

The Ethical Setting: Conflicts of Interest

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Introduction

Working out how to be a ‘good’ lawyer is not only a matter of knowing and applying the law. A good lawyer does the ‘right’ thing in the particular circumstances. Doing the right thing requires professional judgment and ethical acuity; that is, the ability to assess complex factors and make a decision aligned with the established ethical standard. These normative words ‘good’ and ‘right’ should be responsive to the context of the law practice. What is good and right in a well-resourced inner city, commercial law practice may not be good and right when delivering legal services to a remote Australian community. This chapter considers the perennial ethical issue of ‘conflicts of interest’ and offers tools and processes to guide the rural and regional lawyer’s professional conduct.

Lawyers’ professional conduct is informed by the ethical norms which are established by the overarching ethical principles, prescriptive rules of professional conduct and common law precedent. If a lawyer breaches the ethical norm, that breach is prima facie grounds for professional misconduct.¹ At both common law and under these professional conduct rules, a lawyer is prohibited from acting for a client when there is a conflict with the lawyer’s ‘own interests’ or if there is a conflict in the lawyer’s fiduciary duties owed to former and current clients. The lawyer’s fiduciary duty to the client means that the client is the principal and the lawyer is their loyal and trustworthy fiduciary. As the fiduciary, the lawyer must put their client’s interests first, keep their client’s confidential information safe and not act in a matter which would place them in conflict, either with their own or another’s interests. The

* The author welcomes contact from colleagues to discuss the content of this chapter. These tools and processes are developed from the practice wisdom of lawyers making every day ethical decisions. They are offered as an aid to support ethical legal practice. These tools and processes are not approved by the professional regulators. Each rural and regional lawyer must make their own professional judgment as to how they will decide where the boundary between ethical and unethical practice lies.

1 *Legal Profession Uniform Law s 298b*; Law Council of Australia, *Australian Solicitors Conduct Rules* (21 June 2011) r 2.3. For ease of reference, this chapter uses the *Australian Solicitors Conduct Rules* although at the time of writing (March 2017) Western Australia, Northern Territory and Tasmania use different rules.

This is a preview. Not all pages are shown.