Bar Notes

Solicitor Prosecutors

Following upon a complaint from a member, the Bar Council referred to the Law Society the question whether a solicitor who acted in a prosecution as an advocate should be bound by a rule similar to Rule 57A of the Bar Association Rules. The Law Society has now informed the Bar Council that it has resolved to adopt the following ruling based upon the Bar Association's Rules.

"A solicitor appearing for the prosecution should not act as an advocate in order to attempt to persuade a court to impose a harsh sentence, but nevertheless should be prepared to correct any error or mis-statement made by Counsel for the defence, refer the court to any relevant authority which has bearing on the appropriate penalty and generally to assist the court to avoid appealable error."

The ruling is to be brought to the attention of the members of the Law Society by means of publication in the Law Society Journal.

Funding of Courts Must Keep Up with the Pace of Litigation

In his opening address to the Australian Institute of Judicial Administration Seminar on 3 September, 1988 His Honour Sir Anthony Mason A.C., K.B.E., Chief Justice of the High Court of Australia made many important points including:

* That expenditure on law and order must keep up with the volume and complexity of litigation rather than just with such indicators as the population increase and GNP.

* Denying law enforcement agencies adequate resources for the investigation of and preparation of cases coming before the criminal courts means delay with consequential inefficient use of the court system and leads to a waste of facilities and resources as well as the potential of permanent stay of proceedings on the basis of such dely.

* That a suitable model for the administration of court systems had to be evolved.

* That greater participation by judges was inevitable in order to achieve more efficient court administration.

* That neither the judiciary nor the legal profession could legitimately expect the executive to provide whatever level of funding and administration was necessary to provide courts and facilities without the executive concerning itself about the efficiency of the court system.

* That the judiciary and the legal profession could not justifiably criticise executive funding and administration of the court system unless they were prepared to participate in formulating and implementing strategies and procedures to ensure efficiency without impairing the administration of justice. ❑

Time and Motion in Court

On October 5 the Premier, Mr. Greiner and the Attorney-General, Mr. Dowd announced an inquiry to identify the cause of delays and inefficiencies in the New South Wales court system. They said that the Government had appointd the management consultants Coopers and Lybrand W.D. Scott to conduct the review. Mr. Greiner said the public confidence in the court system would flounder unless action was taken to speed up the hearing of court cases and to make the system more efficient. Money alone would not solve the problems he said, but fundamental changes in management practices had to be introduced. He said that the consultants would consult widely within the legal profesion in the course of their review and would have due regard to the fundamental principles of justice and due process. They are to report to the Government by the end of Feburary 1989. He said that the Government had already taken several steps to improve the court system including the announcement in the State Budget of a 24% increase in spending on courts. New courthouses aare to be built at Parramatta and Burwood, at Wyong and Byron Bay. In addition two new Supreme Court Judges, four District Court Judges and seven more Magistrates are to be appointed. ❑

N.S.W. Bar Assocation v. Kalaf

On 11 October 1988, the Court of Appeal delivered judgment in the above matter.

The Court (Kirby P., Samuels J.A. and Mahoney J.A.) unanimously held that Kalaf's irregularities of dealings with his client as well as his lack of frankness in dealing with the Solicitors Admission Board amounted to professional misconduct for which a reprimand would be insufficient.

The majority (Kirby P. and Mahoney J.A.) held that the appropriate penalty was suspension for one year - Samuels J.A. held that Kalaf's name should be removed from the Roll of Barristers.

Kalaf was ordered to pay the Association's costs. A precis of the decision will be published in Bar News in Autumn 1989 ❑