# Ethical Deliberation Questionnaire

## Legal practitioners frequently encounter difficult ethical issues or problems in their work. Acting on issues in haste or with inadequate consideration can have significant consequences, for example unethical conduct can result in disciplinary action.

Full consideration of an ethical issue can assist you to:

* determine the best course of action in the situation
* explain to an investigator, if that becomes necessary, the reasoning
process that led you to adopt the particular course of action.

This questionnaire provides practical assistance, through a step-by-step process
of working through an ethical problem, but does not comprise legal advice.

This document also incorporates links to resources and additional information.

## Identify the issue

To consider an ethical issue it is important to carefully define it.

(As you reflect on the ethical problem while you work through this questionnaire you may wish to return
to this section to further refine the issue).

1. What is the ethical issue concerning you?

|  |
| --- |
|       |

## Options

When considering an ethical issue the options to address it might be quite apparent, while at other times this is not the case.

Further options to address a situation may appear as you fully consider the issues or consult others.
You may like to return to this section if this occurs.

1. What options can you identify?

|  |
| --- |
|       |

## Identify the interests

The relationship between a legal practitioner and client is a fiduciary relationship and a legal practitioner must be loyal to their client’s interests.

A practitioner must avoid conflicts of interest. By identifying the relevant interests (including your own) that arise in an ethical issue and prioritising these you can determine an appropriate course of action consistent with your duties to your client. The Court will be interested in third parties, other parties and their lawyers and the general community.

1. What are the relevant interests in this situation?

|  |
| --- |
|       |

## Sources of authority

There are a number of sources of authority which outline a solicitor’s duties to the court, a client, interested third parties, other parties and their lawyers and the general community.

Solicitors are bound by the [*Australian Solicitors Conduct Rules 2012*](https://www.qls.com.au/Content-Collections/Rules/Australian-Solicitors-Conduct-Rules) (‘ASCR’). Further assistance can
be found in the *Australian Solicitors Conduct Rules 2012 in Practice* (the Commentary). The Commentary provides guidance as to ethical issues which may arise, practical steps and other relevant sources
(cases and legislation).The legal profession is also subject to a significant amount of statutory regulation including the [*Legal Profession Act 2007 (Qld)*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2007-024) and the [*Legal Profession Regulation 2007 (Qld)*](https://www.legislation.qld.gov.au/view/whole/html/2016-12-09/sl-2007-0153), which
now includes the trust accounting provisions.

Case law and decisions of the Legal Practice Committee and Legal Practice Tribunal are also important sources of authority on ethical conduct. Further material can be found on the [QLS Ethics and Practice Centre](https://www.qls.com.au/Practising-law-in-Qld/Ethics-Centre/Ethics) page.

The Society provides a telephone guidance service to its members on ethical issues.
Simply call **07 3842 5843**.

1. What guidance can you derive from sources of authority?

|  |
| --- |
|       |

## Broader ethical considerations

Ethically attuned judgement is not simply concerned with the statutory requirements or conduct rules,
but also takes account of broader ethical concerns. This may include for example, the effect that your action/inaction may have on persons other than your client or personal moral concern about carrying
out your client’s instructions.

1. Are there any broader ethical considerations that
you need to take into account? If YES, what are they?

|  |
| --- |
|       |

## Consultation and guidance

Discussion of an ethical issue with another legal professional not directly involved, may assist you to
work through any impacting factors. This could also include identifying factors that may be impeding your objectivity, including for example, personal or health issues. [Click here](https://www.qls.com.au/Services/Personal-Services/LawCare) for details of the services offered by LawCare.

Through discussion and reflection new options for dealing with an ethical issue may emerge.

You may consider discussing an issue with a:[[1]](#footnote-1)

* colleague
* more senior and experienced practitioner
* Queensland Law Society senior counsellor[[2]](#footnote-2)
* Queensland Law Society ethics solicitors.

In seeking assistance or guidance on an ethical issue you need to provide a comprehensive and accurate account of all the relevant information and issues. Without this, any guidance may be of limited value.

1. Who have you consulted or discussed this issue with?
And what was their advice?

|  |
| --- |
|       |

## Consequences

Any course of action in relation to an ethical issue will have consequences. These may include:

* liability to your client for breach of equitable duties or breach of the retainer
* disciplinary action, including a possible fine, suspension or perhaps even striking from the professional roll
* conflict with your employer if your decision does not align with your employer’s ethical culture

A telephone guidance service is available to members by calling **07 3842 5834**.

It is important to think carefully about the likely consequences of any option before taking action.

1. In considering your options for action, what are the likely consequences?

*(Make a list of both the options and the consequences)*

|  |
| --- |
|       |

## Decision

Once you have considered all the relevant factors of your ethical problem you will need to exercise professional judgement to determine the most appropriate course of action.

1. What have you decided is the best course of action in this case?

|  |
| --- |
|       |

1. In summary, what are your reasons for deciding on this course of action?

|  |
| --- |
|       |

|  |  |  |
| --- | --- | --- |
|       |  |       |
| Name |  | Date |

|  |
| --- |
|  |

Signature

## Acknowledgements

In developing this questionnaire the Queensland Law Society drew substantially
on the following source:

Michael Robertson and Kieran Tranter ‘Learning and Teaching about the Ethical
Dimension in Lawyering: a Curriculum Approach that Emphasises Discretion and
Choice in the Lawyer’s Role’ (Paper presented at the Professional Ethics and Personal
Integrity Conference, Legal Ethics Conference, University of Auckland, June 2006).

Queensland Law Society would also like to thank Sue Jefferies for her assistance
in the development of the questionnaire.

1. It is important that you keep detailed notes of the discussion and any guidance provided. Completion of this questionnaire
is not intended to substitute for maintaining detailed and comprehensive file notes of any relevant discussions. [↑](#footnote-ref-1)
2. Queensland Law Society maintains a list of senior counsellors. The senior counsellors are private practitioners with considerable experience who volunteer to discuss ethical and practical issues with Queensland Law Society members. Details can be found [here.](https://www.qls.com.au/Pages/Senior-Counsellors) [↑](#footnote-ref-2)