

Creating Exceptional Outcomes

Risk and Practice Management when working from home

Your professional obligations; issues you might face while working from home and some practical tips to assist

/ 23 February 2022

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Agenda

- **Australian Solicitors' Conduct Rules**
 - QLS website: https://www.qls.com.au/files/2403d618-5c7c-445c-a191-a42200ad0cd4/QLS_Australian_Solicitors_Conduct_Rules_2012.pdf
- **Challenges when working from home**
- **Practical tips**
- **Pop Quiz**

Australian Solicitors Conduct Rules – purpose and effect

- **Purpose and effect**

- To assist solicitors to act ethically and in accordance with the established principles of professional conduct
- To assist in determining whether a solicitor has engaged in unsatisfactory professional conduct or professional misconduct
- Not enforceable by a third party

(ASCR 2)

Paramount and fundamental duties

- **Paramount duty:**

- *“A solicitor’s duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.” (ASCR 3.1)*

- **Other fundamental duties:**

- Act in the best interests of a client
- Be honest and courteous in practice
- Deliver legal services competently, diligently and promptly
- Avoid any compromise of integrity and professional independence
- Comply with the ASCR and the law

(ASCR 4.1)

Dishonest and disreputable conduct

- **Dishonest and disreputable conduct:**
 - *“A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to:*
 - *be prejudicial to, or diminish the public confidence in, the administration of justice; or*
 - *bring the profession into disrepute.”*

(ASCR 5.1)

Confidentiality

- **Confidentiality:**

- *“A solicitor must not disclose any information which is confidential to a client and acquired by the solicitor during the client’s engagement to any person who is not:*
 - *a solicitor who is a partner, principal, director, or employee of the solicitor’s law practice; or*
 - *a barrister or an employee of, or person otherwise engaged by, the solicitor’s law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client;*

EXCEPT as permitted in Rule 9.2.”

(ASCR 9.1)

Confidentiality

- **Confidentiality:**
 - *“A solicitor may disclose confidential client information if:*
 - *the client expressly or impliedly authorises disclosure;*
 - *the solicitor is permitted or is compelled by law to disclose;*
 - *the solicitor discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the solicitor’s legal or ethical obligations;*
 - *the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence;*
 - *the solicitor discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person; or*
 - *the information is disclosed to the insurer of the solicitor, law practice or associated entity.”*

(ASCR 9.2)

Formality before the court

- **Formality before the court**

- *“A solicitor must not, in the presence of any of the parties or solicitors, deal with a court on terms of informal personal familiarity which may reasonably give the appearance that the solicitor has special favour with the court.” (ASCR 18.1)*

Another solicitor or other person's error, and inadvertent disclosure

- **Another solicitor or other person's error (ASCR 30.1)**
 - *"A solicitor must not take unfair advantage of the obvious error of another solicitor or other person, if to do so would obtain for a client a benefit which has no supportable foundation in law or fact."*
- **Inadvertent disclosure (ASCR 31.1)**
 - *"Unless otherwise permitted or compelled by law, a solicitor to whom material known or reasonably suspected to be confidential is disclosed by another solicitor, or by some other person and who is aware that the disclosure was inadvertent must not use the material and must:*
 - *return, destroy or delete the material (as appropriate) immediately upon becoming aware that disclosure was inadvertent; and*
 - *notify the other solicitor or the other person of the disclosure and the steps taken to prevent inappropriate misuse of the material."*

Unfounded allegations

- **Unfounded allegations**

- *“A solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.” (ASCR 32.1)*

Supervision of legal services

- **Supervision of legal services**
 - *“A solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of the legal services for that matter.”*
(ASCR 37.1)

Client legal privilege

- **Privileged communications:**

- Client legal privilege protects the confidentiality of communications between a lawyer and their client.
- The privilege attaching to communications does not belong to the lawyer, it belongs to the client.
- A common law right attaches to confidential communications between a lawyer and client and protects such communications from disclosure.
- The communications can be in writing or verbal. In order to be privileged, the communications must be confidential.
- Privilege can also extend to documents even though they are not communications (e.g. documents prepared for the purposes of litigation).

Client legal privilege

- **Client legal privilege:**

- There are currently two distinct limbs of client legal privilege:
 - advice privilege which applies to communications between a lawyer and a client which were made for the dominant purpose of the lawyer providing legal advice; and
 - litigation privilege which applies to any communications between a lawyer and a client or third party which were made, or documents which were created, for the dominant purpose of use in existing or anticipated legal proceedings.

- **Waiver of privilege:**

- Only the client may waive privilege, which can be either express or implied.
- For an implied waiver, the main question is whether the client has acted inconsistently with the maintenance of that privilege.

WFH challenges - Confidentiality

- Sharing a house with limited private spaces
- Sound travelling between rooms / neighbours
- Documents lying around
- Documents left on screens
- Informal communications with clients – texts, emails etc via mobile phone
- Data breaches

Practical tips

- **Some practical confidentiality tips:**
 - Consider who can see your computer and/or paperwork and take steps to secure them by locks / passwords etc.
 - Consider who can hear your conversations and take steps to create space between you and others
 - Do not use public wi-fi for work purposes
 - Consider where you are printing documents, and what you do with them
 - Ensure you shred documents when necessary and do not simply put them in the bin
 - Do not leave your computer unlocked when not in use
 - Do not leave hard copy files or documents unattended
 - Ensure that your mobile phone does not flash up with text from work emails / SMS

WFH challenges - Cyber security

- **In 2021, \$110,000 was stolen from a Victorian law firm's trust account**
 - The cyber criminal gained access to the practitioner's email account.
 - Then used the practitioner's mobile phone number, date of birth and address to impersonate them in dealing with their mobile phone service provider and bank to orchestrate the theft of \$110,000 from the law firm's trust account.

Practical tips

- **Some practical security tips:**
 - Ensuring staff passwords are sufficiently strong
 - Never opening unknown or suspicious attachments or links in emails
 - Not using public wi-fi for work purposes
 - Always verifying payment details via telephone before transferring funds
 - Be alert to anything unusual or suspicious and check it appropriately
 - Adhere to the firm's policies and procedures about cyber security
 - Maintaining up to date software on your devices
 - Educating staff in relation to cyber risks
 - Ensuring any hard copy files that leave the office are scanned and not left unattended

WFH challenges - Supervision

- Supervision of junior practitioners
- Mental health

Practical tips

- **Some practical supervision tips:**
 - Regular communication
 - Supervision plan – what, when, how
 - Training
 - Videoconference as opposed to emails / calls
 - Social contact as well as professional contact

WFH challenges - Record-keeping

- File notes
- File management

Practical tips

- **Some practical record-keeping tips:**
 - Use BigHand dictations or another similar digital dictation program
 - Use document management software that facilitates filing of all types of communications (e.g., text messages)

WFH challenges - Mobile phones

- Can you deliver service to your clients effectively from a mobile phone?
- What are the limitations?

Practical tips

- **Some practical mobile phone use tips:**
 - Diversion to voicemail or secretary when on breaks
 - Don't answer work calls / send work emails whilst not 'working'
 - Separate mobile phones – work and personal

WFH challenges - Informalities

- Attire
- Videoconference background
- Interruptions
- Interaction with clients and colleagues

Practical tips

- **Some practical tips:**
 - Remember you are still 'at work'
 - Dress professionally
 - Act professionally
 - Use an appropriate videoconferencing background
 - Avoid interruptions

WFH challenges - Self-care

- Workplace v Home
- Workhours v Home time

Practical tips

- **Some practical tips:**
 - Set up a work-specific area
 - Stick to defined work hours

Pop Quiz – Scenario 1

- **Scenario 1**

- You act in a matter currently before the Supreme Court.
- Unfortunately, your client has been diagnosed with COVID and is isolating at home. Pursuant to Orders of the Court, your client is required to file an affidavit today.
- You have briefed Counsel who has prepared the draft affidavit. You have read it and forward it onto your client. You request that they closely read the affidavit and make amendments as required.
- Around 30 minutes later, your client calls and says they have read the draft affidavit, made some minor amendments, has the final version in front of them and wants to swear the contents of the affidavit are true and correct.
- Your client confirms they have a bible, and reads the content of the affidavit over the phone. You then ask your client to confirm that they have their hand on the bible and then ask “*do you swear the content of the affidavit in front of you to be true and correct to the best of your knowledge, information and beliefs so help you god*”. Your client replies saying words to the effect of “yes” and “I do”.
- The client then signs the affidavit and emails a copy to you. You then insert your signature as the witness of the affidavit.



Pop Quiz – Scenario 1

- **What issue/s have arisen?**

- a. None – your client was in isolation and therefore could not come into your office for you to witness their affidavit, therefore you can witness the affidavit over the phone.
- b. None – your professional obligations only apply when reasonable and necessary – given that there is a pandemic going on, there is some leniency afforded to legal practitioners.
- c. You have engaged in unsatisfactory professional conduct by not witnessing the affidavit of your client correctly.
- d. None – you have complied with your duty to your client to make life as convenient as possible for them in difficult pandemic times.

Pop Quiz – Scenario 1

- **Answer - C**

- *You have engaged in unsatisfactory professional conduct by not witnessing the affidavit of your client correctly.*
- *Legal Services Commissioner v Bentley* [2016] QCAT 185
- Rule 432 of the *Uniform Civil Procedure Rules 1999* (Qld), makes it clear that an affidavit must be signed by the person making it “in the presence of” the person authorised to take the affidavit.
- The lawyer had witnessed his client’s affidavit over the phone and was subsequently found to have engaged in unsatisfactory professional conduct.
- **COVID provisions**
- Section 12B of the *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* provides that an affidavit may now be witnessed by audio visual link.
- If the affidavit is witnessed solely via phone and not audio visual link then it is likely to be unsatisfactory professional conduct and you may liable to sanction.

Pop Quiz – Scenario 2

- **Scenario 2**

- You are working on a contentious legal matter against a private company, BigCo.
- You are keen to impress your boss by getting a good outcome, but the case hasn't been going so well.
- Fed up with work for the week, you knock off early on Friday afternoon to have a beer with your new neighbour, Jim. During the course of small talk, Jim tells you that he works for BigCo as its CFO. You tell Jim about your legal case against BigCo and say that you are hoping to settle the case soon as it is becoming a drain on you. Being a friendly and chatty type, Jim tells you that he had in fact heard about your legal case, as the company's CEO had told him to put a \$1 million entry in BigCo's financial forecasts as a contingent liability, to account for the settlement sum that BigCo considered they'd likely need to pay to your client.
- The following week, you write to BigCo's solicitors making a without prejudice offer for \$1 million and it is accepted. Your boss is so impressed that you get employee of the month and a \$50 gift voucher.



Pop Quiz – Scenario 2

- **What issue/s have arisen?**

- a. None – ASCR 4 requires you to act in your client's best interests, and when you found out information that could be used to your client's advantage, you rightly took advantage of it in order to obtain a great result for your client.
- b. Your employer has likely breached the ASCR by paying you a \$50 bonus for settling a case.
- c. You have likely breached ASCR 3.1 because you have put your duty to act in your client's interests before your paramount duty to the court and the administration of justice.
- d. You have engaged in conduct that breaches a number of ASCR and you may find yourself in big strife with the Legal Services Commission.

Pop Quiz – Scenario 2

- **Answer – D**

- *You have engaged in conduct that breaches a number of ASCR and you may find yourself in big strife with the Legal Services Commission.*

- **ASCR 3.1** A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.
- **ASCR 30.1** A solicitor must not take unfair advantage of the obvious error of another solicitor or other person, if to do so would obtain for a client a benefit which has no supportable foundation in law or fact.
- **ASCR 31.1** Unless otherwise permitted or compelled by law, a solicitor to whom material known or reasonably suspected to be confidential is disclosed by another solicitor, or by some other person and who is aware that the disclosure was inadvertent must not use the material and must:

...

31.1.2 notify the other solicitor or the other person of the disclosure and the steps taken to prevent inappropriate misuse of the material.

- **ASCR 33.1** A solicitor must not deal directly with the client or clients of another practitioner unless:

33.1.1 the other practitioner has previously consented

Pop Quiz – Scenario 3

- **Scenario 3**

- You have been working home for a few weeks now and are starting to get into the groove of it, often stopping in for a morning coffee at your local café and sometime even doing a bit of work on your laptop there.
- You’ve struck up quite the rapport with the hipster café owner, Davo. After hearing a few of your phone calls to clients, Davo has become aware that you are a lawyer and thinks that you must be pretty smart to know all that ‘Law & Order’ stuff.
- One morning he delivers your skinny latte and says ‘this one is on the house, if you can give me a quick bit of legal advice’. Davo proceeds tells you that he’s heard of heaps of other café owners getting reduced rent because of COVID. He said his café has been going great guns fortunately, but his landlord was being a bit tight and won’t give him a rent holiday. He asks you what he should do.
- You are a Family lawyer, but did a graduate rotation through the firm’s Property section and remember a thing or two about leases and have read the news headlines about the Federal Government bringing in laws around commercial and retail leases which gave tenants a bit of a rent holiday. You tell Davo he should just stop paying his rent for the time being as any retail or commercial tenancies basically can’t be enforced against a tenant whilst COVID is ongoing.



Pop Quiz – Scenario 3

- **What issue/s have arisen?**
 - a. None – you gave Davo reasonable off the cuff advice, and he ended up getting a rent holiday from his landlord anyway – no harm, no foul.
 - b. You have breached your professional ethical obligations by not issuing a client agreement to him before providing legal advice.
 - c. You have breached your professional ethical obligations because you did not know the area of law but professed to give advice (albeit informal) about it anyway.
 - d. None – it was just a casual conversation and you were not providing professional legal services, so the ASCR do not apply. If Davo wanted formal legal advice then he could always engage you and pay for your time, instead of offering you a free coffee.

Pop Quiz – Scenario 3

- **Answer – C**

- *You have breached your professional ethical obligations because you did not know the area of law but professed to give advice (albeit informal) about it anyway.*

- **ASCR 4.1** A solicitor must also:

- 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client;

- ...

- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible;

Pop Quiz – Scenario 4

- **Scenario 4**

- You are appearing in QCAT today, in relation to a neighbourhood dispute regarding a problematic tree.
- Due to COVID, the Tribunal has asked everyone to appear via videolink.
- You tidy yourself up, put on your best suit jacket and get ready for the appearance, by dialling into the videoconferencing platform with plenty of time to spare. You and your opponent are both accepted into the videoconference by the tribunal registrar coordinating the videoconference.
- You note that the tribunal registrar is an old friend from law school days. You say hello and ask her how she has been. You then proceed to discuss the ‘good old days’ and how wild you all used to get at college Sunday sessions down at the Regatta. She wishes you all the best for today’s hearing.
- A few minutes later, the tribunal member arrives and calls the parties to state their appearances.



Pop Quiz – Scenario 4

- **What issue/s have arisen?**

- a. None – you have complied with your duties to engage with the tribunal registrar in an honest and courteous manner.
- b. None – you complied with your duties by familiarising yourself with the tribunal's practice direction, preparing yourself for the hearing, dialling into the videoconference early and wearing suitable attire.
- c. You have likely breached ASCR 4.1.2, being your duty to be honest and courteous in all dealings in the court of legal practice, by speaking about the registrar's social life in front of others, which is in breach of the ASCR, and failing to acknowledge your opponent who was also waiting on the videoconference.
- d. You have likely breached ASCR 18.1 because you had a conversation with the tribunal registrar on terms of informal personal familiarity.
- e. You have likely breached ASCR 18.1 because you had a conversation with the tribunal registrar on terms of informal personal familiarity, in the presence of your opponent, which may have given the appearance that you have special favour with the court.

Pop Quiz – Scenario 4

- **Answer – E**
 - *You have likely breached ASCR 18.1 because you had a conversation with the tribunal registrar on terms of informal personal familiarity, in the presence of your opponent, which may have given the appearance that you have special favour with the court.*
- **ASCR 18.1** A solicitor must not, in the presence of any of the parties or solicitors, deal with a court on terms of informal personal familiarity which may reasonably give the appearance that the solicitor has special favour with the court.

Pop Quiz – Scenario 5

- **Scenario 5**
 - Just prior to COVID, you hired a new law clerk, Sally.
 - Sally has been a superstar from day 1 - taking witness statements, preparing draft court documents and preparing lists of documents. Best of all, the clients love her, so you let her do all the liaising with clients.
 - Sally is confident and independent, so you don't need to get too involved in her matters, until the real legal work needs to get done. As a result, you only touch base once a week on Monday mornings for a quick chat over a 'virtual' coffee.



Pop Quiz – Scenario 5

- **What issue/s have arisen?**
 - a. None – Sally is clearly competent, the clients are happy and you are keeping a watching brief on her work.
 - b. You have likely breached ASCR 37.1 as you have not been exercising reasonable supervision over Sally in the provision of legal services.
 - c. You have likely breached ASCR 4.1 as using a law clerk to do complex legal work such as drafting pleadings is not acting in the best interests of clients.
 - d. None – there is no requirement to supervise non-qualified legal staff under the ASCR, and in any event she is not doing legal work.

Pop Quiz – Scenario 5

- **Answer – B**
 - *You have likely breached ASCR 37.1 as you have not been exercising reasonable supervision over Sally in the provision of legal services.*
- **ASCR 37.1** A solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of the legal services for that matter.

Pop Quiz – Scenario 6

- **Scenario 6**

- You are working on a case for a high profile client. Your client informs you that he is concerned about some tax issues that he might have in relation to his business and he is worried that he might have committed some tax offences. You tell him to send you an email with the details and he does so. You take a quick glance and it all looks like a big headache, so you duck out to the kitchen to grab a coffee before your get too far into it.
- Your room mate is also working from home. He works for the ATO. It's 4pm so he has clocked off for the day and walks into your room to see what you're up to. He notices on your screen the email that you'd just received from your client with the RE line "**Tax offences – Please help!!**".
- Coincidentally, a week later, your client is audited by the ATO.



Pop Quiz – Scenario 6

- **What issue/s have arisen?**

- a. None – your room mate should not have walked into your room and viewed your computer without your authority, and you can't be held in breach of any duty of confidentiality in the circumstances.
- b. You have likely breached your duty of confidentiality to your client because you failed to delete his email immediately, and destroy all evidence of it, in circumstances where it revealed all sorts of tax offences.
- c. You have breached your duty of confidentiality to your client because you failed to lock your door or computer screen before going to grab a coffee, when you were aware that your room mate works for the ATO.
- d. None – your client had committed all sorts of tax offences, and a solicitor is able to disclose client confidential information if it relates to the commission of a serious criminal offence (including tax fraud).

Pop Quiz – Scenario 6

- **Answer – C**

- *You have breached your duty of confidentiality to your client because you failed to lock your door or computer screen before going to grab a coffee, when you were aware that your room mate works for the ATO.*

- **ASCR 9.1** A solicitor must not disclose any information which is confidential to a client and acquired by the solicitor during the client's engagement to any person who is not:

- 9.1.1 a solicitor who is a partner, principal, director, or employee of the solicitor's law practice; or

- 9.1.2 a barrister or an employee of, or person otherwise engaged by, the solicitor's law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client,

- EXCEPT as permitted in Rule 9.2.

- **ASCR 9.2** A solicitor may disclose confidential client information if:

- ...

- 9.2.4 the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence;

Pop Quiz – Scenario 7

- **Scenario 7**

- You are enjoying the flexibility of working from home, including the ability to knock off a little earlier than usual on a Friday afternoon in order to collect your kids from school and attend a school fundraiser barbecue.
- You happen to bump into the solicitor on the other side of a matter, and you get to talking.
- The other solicitor is an ‘old school’ type who fancies himself as a bit of a ‘wheeler and dealer’ when it comes to negotiating outcomes.
- Alarms bells are beginning to ring, when he asks to speak with you ‘off-the-record’.



Pop Quiz – Scenario 7

- **Can you have an ‘off-the-record’ conversation?**
 - a. Yes - provided that you both expressly agree to do so.
 - b. No - there is no such thing as an ‘off-the-record’ conversation between two solicitors in the engagement of legal practice.
 - c. No - you should never agree to an ‘off-the-record’ conversation because if the other solicitor says something which compromises their client’s position, you want to be able to use that information to your client’s advantage in accordance with your duty to act in your client’s best interests.
 - d. Yes - provided that your client has provided you with instructions to agree to the conversation on that basis, and you are not using a recording device.

Pop Quiz – Scenario 7

- **Answer – B**

- *No - there is no such thing as an ‘off-the-record’ conversation between two solicitors in the engagement of legal practice.*
- ‘Off-the-record’ v ‘without prejudice’

Pop Quiz – Scenario 8

- **Scenario 8**

- You act for the seller of a commercial property. When reviewing the draft contract on your phone whilst driving to beat the school pickup rush, you fail to notice that a key clause had been omitted from the contract. After forwarding on the draft by email, the solicitor on the other side responds particularly quickly – within the hour – with his client's signed copy of the contract and asks that you arrange for your client to counter-sign the contract that day. You arrange for your client to sign the contract and then circulate a fully executed copy.
- After the weekend, you notice the omission in the contract and fire off an email to the solicitor on the other side, as follows:

“Dear Colleague

I am greatly concerned by the fact that you have attempted to deceive me by trying to have the contract signed up urgently, knowing that clause 7 had been inadvertently left out of the contract. This is a clear breach of Rule 30 of the Australian Solicitors' Conduct Rules (ASCR) and your dishonest and disreputable conduct (in further breach of Rule 5 of the ASCR) demonstrates that. Frankly, you are not a fit and proper person to practise in the legal profession, and I will be referring this matter to the Legal Services Commission.”



Pop Quiz – Scenario 8

- **What issue/s have arisen?**
 - a. You have breached the ASCR by failing to act in a courteous manner in dealing with the solicitor for the other party.
 - b. You have breached the ASCR by making serious accusations without ensuring that there is a proper basis for same.
 - c. Both A and B.
 - d. None – there is clear evidence that the solicitor on the other side was attempting to take advantage of your error and, as a member of the legal profession, you are entitled to take steps to ensure that the other lawyers' conduct is investigated by the LSC.

Pop Quiz – Scenario 8

- **Answer – C**

You have breached the ASCR by both:

- A. failing to act in a courteous manner in dealing with the solicitor for the other party; and*
- B. making serious accusations without ensuring that there is a proper basis for same.*

- **ASCR 4. Other fundamental ethical duties**

4.1 A solicitor must also:

...

4.1.2 be honest and courteous in all dealings in the course of legal practice;

...

- **ASCR 32. Unfounded allegations**

32.1 A solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.

Pop Quiz – Scenario 9

- **Scenario 9**

- You are now working from home much more than you were prior to the COVID pandemic.
- You decide to renovate your house so you have a much more comfortable space to work, and decide to also create a new media room to use for Friday night footy parties with mates.
- The works have been completed and you are very happy with your new work space and, even more so, your new media room.
- You visit your accountant to have him complete your tax return. When providing instructions to your accountant in relation to your work-related expense deductions, you ask the accountant to claim expenses in relation to the costs associated with the fit out of your new office, as well as your new media room.



Pop Quiz – Scenario 9

- **What issue/s have arisen?**
 - a. None - your tax return is a personal matter which is not associated with your practice as a solicitor and therefore you haven't breached any of the ASCR rules.
 - b. None – your accountant says he can ensure there will be no issues as he will characterise it all as a work-related expense.
 - c. You have likely breached the ASCR by engaging in dishonest and disreputable conduct.
 - d. None – every lawyer needs a media room to relax and de-stress; you can go there to take a lunch break when working from home.

Pop Quiz – Scenario 9

- **Answer – C**

You have likely breached ASCR 5.1 by engaging in dishonest and disreputable conduct because your media room fit out is not a work related expense and you have dishonestly claimed it as such. This conduct, whilst not in the course of your employment, is still dishonest and likely to bring the profession into disrepute. Your obligations don't end when you aren't working - they continue throughout your private life.

ASCR 5.1 - Dishonest and disreputable conduct:

- “A solicitor must not engage in conduct, in the course of practice **or otherwise**, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to:
- be prejudicial to, or diminish the public confidence in, the administration of justice; or
- bring the profession into disrepute”

Summary

- Reminder of our professional obligations pursuant to:
 - the *Australian Solicitors' Conduct Rules*; and
 - Client legal privilege
- Challenges when working from home, include:
 - Confidentiality, sharing a house with limited private spaces and sound travelling between rooms / neighbours, documents lying around or on screens, informal communications with clients, and data breaches
 - Supervision of junior practitioners, and mental health
 - Recording keeping, file notes and file management
 - Working effectively from a mobile phone
 - Informalities including attire, videoconference backgrounds, interruptions, interaction with clients and colleagues

Summary

- Practical tips to assist in working from home and complying with the ASCR, include:
 - Considering who can see your computer and/or paperwork, and overhear your conversations
 - Ensure you shred documents when necessary and do not simply put them in the bin
 - Do not leave your computer unlocked when not in use or leave hard copy files or documents unattended
 - Never open unknown or suspicious attachments or links in emails
 - Educating staff in relation to cyber risks, and adhere to policies and procedures about cyber security
 - Ensuring any hard copy files that leave the office are scanned and not left unattended
 - Regular communication, training, videoconference as opposed to emails / calls, social contact
 - Diversion to voicemail or secretary when on breaks
 - Don't answer work calls / send work emails whilst not 'working'
 - Separate mobile phones – work and personal
 - Always remember you are still 'at work', dress and act professionally, use an appropriate videoconferencing background
 - Avoid interruptions, set up a work-specific area, stick to defined work hours

Thank you



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