

The client and informed choice

Two of the fundamental duties we need to discharge when we act for a client are to “act in the best interests of a client” and to “deliver legal services competently, diligently and as promptly as reasonably possible”.¹ These duties complement the obligation to “provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices...”²

These rules ensure we provide “wise and effective counsel”.³ The responsibilities cast upon us by these rules are heightened when our clients are vulnerable due to impecuniousness, lack of education, language barriers and a simple lack of understanding of the law and justice system.

A client will need a clear understanding of the issues before considering whether to initiate or defend legal actions. **Rule 7.2** of the *Australian Solicitors Conduct Rules 2012* (ASCR) requires that we inform the client about alternative dispute resolution. On many occasions, negotiation, conciliation or mediation could be a better course of action rather than the client becoming involved in litigation. To make an informed choice as to whether an action should be commenced or defended we should talk to our clients about the following:

- alternatives to litigation;
- the costs of litigation and the risks of a claim being lost or an unsuccessful defence;
- fees and disbursements likely to be incurred;
- the obligations that litigation create – in particular, a client’s obligation to disclose adverse documents;
- the process of calling evidence and being cross-examined; and
- the public nature of litigation and any potential for media interest.

Our clients need our assistance to evaluate the risks and to clarify relevant issues.

The above matters are only a short list of issues to consider. It is important to remember that the ASCR creates minimal standards for us to observe. We should always aspire to provide practical wisdom.

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¹ *Australian Solicitors Conduct Rules 2012* (ASCR), Rule 4.1.1 and 4.1.3.

² Rule 7.1 ASCR.

³ *Law Society of Singapore v Tan Phuay Kiang* [2004] SGHC 83, [99].