

WHY PROFESSIONAL ETHICS

Dual Function - assist the client & *promote justice* in society.

- these functions may come into conflict.

WHAT ARE PROFESSIONAL ETHICS?

- It concerns the rules of conduct.

- Principles of professional ethics

- Norms to judge fit and proper person

WHY BE GOOD?

Being moral demands 2 things of you:

(1) Determine the right course of action - **DO THE RIGHT THING.**

(2) Follow it

IF NOT?

- you will become unethical by cutting a corner here, by stretching the truth a bit there (white lies?)

- none of the little things that you will do, almost unthinkingly, will seem to be so bad in itself - an added *15 minutes* to a time sheet/invoice here, a little white lie to cover a missed deadline there

After a few years, you won't even notice that you are lying, cheating, and stealing every day that you practice. Your entire frame of reference will change. Instead of reflecting the notions of *right* and *wrong* according to which you conduct your *personal life*, your decisions will reflect the set of values by which you conduct your *professional life* - a set of values that embodies. not what is right or wrong, but what is profitable, *what you can get away with.*

WHERE DOES ONE FIND RULES OF PROFESSIONAL CONDUCT?

WHAT IS A PROFESSION?

6 REQUIREMENTS

(1) an intellectual basis

(2) a private practice

(3) an advisory function

(4) a tradition of service

(5) representative body

(6) a code of conduct

THE PRACTITIONER & HIS CLIENT

THE PRACTITIONER & HIS CLIENT (cont)

- explain the question of costs: *hourly fee, charges, disbursements*

- provide an outline of the work to be done

- difference between *party and party cost and attorney and client** cost

- fee agreement

Contingency Fees

"no win, no fee."

- *not allowed* in Matrimonial matters & Criminal matters

- *100%* more than normal fees or *25%* of capital

- *common law agreement - illegal*

De La Guerre v Ronald Bobroff

Overcharging/Overreaching*

excessive fees = removal from the roll

Fee Assessment Committee

Factors:

1. Difficulty

2. Seniority

3. Expertise

4. Urgency

5. Time spend

6. Importance & Value

Leite v Leandy & Partners

Attorneys who is drawing a contract between a client and a unrepresented party has a *duty to act fairly to BOTH parties*

Unrepresented party should seek independent legal advice

Execution of the Instructions

- *duty to obey* your client's *specific* instructions

- obtain instructions for every action you take

- **ALWAYS** act in the *best interests* of your client

THE PRACTITIONER & HIS CLIENT (cont)

Washaya v Washaya: settlements - *get instructions*

Clients are NOT bound by the actions of lawyers where they *exceed* the mandate given.

- It is an implied term of the *contract* between yourself and your client that you are *liable* to your client in *damages for breach of contract*

- Duty of care

- the necessary *skill & knowledge* are expected.

(*Mouton v Mynwerkersunie*)

TEST: reasonable attorney/-expert attorney

Liability towards non-clients?

Pretorius v McCallum 2002

- disappointed beneficiaries - invalid will - *interstate succession* applied

CONFIDENTIALITY & PROFESSIONAL PRIVILEGE

It applies to communications made -

- in your professional capacity

- confidentiality

- for the purpose of seeking legal advice - *institute action*

All communications between you and your client are *confidential*

It remains confidential even after the termination of the mandate

- it can only be waived by the client

POPI ACT

The Protection of Personal Information Act 4 of 2013 came into effect on 1 July 2021

- duty to protect personal information of clients.

TREATMENT OF CLIENT

- client is **most** important
- you are dependent on client
- the client does you a favour
- should not fight with your client
- **lifeblood** of your firm
- *- under **no obligation** to accept a client's instructions

Consider the following:

1. Potential **conflict of interest**.
2. Potential fraud, **illegality**
3. Competence: **knowledge & skill**

Ebersohn v Tvl Law Society

ACCEPTING THE CLIENT OR MANDATE

Satisfy yourself of the following:

- the client's *identity*
- the client's *competence*
- the *authority of holders of a power of attorney*
- scope of instruction - *good communication is vital*
- **learn to listen**

Financial Intelligence Centre Act (FICA)

- aim to combat crime and money laundering
- **s21** - provides that attorneys must *verify* the identity of the client

Costs:

- Must provide the client with a written cost estimate

