

COMMITTEE: Ethics Committee

DATE: May 7, 2009

6. CHAPTER 1, RULE 4(3): WHAT KINDS OF MISTAKES ARE SLIPS WITHIN THE RULE

The Committee reviewed Rule 4(3) and was of the view that the following examples are situations that could be considered slips by a lawyer:

- 1) Lawyer A must send a sum of money to Lawyer B. The amount is based on a number of factors on which the lawyers agree, but the final sum requires Lawyer A to calculate the amounts. When the cheque for the funds arrives Lawyer B checks the calculations and finds Lawyer A has miscalculated and sent too much money.
- 2) Lawyer A and Lawyer B agree to settle an amount for \$15,000 payable to Lawyer B's client. Lawyer A sends over a cheque for \$150,000.
- 3) Court orders costs on scale 3 in favour of Lawyer A's client, payable by Lawyer B's client. Lawyer A sends Lawyer B a bill of costs on scale 2.
- 4) In negotiations between two lawyers with respect to a transaction, Lawyer A receives from Lawyer B draft 5 of the agreement between the clients. A clause that Lawyer B emphasized was very important to her client in a previous draft is missing from the latest draft, and does not seem to be covered by other parts of the agreement.

The Committee was of the view the following examples do not amount to slips and do not trigger any obligation under the rule:

- a) Lawyer A acts for a plaintiff with several causes of action against Lawyer B's client. Lawyer A pleads some causes of action but neglects to plead an important one.
- b) Lawyer A submits a bill of costs for payment by Lawyer B's client at a lower scale than what Lawyer B is satisfied Lawyer A's client is entitled to, but the Court has made no order in relation to a scale.
- c) Lawyer A states in a conversation with Lawyer B that she will be issuing a writ against Lawyer B's client well within the limitation period which she states is two years. In fact, Lawyer B knows the limitation period is shorter than that stated by Lawyer A, but Lawyer B has made no comment himself on what the limitation period is.

The Committee emphasized that these are examples only and must be considered with caution, since real facts could lead to a different result.

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