

PRESENTERS

Judge Raoul Neave, District Court, Christchurch

Judge Neave was appointed to the bench in 2007 and holds both a jury warrant and civil designation. Prior to his appointment he practised as both a prosecutor and defence counsel in criminal trials and spent 10 years at the bar as a general litigator. He tutored in evidence at the University of Canterbury for 20 years and was a moderator in advocacy for the IPLS. He served on the councils of both the Canterbury District and New Zealand Law Societies during the introduction of the new regulatory regime.

Dr Duncan Webb, Lane Neave, Christchurch

Duncan has practised law since 1989. He has also taught in law schools in the United States and New Zealand including a distinguished career as a former professor of law. He was closely involved in the preparation of the new Rules of Professional Conduct and Client Care and recently presented on Client Care for the New Zealand Law Society. Duncan is the author of *Ethics Professional Responsibility and the Lawyer* and regularly speaks to professional groups on issues of ethics and professional conduct. Between 2008 and 2010 Duncan held a quasi-judicial appointment within the Ministry of Justice as Legal Complaints Review Officer.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

THE DUTY OF CONFIDENCE	1
DUTY NOT TO MISLEAD OR MISUSE THE COURT	6
DUTIES OF PROSECUTING AND DEFENCE COUNSEL	14
ROLE OF THE DEFENCE COUNSEL	17
CAB RANK RULE.....	19
COVER YOUR BACK.....	23
<i>Protect yourself.....</i>	23
<i>Maintain your client's privacy.....</i>	24
<i>Remember the need for courtesy towards your clients, your colleagues, and the court.....</i>	24
<i>Dont be afraid</i>	24
<i>Don't take on cases you can't do either through work or lack of ability.....</i>	24
<i>Don't be greedy.....</i>	24
<i>If you make a mistake, own up</i>	25
CONFLICTS OF INTEREST	27
THE FIDUCIARY DUTY	28
<i>Waiver: Explanation and consent</i>	30
WHOLE OF FIRM.....	31
TERMINATION FOR CONFLICT.....	32
LAWYER/CLIENT CONFLICT.....	32
INDEPENDENCE IN LITIGATION	35
LAWYER'S CONDUCT UNDER SCRUTINY.....	35
THE LAWYER CLIENT RELATIONSHIP	36
IS THERE A RETAINER?	36
WHO IS MY CLIENT?	36
AM I ACTING AS A LAWYER?	37
FRIENDS AND FAMILY	37
<i>Efficient administration of justice</i>	38
ABUSE OF PROCESS	40
DISCOVERY	41
REFERRAL FEES.....	43
GIFTS	44
COSTS AND CONDITIONAL FEES.....	44
REASONABLE FEE FACTORS.....	46
<i>Time and labour</i>	46
<i>Skill, knowledge, responsibility.....</i>	46
<i>Importance to the client.....</i>	46
<i>Results achieved.....</i>	46
<i>Vallant Hooker & Partners v Tootill.....</i>	47
<i>Urgency.....</i>	47
<i>Risk.....</i>	47
<i>Value of property.....</i>	48
<i>Complexity/difficulty/novelty.....</i>	48
<i>Experience, reputation, and ability of the lawyer</i>	48
<i>Loss of other clients</i>	49
<i>Fixed or conditional fee</i>	49
<i>Quote or estimate of fees</i>	49
<i>Fee agreement.....</i>	50
<i>Reasonable costs of running a practice</i>	50
<i>Fee customarily charged in the market and locality:.....</i>	50
CONDITIONAL FEE ARRANGEMENTS	51
<i>Formalities</i>	52
RESPECT, COURTESY AND ETIQUETTE	52
HONESTY	53
FEES OF OTHER LAWYERS: BARRISTERS FEES	54
UNDERTAKINGS	55

OBLIGATIONS TO THIRD PARTIES.....	57
SELF REPRESENTED PARTIES	59
REPORTING MISCONDUCT.....	59