

LAYWERS' DUTIES TO THE COURT

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What do we mean when we say that lawyers have duties to the court?
Law Counsel of Australia's *Model Rules of Professional Conduct and Practice*.

What do we mean when we say that a lawyer is an officer of the court?
Rondel v Worsley [1969] 1 AC 191.

How are a lawyer's duties to the court enforced?

When a court may restrain a lawyer from representing a party:
Cleveland Investments Global Ltd v Evans [2010] NSWSC.

A lawyer must be able to exercise independent judgment.

When might a court exercise its power to sanction a lawyer for breach of duty?

Attorney General for Queensland v Lovitt [2003] QSC 279.

What are the consequences for misleading the court?

Meek v Fleming [1961] 2 QB 366.

Rees v Bailey Aluminium Products Pty Ltd (2008) 21 VR 478.

INDEPENDENCE

Why independence matters: *Kooky Garments Ltd v Charlton* [1994] 1 NZLR 587.

Exercising independence in the presentation of a case:
Richardson v R (1974) 131 CLR 116.

The danger of allowing clients to control litigation:
Wentworth v Rogers [1999] NSWCA 403.

The problems with a lawyer being a witness.

Prohibitions on a lawyer being a witness and its rationale:

Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Vic), r 27.

When a court may disqualify a lawyer-witness from acting.
Beggs v Attorney-General [2006] 2 NZLR 129.

The justification for disqualification.

Exceptions to the prohibition
Brown v Daniel (1998) 180 FRD 298.

Independence is undermined by conflicts of interest.

Clay v Karlson (1997) 17 WAR 493

Scallan v Scallan [2001] NSWCA 82

How independence may be threatened by a lawyer's relationships.

A lawyer's relationship with the client:

Prothonatory v Jackson [1976] 2 NSWLR .

A lawyer's relationship with the opposing lawyer.

The importance of candour in the presentation of the law:
Re Gruzman (1968) 70 SR (NSW) 316.

A lawyer has a duty to assist the court in the applicable law
and procedure.

Accurate Financial Consultants Pty Ltd v Koko Black Pty Ltd [2008] VSCA 86

The importance of the lawyer's role in the adversarial process:
Copeland v Smith [2000] 1 WLR 1371.

The need to keep knowledge up to date.

The duty not to withhold relevant law:

Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Vic), r 19.

The need for candour in presenting the facts:

Kyle v Legal Practitioners Complaints Committee (1999) 21 WAR 56.

Re Cooke (1889) 5 TLR 407.

How the duty of candour both prohibits and prescribes.

Vernon v Bosley (No 2) [1999] QB 18.

What are the limits to the duty of candour?

The duty not to knowingly submit false documents:

Kyle v Legal Practitioners Complaints Committee (1999) 21 WAR 56.

The duty not to knowingly make false allegations of fact in pleadings.

The duty not to offer half truths:

Re Thom, (1918) 18 SR (NSW)

The special need for candour in ex parte applications:

Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Vic), r 19.4.

Verifying a client's narrative.

Client perjury.

Where a client proposes to lead perjured testimony.

Where a client discloses an intention to disobey a court order.

Dealing with witnesses:

A lawyer should not confer with more than one witness at a time:

Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Vic), r 25.1.

A lawyer should not coach witnesses:

Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Vic), r 24.1.2

A lawyer must not confer with a witness who is under cross-examination:
Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Vic), r 26.1.

A lawyer must not prevent a witness from being interviewed by the other side:
Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Vic), r 23.1.

Communicating with the judge.

Communicating with the media.

The challenge: meeting both the duty to the court and the duty to client.