

FOLEY'S | LIST

ETHICS FOR THE CRIMINAL LAWYER



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Ethics and the Criminal Lawyer

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It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.

Boucher v The Queen [1955] SCR 16 at 23-4

Being responsible sometimes
means pissing people off

Colin Powell

Give me six hours to chop down a tree
and I will spend the first four
sharpening the axe.

Abraham Lincoln

The most courageous act is still to think
for yourself. Aloud.

Coco Chanel

If you can keep your head when all about
you are losing theirs ... you don't
understand the gravity of the situation.

Apologies to **Rudyard Kipling**

Communicating with the Court

- You've run the contest, you've made submissions, it is set down for ruling ...
- Do you:
 - write to the Court to change the date?
 - write to the Magistrate about their role?
 - send further submissions to Court?
 - provide copies to your opponent?
 - only provide copies if it is substantial?
 - complain about natural justice in a letter to the Registrar?

See Practice Rules 18.5-6 and *VLSC v G* [2017] VCAT 6

Duty to communicate with client

- The case is difficult. It requires extra work that VLA won't cover. It is close to trial. You can't do justice to the task. Your client is in gaol.
- Do you:
 - Recognise your limits and withdraw?
 - Do so in the week before trial?
 - Refund his money?
 - Cover costs of extra work with private funds?
 - Threaten to sue a client over disagreements?
 - File appeal papers if you are still involved?

See Practice Rules 1.2 & 39 and *VLSC v J* [2016] VCAT 2058

Duty to Client and their interests

- You act for a litigant. The other side makes an offer to settle. It is a while before the hearing.
- Do you:
 - Tell the client about the offer?
 - make your own judgment about whether it is a good offer?
 - Reject an offer based on previous discussions?
 - Claim you told the client when perhaps you didn't?
 - Come clean when investigated?

See Practice Rule 12 and *VLSC v W* [2016] VCAT 1835

Duty to be honest

- You have a client with multiple court dates. You are under the pump! You miss an appearance. A warrant is issued!
- Do you:
 - Claim not to have known the court date?
 - Ignore a letter from new solicitors wanting the file?
 - 'fess up and do all you can to make it right?
 - Change the date on the Advice of Hearing?
 - Mislead the LSC about your file?

See VLSC v M [2016] VCAT 918