

# **ETHICS AND PROFESSIONAL RESPONSIBILITY PRACTICAL GUIDE**



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Sample

## HOW TO USE THIS PRACTICAL GUIDE

This practical guide has been developed for your assistance in the practical legal training unit Ethics and Professional Responsibility. This guide is structured in a way that aims to aid your development of practical knowledge and skills in three key topics or areas of:

1. Your duty to the Court;
2. Your duty to the client; and
3. Your relationship with the public and the legal profession.

The ethical standards and professional responsibility of lawyers are particularly required in the following situations:

1. Identifying and managing ethical dilemmas;
2. Following standards of professional conduct;
3. Managing and reducing risks of complaint; and
4. Managing disciplinary actions.

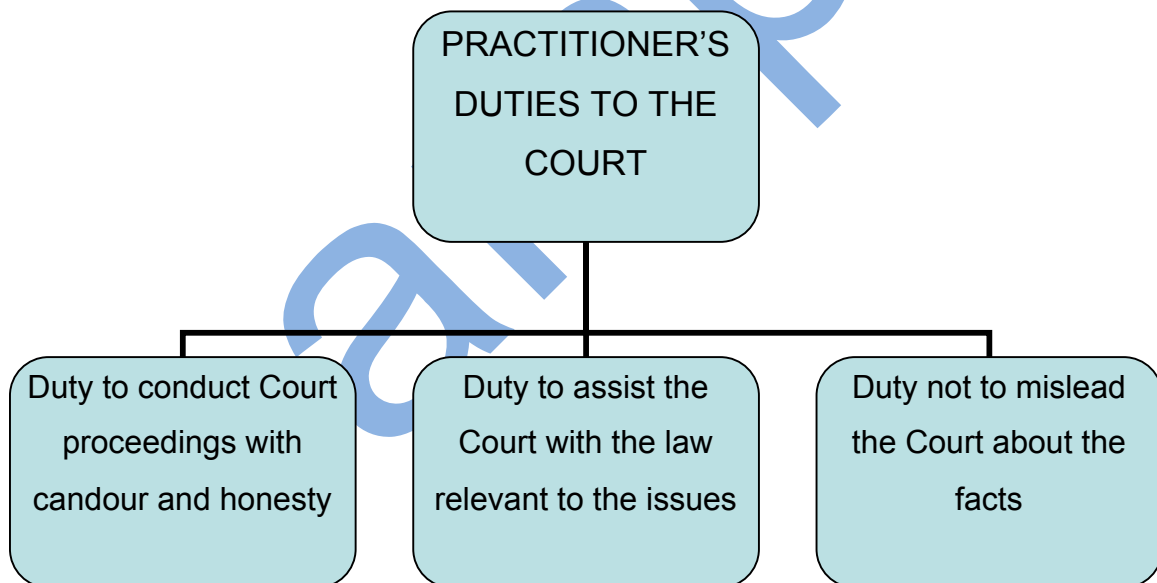
The types of assessment in this practical legal training unit currently include participation in tasks to a satisfactory standard, an exam and an oral assessment. Lawskool Pty Ltd recommends that you follow this practical guide in the order as it appears, and work through the fact scenario to each practical task in a way that ensures you understand the steps taken along the way.

Throughout your studies, you may adopt an engaged learning style which enables you to actively explore ideas and issues about a topic, and connect with your peers and mentors about real life situations and how they apply to the topic. Lawskool Pty Ltd hopes that you may use this practical guide as a tool in your engagement about ethics and professional responsibility in your practical legal training course.

## PART 1: DUTY TO THE COURT

### 1. PARAMOUNT DUTY

- The practitioner's duty to the Court is paramount! In many situations, this duty overrides the duty to the client.
- Practitioners have to maintain an effective balance when exercising these duties.
- Practitioners are obliged to present issues for determination to the Court and to present facts relevant to these issues.
- The practitioner's job is arguably to present the most favourable case for the client to the Court.
- However, this is within the (often) paramount duty to the Court. Where conflicts arise, great care will be taken to resolve these conflicts, and practitioners ought to consult their colleagues for advice.
- The fundamental duties to the Court are outlined below.

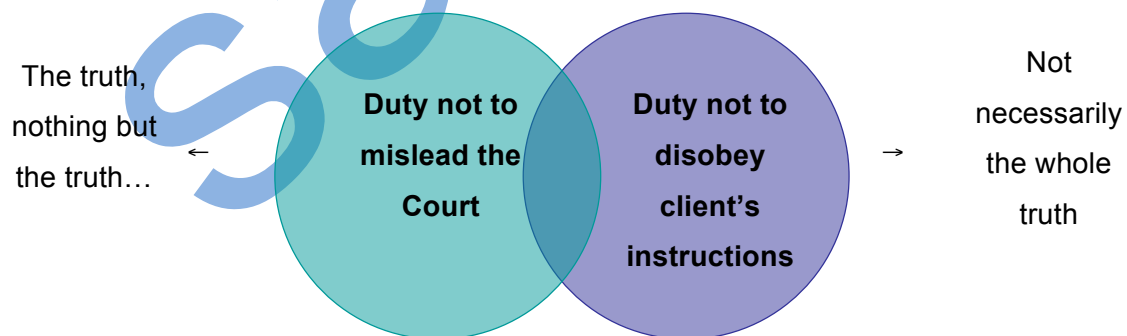


## 1.1 SOLICITORS RULES

- These duties have emerged from some case law, as well as been enshrined in some Solicitors and Barristers Rules across Australian jurisdictions.
- Almost all jurisdictions have enacted legislation following a National Model Bill. However, a uniform national regulation has not yet occurred due to variations between some jurisdictions.
- From 1 July 2015, the Legal Profession Uniform Law came into effect in NSW and Victoria via the *Legal Profession Uniform Law Application Legislation Amendment Act 2015*.
- The *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015* and the *Legal Profession Uniform Law Application Regulation 2015* (NSW) now govern solicitors across NSW and Victoria.

## 1.2 THE TRUTH, NOTHING BUT THE TRUTH... BUT NOT NECESSARILY THE WHOLE TRUTH

- Conflicts may arise when a client informs a practitioner of 'the whole truth,' but instructs the practitioner not to then inform the Court of this 'whole truth.'



- Practitioners particularly experience this conflict when a client says that they are guilty, but instructs the practitioner to defend them in a criminal case.
- In compliance with their duty to the Court, a practitioner **must not** assert what he or she knows to be a lie.
- The practitioner remains entitled to test the strength of the evidence and submit that the evidence is insufficient to prove the guilt of the accused. However, the practitioner must not step beyond this entitlement in circumstances where they have been informed by the client of guilt.



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