RPA Alert

Regulation. Prosecution. Action.

Alert to all practitioners from the Legal Services Board and the Legal Services Commissioner

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A lawyer's undertaking is sacrosanct

In 2013 the Legal Services Commissioner brought four lawyers before VCAT on misconduct charges for failing to deliver on undertakings given to other solicitors, other businesses or to the regulator. In each of these matters the solicitors were found guilty of professional misconduct and received penalties ranging from reprimands and fines to conditions being placed on their practising certificate.

The January/February 2014 edition of the Law Institute Journal features an article describing those four prosecutions.

There is a wrongly held belief by some lawyers that the word 'undertaking' must be used when making a promise for it to be a true undertaking. This is not the case, and VCAT confirms this.

It is essential that all lawyers understand the rules covering undertakings. Rules 22 and 27 of the *Professional Conduct and Practice Rules* 2005 set out the importance of abiding by undertakings given by lawyers. Breaching these rules may constitute professional misconduct. The Law Institute of Victoria has recently issued a guideline on undertakings to assist the profession understand their obligations.

The Commissioner and VCAT view undertakings seriously, as should the entire legal profession. Undertakings are promises of action, and when given to another party, either explicitly or implicitly, must be followed through. As lawyers, your word is your bond, and failing to deliver on an undertaking undermines trust that the public and other lawyers justifiably place in members of the legal profession.

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