

## **PSYCHO-LEGAL JOINT STATEMENT**

### **I. INTRODUCTION**

- (1) A joint Advisory Committee has been established by the South Australian Institute of Private Practising Psychologists Inc. and the Law Society of South Australia Inc. to
  - (a) promote harmonious relations between the members of both professions;
  - (b) provide one source of clear guidelines and information on psycho-legal matters;
  - (c) ensure that the efforts of both psychologists and solicitors are co-ordinated and directed towards the rapid and efficient settlement of claims and forensic actions;
  - (d) deal with complaints.
- (2) The Joint Advisory Committee will also keep this joint statement under continuous review.

### **II. PROCEDURE FOR ARRANGEMENT OF PSYCHOLOGICAL EXAMINATION**

- (1) Generally, a solicitor should not refer his or her client to a independent examining psychologist for a report without first requesting a report from the client's treating medical practitioner or psychologist.
- (2) This report should be made available to the examining psychologist as soon as possible.
- (3) The solicitor should consider speaking to the treating psychologist or medical practitioner before arranging a referral to the examining psychologist.
- (4) The solicitor making the appointment should make the purpose of the examination quite clear to the psychologist at the time it is made.
- (5) When arranging a psychological examination, the solicitor will at all times give primary consideration to the welfare of the patient and abide by all reasonable recommendations of a treating doctor or psychologist as to when the patient is fit to undergo the examination. It is recommended that in cases of physical and/or psychological trauma, the initial psychological examination should take place as soon as possible after the injury has been sustained. This will enable a comparison to be made with the client's psychological status in a later examination.
- (6) If the appointment for the examination prior to the preparation of the psycho-legal report is arranged by telephone, the appointment must be confirmed by letter from the solicitor. In cases of injury, the letter should contain a brief description of the circumstances in which the patient was injured, particulars of the injuries alleged, copies of any psychological or medical reports already in the possession of the solicitor and which might assist the psychologist to assess the case, and details of the disabilities claimed by the patient to have resulted from the injuries. In forensic cases, the letter should contain a brief statement of the background of the case, the allegations made, and copies of any previous psycho-social reports in the possession of the solicitor.

- (7) The specific matters which the solicitor desires the psychologist to include in the report should then be set out, such as:
- (a) a description of the injuries;
  - (b) whether, in the opinion of the psychologist, the injuries were caused by the incident/sets of incidents in question;
  - (c) an outline of the course of treatment;
  - (d) whether or not the patient's condition is stable;
  - (e) whether there is any residual disability, and if so, the extent of such disability;
  - (f) whether any further psychological treatment is indicated;
  - (g) whether the patient is psychologically fit for any, and if so, what type of work;
  - (h) if the patient is psychologically unfit for work, the extent to which this incapacity has resulted from the injuries;
  - (i) if the patient's psychological condition is not stable, when should a further report be requested.

### **III. FURNISHING PSYCHOLOGICAL REPORTS**

- (1) There is a difference between the position of the treating psychologist and that of the psychologist whose assistance is sought solely for a psycho-legal assessment. In the case of the treating psychologist, whenever the treatment has been in a hospital, clinic, or in any other place, there is a moral and ethical obligation to furnish a report on request by the patient or his or her solicitor and such follow-up reports as may be reasonably necessary to enable the patient's claim to be properly presented. This applies even if the treating psychologist does not in the ordinary course accept instructions to examine and report on patients he or she has treated.
- (2) In addition to any other information specifically sought by the solicitor, psychological reports should normally include:
- (a) the history obtained from the patient;
  - (b) the patient's present complaints;
  - (c) the observations and findings on examination of the patient;
  - (d) details of any diagnostic psychometric tests and/or other assessment procedures;
  - (e) the diagnosis of the patient's condition;

- (f) the prognosis of the patient's condition (where it is alleged that a pre-existing mental disorder or pathological condition has been aggravated, or that a future disorder or condition may occur, specific reference to this should be made).
- (3) Payment for the psychological report is the responsibility of the solicitor requesting the report.
- (4) A report should be comprehensible without particular reference to the letter of request and should not simply state "yes" or "no" in answer to numbered questions.
- (5) A psychologist making a report should confine his or her comments to matters relevant to the condition of the person examined.
- (6) It is inappropriate for psychologists to express opinions to patients as to the amount of damages likely to be received as a result of the injuries.
- (7) Similarly, solicitors should not make any comments to their clients about the psychological management of cases.
- (8) Psychologists should bear in mind that psychological reports obtained by patients or their solicitors for the purposes of litigation are legally privileged in the sense that their availability to the opposing party to litigation is governed by Rules of Court. Generally, but not in all circumstances, Rules of Court require a party to disclose reports to the opposing party prior to the hearing. Such disclosure often assists the parties to resolve matters.
- (9) The examining psychologists should supply the report to the solicitor requesting it, but where the solicitor is the patient's solicitor, a copy may be sent to the patient's treating psychologist or other treating clinician.
- (10) No psychological report should be provided to any solicitor (or indeed any other person) without the signed authority of the patient unless required by law.
- (11) When requested by a solicitor, the psychologist should provide the report within reasonable time of the examination, or if no examination is necessary, within reasonable time of the request.
- (12) Similarly, the solicitor should make payment for the report within reasonable time of receiving it.

#### **IV. COURT ATTENDANCES OF A PSYCHOLOGICAL WITNESS**

- (1) Frequently there is uncertainty about the precise date upon which the trial of an action will commence. Before cases are listed, solicitors should ascertain when psychologists will be available.
- (2) Generally the case is listed for trial on a particular day, but unless it is high on the list for that day, it may not be allocated a Judge and be only a reserve, in which case it may not be heard that day or the next or not be reached at all.

- (3) The uncertainty of listing is one of considerable concern to solicitors, parties to the action and other witnesses, but at the present time and notwithstanding the improvements in listing procedures, no scheme has been devised whereby all cases can be guaranteed to commence on specific dates.
- (4) The following booking procedure is set out:-
  - (a) The psychologist should be booked to give evidence, if required, as soon as a solicitor becomes aware of the hearing date. Such a booking should be done by telephone and confirmed in writing.
  - (b) The solicitor should try to make such arrangements to suite the psychologist's other commitments as far as practicable.
  - (c) Should a matter resolve or be adjourned, the solicitor should notify the psychologist as soon as possible that the psychologist is no longer required at the arranged time.
  - (d) A solicitor may issue a subpoena to secure the attendance of a psychologist as a last resort.
  - (e) Attendance fees and cancellation fees should be agreed in writing by the psychologist and the solicitor at the time the booking is made, with reference to the Guidelines and Schedule A. If this is not done and a dispute ensues, then the fee sought may be fixed by the Court.
- (5) A solicitor should make every reasonable endeavor to obtain payment of a psychologist's fees by the client for a Court appearance or cancellation within one month of receiving the account subject to the solicitor's duty to comply with the Rules of Court and duty to the client.

**V. PAYMENT OF FEES**

- (1) When a psycho-legal examination and/or report is requested by a solicitor, the agreement to provide the report is between the solicitor and the psychologist. The payment for this service is the responsibility of the solicitor making the request.
- (2) The psychologist's account for the examination and preparation of the report should bear a proper relationship to the time taken, the difficulty involved, and the expertise brought to bear.
- (3) Unless otherwise agreed between the psychologist and the solicitor, the fees for providing the psychological reports, attending Court and cancellation of Court attendances should be guided by the Guidelines which will be issued periodically.
- (4) The scale of fees in the Guidelines will be reviewed from time to time by the Joint Advisory Committee.
- (5) In cases of client's hardship, it is the solicitor's duty to make prior arrangements with the psychologist with regard to the payment of fees before an examination and the preparation of the report.

**VI. CONFIDENTIALITY OF PSYCHOLOGICAL REPORTS**

A client is entitled to see a psychological report obtained by his or her solicitor from an examining psychologist. It should be noted that ultimately a solicitor is bound to act in accordance with his or her client's instructions. If a treating or examining psychologist requests the solicitor not to disclose information (when, for example, disclosure might impede recovery, or endanger the safety of the psychologist), the solicitor should use every endeavor to respect that request. Letters between psychologists or between psychologists and doctors are confidential and should not be passed onto a solicitor without the approval of the original sender or a Court Order.

**VII. COMPLAINTS**

When a member of either profession believes that a member of the other profession has failed to act in accordance with the spirit of this Joint Statement, that member may report the matter to his or her respective professional body which should consider the matter. If the matter is of substance requiring further action, that professional body should liaise with the other professional body or its appropriate committee to resolve the matter. Any unresolved matters should be referred to the Joint Advisory Committee for determination.

December 2001.

## **GUIDELINES OF FEE STRUCTURES FOR PSYCHO-LEGAL WORK**

### **1. Psycho-Legal Reports**

- (1) These guidelines should be used in conjunction with The Psycho-Legal Joint Statement.
- (2) For an interview, assessment, perusal of documents and an opinion, together with a written report, the fee is for the time spent, facilities provided, the substance of the opinion given and the report provided.
- (3) The fee chargeable for a psycho-legal report for a psychologist is the psychologist's normal hourly rate.
- (4) This range is intended to allow for a differential based on seniority, accumulated experience, expertise in a special area and actual time engaged.
- (5) Psychologists are at liberty to charge at a rate above these suggestions by prior agreement with solicitors, however, a plea is made that full documentation should be kept to justify the increased rate should there be a request for a costing.
- (6) If the request is for a purely transcriptional report made from notes already held, not involving a recall and examination, then a range of charge in the range of \$40-\$60 per typed page, 1.5 spaced, is suggested as appropriate.
- (7) Where a client fails to attend an appointment, the psychologist can charge a full fee for time allocated if that time is not utilized on other psychological work. However, if part or all of the time is utilized, the psychologist shall render an account for that portion of the time not utilized or no account at all as the case may be.
- (8) Unless otherwise agreed, requests for payment in advance should not be made by psychologists except in exceptional circumstances

### **2. Court Attendances**

- (1) The fee chargeable for a Court Attendance for a psychologist is the psychologist's normal hourly rate. Clause 1(4) and (5) of these Guidelines applies equally to this clause.
- (2) A psychologist's expenses for fares, accommodation, sustenance and like expenses should be negotiated in advance.
- (3) A country psychologist appearing in an Adelaide Court, or a city psychologist required in a country Court may charge for the time the psychologist is away from the practice due to the Court attendance on the rates set out in sub-clause (1) above. It is suggested that the psychologist and solicitor requiring the Court attendance liaise prior to the hearing to make arrangements to cause least disruption to the psychologist's practice and to comply with requirements of the Court.

**3. Cancellation Fees**

- (1) Cancellation fees should be within the suggested range applicable to Court appearances as applied by Schedule A of the Psycho-Legal Joint Statement unless otherwise agreed;
- (2) A cancellation fee may be charged by a psychologist only for resulting loss of earnings.

**4. Fees not necessarily allowable on taxation**

The range of fees recommended in these Guidelines will not necessarily be the fees that are allowed on a taxation of costs by a taxing officer of a Court or Tribunal. Solicitors should seek specific instructions from their clients if such fees may be above those allowable on taxation.

**SCHEDULE A**

If the case is withdrawn:

If the case is withdrawn:

- |   |  |
|---|--|
| - with less than 24 hours notice        | Full fee.                                      |
| - with less than 2 working days notice  | 75% of the fee.                                |
| - with less than 5 working days notice  | 50% of the fee.                                |
| - with less than 10 days working notice | 25% of the fee.                                |
| - with less than 14 working days notice | a nominal charge<br>say \$25.00 for paper work |

October 2001