

DUTY TO THE ADMINISTRATION OF JUSTICE

Lawyer as an officer of the court:

A lawyer is an officer of the court which admits her or him ([Legal Profession Uniform Law s25](#)). A lawyer's paramount duty is to the administration of justice; this duty prevails to the extent of inconsistency with any other duty ([ASCR r 3](#); [Legal Profession Uniform Conduct \(Barristers\) Rules 2015 rr 4a and 23 \(and rr 3c and 8\)](#); [Rondel v Worsley \[1969\] 1 AC 191](#)). The court has an inherent jurisdiction to supervise its officers, albeit one which it will exercise only in exceptional or very clear cases. The jurisdiction includes power to:

- Admit or refuse admission to practise; and
- Restrain lawyers from representing parties to litigation before it (for instance where the lawyer is not independent or there is a real risk of the misuse of confidential information)

Courts have jurisdiction to restrain lawyers from acting where 'a fair minded, reasonably informed person would find it subversive to the administration of justice to allow the representation to continue' ([Davies v Clough \(1837\)](#)).

Sanctions for breach of duty to court:

- Consequences for lawyer may include:
- Disciplinary proceedings
- Personal orders for costs

Punishment for contempt/perverting the course of justice

Note there may also be consequences for the proceeding, particularly where the court has been misled. In criminal matters, it may constitute a miscarriage of justice which warrants setting aside the conviction. In exceptional cases, a civil judgment may be set aside ([Meek v Fleming \[1961\] 2 QB 366](#)).

Independence

The proper administration of justice requires the exercise of independent judgment by lawyers in conducting cases. This may require considering which points are reasonably arguable, and which are not, in the interests of not unnecessarily using court time and resources.

[ASCR r 17.1](#) - *A solicitor representing a client in a matter that is before the court must not act as the mere mouthpiece of the client or of the instructing solicitor (if any) and must exercise the forensic judgments called for during the case independently, after the appropriate consideration of ... instructions ...*

- Independence in the presentation of the case
Lawyer must advance only arguments which are reasonably open, even if contrary to instructions ([ASCR r13.1-15.3](#)).
- Independence is undermined where lawyer is a witness ([ASCR r13.4](#)), court has the power to disqualify from acting in these circumstances
- Undermined by conflict of interest
Lawyer must withdraw if this is the case ([Kooky Garments v Charlton \[1994\]](#))
- Threatened by lawyer's relationship
Must not appear in a matter where relationship with client would make it difficult to maintain professional independence. Also the case where personal or family association with opposing lawyer

See also [r 17.2 – 17.4](#) and [Barristers Rules rr 42-44](#).

Lawyers as witnesses:

A lawyer's independence and objectivity is compromised if she or he is or may be required to give evidence on matters relevant to the issues in dispute in a proceeding. There may be confusion between the roles of lawyer and witness; further, a duty/conflict interest may arise. The ASCR proscribes a lawyer from appearing as advocate if required to give evidence in a case ([ASCR r27.1](#)); however, the lawyer (or her or his firm or an associate) is prohibited from acting altogether only if to do so would prejudice the administration of justice ([ASCR r27.2](#)).

See also [Barristers Rules r101\(d\)](#) - a barrister must refuse to accept or retain a brief if the barrister has reasonable grounds to believe that the barrister may, as a real possibility, be a witness in the case. [R101\(e\)](#) - barrister cannot accept a brief in an appeal where the barrister was a witness at first instance.

A court may restrain a lawyer/witness from acting if the administration of justice will be compromised. Exceptions are lawyers who conduct their own cases, and lawyers giving evidence on uncontested issues, or formalities.

Relationships which may undermine a lawyer's independence:

A lawyer should avoid personal or business relationships with clients as to do so jeopardises the ability to maintain objectivity and independence. There are dangers in representing friends or relatives: see for instance [Legal Practitioners Complaints Committee v Chang \[2007\] WASAT 86](#) in which a lawyer, acting for a friend, failed to make proper record of cash and cheque receipts; given there was no dishonesty involved the lawyer was disciplined with a reprimand and a fine. A personal relationship with an opposing lawyer may also create an apprehension that the case may not be conducted in complete fulfilment of the duty to the court (and the client – see Week 3).

Duty to assist the court (candour):

As an officer of the court, a lawyer's role is to assist the court in correctly applying the law. This requires the lawyer to have thoroughly researched matters relevant to the issues before the court. See, for instance, [Copeland v Smith \[2000\] 1 WLR 1371](#), in which a barrister failed to refer the trial judge to a decisive recent case. A solicitor must not deceive or knowingly or recklessly mislead the court ([ASCR r19.1](#); [BR r24](#)). Must not misrepresent the law to a court ([Clyne v NSW Bar Association \(1960\)](#)), and must do what they can to ensure the law is applied correctly to the case ([Re Gruzman \(1968\)](#)).

- Duty to assist the court in the applicable law and procedure
- Should be aware of relevant legal principles and rules of court ([Kennedy v McGeechan \[1978\]](#)) and be adequately prepared in submissions. Lawyers have a duty to assist judges in making submissions.
- Duty not to withhold relevant law