

A Lecture on Legal Professional Ethics

The Chief Justice's Lecture Series

Introduction

The Ethos

- Commenting on the standard of conduct which can be expected of professionals Sir Francis Bacon said:
- "I hold every man a debtor to his profession, from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves by way of amends, to be a help and ornament thereunto. This is performed in some degree by the honest and liberal practice of a profession when men shall carry a respect not to descend into any course that is corrupt and unworthy thereof and preserve themselves free from the abuses wherewith the same profession is noted to be infected."

Ethical Considerations for the TCI Bar

We will discuss:

- The Importance of Professional Ethics
- The Self Regulation of the Legal Profession
- The Legal Profession Ordinance; and
- The Code of Professional Conduct

Ethical Considerations for the TCI Bar

We will then examine 2 authorites:

- Fernandez Martinez v Spain (2014) 37 BHRC 1
- *R v. Farooqi* [2013] EWCA Crim 1649

These will bring home the various duties you owe:

- 1. To the Court
- 2. To Your Clients
- 3. The Community
- 4. Your Colleagues

Ethical Considerations for the TCI Bar We will also examine Expected Standards of Professional Conduct in the area of: • Client Accounts

We will close by conducting a reflective exercise; examining **4 case studies** and discussing best practices in each scenario.

The Importance of Professional Ethics

An attorney is expected to:

- Engage in **decent practice**;
- Tread the halls of justice with **reverence**;
- Not bend the law at will to suit your case;
- Live responsibly with the paramount objective to uphold the ethical standards of the profession;
- Adhere to the common expectation of **integrity**, **morality**, **pursuit of excellence and responsibility**.

The Various Names/Descriptions used to describe attorneys indicate what there business is and what is expected of them:

- •Lawyer: a person learned in the law... Any person who, for fee or reward, prosecutes or defends causes in courts of record or other judicial tribunals
- Attorney: In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place or stead of another...One who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated...."

The Various Names/Descriptions used to describe attorneys indicate what there business is and what is expected of them:

•Advocate: One who assists, defends, or pleads for another; one who renders legal advice and aid and pleads the cause of another before a court.

•Counsel: (1) a lawyer engaged in the trial or management of a case in court. (2) a lawyer appointed to advise and represent in legal matters, an individual, client or a corporate, and especially a public body.



The Self Regulation of the Legal Profession

Self-Regulation

- Like other professional bodies, **the legal profession self-regulates.** The goal is to ensure that certain standards are kept.
- While some Bar Associations/Law Societies design what is intended to be minimum standards of behaviour, comportment, others go for the aspirational, raising the Bar. While much has been achieved regarding regulation in this way, it has been said, that such codes of conduct are outmoded, and do not take cognizance of the various ways in which the law is practiced by the several persons who have entered the profession. There is also the charge that in seeking to provide the needed latitude, they lack certainty and almost operate as a trap.

"The reasons for having codes of professional conduct are fairly obvious—to educate lawyers on communal expectations; to affect behaviour; and to offer a basis for discipline. However, they are long on righteous aspiration and vague generalities, but short on serious instruction and concrete guidance. There is little to counsel the floundering or jaded lawyer in establishing an overall professional modus vivendi. Ethics is reduced to a technical compliance with a set of simple do's and don'ts: it is more of a shopping list than a genuine effort to inculcate a style and substance of legal practice. It is as much about conformity as it is about conscience. Lawyers approach ethics in the same way that they approach law as a set of rules to be mastered and manipulated to serve the purpose in hand." See Legal Ethics for a Fragmented Society: Between Professional and Personal, Hutchinson, 1998

The Code of Professional Conduct (CPC) TCI

The Bar Council is responsible for the control of the Bar Association:

 Section 16(1) of the Legal Profession Ordinance (LPO) provides for the constitution of a Bar Council in accordance with section 17 which shall, be responsible for the policy, control and management of the Bar Association. The Schedule to the LPO sets out the Code of Professional Conduct (CPC). The Code of Professional Conduct creates duties:

- **1**. Duties to the Court
- 2. Duties to Clients
- 3. Duties to the Community
- 4. Duties to Fellow Attorneys

Duties under the TCI CPC- Rule 4

An Attorney must discharge his duties to the court, his client, members of the public and his fellow members of the profession with integrity and in accordance with this Code. In the performance of his duties an Attorney shall not act with inexcusable or undue delay, negligence or neglect.

Duties under the TCI CPC-Rule 5

It is the duty of every Attorney—

(i) to comply with the provisions of this Code;

(ii) not to engage in conduct (whether in pursuit of his

profession or otherwise) which is dishonest or which may

otherwise bring the profession of an Attorney into disrepute, or

which is prejudicial to the administration of justice;

Duties to the Court Officers of the Court

The CPC sets out conduct expected of attorneys as officers of the court with a duty to uphold the administration of justice, while ensuring the best interests of his client.

Rules 26-33 provide that an attorney must at all times act with due

courtesy to the court before which he is appearing and to opposing

counsel, using his best endeavours to avoid unnecessary expense and

waste of the court's time, and conducting his case in a manner most

advantageous to his client. This includes ensuring that they are informed of

any relevant decision on a point of law or any legislative provision whether

it be for or against his contention.

• In settling pleadings, he may not make any allegation unsupported by his instructions. Nor may he settle grounds of appeal unless he considers that the proposed appeal is properly arguable.

• An attorney is expected to not knowingly assist or permit his client to do vexatious, dishonest or dishonourable; appear before a court when he or his associates are conflicted through personal or business relations with a member of the court, or to do anything that may interfere with the impartiality of the court, or the decision or action of a court or any of its officials.

• An attorney shall also not knowingly attempt to deceive a court or influence the course of justice by offering false evidence, mis-stating facts or law, presenting or relying upon a false or deceptive affidavit; suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime or illegal conduct, mis-stating the contents of a document, the testimony of a witness, the substance of an argument or any provision of the law or any case that he cites or refers to tamper with a witness, abuse, hector, harass or inconvenience a witness.

- An attorney is expected to encourage public respect for and shall try to improve the administration of justice.
- Attorneys are officers of the court. The import of being an officer of the court, is fast losing meaning although lip service is often paid to it. That is why some lawyers will fail to keep appointments with the court and be unapologetic about it; argue with the court with belligerence; conduct their business without regard to the court and its processes.

The various duties of a lawyer:

 A lawyer's duty to the court is a fundamental obligation that defines a lawyer's role within the adversarial system. However, a lawyer's duties are not carried out in a vacuum. While facing financial and competitive pressures, lawyers must fulfil and balance their duties to the client, opposing counsel, the administration of justice and society"

(See A Practice Guide to Legal Etiquette and Decorum, An Introduction by Justice Allyson Ramkerrysingh

The various duties of a lawyer:

• You have a duty to the court whose officer you are. Unfortunately, many lawyers, supposing that it is subservient to the duty to the client, believe that all is fair even if it offends the administration of justice, as long as it is in the perceived interest of his client. It is not so. Your duty to the court includes your having fair dealings with the court. In this regard, do proper research to assist the court. You have a duty to not mislead the court, especially where the opponent appears in person. When you cite a case, make sure it exists; that you have read it thoroughly, give the proper citation, and ensure that the subject matter is properly interrogated by the court because of your industry.



Observe proper Bench/Bar relations

 As the officers of the court, lawyers are required to maintain a respectful attitude toward the court. Moreover, bearing in mind that the dignity of the judicial office is essential for the survival of society.

See Social laws today: https://sociallawstoday.com/bar-and-bench-role-and-relation/

Be Courteous to the Court

 Being courteous and respectful to the Court does not mean that one should be subservient or obsequious. It simply means being deferential to the office of Judge or Magistrate.

See A Practice Guide to Legal Etiquette and Decorum, An Introduction by Justice Allyson Ramkerrysingh

Prepare for Your Court Appearance

• Counsel have a duty to the court to prepare the case properly and know the relevant law. It has been said that it is counsel's duty to present argument based on full research and not to rely on practice books. Counsel is expected to be experienced in his particular legal field and be aware of the requirements of the relevant rules of court.

Lawyers Duties to the Court, (1998)]]4 L.Q.R;

http://cloud.mrlegal.com.au/mrhomepage.nsf/565ff94daed36d5a48257b530051cc28/643b2cb32280b44d482577310034ff85/\$FILE/Lawye rs%20Duties%20to%20the%20Court.pdf;

Do not Mislead the Court

Counsel has a duty to bring all relevant authorities to the attention of the court, whether or not they assist the party represented by him¹.

"You must uphold the highest professional ethics and morals. Let these two watchwords dictate how you conduct your practise of the law. While you are being paid to fearlessly and zealously defend your client's case, you are above all an officer of the court and it is your duty to act competently, diligently and candidly with the court. There is an expectation of honesty and frankness and you must ensure that these permeate all that you do before the court and throughout your dealings with your colleagues and clients."²

Refrain from Public Comments about a Judge or Magistrate

"Never speak openly disparagingly to or about a judge or magistrate. We have all been disappointed at one time or another, or felt angry or aggrieved with an unfavourable judgment or ruling, but that is not a reason to be openly critical of a judge. Such is not only unfair to judges personally, it can improperly undermine public trust and confidence in the judicial system. Any perceived judicial attack on your presentation is usually not personal. You can only do the best with the case you have and if that case is a weak one that may come across in your presentation resulting in judgment or ruling against your client. You are only as good as your brief. If you feel that you are deliberately and unjustifiably being bullied or victimised by a Judge you may lay a complaint the appropriate authorities...Before taking such a drastic step however you may report to senior colleagues and seek their opinion and advice." See A Practice Guide to Legal Etiquette and Decorum, An Introduction by Justice Allyson Ramkerrysingh

Refrain from Public Comments about a Judge or Magistrate

•As an officer of the court, where appropriate and in pursuit of professional integrity, your duty to the court requires you to respectfully make submissions to the judge that he/she may possibly be mistaken or is departing from "contemporary standards of fairness".

See A Practice Guide to Legal Etiquette and Decorum, An Introduction by Justice Allyson Ramkerrysingh



Ethics in Action 1

R v Farooqi

Advocates duties to the court and clients R v Farooqi

This was a Criminal Appeal from the United Kingdom where the Chief Justice and appeal court acknowledged the poor conduct of one of the defendant's counsel. The Chief Justice made strong comments about the responsibilities of trial advocates. Some of these are:

- The role of instructions in the conduct of a case;
- The role of the judge
- The binding nature of rulings and judgments;
- The responsibility of counsel to the administration of justice.
Advocates duties to the courts and clients R v Farooqi-

[108] Something of a myth about the meaning of the client's "instructions" has developed. As we have said, the client does not conduct the case. The advocate is not the client's mouthpiece, obliged to conduct the case in accordance with whatever the client, or when the advocate is a barrister, the solicitor "instructs" him. In short, the advocate is bound to advance the Defendant's case on the basis that what his client tells him is the truth, but save for well-established principles, like the personal responsibility of the Defendant to enter his own plea, and to make his own decision whether to give evidence, and perhaps whether a witness who appears to be able to give relevant admissible evidence favourable to the Defendant should or should not be called, the advocate, and the advocate alone remains responsible for the forensic decisions and strategy. That is the foundation for the right to appear as an advocate, with the privileges and responsibilities of advocates and as an advocate, burdened with twin responsibilities, both to the client and to the court.

Advocates duties to the courts and clients-R v Farooqi

"[107] The client does not conduct the case: that is the responsibility of the trial advocate. The client's instructions which bind the advocate and which form the basis for the defence case at trial, are his account of the relevant facts: in short, the instructions are what the client says happened and what he asserts the truth to be. These bind the advocate: he does not invent or suggest a different account of the facts which may provide the client with a better defence..."

Advocates duties to the courts and clients R v Farooqi

"[109] In the trial process the advocate is subject to some elementary rules. They apply whether the advocate in question is a barrister or solicitor, and to the extent that the rules of professional conduct of either profession are not consistent, they should be made so. In the forensic process the decision and judgment of this court bind the professions, and if there is a difference, the rules must conform with the decisions of the court. By way of emphasis, in the course of any trial, like everyone else, the advocate is ultimately bound to abide by the rulings of the court. If a remedy is needed, the rulings are open to criticism in this court, and if they are wrong, their impact on the trial and the safety of any conviction can be fully examined..."

Advocates duties to the court and clients R v Farooqi- Comments

"[109]...Although the judge is ultimately responsible for the conduct of the proceedings, the judge personally, and the administration of justice as a whole, are advantaged by the presence, assistance and professionalism of high quality advocates on both sides. Neither the judge nor the administration of justice is advantaged if the advocates are pusillanimous. Professional integrity, if nothing else, sometimes requires submissions to be made to the judge that he is mistaken, or even, as sometimes occurs, that he is departing from contemporary standards of fairness. When difficult submissions of this kind have to be made, the advocate is simultaneously performing his responsibilities to his client and to the administration of justice. The judge, too, must respect the reality that a very wide discretion is vested in the judgment of the advocate about how best to conduct the trial, recognising that different advocates will conduct their cases in different ways, and that the advocate will be party to confidential instructions from his client from which the judge must be excluded. In general terms, the administration of criminal justice is best served when the relationship between the judge and the advocates on all sides is marked by mutual respect, each of them fully attuned to their respective responsibilities. This indeed is at the heart of our forensic processes."

Advocates duties to the court and clients R v Farooqi

- The attorney's duty to the court has also been described as the duty:
- (1) "to use tactics that are legal, honest and respectful to courts and tribunals;
- (2) to act with integrity and professionalism, while maintaining his or her overarching responsibility to ensure civil conduct; and,
- (3) to educate clients about the court processes in the interest of promoting the public's confidence in the administration of justice."



DUTY TO CLIENT

Duties under TCI CPC Rule 6

An Attorney has a duty to uphold the interest of his client without regard to his own interest or to any consequences to himself or to other persons, subject always to his primary duty to the court and to the law.

- I will refer to the general duties of the possession of the knowledge, skills and competence to represent a client's interests, diligence in the conduct of the client's case, as well as the simultaneous duties to court and client to ensure a fair trial in criminal cases.
- I will also discuss other duties that inhere in a lawyer-client relationship .

Duty of Care

• The level of care and skill applied by an attorney depends on whether an attorney is being paid for his services or whether he holds any relevant professional qualifications. For example, an attorney who is not being paid must apply the same care, skill and diligence he would use to make decisions in his own life. If the attorney is being paid then a higher degree of skill and care is expected. Similarly, an attorney acting in the course of his profession such as a solicitor or corporate trustee, must display professional competence and follow his profession's rules and standards.

Fiduciary Duty

 An attorney must not take advantage of his position as an attorney. An attorney must not profit or get any personal benefit from his position nor should he put himself in a position where his personal interests conflict with his duties.

Duty to not Delegate

Attorneys cannot usually delegate their authority to someone else, unless this is specifically authorised by the client.

Duty of Good Faith

An attorney must act with honesty and integrity.

Duty of Confidentiality

An attorney must keep the client's affairs confidential unless authorised, or the client loses capacity having come under a disability and is authorised in such circumstances to disclose information. In such circumstances it may be advisable for the attorney to seek legal advice. DUTY TO THE COMMUNITY

GUARIDANS OF THE PUBLIC GOOD

Duty to the Community

Legal practice is a hallowed profession entrusted with keeping the public good. It does not appear that there is adherence to the cab rank rules which consign junior counsel to unpalatable work to provide access to legal representation, I however note, and commend the Bar that there is now in place, a system for giving back to the community through pro bono legal work. In a recent article by Jonathan Goldsmith¹, he identified serious ethical questions raised in the European Parliament inquiry².

See 1) Former Secretary General of the Council of Bars and Law Societies of Europe. 2) Law Society Gazette, 27 February 2017.

Duty to the Community

These questions included; "whether lawyers are "hiding behind legal professional privilege to allow clients to get away with dodgy acts"; and whether lawyers "are taking responsibility for their role in the funding of terrorism, arms trafficking, mass drug addiction and other ills financed by the transfer of illicit funds". He cites a sting operation mounted by the NGO Global Witness in which a purported African minister sought legal help from several New York law firms to bring large sums of money into the US without detection. All but one of the firms suggested using anonymous companies or trusts to hide the minister's assets and were apparently willing to assist his dubious endeavours."

See: Law Society Gazette, 27 February 2017.

Duty to the Community

Yet, "...dedication to serving the public good is not a matter of blind altruism. Rather, it is a foundation upon which lawyers earn the confidence of the community and, as a result, are able to play their essential role in the administration of justice..."

Roddenberry, E.W. "Achieving Professionalism" (1953)



DUTY TO FELLOW ATTORNEYS

Duties to other Attorneys

Rules 62 provides: An Attorney shall act with good faith and courtesy in relationship with other Attorneys.

 Needless to say, a house divided cannot stand. It is a sorry spectacle to behold counsel making disparaging comments about opposing counsel, or quarrelling openly or behaving like enemies in a misguided effort to please their clients. As the hackneyed expression goes: clients come and go, but friends remain at the Bar.

 There is no doubt a reason for the practice dating from antiquity, of calling your colleague both learned and a friend. You owe it to your colleague and to the court to show courtesy. The phenomenon of Perry Mason and Hamilton Burger in which one counsel is a protagonist and the opposing one, an antagonist must be consigned to dated novels that have little in common with reality. The court, the community and even your client benefits from an atmosphere of litigation in which counsel are courteous to one another and to the Bench.

"... The duty to be courteous and respectful to counsel on the opposite side and to the court is not a sign of weakness or subordination. It is not beneath one's to be deferential and good-mannerly.."

A Practice Guide to Legal Etiquette and Decorum, An Introduction by Justice Allyson Ramkerrysingh

- On the other hand, it is a sensitive point that many attorneys would rather not acknowledge, that because their clients do not trust them implicitly, they may become uncomfortable when they observe easy camaraderie and overfamiliarity among lawyers displayed in their presence. It is not for you to explain that you are not enemies, only opponents in the conduct of their case.
- "... Such light-hearted communications may be resumed after attorneys have left the presence of their clients. The bard's admonishment in "The Taming of the Shrew" comes to mind: "And do as adversaries do in law, strive mightily but eat and drink as friends."

Ramkerrysingh (Supra).

Avoid Criticism or disparaging remarks of Fellow Attorneys or Opposing Counsel

Rule 65 of the CPC reinforces this by providing: 65. (1) An Attorney shall neither in response to the enquiry of a member of the public nor gratuitously criticize the competence, conduct, advice or charges of other Attorneys.

(2) An Attorney should, however, be prepared when requested by a member of the public to do so, to advise and represent such a person in any complaint or proposed court action against another Attorney

Accede to Reasonable Requests of Opposing Counsel

Rule 66 of the CPC provides:

66. (1) An Attorney should accede to reasonable requests concerning trial dates, adjournments, waiver or procedural formalities and similar matters which do not prejudice the rights of his client.

(2) Where an Attorney knows that another Attorney is concerned in a case, he should not proceed by default without enquiry and warning.

(3) An Attorney shall not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of another Attorney not going to the merits or involving the sacrifice of the client's rights.

Deal with Opposing Counsel Honourably and Communicate Honestly.

"Mention has already been made about how to treat attorney appearing opposite you, but added to that **remember to be honourable and candid in your dealings**. That is the only way to **build trust with your friends and with the Court. Nothing builds a poor and distrusting reputation faster than when you say one thing to your opponent outside the courtroom, but deliberately do or say something completely different inside**. Unless a genuine mistake or misunderstanding had been made there is no room for underhandedness which would eventually spread into a deservingly distrusting and unworthy reputation throughout the fraternity."

See A Practice Guide to Legal Etiquette and Decorum, An Introduction by Justice Allyson Ramkerrysingh

Communicate with Opposing Counsel honestly

"Never ever communicate with the opposing litigant in person. Always communicate through his attorney. If the opposing in unrepresented, leave it to the Judge to decide the manner of between the two sides. Do not knowingly mislead or make false statements to the other side. If an error is made, correct it at the earliest possible time after becoming aware of the mistake. Always be honourable in your dealings with your colleagues or risk harming your reputation in the fraternity irreparably, destroying your career before it even begins. Stay away from aggressive communication. It is unhelpful and unprofessional and only serves to inflame tensions between the parties. Communication should be measured and based on instructions. Remember that your letters may be used as evidence particularly in relation to costs, so be careful what you write."

See A Practice Guide to Legal Etiquette and Decorum, An Introduction by Justice Allyson Ramkerrysingh

Ethics is Action 2:

The tension between your own rights as a human being and the demands of the ethics of the legal profession.

What does the law expect of you in such circumstances?

Fernandez Martinez v Spain

Fernandez Martinez v Spain (Facts)

The applicant was ordained as a priest in 1961. In 1984 he applied to the Vatican for dispensation from the obligation of celibacy but he received no immediate answer. The following year he was married in a civil ceremony. From 1991 onwards, he was employed as a teacher of Catholic religion and ethics in a secondary school under a renewable one-year contract. In 1996 the applicant made his family situation public in a newspaper article about the 'Movement for Optional Celibacy' of priests, an organisation with aims incompatible with the official Church doctrine and of which the applicant was a member.

See Halsbury's Laws Annual Abridgment/Annual Abridgment 2014/Text/Rights and Freedoms

Fernandez Martinez v Spain (Facts)

When his contract next came up for renewal, a decision was taken not to renew his contract on the grounds that he had made public two personal characteristics which while known to the diocese, challenged certain precepts of the Catholic Church engendered scandal and failed to respect the sensitivity of the parents of the school's pupils. After a series of domestic litigation the applicant appealed to the European Court of Human Rights complaining that the non-renewal of his contract had breached his right to respect for his private and family life.

Fernandez Martinez v Spain (Decision)

• The Court held there was no violation.

• It held that the non-renewal decision pursued the legitimate aim of protecting the rights and freedoms of others, namely those of the Catholic Church, and in particular its autonomy in respect of the choice of persons accredited to teach religious doctrine. The principal issue was whether the interference with the applicant's right to respect for his private life was proportionate to that aim.

Fernandez Martinez v Spain (Decision)

- The applicant's right to his private and family life had to be balanced against the right of religious organisations to autonomy. As a consequence of their autonomy, religious communities could demand a certain degree of loyalty from those working for them or representing them. In the instant case, by signing his successive employment contracts, the applicant knowingly and voluntarily accepted a heightened duty of loyalty towards the Catholic Church, which limited the scope of his right to respect for his private and family life to a certain degree. Such contractual limitations were permissible under the convention where they were freely accepted.
- The main principle is the balance between individual rights and group rights.



Expected Standards of Ethical Professional Conduct:

Client Accounts
Section 21 of the LPO provides all money received for or on behalf of any client by an Attorney (including a firm of attorneys) shall be held on trust for that client, to be paid to the client or as he may direct, and until so paid, the money shall be deposited at a bank in a general or separate client account maintained by, and in the name of, the Attorney. It further provides that client's monies so kept may not be used for the payment of the debts of any creditor of the Attorney and no such money shall be liable to be attached or taken in execution under the order or taken in execution under the order of process of any court at the instance of any such creditor. The exception to this is any just claim or lien that an Attorney may have against any money so received by him.

Comingling of funds:

• Rule 52 (ii) of the CPC frowns on the co-mingling of funds. It provides that an attorney shall not appropriate any funds of his client held in trust or otherwise under his control for or on account of his fees without the express authority of his client, except as permitted by law.

What are Client Accounts:

- A Client Account is a bank account that is separate from a law office's or attorney's business or operating account.
- They may be used to pay cash advances on retainers and this money must be kept somewhere until it has been earned. They can also act as a source of settlement on behalf of the client.

What are Client Accounts

• Money held in a client account must be immediately available. Any money recovered on behalf of a client, such as compensation monies, must be paid into a client account before any fees are deducted. Where any money from a client account is retained by a lawyer, the lawyer should inform the client in writing of the reason for retaining the money.

Client Accounts.

 I will enjoin the Bar Council to be alive to its responsibilities under Section 22 of the LPO to make rules regarding clients' accounts including the auditing of such accounts. This is without prejudice to section 23 of the LPO which enables the Bar Council to apply to the Supreme Court for an order to compel an attorney to have his accounts, or any specified one or more of them, audited immediately, or within a period of time specified in the order to protect the interests of his client.

Best Practices (United Kingdom)

• In the UK the main rules currently in force relating to solicitors' accounts are the Solicitors Regulation Authority Accounts Rules 2019. The Rules are mandatory and must be complied with and set out the requirements relating to client money and client accounts including, that clients' money must be kept separate; may only be withdrawn for certain purposes; interest on client money must be accounted for in accordance with the rules; proper accounting records must be kept to show accurately the position with regard to the money held for each client and trust.

See Halsbury's Laws of England/Legal Professions (Volume 65 (2020), [583]. See also https://www.sra.org.uk/solicitors/standards-regulations/accounts-rules/

Payment of Costs.

• An attorney must ensure that you allocate promptly any funds from mixed payments (a payment of that includes client money and non-client money) you receive to the correct client account or business account; where an attorney is holding client money and some or all of that money will be used to pay his/her costs. An Attorney must give a bill of costs, or other written notification of the costs incurred, to the client or the paying party before any funds are transferred from a client account to make the payment; and any such payment must be for the specific sum identified in the bill of costs, or other written notification of the costs incurred, and covered by the amount held for the particular client or third party.

See https://www.sra.org.uk/solicitors/standards-regulations/accounts-rules/



Reflective Exercises Case Studies

Case Study 1: Accounts, Client Money, Fees

I am a lawyer acting in a personal injury case and the opposing party has made an offer of compensation to my client. I decided to accept the offer on behalf of my client as I thought it was a good offer. I have given the opposing party's lawyer my bank details so that they can deposit the money into my account. Once I receive the money, I will deduct my fees and transfer the money over to my client. I will also deduct some money for expenses. Do I need to inform my client of all the details or can I just give him the money after I have made the deductions?

Discuss

Case Study 1: Recommendation

You should not have accepted any offer of payment without first informing your client of the offer. You should also have advised your client of the reasons why it was a good offer. Once you considered that your client understood your advice, you should have asked your client for consent before accepting the offer. It is essential that a client gives informed consent.

Where you are receiving money on behalf of a client, or holding any money for a client, you should have a separate client bank account. You should not be receiving or holding any money for a client in your own personal bank account. As soon as you receive any money on behalf of a client, you should immediately inform the client. Where you intend to deduct your fees and expenses from money held for your client, you should first provide your client with an invoice which includes a breakdown of your fees and details of any reasonable expenses. Where possible, you should also attach copies of receipts for expenses.

Case Study 2: Duty to the Court, False Evidence, Confidentiality

I am a lawyer and during a court hearing, I realised that my client gave evidence that was different to what he had previously told me. I think my client may have given false evidence. What should I do?

Discuss

Case Study 2: Recommendation

If your client refuses, you should inform the client that you have a duty to withdraw from the case. If your client still refuses to confess to giving false evidence, you must withdraw from the case and no longer act for the client. However, if you withdraw from the case, your duty of confidentiality continues. This means that if the court asks you why you have withdrawn from the case, you should not disclose that your client may have given false evidence. You can only state that due to professional considerations, you can no longer represent the client.

Case Study 3: Duty to the Court, Disclosure of Adverse Information

I am a lawyer and have discovered a section of relevant law which assists the opposing party. I am surprised that the opposing party's lawyer has not yet referred to it during the trial proceedings. The judge also appears to be unaware of it. As the information assists the opposing party, I think I will leave it to the opposing party's lawyer to raise it.

Discuss

Case Study 3: Recommendation

As a lawyer, you are an officer of the court and owe a duty not to mislead the court. This includes the duty to disclose adverse legal authority that has not been disclosed by the opposing party's lawyer. A lawyer, while an advocate, has a duty to prevent the court being misled by false statements of law. You should inform the judge of the relevant law you have discovered. **Case Study 4:** Relationships with Opposing Counsel and Legal Professional Privilege

I am a lawyer acting in a case where I received a letter from the opposing party's lawyer. The letter is addressed to his client and it seems that it was accidentally sent to me. What should I do?

Discuss

Case Study 4: Recommendation

If the letter from the opposing party's lawyer is addressed to his client, it appears to be subject to legal professional privilege and, therefore, confidential. This means that you should not examine the contents of the letter. You have a duty to immediately inform the opposing party's lawyer and return the letter to him without examining it.



Conclusion

"Professional ethics are key to ensuring an independent, competent, effective and accountable legal profession. Where comprehensive rules of ethics or professional conduct exist, they should ensure that lawyers are required to follow client care procedures, act in the best interests of the client, and fulfil their duties as advocates. Ethics can further instil principles of fairness, honesty and integrity in the way that lawyers conduct themselves and strengthen public confidence in the administration of justice."

