

## I have learned that my client has lied when giving evidence before a court. What are my duties?

We are ethically obliged to deliver legal services competently and diligently and not to disclose any information which is confidential to a client and acquired by us during the client's engagement unless permitted by the conduct rules.<sup>1</sup>

We are also officers of the court. We have not only a legal duty but an ethical obligation to the administration of justice – this duty and ethical obligation is paramount and prevails to the extent of consistency with any other duty.<sup>2</sup> As officers of the court we cannot assist our client in perpetrating a fraud on a tribunal.

**Rule 20.1** ASCR requires that if we as a result of information provided by the client or a witness called on behalf of the client, learn during a hearing or after judgment or the decision is reserved and while it remains pending, that the client or a witness called on behalf of the client:

- has lied in a material particular to the court or has procured another person to lie to the court;
- has falsified or procured another person to falsify in any way a document which has been tendered; or
- has suppressed or procured another to suppress material evidence upon a topic where there was a positive duty to make disclosure to the court;

We must

- advise the client that the court should be informed of the lie, falsification, or suppression and request authority so to inform the court; and
- refuse to take any further part in the case unless the client authorises the solicitor to inform the court of the lie, falsification, or suppression. We must promptly inform the court of the lie, falsification, or suppression upon the client authorising us to do so, but otherwise we may not inform the court of the lie, falsification, or suppression.

What **Rules 20.1.4** and **20.1.5** require of us are:

- To inform the client that the court must be told of the client's or witness's perjury, and that we must seek the client's instructions to inform the court of the perjury; and
- If our client refuses, or just fails to give instructions to permit us to inform the court of the perjury, we must terminate our retainer with the client and withdraw from representing the client before the court. We are, in those circumstances, not permitted to inform the court of the lie, falsification, or suppression when withdrawing.<sup>3</sup>

Atkinson J in *Perpetual Trustee Ltd v Cowley*<sup>4</sup> has observed that we have a duty to robustly represent our

<sup>1</sup> Rules 4.1.3 and 9 *Australian Solicitors Conducts Rules 2012 (ASCR)*.

<sup>2</sup> The legal duty is referred to in *Giannarelli v Wraith* (1988) 165 CLR 543 at 555-6 (Mason CJ) and at 572 (Wilson J). The ethical obligation is Rule 3.1 ASCR.

<sup>3</sup> *Perpetual Trustee Co Ltd v Cowley* [2010] QSC 65 at para [130]. It should be noted that this case also dealt with the issue of when a solicitor is under a duty to correct a misleading or false statement made by a solicitor to a court. In that context see para [132].

<sup>4</sup> *Ibid.*

clients but we are “not merely a passionate and gullible mouthpiece”.<sup>5</sup> The other party and the court may have their suspicions as to why we withdraw, but such withdrawal without more is not a breach of the confidential information we have of our client’s or the client’s witness’ perjury.

**Stafford Shepherd**

Senior Ethics Solicitor

4 September 2014

---

<sup>5</sup> Ibid.