

Quick cautionary tales for a better practice

Episode 69

Documenting Advice

In the New South Wales Court of Appeal case of *Odlum v Friend* the court addressed the issue of documenting advice in relation to settlement offers, emphasising the importance of accurate record keeping.

In the initial proceedings the appellant retained the solicitor and counsel to act on her behalf in respect of a property settlement against her former partner. Judgement was delivered and the former partner made several written offers as to the issue of costs. These offers were declined and ultimately the appellant was ordered to pay the majority of the former partners costs. The appellant then commenced proceedings against her former solicitor and counsel alleging professional negligence and a failure to advise in respect to the costs offers.

Ultimately the appellant was unsuccessful with the Judges finding in favour of the solicitor and the barrister. In the decision the court relied heavily on the solicitor and barrister's account of the matter, with particular emphasis on the detailed and contemporaneous documentation they both provided the client throughout the initial proceedings and regarding the costs issue.

Further, the court reinforced the need for solicitors and barristers to ensure they provide detailed and transparent documentation of advice given in relation to offers of settlement, including:

- Detailed and contemporaneous file notes of client interactions
- Written documentation showing prompt and clear communication
- Written advice setting out the options available as well as confirming any instructions received

Maintaining detailed and transparent documentation of advice is crucial to avoiding disputes over advice and instructions given. Without documentation solicitors may find themselves in trouble if a dispute arises later.

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Odlum v Friend [2024] NSWCA 159