

Traps for junior solicitors

The perils of giving casual legal advice to friends and family

Many of us will remember a time when, as junior solicitors, we found ourselves in the awkward position of casually being asked for legal advice. The request usually comes from a friend or family member at a social gathering or by way of an anxious late-night phone call, and often involves areas of law that are outside our usual area of practice. Quite understandably many solicitors may feel obliged to help out. There are many perils in giving informal legal advice both from a professional negligence and professional conduct perspective. Being prepared to handle this situation is key to effective risk management. Early conversations between Principals and junior solicitors will ensure junior solicitors are mindful of their professional and contractual obligations around the risks of casual or informal advice.

Zakka v Elias [2013] NSWCA 119 is a classic example of issues that can arise. In this case an employed solicitor felt pressured by a family member to give advice in an area outside her usual practice area. There were problems with the advice and although the solicitor was acting in a personal capacity, her employer (the law practice) was faced with defending a vicarious liability claim.

In the recent case of *NSW Legal Services Commissioner v LaI* [2022] NSWCATOD 144, a finding of professional misconduct was made against an employed solicitor. The tribunal found that the solicitor represented that her partner was a client of her employer (the law practice) when the solicitor knew that no formal (or any) solicitor/client relationship existed. The tribunal noted the solicitor wrote letters on behalf of her partner on law practice letterhead, sent emails from her work email address signing off as a solicitor of the law practice and stated in correspondence that the law practice acted for her partner.

Such conduct can give rise to indemnity issues. Lawcover's Professional Indemnity Insurance Policy insures the law practice and when employed solicitors provide legal advice to friends or family this may be outside the scope of their employment. Additionally, it may also give rise to professional conduct issues as the employed solicitor may be acting outside the scope of the conditions of their practising certificate.

Principals do not want to find themselves defending a vicarious liability claim and junior solicitors certainly do not want to find themselves in the position of defending allegations of professional misconduct as they embark on their legal careers.

These examples illustrate the importance of taking steps to ensure employed solicitors understand the parameters of their practising obligations.

Law practice Principals can help manage the risk associated with these types of practices by:

- ▼ Discussing with your employees, the importance of not giving informal legal advice to friends or family. Any requests must either be declined or referred to the Principal/s for consideration
- ▼ Incorporating the above risk management message into your employee induction program; and
- ▼ Reviewing your practice management manual to ensure the message is incorporated into your policies and procedures with appropriate training provided.