

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
FAMILY COURT OF AUSTRALIA

Question No. 24

Senator Barnett asked the following question at the hearing on 25 May 2009:

Of the 75 judicial complaints in 2007-08, how many resulted in counselling and/or discipline? Can details also be provided as to the nature of the counselling and/or discipline?

The answer to the honourable senator's question is as follows:

There has been one occasion upon which the Chief Justice has needed to discuss with the Judge a complaint about a particular case management approach. In response to this complaint some counselling in relation to particular work habits was arranged.

There have been two occasions when the conduct of a Judge was referred to the Judge for comment. This was because it was about out of Court conduct and could not be responded to by use of a transcript or audio tape. One complaint was about the Judge's attendance with his wife at a party at which the complainant and his ex-wife were present. This complaint was referred to the Judge who acknowledged his attendance but denied any impropriety which might affect his capacity to hear the case and his answer was referred to the complainant.

The other complaint about out of Court conduct was refuted by reference to others who were present at the occasion on which the behaviour was alleged to have occurred.

Complaints about Judgment delays (which fall under a protocol with the Law Societies and Bar Associations) are dealt with by the Deputy Chief Justice in the first instance, and if necessary, the Chief Justice raising the matter with the particular Judge and ascertaining when the Judgment can be delivered. If there are particular problems which mean that a Judge is struggling with Judgments generally then the Chief Justice will arrange for that Judge to be removed from their immediate sitting arrangements to complete the outstanding Judgments.

It is important to be aware that the Chief Justice has no powers to discipline a Judge. The only discipline is removal from the office by both Houses of Parliament moving a motion for the removal of the Judge because of incapacity or proven misbehaviour.

Thus if a complaint identifies "behaviour" which the Chief Justice might regard as unsatisfactory then the response can only be a remedial one not a disciplinary one. Indeed, remedial action can only be taken with the consent of the Judge as there is no sanction (short of removal) for not accepting a recommendation of the Chief Justice for example that a Judge attend counselling or a particular course of education. That said, the Chief Justice would expect that her moral authority at least would be sufficient to ensure a Judge did accept her recommendation.