LETTER: SEX WITH CLIENTS

M M Park

Letter to the Editor, Legal Affairs, *The Australian*. Friday 26 October, 2007, page 34

It is with disappointment that I am forced to agree with Ysaiah Ross’s views as summed up by the heading selected for his article “Professional code should ban sex with clients” (19/10).

This should not be the case. The necessity for a specific rule has only arisen because the profession is disinclined to impose professional responsibility on its members. The letter from the Victorian professional body to “Anne” concluding that the private lives of legal practitioners is outside the purview of “Professional Standards” is evasive buck-passing and does not address the issue that the conduct of the particular solicitor arose out of the professional solicitor-client relationship with Anne.

Apparently, according to the tenor of the article citing the experience of Dr Ross and NSW Legal Services Commissioner Steve Mark, both the Victorian and NSW professional bodies assert that the general rule on conflict of interest is sufficient until a complaint is received. These same bodies then assert that, in the absence of a specific rule, the general rule is insufficient and as a consequence they are unable to act. The Victorian and NSW professions are passing off their “will not” as “cannot”.

That the profession would prefer not to have to deal with such an issue does not excuse its lack of action if the profession expects to retain community respect. There should be no need for a specific rule prohibiting sex with clients. It should be understood without saying that such conduct is unprofessional. However, if the profession wishes to assert that such conduct is not unprofessional then there is a need for such a specific rule.

The consequence of the profession seeking to ignore the problem is that an external solution will be imposed upon it and no amount of bleating about self-regulation by the profession will stave off such a remedy after its necessity has been determined.

History records that such imposed external solutions are usually more onerous than those required by internal self-regulation. The profession cannot complain about the community not permitting self-regulation when the profession demonstrates a reluctance to self-regulate.

The profession must decide whether it wishes to lead, or is content to be forcibly prodded into compliance with professional standards and community expectations.

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