

DUTY TO THE ADMINISTRATION OF JUSTICE

ASCR 4.1.2: a solicitor “must...be **honest and courteous** in all dealings in the course of legal practice”

ASCR 3.1: Duty to the court and the administration of justice **prevails to the extent of inconsistency with any other duty.**

ASCR Rule 20.1: Where a lawyer becomes aware that a client, or a witness called on behalf of the client, has:

- lied in a material particular, or procured another person to lie;
- falsified a tendered document, or procured another to falsify a document; or
- suppressed material evidence where there was a positive duty to make disclosure;

Lawyer must advise client that court must be informed and if client does not authorise this, lawyer must refuse to take further part in the case

Giannarelli & Shulkes v Wraith

- Appellant abused her role as an officer of the court by relying on materials she knew to be false. She deliberately and recklessly misled the court in an attempt to further the interests of her client and family. Conduct was made more serious by repetition.
- Mason CJ: “duty to the court is paramount and must be performed even if the client gives instructions to the contrary.”

Rondel v Worsley

- “he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client’s wishes or with what the client thinks are his personal interests. Counsel must not mislead the court.”

Meek v Fleming per Pearce LJ:

- “Where a party deliberately misleads the court in a material matter, and that deception has probably tipped the scale in his favour, it would be wrong to allow him to retain the judgement thus unfairly procured...moreover, to allow the victor to keep the spoils so unworthily obtained would be an encouragement to such behaviour”

Meek v Fleming

- Defendant at the time was chief inspector of police. He was demoted during the proceedings. Defendant’s barrister did not tell the court about demotion. Defendant was referred to as Mr during proceedings, although Judge referred to him as Inspector
- Held: Judge and jury were misled and therefore it would be wrong to allow the ‘not guilty’ verdict to stand where the actions of the defendant and his counsel had enabled the defendant to “masquerade as a chief inspector of unblemished reputation enjoying such advantage as that status and character would give him at the trial.”

Chamberlain v Law Society of the ACT: Positive conduct which ‘induces or fosters a mistake’ runs the risk that it may be construed a false statement

Misleading a court to benefit a client is not a defence¹

¹ Legal Profession Complaints Committee v Barber

Legal Services Commissioner v Mullins

- Barrister represented a quadriplegic client seeking damages from an insurer. In settlement negotiations, barrister did not disclose to insurer that client had been diagnosed with cancer, which reduced the life expectancy estimate that factored heavily in calculating the value of the claim
- Respondent conducted mediation on the basis of the original life expectancy estimate and matter was settled on that basis
- Judge found respondent intentionally deceived the insurer's barristers and representatives and was guilty of professional misconduct and he was ordered to pay a fine equal to his fee for the mediation (\$20,000), so he did not profit from his wrong-doing