

MARK HOLLER

BARRISTER

SHORT REMINDERS ON DUTIES TO THE COURT AND DUTIES TO THE CLIENT

For those lawyers who wake in fright at times wondering if they have observed their paramount duty to the Court whilst also observing their duty to the client, I recommend a paper delivered in March 2012 by the Honourable Justice Kenneth Martin, copy attached.

The paper usefully and practically discusses the:

1. duty of candid disclosure to the Court involving the responsibility not to intentionally mislead a Court about the facts or the law and to correct any inadvertent error immediately;
2. obligation to refer all relevant case law, both for and against your client, to the Court;
3. duty not to abuse the Court process by, for example, being very careful before making allegations of serious misconduct against others. Also being mindful not to run a hopeless case which may result in exposure to adverse costs orders not only for the client but for the practitioner and also not to participate in proceedings brought for the collateral purpose of applying pressure or exhausting the resources of the Defendant in order to force a settlement;
4. the duty not to corrupt the administration of justice of which a particular example is ensuring affidavits of discovery are comprehensively and accurately reviewed. Another example is to avoid improperly coaching a witness or seeing more than one witness at a time so that stories can be compared and adapted;
5. duty to conduct cases efficiently and expeditiously. This involves not only respecting Court orders as to timetables and in proper cases making an application to amend those timetables, but also to critically review the amount of documentary material to be used at trial. A barrister has a particular role to play here in exercising independent forensic judgment so as to reduce information overload.

The article is not only informative but easy to read and I recommend it to you.



MARK HOLLER

BARRISTER

Francis Burt Chambers

Level 15

77 St Georges Terrace

Perth WA 6000

T: (08) 9220 0409

F: (08) 9325 9894

E: mholler@francisburt.com.au

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