

What do I do if my client is not guilty but wants to plead guilty?

The [Australian Solicitors' Conduct Rules 2012](#) (ASCR) address the issue of a client who confides guilt to their lawyer yet wants to enter a not guilty plea (see FAQ [What do I do if my client confesses guilt to me but wants to plead not guilty?](#)) but are silent about when the innocent wish to plead guilty.

Presumably, similar principles apply and the discretion is left to the solicitor to determine whether to put the plea or to withdraw. If you decide to withdraw bear in mind the “just cause” and “reasonable notice” requirements for ending a retainer ([ASCR Rule 13](#), but also by analogy [Rule 20.2.1](#)).

If you proceed then the Queensland Court of Appeal provides some guidance in the case of [R v Allison](#) [2003] QCA 125.

Citing with approval Justice McPherson in [R v MacKenzie](#) that “...counsel of course will emphasise that the accused must not plead guilty unless he has committed the offence charged”, Jerrard JA proceeded to lament the reality that:

“...experience shows that some people charged with serious offences (and particularly offences of incest or indecently dealing with children) wish both to maintain to their lawyers that they are actually innocent, and also to plead guilty. In those circumstances it is imperative that these lawyers ensure that no plea be taken until (written) instructions have been obtained in which the person charged describes a wish or willingness to plead guilty, and an understanding that by so doing, he or she will be admitting guilt. If those instructions are obtained and adhered to a lawyer may properly appear on the plea.”

His Honour goes on to support the above principle that a practitioner in such a circumstance retains the discretion to withdraw and allow the accused to present his own plea or seek alternative legal representation. Should you choose to proceed, however, the case sets out the following advice:

- advise the client not to plead guilty unless they have committed the offence;
- ensure the client is fully informed of the consequences of a guilty plea and that the Court is bound to accept such a plea without any further evidence of guilt; and
- ensure the client’s instructions regarding the plea are provided in writing and are witnessed by a third party.