

Courting trouble – A Judge’s warning

Technology has transformed the way we communicate and while online communication is more convenient and accessible, especially since COVID, solicitors must not forget their professional duties and etiquette, particularly when dealing with the court.

A senior judge has recently spoken out to remind solicitors that writing to the court is a very different proposition from writing an informal social media message.

In *Amirbeaggi (Trustee), in the matter Billiau (Bankrupt) v Billiau* [2023] FedCFamC2G 949, Given J noted the “*apparent deterioration in the standard of conduct before the Court*” [at 1] and a “*spate of informal and presumptuous correspondence*” since COVID-implemented changes which “*deprived a generation of young lawyers from exposure to proper Court etiquette*” [at 16] which “*should not be allowed to endure*” [at 1].

Her Honour took the parties’ solicitors to task over a discourteous email sent by a law clerk to her Associate about a failure to comply with timetabling Orders, and an application for new timetabling Orders which failed to explain the non-compliance and which presumed the new orders would be “*rubber stamped*” without question.

The offending email

“Dear Associate

We refer to the abovementioned proceedings listed for 2 November 2023 before Judge Given.

We attach signed short minutes of order shared with the Court concurrently.

The Applicant and First Respondent’s solicitors have consented to the Orders and have been copied into this email.

Please have the Directions hearing relisted in accordance with the Orders.

Kind regards...”



Given J was not impressed. Her Honour directed the parties to appear before the court and published the following reasons:

1. The email gave no explanation for the non-compliance with the timetabling Orders;
2. The correspondence was informal and "possibly arrogant" for approaching the court with agreed Orders and simply presuming they would be made;
3. The email was sent by a law clerk, not an admitted solicitor. Her Honour emphasised that emails to the court are the equivalent of appearing in-person before the court. Submissions should not be made to a court by anyone other than a legal representative, unless the court has granted leave. Therefore, non-admitted staff should not write to the court making substantive representations and/or seeking Orders;
4. Her Honour noted that the correspondence was sent with the consent of all parties and warned solicitors to be cautious when reviewing and consenting to correspondence that will be sent by others with their consent;

Her Honour held that the concluding use of "kind regards" was not appropriate, falls foul of the obligation to avoid informality, and should not be used.

Given J commented that a spate of such correspondence had occurred since COVID and had forced courts to conduct hearings using online technologies. Her Honour noted:

"Lest there be any doubt, parties and practitioners should not interpret the use by Courts of a medium which can also be used for meetings and entertainment, as somehow informalising the solemnity of Court proceedings. Similarly, it would be a serious mistake to confuse the ease of use provided by email as giving rise to a correlative reduction in propriety, professionalism and formality." [at 16-17].

This is a timely reminder to solicitors of their paramount duty to the court and the obligation of formality before the court under the [Australian Solicitors' Conduct Rules](#) and at common law.

Solicitors should keep in mind that:

- Whilst an email is not a formal appearance, it is still important to treat it as such when preparing correspondence
- Conduct or submissions which are not appropriate or permitted in a courtroom are similarly not appropriate in an email to the court
- Where a party to legal proceedings is represented, submissions should not be made to the court by anyone other than a qualified legal representative
- Staff in law practices without a current practising certificate should not write to the court to make substantive representation and/or seek Orders
- Solicitors can be equally responsible for the content of emails sent with their consent

Falling foul of the court and the rules in such cases can have adverse consequences for both a client and the solicitor. These consequences might include strategic disadvantages in the practical preparation of a case, as well as adverse costs consequences for a client, and personal costs orders against a solicitor as a means of ensuring observation of duties to the court. A related professional negligence claim against the solicitor is a possible outcome.

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