Are Lawyers Hired Guns?

The system of Government in Queensland is based on the Westminster System, with Government being broadly divided into three branches: the Legislature or Parliament which enacts laws, the Executive which administers the laws and the Judiciary (Courts) which interpret and adjudicate upon the laws. In practice, there is an overlap between the Parliament (known in Queensland as the Legislative Assembly) and the Executive, which consists of the Governor and the Cabinet who are elected members of the Legislative Assembly. This system is commonly referred to as the “separation of powers”.

A key characteristic of this system is the principle of judicial independence. This recognises that judicial officers are to apply Parliament’s laws in an equal and fair way and do justice in each case, without undue influence from outside sources.

The administration of justice is supported by solicitors who become officers of the Court when they are admitted to practice. As officers of the Court, they have an overriding duty to the Court to ensure the efficient and proper administration of justice. Rule 3.1 of the Australian Solicitors Conduct Rules (ASCR) states that:

“A solicitor’s duty to the Court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty”.

While solicitors have a duty to act in the best interests of their clients, the duty to the Court, therefore, takes precedence.

The ASCR set out a framework of the ethical standards to which solicitors must adhere. Rule 4 sets out the fundamental and ethical duties with which a solicitor must comply as follows:-

4.1 A solicitor must also;

4.1.1 Act in the best interests of a client in any matter in which the solicitor represents the client;

4.1.2 Be honest and courteous in all dealings in the course of legal practice;

4.1.3 Deliver legal services competently, diligently and as promptly as reasonably possible;

4.1.4 Avoid any compromise to their integrity and professional independence;

4.1.5 Comply with these Rules and the Law.
In Queensland, the Legal Services Commission prosecutes complaints against solicitors. Lawyers are not merely hired guns and cannot conduct a matter on behalf of a client without regard to the required standards of conduct, even through inadvertence. This is demonstrated in a recent case brought by the Legal Services Commission. The solicitor in question had written a letter to a third party advising that he acted on behalf of a certain person and on forwarding with that correspondence, a Statutory Declaration prepared solely by the client for proceedings that had been commenced. It was found that the Statutory Declaration contained content that was scandalous and threatening. The Tribunal determined that the solicitor’s behaviour in sending the letter with its enclosure constituted unsatisfactory professional conduct. While the solicitor had not prepared the Statutory Declaration, his mistake was “one involving a failure to properly and carefully reflect upon the contents of the material he conveyed, on instructions from his client”.

Solicitors are, therefore, not “hired guns”. They have strict legal and ethical obligations. If they fail to adhere to these standards, they run the risk of losing their right to practice.

**WARNING**

This article reflected the state of the law at the time of publication. But the law is a living creation which is constantly changing and adapting. These articles should be treated as an information resource only and not as a substitute for specific legal advice in respect to your particular problems and circumstances.

*Liability limited by a scheme approved under professional standards legislation.*