendations are communicated where appropriate |
| Prepare to meet with client | <ul style="list-style-type: none">• Background research is conducted if necessary• Options available to client are researched and communicated to instructing legal practitioner for approval• Appointment is made to discuss court appearance outcomes and options with client if necessary |
| Meet with client | <ul style="list-style-type: none">• Options available are communicated to client• Client is informed about extra monies for trust account if necessary• Client's instruction regarding course of action are received, understood and documented |
| Communicate client's decision to instructing legal practitioner | <ul style="list-style-type: none">• Client's instructions regarding course of action are communicated to instructing legal practitioner for comment• Recommendations on appropriate course of action and any follow up action are discussed with instructing legal practitioner and implemented |
| Initiate action under instruction | <ul style="list-style-type: none">• Legal procedures are initiated• Opposing party is contacted and informed of pending actions where appropriate• Negotiations with opposing party are initiated and/or responded to• Appeal is lodged where appropriate• File/matter number is attached to relevant documentation and such documentation is filed appropriately |

RANGE OF VARIABLES

- Instructions may relate to:
- pleadings
 - briefs
 - files
 - background to the matter
 - the client
 - the opposing party
 - timelines
 - the court
 - Common Law
 - Pieces of legislation
 - Providing a Direction to the court
 - Providing a Mention to the court
 - Appearing before a Taxation Master
 - the Bill of Costs
 - date of court hearing

- Recording mechanisms/systems may be:
- paper-based
 - electronic

- Court documentation may include:
- pleading
 - brief
 - memoranda of law
 - list of documents
 - medical report
 - clinical report
 - other reports
 - hospital discharge summary
 - subpoenaed documents
 - agreements
 - transcripts from supervisor's notes
 - supervisor's instructions
 - discoverable documents

- Client may be:
- plaintiff/claimant
 - defendant
 - a child
 - people with disabilities

	• mentally incapacitated
Courts may include:	• Magistrates Court • District/County Court • Family Court • Children's Court • Supreme Court • Coroner's Court • Federal Court
Tribunals may include:	• Administrative Appeals tribunal • Tenant's tribunal
Information presented in court may be:	• pleading if representing defendant • mention • direction • negotiation on costs before a Taxation Master
Non-disclosable information may include:	• medical history • psychological history • financial information • a firm's other clients • documents and information reserved for client-solicitor privilege • documents protected by commercial in confidence regulations • witness statements • briefs to counsel • schedule II documents/content of non-discoverable documents
Uncertainties or unanticipated complexities may include:	• not understanding a point of law • missing information • incomplete information • incorrect information • a change in the opposing party's pleading • a change in the opposing party's case • lack of further instructions from designated person

- Judge's ruling may include:
- ruling on points of law involved in matter
 - party/party costs
 - client/solicitor costs
 - the magnitude of the damages awarded
 - jail sentence
 - community service order
 - family intervention order
 - custody
 - order for mediation/counselling
- Outcomes and follow-up activities may include:
- exchange of information
 - financial transaction
 - consulting experts
 - verbal communication with external parties
 - meetings with clients, opposing party and designated person
 - acceptance or rejection of offers of compromise
 - outcomes
 - further out of court negotiation
 - initiating an appeal
 - failure to respond
 - communication with client
 - communication with opposing party
- Options available to the client may include:
- no further legal action
 - initiating an action against the opposing party regarding a different matter
 - appeal against ruling
 - appeal against distribution of cost
 - appeal against damages
 - appeal against penalties
- Negotiations with opposing party may include:
- resolution of Judge's ruling on costs
 - division of property
 - reinstatement at place of work
 - employment agreement
 - accident damages
 - custodial agreement
 - divorce agreement
 - hospital fees

	• public apology • admission of partial negligence
A firm's policies and procedures may include:	• contacting opposing party • contacting client • arranging meetings • accepting/making offers of compromise • attending court • drawing up costs • preparing and witnessing affidavits availability of information • information specific to the firm • privacy/security/confidentiality procedures • contingencies • time recording procedures • interviewing • verifying and authorising information • recording information • accessing files • updating files • protocol for accommodating special client needs, eg. case manager, social worker, parole officer, translator, interpreter • office procedure manual • information sources
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.
Legislative requirements	• relevant State/Territory/Commonwealth legislation • Governing legal practice Acts in each State/Territory

may relate to:

- 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

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
 - roles and responsibilities of persons involved in matter are understood and adhered to
 - designated person is kept up-to-date with all actions activities and outcomes
 - documentation required at different stages of the legal process is identified, prepared and checked
 - matter and associated legal implications are understood
 - action is within court and client timelines
 - instructing legal practitioner's instructions are adhered to at all times, particularly in relation to:
 - presenting information to court
 - submitting requests to court
 - communicating options to client
 - initiating legal proceedings
 - negotiating with opposing party
 - lodging appeals
 - court etiquette and procedures are adhered to
 - non-disclosable information is not communicated and where any doubt exists as to the information's status it is not disclosed
 - uncertainties and complexities in court are immediately clarified with judge, opposing party or designated person
 - different rulings, costs, penalties and damages are understood and communicated to client and designated person in appropriate language
 - client's questions and queries are answered in clear and simple language
 - client feedback is sought where appropriate
 - background research is relevant and thorough and presented in an effective manner
 - options suggested are within client's best interests and client's budgetary capacity
 - meetings are conducted professionally and courteously
 - legal procedures, legislative requirements and trust account processes are explained to client in simple language where appropriate
 - offers of compromise are costed accurately and according to a firm's policies and procedures, legal requirements and client's requirements
 - legal procedures are initiated within agreed timelines
 - judge is informed of any bona fide out of court negotiations
 - all activities, actions and outcomes are documented on file notes and

	time is recorded • financial documentation is prepared on a regular basis and forwarded to client where appropriate • file/matter number is attached to relevant documentation and such documentation is filed appropriately • record of time is processed for client invoicing purposes • 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, appearing in court and conducting negotiations • workplace manuals and reference materials such as company policy, procedural manuals, checklists and legal dictionaries • mock or real court room
Consistency in performance:	This unit of competency will require evidence to be collected across a range of events, eg. dealing with different clients and court appearances, 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 • third party reports
Underpinning	Knowledge

knowledge and skills

- relevant legal process, court procedures and etiquette, appeals process
- security, confidentiality and privacy
- general knowledge of legal terminology and in-depth knowledge of legal terminology relevant to the area of law
- likely court rulings
- relevant current legislation and penalties for non-compliance with legislation
- a firm's invoicing procedures
- accepting and costing offers of compromise indemnity insurance
- common law and Statutory Duties of Care
- setting up a trust account
- transferring assets

Skills

- literacy: follows complex legal procedures; interprets court rulings
- research: prepares background evidence and brief
- communication: participates in sustained and complex oral transactions on legal matters; listens and questions to clarify uncertainties or ambiguous rulings; gives clear oral sequenced instructions to others; responds to client's queries
- numeracy: collates documents; accurately records documents
- keyboarding
- professional image and etiquette
- contingency planning and organisational skills
- liaison and negotiation skills with internal and external contacts

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
3	2	2	2	1	2	2

Performance levels:

Level 1	Level 2	Level 3
- carries out established processes - makes judgements of quality using given criteria	- manages processes - selects the criteria for the evaluation process	- establishes principles and processes - evaluates and reshapes processes - establishes criteria for evaluation of processes