Law Council
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National Legal Profession Anti-Money Laundering & Counter-Terrorism Financing Guidance

Guidance Note No 11 – Ceasing or Declining to Act

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Guidance Note 11

Ceasing or Declining to Act

This Guidance Note addresses what you can do if you believe that you or your law practice may be, or may have been, at risk of unwittingly assisting a client in the furtherance of unlawful activity involving money laundering or terrorism financing.

When faced with 'red flag' behaviour (see Guidance Notes 4 and 5), legal practitioners should immediately pause and consider the context. If the context explains the behaviour and the behaviour is lawful and appropriate, you may continue; if not, enquiries should be made of the person whose conduct is in question, or independently of them. Depending on the level of satisfaction gained, you may then continue or, if appropriate, advise against the action, and/or cease to act. You may seek independent legal or ethics advice at any time throughout this process.

1. Seeking Independent Advice

Advice can be sought on a confidential basis from another solicitor or a barrister or from any of the law societies, each of which provide guidance or rulings on a confidential basis. Rule 9.2.3 of the Australian Solicitors' Conduct Rules (**ASCR**) provides an exception to the duty to maintain the confidentiality of client information where '... the solicitor discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the solicitor's legal or ethical obligations'.

In addition, Rule 9.2.4 of the ASCR provides an exception to the duty to maintain the confidentiality of client information where the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence.

2. Declining to Act

Rule 8.1 of the ASCR sets out the ethical duty and professional obligation to 'follow a client's lawful, proper and competent instructions'. If a legal practitioner reasonably comes to the view that the instructions the client intends to give are for, or in furtherance of, an unlawful purpose, the legal practitioner's duty is to counsel the client against, and not condone or render any assistance toward, that unlawful purpose.

Dal Pont writes that '[i]f a lawyer has reason to believe that a client will disregard the lawyer's advice and thereby contravene the law or some legal obligation to a third party, again he or she should counsel the client of the lawyer's responsibilities and, if the client persists, terminate instructions.'[1]

3. Terminating the Retainer

Rule 13.1.3 of the ASCR provides that a solicitor or law practice may terminate a retainer for just cause and on reasonable notice. Given the duty to follow a client's lawful, proper and competent instructions, a just cause to terminate the retainer arises where, despite efforts to counsel and dissuade the client, the client insists that the solicitor or law practice commit a breach of the law or professional rules.[2]

References

1. GE Dal Pont (2021) *Lawyers' Professional Responsibility* (7th Ed, Thomson Reuters) at [19.10]-[19.25].

2. Dal Pont, *Lawyers' Professional Responsibility* at [3.205].

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