



New South Wales

## LEGAL PROFESSION ACT 1987

The Council of the Law Society of New South Wales, on 24 August 2000, resolved pursuant to its powers under section 57B of the Legal Profession Act 1987, to amend the Revised Professional Conduct and Practice Rules 1995 as follows:

Amend the Preamble to the Advocacy Rules by deleting the reference to “A.16” and substituting a reference to “A.15”.

### **Efficient administration of justice**

Add new Revised Professional Conduct and Practice Rules A.15, A.15A, A.15B:

**A.15** A practitioner must ensure that:

- (a) the practitioner does work which the practitioner is retained to do, whether expressly or impliedly, specially or generally, in relation to steps to be taken by or on behalf of the client, in sufficient time to enable compliance with orders, directions, rules or practice notes of the court; and
- (b) warning is given to any instructing practitioner or the client, and to the opponent, as soon as the practitioner has reasonable grounds to believe that the practitioner may not complete any such work on time.

**A.15A** A practitioner must seek to ensure that work which the practitioner is retained to do in relation to a case is done so as to:

- (a) confine the case to identified issues which are genuinely in dispute;
- (b) have the case ready to be heard as soon as practicable;
- (c) present the identified issues in dispute clearly and succinctly;
- (d) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client’s interests which are at stake in the case; and
- (e) occupy as short a time in court as is reasonably necessary to advance and protect the client’s interests which are at stake in the case.

## **2000 No 551**

Revised Professional Conduct and Practice Rules 1995

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**A.15B** A practitioner must take steps to inform the opponent as soon as possible after the practitioner has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, of the fact and the grounds of the application, and must try with the opponent's consent to inform the court of that application promptly.

Add new Revised Professional Conduct and Practice Rules A.17A and A.17B:

### **Duty to client**

**A.17A** A practitioner must inform the client or the instructing practitioner about the alternatives to fully contested adjudication of the case which are reasonably available to the client, unless the practitioner believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the litigation.

**A.17B** A practitioner must (unless circumstances warrant otherwise in the practitioner's considered opinion) advise a client who is charged with a criminal offence about any law, procedure or practice which in substance holds out the prospect of some advantage (including diminution of penalty) if the client pleads guilty or authorises other steps towards reducing the issues, time, cost or distress involved in the proceedings.

Add a new Revised Professional Conduct and Practice Rule A.31A

### **Frankness in court**

**A.31A** A practitioner must take all necessary steps to correct any express concession made to the court in civil proceedings by the opponent in relation to any material fact, case law or legislation:

- (a) only if the practitioner knows or believes on reasonable grounds that it was contrary to what should be regarded as the true facts or the correct state of the law;
- (b) only if the practitioner believes the concession was in error; and
- (c) not (in the case of a concession of fact) if the client's instructions to the practitioner support the concession.

Delete existing Revised Professional Conduct and Practice Rules A.35, A.36, A.37, A.38, A.39, A.40, A.41, and replace with the following:

### **Responsible use of court process and privilege**

**A.35** A practitioner must, when exercising the forensic judgments called for throughout the case, take care to ensure that decisions by the practitioner or on

the practitioner's advice to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person:

- (a) are reasonably justified by the material already available to the practitioner;
- (b) are appropriate for the robust advancement of the client's case on its merits;
- (c) are not made principally in order to harass or embarrass the person; and
- (d) are not made principally in order to gain some collateral advantage for the client or the practitioner or the instructing practitioner out of court.

**A.36** A practitioner must not allege any matter of fact in:

- (a) any court document settled by the practitioner;
  - (b) any submission during any hearing;
  - (c) the course of an opening address; or
  - (d) the course of a closing address or submission on the evidence;
- unless the practitioner believes on reasonable grounds that the factual material already available provides a proper basis to do so.

**A.37** A practitioner must not allege any matter of fact amounting to criminality, fraud or other serious misconduct against any person unless the practitioner believes on reasonable grounds that:

- (a) available material by which the allegation could be supported provides a proper basis for it; and
- (b) the client wishes the allegation to be made, after having been advised of the seriousness of the allegation and of the possible consequences for the client and the case if it is not made out.

**A.38** A practitioner must not make a suggestion in cross-examination on credit unless the practitioner believes on reasonable grounds that acceptance of the suggestion would diminish the witness's credibility.

**A.39** A practitioner may regard the opinion of the instructing practitioner that material which is available to the practitioner is credible, being material which appears to the practitioner from its nature to support an allegation to which Rules A.36 and A.37 apply, as a reasonable ground for holding the belief required by those rules (except in the case of a closing address or submission on the evidence).

**2000 No 551**

Revised Professional Conduct and Practice Rules 1995

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Re-number present Revised Professional Conduct and Practice Rule A.42 as Revised Professional Conduct and Practice Rule A.40.

These rules shall commence on the thirty - second day after their publication in the NSW Government Gazette.

BY AUTHORITY