LEGAL PRACTICE MANAGEMENT

RMIT UNIVERSITY
2024 SEMESTER 1

CONTENTS

Legend

Australian Case

UK Case

Foreign Case/Legislation

Accept/Reject a Client

Solicitors

Uniform Law Solicitors' Conduct Rules 2015 r 13

13. COMPLETION OR TERMINATION OF ENGAGEMENT

- 13.1. A solicitor with designated responsibility for a client's matter must ensure completion of the legal services for that matter UNLESS:
  - 13.1.1. the client has otherwise agreed,
  - 13.1.2. the law practice is discharged from the engagement by the client,
  - 13.1.3. the law practice terminates the engagement for just cause and on reasonable notice, or
  - 13.1.4. the engagement comes to an end by operation of law.
- 13.2. Where a client is required to stand trial for a serious criminal offence, the client's failure to make satisfactory arrangements for the payment of costs will not normally justify termination of the engagement UNLESS the solicitor or law practice has:
  - 13.2.1. served written notice on the client of the solicitor's intention, a reasonable time before the date appointed for commencement of the trial or the commencement of the sittings of the court in which the trial is listed, providing the client at least 7 days to make satisfactory arrangements for payment of the solicitor's costs, and
  - 13.2.2. given appropriate notice to the registrar of the court in which the trial is listed to commence.
- 13.3. Where a client is legally assisted and the grant of aid is withdrawn or otherwise terminated, a solicitor or law practice may terminate the engagement by giving reasonable notice in writing to the client, such that the client has a reasonable opportunity to make other satisfactory arrangements for payment of costs which would be incurred if the engagement continued.

Barristers

Legal Profession Uniform Conduct (Barristers) Rules 2015 r 4(f)

PRINCIPLES

4. These Rules are made in the belief that: ...
   - f. the provision of advocates for those who need legal representation is better secured if there is a Bar whose members:
     - i. must accept briefs to appear regardless of their personal beliefs;
     - ii. must not refuse briefs to appear except on proper professional grounds; and
     - iii. compete as specialist advocates with each other and with other legal practitioners as widely and as often as practicable.

Legal Profession Uniform Conduct (Barristers) Rules 2015 r 17

CAB-RANK PRINCIPLE

A barrister must accept a brief from a solicitor to appear before a court in a field in which the barrister practises or professes to practise if:

- a. the brief is within the barrister's capacity, skill and experience,
- b. the barrister would be available to work as a barrister when the brief would require the barrister to appear or to prepare, and the barrister is not already committed to other professional or personal engagements which may, as a real possibility, prevent the barrister from being able to advance a client's interests to the best of the barrister's skill and diligence,
- c. the fee offered on the brief is acceptable to the barrister, and
- d. the barrister is not obliged or permitted to refuse the brief under rule 101, 103, 104 or 105.

Interviewing Clients

HANDY HINTS

- Be courteous
- Take time to explain
- Simple clear language
- Ensure your instructions are complete
- Ensure instructions come from the client
- Obtain evidence in support of instructions
- Do not be pressured into giving hurried advice
- If client limits instructions, confirm in writing
- In criminal matters, ideally take instructions alone

Ethical Obligations

OVERARCHING DUTIES CATEGORIES

- Competence;
- Loyalty; and
- Confidence.

OTHER DUTIES:

- Duty to represent;
- Duty to follow instructions;
- Duty to control the conduct of the case;
- Duty to promote access to justice;
- Duty to promote quality and 'client care'; and the
- Duty to encourage settlement.

Hawkins v Clayton (1988) CLR 539

The standard of care required is the standard of a qualified, competent and careful lawyer.

Duties of Solicitors

Fundamental

Uniform Law Solicitors' Conduct Rules 2015 r 3

3. PARAMOUNT DUTY TO THE COURT AND THE ADMINISTRATION OF JUSTICE

3.1. A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

Uniform Law Solicitors' Conduct Rules 2015 r 4

4. OTHER FUNDAMENTAL ETHICAL DUTIES

4.1. A solicitor must also:

4.1.1. act in the best interests of a client in any matter in which the solicitor represents the client,

4.1.2. be honest and courteous in all dealings in the course of legal practice,

4.1.3. deliver legal services competently, diligently and as promptly as reasonably possible,

4.1.4. avoid any compromise to their integrity and professional independence, and

4.1.5. comply with these Rules and the law.

Relationships Between the Profession and Third Parties

Duty to Third Parties

Uniform Law Solicitors' Conduct Rules 2015 r 33

33. COMMUNICATION WITH ANOTHER SOLICITOR'S CLIENT

33.1. A solicitor must not deal directly with the client or clients of another practitioner unless:

- 33.1.1. the other practitioner has previously consented,
- 33.1.2. he solicitor believes on reasonable grounds that:
  - i. the circumstances are so urgent as to require the solicitor to do so, and
  - ii. the dealing would not be unfair to the opponent's client,
- 33.1.3. the substance of the dealing is solely to enquire whether the other party or parties to a matter are represented and, if so, by whom, or
- 33.1.4. there is notice of the solicitor's intention to communicate with the other party or parties, but the other practitioner has failed, after a reasonable time, to reply and there is a reasonable basis for proceeding with contact.

Uniform Law Solicitors' Conduct Rules 2015 r 35

35. CONTRACTING WITH THIRD PARTIES

35.1. If a solicitor instructs a third party on behalf of the client, and the solicitor is not intending to accept personal liability for payment of the third party's fees, the solicitor must advise the third party in advance.

Assumption of Responsibility

Watkins v de Varda [2003] NSWCA 242

You may need to disclaim responsibility to third parties in writing.

Stringer v Flehr & Walker [2003] QSC 370

Where a lawyer advises a client to seek independent legal advice, no further duty will exist.

Misstatement

Dean v Allin & Watts [2001] EWCA Civ 758

If advice is given negligently and loss results, the lawyer will be liable for damages.

    b. if an itemised bill was requested in respect of those costs in accordance with section 187(2)—30 days after the request was complied with.
4. The designated local regulatory authority's decision to waive or refuse to waive a time requirement under this section is final and cannot be challenged in any proceedings by the complainant or the respondent.

Withdrawing Complaints

Legal Profession Uniform Law s 273

WITHDRAWING COMPLAINTS

1. A complaint may be wholly or partly withdrawn by the complainant.
2. No further action is to be taken under this Chapter with respect to a consumer matter contained in a complaint to the extent it is withdrawn, but—
    a. the designated local regulatory authority may initiate or continue to investigate disciplinary matters, or proceed with disciplinary matters despite the whole or partial withdrawal of a complaint; and
    b. the whole or partial withdrawal of a complaint does not prevent—
        i. a further complaint being made under this Chapter, by the same or any other person, with respect to the same subject matter; or
        ii. action being taken on any other complaint made with respect to the same subject matter.
3. (3) The whole or partial withdrawal of a complaint in any jurisdiction does not of itself affect any proceedings in the designated tribunal.

Professional Misconduct

Legal Profession Uniform Law s 296

UNSATISFACTORY PROFESSIONAL CONDUCT

For the purposes of this Law, unsatisfactory professional conduct includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

Unsatisfactory Professional Conduct

Legal Profession Uniform Law s 297

PROFESSIONAL MISCONDUCT

1. For the purposes of this Law, professional misconduct includes—
    a. unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
    b. conduct of a lawyer whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.
2. For the purpose of deciding whether a lawyer is or is not a fit and proper person to engage in legal practice as referred to in subsection (1)(b), regard may be had to the matters that would be considered if the lawyer were an applicant for admission to the Australian legal profession or for the grant or renewal of an Australian practising certificate and any other relevant matters.

Types of Conduct

Legal Profession Uniform Law s 298

CONDUCT CAPABLE OF CONSTITUTING UNSATISFACTORY PROFESSIONAL CONDUCT OR PROFESSIONAL MISCONDUCT

1. Without limitation, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—
   a. conduct consisting of a contravention of this Law, whether or not—
      i. the contravention is an offence or punishable by way of a pecuniary penalty order; or
      ii. the person has been convicted of an offence in relation to the contravention; or
      iii. a pecuniary penalty order has been made against the person under Part 9.7 in relation to the contravention;
   b. conduct consisting of a contravention of the Uniform Rules;
   c. conduct involving contravention of the Legal Profession Uniform Law Act of this jurisdiction (other than this Law), whether or not the person has been convicted of an offence in relation to the contravention;
   d. charging more than a fair and reasonable amount for legal costs in connection with the practice of law;
   e. conduct in respect of which there is a conviction for—
      i. a serious offence; or (ii) a tax offence; or
      ii. an offence involving dishonesty;
   f. conduct as or in becoming an insolvent under administration;
   g. conduct in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;
   h. conduct consisting of a failure to comply with the requirements of a notice under this Law or the Uniform Rules;
   i. conduct in failing to comply with an order of the designated tribunal made under this Law or an order of a corresponding authority made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Law or a corresponding law);
   j. conduct in failing to comply with a compensation order made under this Chapter.

Trust Account Irregularity

Legal Profession Uniform Law s 154

Reporting irregularities and suspected irregularities

1. As soon as practicable after—
   b. a legal practitioner associate of a law practice; or
   c. an ADI; or
   d. an external examiner; or
   e. another entity of a kind specified in the Uniform Rules for the purposes of this section—
   becomes aware that there is an irregularity in any of the law practice's trust accounts or trust ledger accounts, the associate, ADI, examiner or entity must give written notice of the irregularity to the designated local regulatory authority.
   Civil penalty: for a corporation—250 penalty units;
   for an individual—50 penalty units.
2. If an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as practicable after forming the belief, give written notice of it to the designated local regulatory authority.

Civil penalty: 50 penalty units.

Note Section 466 contains provisions relating to compliance with this section.