

## Episode 127: Summary

**Episode name:** Legal Liaisons: Navigating Court Communication Protocols

**Guest(s):** Caroline Hutchinson

**What area(s) of law does this episode consider?**

Court communication etiquette and obligations under the [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 \(Cth\)](#).

**Why is this topic relevant?**

The legal profession mandates that written communications with the Courts adhere to strict protocols and formalities, serving as a proxy for personal appearances before a judge. Understanding and adhering to the legislated obligations is crucial for maintaining professional standards and avoiding potential penalties for non-compliance. Legislation, such as the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*, specifies the duties lawyers owe to the court, including the avoidance of informal communications and the proper invocation of the court's powers. This regulatory framework is designed to preserve the decorum of court interactions and prevent any semblance of undue familiarity or impropriety.

Compliance with these rules ensures that legal practitioners conduct themselves with the utmost respect and professionalism. The significance of maintaining professionalism and courtesy in court communications cannot be overstated. Recent rulings, including the decision in *Amirbeaggi*, have served as notable reminders to practitioners of their obligation to maintain these standards. These standards are crucial, as missteps in communication not only disrupt and undermine the judiciary but can also negatively influence the integrity of the legal process, in addition to embarrassing the practitioner involved.

**What legislation is considered in this episode?**

[Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 \(Cth\)](#) ("Solicitor's Conduct Rules")

[Civil Procedure Act 2005 \(NSW\)](#)

**What cases are considered in this episode?**

[Amirbeaggi \(Trustee\), in the matter of Billiau \(Bankrupt\) v Billiau \[2023\] FedCFamC2G 949](#)

- In this case, the parties failed to comply with case management orders issued by the Federal Circuit and Family Court. Five days past the compliance deadline, a law clerk from the solicitors of the second respondent improperly emailed Justice Given's Chambers, copying in the other parties, directing the court to relist the Directions hearing according to the proposed orders of consent attached to the email. In response, Judge Given scheduled a directions hearing requiring the solicitors to appear to address the inappropriate conduct. The solicitors apologised for the conduct, which Judge Given accepted, and costs were reserved for the directions hearing. In the resulting judgement, Judge Given emphasised several key reminders about solicitors' obligations when dealing with courts. These included that court orders must be strictly adhered to, and if compliance is not possible, the appropriate legal channels must be followed to seek modifications. Consent

orders are merely proposals until the court officially enters them, and no correspondence should suggest otherwise. Furthermore, only qualified legal practitioners, and preferably only those on record or handling the file, should engage directly with the court. Additionally, any communications with the court, including emails, should be treated with the same level of formality as in-court appearances, and signing off emails to the court with informal sign offs such as "kind regards" is inappropriate.

[Kalil v Eppinga \[2020\] NSWDC 40](#)

- In this case, the judge found that the acting solicitor's poor performance led directly to the incurring of unnecessary costs and delay. Amongst other comments about instances of the solicitor's incompetence during the proceedings, the judge famously stated at paragraph [221] of the judgement "On one occasion [he solicitor] was eating a muffin whilst in [another solicitor's] office and appearing in Court via the AVL. His response to that was most unsatisfactory." The resulting orders included the indemnification of costs for the delays, as well as directing the registrar to forward the papers to the Legal Services Commissioner with a recommendation that they investigate whether the conduct amounted to either unsatisfactory professional conduct or professional misconduct.

**What are the main points?**

- Courts are noting increasing lapses in the formality required from those communicating with, and appearing in court. The rising informality may be attributed to technological advancements and the impact of recent events such as COVID-19, which have caused a shift from traditional methods of communication, such as letters and faxes, to quicker, digital communications with the court.
- The COVID-19 pandemic caused an increase in court proceedings being conducted through Audio-Visual Link (AVL) technology. However, the formality requirements for in-person proceedings remain the same for virtual proceedings. As such, courts have issued practice notes outlining the obligations and etiquette required of those appearing in court in virtual hearings.
- Despite the pressure to vigorously advocate for a client, the primary duty remains to the court. It is essential to prioritise ethical conduct and adhere to professional standards, even when faced with conflicting client demands. Both minor and serious lapses in the required conduct can have consequences, and can potentially amount to professional misconduct.
- In professional settings, it is crucial to approach written correspondence with caution, especially in legal matters where the content may be used as evidence. A prudent approach is to draft the communication, take time to reflect, and consider potential implications if the content is presented before a judge.
- Judges typically prefer to see parties working together to find common ground, but ultimately, the court holds the final say. Parties are encouraged to communicate, cooperate, and seek agreement, but it is crucial to respect the court's authority and follow procedures promptly to avoid delays or complications in legal matters.

## What are the practical takeaways?

- As a solicitor, it is your responsibility to be aware of, and abide by the *Solicitors Conduct Rules*, and any additional etiquette that is expected of you during your practise.
- Solicitors must ensure that all communications and documents being submitted to the court are in accordance with these standards. Solicitors must ensure that any work that they receive assistance with, from junior practitioners or non-admitted persons, must also follow these standards. Ultimately, the solicitor in charge bears the final responsibility for all matters under their purview.
- It is essential for a solicitor overseeing others to offer appropriate guidance and supervision, ensuring they receive proper training and support. While not necessary to micromanage every aspect, it is important to be available for advice and strategic input, and to review final work.
- As a legal practitioner, it is essential to provide guidance to clients on how to dress, behave, and communicate in court. This includes advising them on proper courtroom etiquette, such as how to address the judge and what to say. It is part of the lawyer's role to ensure that clients are prepared for their interactions within the legal system.
- It is important to make yourself available for support to colleagues and those you oversee, particularly to younger practitioners who may feel less experienced in the legal profession, especially coming out of the COVID-19 pandemic.
- It is important for legal professionals to seek help from supervisors and other practitioners when needed. Asking questions and seeking guidance from supervisors, colleagues, and counsel will aid in the learning process and gaining experience over time.
- There are many great benefits to getting involved in legal communities. Beyond your immediate network, you can reach a larger community by joining one of the many organisations and societies that exist within the legal industry.

## Show notes

[Hutchinson, Caroline, Carrie Peterson and Sonya Willis, 'Writing it right: communicating correctly with courts' \(2024\) \*Law Society Journal\*](#)

[The Law Society of NSW Litigation Law and Practice Committee, 'Navigating court protocols in post pandemic practice' \(2023\) \*Law Society Journal\*](#)

[The Honourable Marilyn Warren AC KC, 'The Duty Owed to the Court-Sometimes Forgotten' \(Speech, Judicial Conference of Australia Colloquium, Melbourne, 9 October 2009\)](#)

[Caroline Hutchinson's Coleman Greig Lawyers Profile](#)