

Short Minutes Transcript: The importance of direct instructions

Is this scenario familiar?

You are instructed by your client's daughter who asserts that she is acting on the authority of her parent. The parent is elderly and a resident of a nursing home. You are instructed to prepare a will for the parent. You prepare the will as instructed. The will is taken by the daughter to be signed by the parent.

This is precisely what happened in a disciplinary case heard by the South Australian Supreme Court in 2015.

Do you meet with or speak to the parent? What are the possible consequences if you don't?

It would not surprise you that the will made less provision for some of the parent's children and more for others including the instructing daughter.

The will was challenged on the grounds that the parent lacked testamentary capacity. The cost of the capacity case exceeded the value of the estate.

The consequences of the solicitor not having direct contact with his client were that he was found guilty of unprofessional conduct.

The Full Court of the South Australian Supreme Court chastised the solicitor for taking instructions from the daughter without having direct contact with the parent. The unprofessional conduct led to the estate being completely depleted.

When taking instructions for a will, always speak to your client, preferably alone and ask open ended questions going to the Banks v Goodfellow test.

I'm Jen McMillan

Legal Profession Conduct Commissioner v Brook [2015] SASCFC 128

Banks v Goodfellow [1870] LR 5 QB 549