

CIVIL LITIGATION PRACTICE

This information has been taken from Schedule 3 of the Legal Profession (Admission) Rules 2008. Each applicant for admission to the legal profession is required to provide evidence that the applicant has achieved the requisite competence in each element.

Descriptor:

An entry level lawyer should be able to conduct civil litigation in first instance matters in one or more State or Territory courts of general jurisdiction, in a timely and cost-effective manner.

Element: 1. Assessing the merits of a case and identifying the dispute resolution alternatives

Performance criteria

The lawyer has competently:

- assessed the strengths and weaknesses of both the claimant's and opponent's cases.
- identified the facts and evidence required to support the claimant's case.
- identified all means of resolving the case, having regard to the client's circumstances.
- identified and complied with the relevant limitation period.

Element: 2. Initiating and responding to claims

Performance criteria

The lawyer has competently:

- identified an appropriate claim or defence
- identified a court of appropriate jurisdiction.
- identified the elements of the claim or defence, according to law.
- followed procedures for bringing the claim or making the defence in accordance with the court's rules and in a timely manner.
- drafted all necessary documents in accordance with those procedures.

Element: 3. Taking and responding to interlocutory proceedings

Performance criteria

The lawyer has competently:

- identified any need for interlocutory steps, according to the court's rules.
- followed procedures for taking those steps in accordance with the court's rules and in a timely manner.
- drafted all necessary documents in accordance with those procedures and rules.

Element: 4. Gathering and presenting evidence

Performance criteria

The lawyer has competently:

- identified issues likely to arise at the hearing.

- identified evidence needed to prove any facts in dispute, according to the rules of evidence.
- gathered the necessary evidence.
- presented that evidence according to law and the court's rules.

Element: 5. Negotiating settlements

Performance criteria

The lawyer has competently:

- conducted settlement negotiations in accordance with specified principles.
- identified any revenue and statutory refund implications.
- properly documented any settlement reached.

Element: 6. Taking action to enforce orders and settlement agreements

Performance criteria

The lawyer has competently:

- identified procedures for enforcing the order or settlement according to law and the court's rules.
- followed those procedures in a timely manner.

Explanatory Note

This competency standard applies to first instance civil litigation in a local lower and a local higher court of an Australian State or Territory, having general jurisdiction, and in the Federal Court.

Means by which a dispute might be resolved include, but are not limited to:

- negotiation;
- mediation;
- arbitration;
- litigation;
- expert appraisal.

Means by which evidence might be gathered include:

- statements from witness;
- notices to admit;
- discovery;
- subpoena;
- expert reports;
- certified official records, banker's books etc.

Means by which evidence might be presented include:

- orally on oath;
- affidavits;
- video or telephone link.

Means of enforcement include:

- execution process including attachment of debts;
- taxation or assessment of costs;
- oral examination.