Giving a second opinion to a non-client

Can I give a second opinion to the client of another solicitor?

Rule 33.1 of the Australian Solicitors Conduct Rules 2012 (ASCR) provides that we must not deal directly with a client of another practitioner unless the exceptions in rules 33.1.1 to 33.1.4 can be made out. The rule is known generally as the “no contact rule”. The rule is aimed at preventing us from circumventing the protection that legal representation provides to the represented party. The rule is directed to our actions. A client is at liberty at any time to seek a second opinion concerning the legal issues which the client may have. If approached to provide a second opinion it would be a professional courtesy (unless the client otherwise instructs) to notify your colleague of the client’s approach. This courtesy is directed to prevent the existing client-solicitor retainer being undermined and including attempts to poach colleague’s clients. Before we consider accepting instructions, consider the circumstances – do we have all the information necessary to give a considered competent advice? In the course of a second opinion there may be information which only the first instructed solicitor may be aware of. The decision as to whether we accept instructions to provide a second opinion is for us to make.

Stafford Shepherd
Senior Ethics Solicitor
17 April 2013

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2 It is unethical and improper for a legal practitioner to communicate with an opposing party whom he or she knows to be represented by another legal practitioner in the matter without the latter’s consent. The rationale for this principle includes protecting the opposing party against the solicitation of information by the opposing legal practitioner contrary to that party’s interests, as well as preventing the undermining of the other party’s trust and confidence in his or her own legal practitioner: Legal Practitioners Conduct Board v Daryl Wharff [2012] SASCFC 116, [11]-[12] (‘Wharff’).
3 If the client otherwise instructs we are bound by our duty of confidentiality (Australian Solicitors Conduct Rules 2012 (‘ASCR’), rule 9).
4 Wharff, [11]-[12].
6 ASCR, rules 4.1.3 and 7.1.
7 Law Society of Alberta Code of Conduct – Commentary to rule 6.02(9), 104.