

IS YOUR ATTORNEY ETHICAL?

Newsletter 25 /2016

When times are tough, unethical behaviour becomes more common and, as unethical behaviour often leads to fraudulent and illegal activities such as corruption, the costs add up.

The legal profession is required to maintain an unquestionable standard of ethics and professionalism. Unfortunately, even in the legal profession, lines distinguishing ethical from unethical behaviour are sometimes manipulated and can become blurred. The Law Society of South Africa ("the Law Society") has formulated a set of rules that clarify acceptable behaviour in the legal profession. The Law Society implements these rules and investigates any alleged contravention of these rules in order to protect the public against unprofessional, unethical and irresponsible conduct by attorneys.

When you engage the services of an attorney you enter into a relationship with that attorney. Every relationship consists of rights and duties for both parties to the relationship. To help clarify the rights and obligations involved in your relationship with your attorney, we have explored three aspects below.

What is an attorney?

The Attorneys Act 53 of 1979 ("the Attorneys Act") governs the attorneys' profession. An attorney is someone who has obtained a legal degree, passed the admission examinations set by the Law Society and has been admitted to practise as an attorney in South Africa.

What can you expect from your attorney?

The foundation of the relationship between an attorney and his/her client is trust. In terms of the Law Society rules and the Attorneys Act:

- Your attorney must:
 - maintain the highest standards of honesty and integrity at all times;
 - always act in your best interests;
 - inform you of what you can expect in terms of the possible outcome of your matter as well as the potential costs involved;
 - keep you informed of the progress of your matter in the manner you have chosen;
 - treat you and your matter with respect and confidentiality;
 - never place his/her own interests above his/her professional duties to you as the client.
- Your attorney must not:
 - give a financial reward to an individual to solicit legal work;
 - acquire a financial interest in the subject matter of the dispute in which he/she is acting;
 - accept an instruction in which there may be a potential conflict of interest;
 - act unlawfully;
 - accept a mandate from you if you still have an existing mandate with another attorney in respect of the particular matter.

The above lists provide the bare minimum you should expect from your attorney and, if any of the above are missing or contravened, warning bells should ring.

What can your attorney expect from you?

Just as the attorney has certain obligations to fulfil, you also have obligations to your attorney. Some of these are to:

- treat your attorney with respect and courtesy as a professional in the legal profession;
- provide your attorney with accurate and complete information disclosing all relevant facts which may be necessary to assist your attorney to provide you with the correct advice;
- settle your attorney's account timeously;
- pay a deposit when requested to do so.

Clarifying expectations at the outset of a relationship is essential and it is advisable to conclude a written mandate with your attorney setting out your respective expectations and obligations prior to the commencement of any work by your attorney.

Ethics are vital to ensure a profitable and sustainable economy and it is the responsibility of each of us to conduct ourselves in an ethical manner. A tough economic climate may tempt you to consider taking short cuts or to work with an attorney with a blurred ethical compass, but be warned: not only will the attorney face the consequences of the Attorneys Act and the Law Society, but if you are found to be a party to a relationship which is corrupt, you may face the severe penalties laid down in the Prevention and Combating of Corrupt Activities Act, 12 of 2004 ("PACCA"). Punishment for contravention of PACCA includes a criminal conviction and possibly a prison sentence.

For professional but personal advice please contact Stuart Fourie (stuart@fouriestott.co.za), Vicky Stott (vicky@fouriestott.co.za), Chris Salmon (chris@fouriestott.co.za), or Allison Schoeman (allison@fouriestott.co.za) or visit our website for further information about our firm and areas of expertise.

