



Short Minutes Episode 57 - Transcript

A Judge's view of file notes

Every Lawcover presentation or workshop stresses the importance of making contemporaneous and comprehensive file notes of advice provided to your clients. It is extremely difficult for Lawcover to defend solicitors without proper file notes in many situations.

The comments of a Judge in an action defended by Lawcover are instructive as to how the court will treat the uncorroborated evidence of a solicitor when that evidence conflicts with that of the solicitor's client.

In that case the solicitor acted for both the vendor and the purchaser of a property. The valuation evidence clearly established that the property was being sold at an overvalued price.

There were a number of aspects of the evidence where the solicitor and client were in direct conflict. In particular:

- Whether the solicitor informed the client that the vendor was a company wholly owned by the solicitor's wife
- Whether the solicitor informed the client of the purchase price and that the solicitor had previously acted on the purchase of the property
- The extent to which the solicitor introduced the client to the property and encouraged the client to purchase the property
- Whether the solicitor advised the client not to obtain a strata report

Lawcover could only succeed if the solicitor's evidence was believed but the solicitor did not have any file notes of the conversations.

In his judgment in favour of the client Justice Rein said:

"When important advice is given orally by a legal practitioner a failure to note that advice by means of file note or to follow up that advice with a letter is such as to induce doubt whether the advice was given at all"

File notes can be done in any number of ways be it handwritten, typed or voice recorded. They should always be contemporaneous, comprehensive and legible.

It doesn't take a lot of time and its time well spent.

I'm Malcolm Heath

[Lawcover file note template](#)

[Sewell v Zelden \[2010\] NSWSC 1180](#)