**Letter of Advice** Word Count-- 2138

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1st October 2021

Wendy Bird

45 Kings Road

Victoria- 3885

File No: 1234

Dear Wendy Bird,

This letter is regarding the advice that you are seeking regarding your practice as a solicitor in Victoria, and whether you are under any breach of ethical obligations. I’m much obliged to you for going to a gathering at our office on twentieth September 2021, to talk about issues brought on your lead up in the capacity of a solicitor. These direct concerns three separate occurrences. We are satisfied to advise you that having considered every one of the legitimate issues we have come to the most reasonable lawful exhortation.

In terms of your overall client management our advice can be summarised as:

As a solicitor practising in Victoria, you must act ethically and following the Australian Solicitors' Conduct Rules, 2015 (Vic) (Solicitors' Conduct Rules') established by the Common Law and Legal Professional Uniform Law Australian Solicitors' Conduct Rules, 2015 (Vic) (Solicitors' Conduct Rules')*.* It is crucial for you to maintain the client-attorney privilege that is entirely based on trust so it should be duly maintained, you should practice your profession in such a way that you always have the trust of your clients, therefore you need to be honest with your client and profession. You should keep a regular follow-up address to the problems faced by your clients, always revert to the client’s mail and messages. You should always honour your undertakings strictly following the terms and within the specified period.

We have set out our advice for the facts in detail below:

**Wyatt Lang matter** [Dishonesty and Misrepresentation]

Issue

As per our discussion the previous day, in the first issue with Client Wyatt, the drafts affidavit that was prepared by you on behalf of your client was missing some information which was later filled up by you on 3rd September 2021 during a meeting with your client. You have also mentioned that your client had signed the draft affidavit of 7 pages and the Jurat Clause which was not witnessed by you, as required. The client’s signature in the final affidavit which was of 9 pages was cut out from the draft and stuck in the final affidavit by you. You have then witnessed the stuck signatures in the affidavit pages and signed the jurat clause, which was later photocopied and filed before the FCFCOA and received the sealed copy of the affidavit on 6th September 2021.

Rule

An affidavit[[1]](#footnote-1), according to the Federal Circuit and Family Court of Australia, is a written statement in which the contents are sworn or affirmed to be genuine, and it should contain facts rather than opinions. In the presence of an authorized person, such as a lawyer or a Justice of Peace, the deponent (person making the affidavit) must sign the bottom of each page[[2]](#footnote-2). Details such as the full name of the deponent with his signature; that the affidavit is sworn or affirmed; the day and place where the affidavit is signed by the deponent; and the full name of the authorized witness with his occupation and signature must be included on the jurat (last page of the affidavit).

You may have violated a number of these duties, including being honest and courteous in all dealings in the course of the legal profession, by pasting cutouts of your client signatures on the bottom of it and duplicating your client's signature on jurat[[3]](#footnote-3). You may have also violated rule 8.16.2 of the Federal Circuit and Family Court of Australia (Family Law) Rules 2021.

An attorney commits professional misconduct if he/ she engages in any conduct[[4]](#footnote-4):

* that involves, dishonesty, fraud, misrepresentation or deceit;
* that is unfavourable to the administration of justice and;
* that adversely reflects on the attorney’s fitness to practice law.

When you copy and paste your client's signature from the bottom of the document's pages and portraying your signature as that of the client it’s ethically wrong and as a solicitor, you should not practice such activities.

Application

A solicitor must not engage in activities that demonstrate that he or she is not a fit and proper person to practise law, or that is likely to be prejudicial to or diminish public confidence in, the administration of justice, or that bring the profession into disrepute, according to the legal profession (solicitor) conduct rule. A lawyer should assist in preventing the unauthorized practice of law[[5]](#footnote-5) .When you are pasting your client’s signature to the newly drafted pages of the affidavit and filing the affidavit with FCFCOA you violate these above-mentioned rules.

Conclusion

Being a legal practitioner, you need to be honest with your client and profession. You cannot do your job effectively if you are not honest with your clients and your profession.

A solicitor has a very important ethical obligation towards their profession. These ethical responsibilities have a lengthy history and are well-documented in law. In all of your transactions as a solicitor, you should always maintain the highest levels of integrity, honesty, and fairness. As per law "dishonestly obtaining a gain, dishonestly[[6]](#footnote-6) causing a loss, or dishonestly influencing the exercise of a public duty or function" carries penalties.

Being truthful is therefore critical in any case, and a client's decision to employ an attorney should be based on the attorney's trustworthiness and moral integrity.

**Ruth Longmuir matter** [Poor communication and unprofessional practise]

Issue

As per the summary of the facts your client, your client Ruth had sent you a mail on 5th May 2021 asking for the file which could only be received by her after completion of the payment of $9500 as per the invoice. Your client had paid the invoice on 15th June 2020, but still, after the payment, you had not sent her the files as per your stated terms. In addition to that Ruth tried to reach you by sending emails and through calls, within a span of six months, you had responded to her on 5th January 2021 informing your client that the file had to be retrieved from an external source as it was not stored internally. In March 2021 your client again tried to reach you by leaving a message with your receptionist asking for the file. You had finally sent the file by express post on 16th May 2021, without informing your client about the ‘file retrieval and storage fees of $150.

Rule

The rules of professional conduct related to communication that you being a lawyer must follow are:

* A solicitor must not charge for the storage of documents or the retrieval of such documents unless the former client has agreed in writing to such charge being made[[7]](#footnote-7).
* While informing your client with respect to the decisions and circumstances of their case matters.
* Consulting your client to accomplish their desired legal goals and
* responding to your client when they request you for information.

Professional negligence is committed by you when[[8]](#footnote-8): -

* There was a duty of care owed by you towards your client, that was breached.
* The required duty of care was not taken by the Legal Practitioner.
* The client suffered a loss or damage due to the breach of duty.

Application

Your client Ruth is entitled to frequent and clear communication and you have to answer and respond to all of your clients’ queries. Even if you are working on another case still you should get back to your client Ruth within a day or two at most. “If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests[[9]](#footnote-9), he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment.” Thus, before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the client’s consent[[10]](#footnote-10).”

In addition to that unless there are client instructions or regulations to the contrary, a solicitor or law firm must keep client documents for seven years following the conclusion or termination of the engagement. Daubney J held that a solicitor to whom a testator entrusts a testamentary document for safekeeping retains that document as bailee *in* *Public Trustee of Queensland as a Corporation Sole[[11]](#footnote-11)*. The file that was sent to your client Ruth on 16th May 2021 for which she had to bear the expense of $150 without having any prior knowledge and even no information was communicated by you regarding the same amounts to negligent practice[[12]](#footnote-12) and professional misconduct[[13]](#footnote-13) upon your end.

Conclusion

You owe responsive communication to all of your clients including Ruth. So, you cannot give any such excuse as you took months to revert to your client as you were busy with your other clients.

Being a solicitor, you have an ethical obligation to represent the clients' best interests and respond to messages as soon as possible. Because you were busy with your other clients and therefore not available 24 hours a day, still you should nevertheless reply to your every client promptly as you owe an ethical and legal duty towards them.

**Darlene Shell matter** [Breach of professionalism and misconduct]

Issue

You have signed an agreement with fund law whereby you have given the undertaking to provide Fund Law with progress reports concerning the litigation at least every three months. Despite the undertaking, you have not abided with the terms of the agreement for the second, third and fourth progress report.

Summarising your conduct as follows:

* You have submitted your second Report on 18th February 2020, which you were supposed to submit within 15 November 2019.
* The third progress report was required to be submitted on 15th February 2020, but you delayed and submitted it on 17 November 2020.
* In addition to that the fourth progress report which was supposed to be submitted on 15th May 2020, you submitted on 26 May 2021.
* As per the terms of the funding agreement you were required to advise fund law regarding the sum payment from Workcover received by your client amounting to approximately $180,000.

Rule

There are two distinct rules regarding undertakings in the Legal Profession Conduct Rule 6 of the (Solicitor's Rules[[14]](#footnote-14)) which states that any undertaking made by a law practitioner (solicitor) with another party in legal practice, constitutes an undertaking on the part of the practitioner, and he must honour the undertaking strictly following its terms and within a specified period.  As per your conduct, you should advise[[15]](#footnote-15) fund law concerning any significant changes to Darlene’s financial circumstances which were agreed upon by you in the Funding Agreement, that contributes to the clear professional breach of rules upon your part.

Application

Being a solicitor in Victoria you have obligations towards your client that are based on both equity and common law. A lawyer's retainer imposes an obligation to be skilled and cautious under common law. When you fail to meet this commitment then it results in a contract or tort liability for carelessness. The lawyer-client relationship, which is fundamentally a contractual connection, gives rise to a lawyer's duty to their client. In the framework of that connection, the lawyer owes a duty of care in tort and a duty of confidentiality in equity.

The payment that your client Darlene had received should have been informed by you to Fund Law on time and not delayed to a period of six months. A legal practitioner who, in the course of providing legal services to a client, communicated with a third party orally or in writing for the client's business, whether expressly or impliedly, constitutes an undertaking on the part of the practitioner to ensure the performance of an obligation with the expectation that the third party will rely on it.

Conclusion

Keeping all these facts in mind shows a clear breach of professionalism and misconduct. Being a solicitor, you should always clarify the confusions of your clients which contributes to a good client-attorney relation and ethical way of practising law. Good ethics will always lead you to receive respect in society as well as in your professional practice. In comparison to other occupations, there were no penalties for this type of misbehaviour, but in the legal profession, you must follow these standards as laws, or you will be fined. Ethics is just the style of conduct or the way we carry out our acts or activity. In our opinion, it is up to us to decide how we want to work, whether we select the correct or incorrect path.

If you have any questions, please contact **Shirley Perry** on **+61 7 7987 4587**

Yours faithfully

Shirley Perry

Lawyer

Virtuous & Co.

1. Federal Circuit and Family Court of Australia (Division 2) *‘Family Law Rules’,* 2021 (P 8.3). [↑](#footnote-ref-1)
2. Federal Circuit and Family Court of Australia (Division 2) *‘Family Law Rules’,* 2021 (P 8.16). [↑](#footnote-ref-2)
3. Henry Campbell, Black**,** *Black’s Law Dictionary*, (St. Paul, Minn. West publishing Co., 6th ed, 1990) (127) (128). [↑](#footnote-ref-3)
4. Fletcher, George P. “*Fairness and Utility in Tort Theory*.” Harvard Law Review 85, no. 3 (1972): (537) (73). <https://doi.org/10.2307/1339623>. [↑](#footnote-ref-4)
5. Henry Campbell, Black**,** *Black’s Law Dictionary*, (St. Paul, Minn. West publishing Co., 4th edition, 1968): (XXXVI). [↑](#footnote-ref-5)
6. ACT Law Society ‘*Legal Profession (Solicitors’) Conduct Rules’*, 2015 (R 5). [↑](#footnote-ref-6)
7. ACT Law Society ‘*Legal Profession (Solicitors’) Conduct Rules’*, 2015 (R 16). [↑](#footnote-ref-7)
8. Fletcher, George P. “Fairness and Utility in Tort Theory.” *Harvard Law Review* 85, no. 3 (1972): 537–73. <https://doi.org/10.2307/1339623>. [↑](#footnote-ref-8)
9. *ABA Canon Model Code of Professional Responsibility*, cf. 6 [Opinions 261 (1944), 242 (1942), 142 (1935), and 30 (1931)]. [↑](#footnote-ref-9)
10. ABA Canon 6; cf. ABA Opinions 261 (1944), 242 (1942). [↑](#footnote-ref-10)
11. *Public Trustee of Queensland as a Corporation Sole* (2012) QSC 178 [14]. [↑](#footnote-ref-11)
12. *Legal Profession (Solicitors’) Conduct Rules*,2015 [R 16.1]. [↑](#footnote-ref-12)
13. Australian Law Reform Commission, 2000, Report 89, (R 4.146). [↑](#footnote-ref-13)
14. ACT Law Society ‘*Legal Profession (Solicitors’) Conduct Rules’*, 2015 [R 6]. [↑](#footnote-ref-14)
15. ACT Law Society ‘*Legal Profession (Solicitors’) Conduct Rules’*, 2015 [R 7]. [↑](#footnote-ref-15)