



ETHICS COMMITTEE BULLETIN

JUDICIAL OFFICERS AND SOCIAL EVENTS

1. The Ethics Committee publishes this bulletin as a reminder to counsel about the limits on permissible social interactions with judicial officers.
2. Although the bulletin is prompted by incidents that have recently come to the attention of the Committee, it is also timely, having regard to a recent decision of the High Court. Members of counsel may already be familiar with the judgment given on 6 October 2021 in *Charistead v. Charistead* [2021] HCA 29, (2021) 393 ALR 389. A link to the judgment and a summary of relevant passages is set out in the Annexure to this bulletin.
3. It is ultimately the issue of public perception that is key to the propriety of social contact between a member of counsel and a judge seized of a matter in which counsel is to appear, is appearing, or in respect of which a ruling or judgment is reserved.
4. One obvious example of social interaction that should be avoided is a private social event where it is known that a Judge seized of counsel's matter will attend. It matters not whether that event occurs in a private home, a restaurant or at the Essoign Club – the authorities make plain that what is relevant is the perception of the "fair-minded lay observer". Of course, the fair-minded lay observer is a hypothetical one; the fact no such person will be physically present is irrelevant.
5. Attention is also drawn to Rule 8(c) of the *Legal Profession Uniform Conduct (Barristers) Rules 2015*. It provides:

A barrister must not engage in conduct which is:

...

- (c) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.

6. Determining whether to attend a particular social occasion is appropriate is a matter for the individual barrister. However, members of counsel are reminded that they each bear personal responsibility for avoiding social engagements that might cause difficulty. Whether or not a particular event should be attended, or should proceed at all, is something that counsel should consider prior to the occasion, rather than burdening a judicial officer at the event in question with the decision-making responsibility.
7. As always, the Committee is available to give guidance to assist.

Lisa Hannon QC
Chair
Ethics Committee

Bulletin 1 of 2022



ANNEXURE TO BULLETIN 1 OF 2022

Charisteas v. Charisteas [2021] HCA 29, (2021) 393 ALR 389.

1. A link to the judgment is found [here](#)
2. *Charisteas* concerned the making of property settlement orders in a long-running Family Court proceeding. The eventual trial judge determined a substantive interlocutory issue in February 2015, and in March 2016 listed the matter for a trial commencing in August 2016. Evidence was led over two weeks at that time, and the matter resumed for submissions in September 2016. Judgment was delivered in February 2018.
3. On appeal to the Full Court, evidence was led that the wife's barrister:

... had met with the judge for a drink or coffee on approximately four occasions between 22 March 2016 and 12 February 2018; had spoken with the judge by telephone on five occasions between January 2017 and August 2017; had exchanged "numerous" text messages with the judge between 20 June 2016 and 15 September 2017 (except for a brief hiatus during the evidence stage of the trial); and had exchanged "occasional" text messages with the judge from 15 September 2017 until 12 February 2018.

The barrister concluded by stating that the "communications" with the trial judge did not concern "the substance of the ... case." (at [8]).
4. In setting aside the orders below and remitting the matter for rehearing, the High Court held that a fair-minded lay observer "would reasonably apprehend that the trial judge might not bring an impartial mind to the resolution of the questions his Honour was required to decide", and that there was "a logical and direct connection between the communications and the feared departure from the trial judge deciding the case on its merits." (at [15]). This was not a case where the other parties to the litigation had given informed consent to the communications taking place; such consent had not been sought (at [14]).
5. The factual circumstances in *Charisteas* might be regarded as somewhat extreme. Nevertheless, it is ultimately the public perception that is key to the propriety of social contact between a member of counsel and a judge seized of a matter in which counsel is to appear, is appearing, or in respect of which a ruling or judgment is reserved. As observed by the High Court:

Nothing that was said in the passage in *Magistrates' Court at Lilydale* extracted above, in guidelines or in a leading text on judicial ethics limits the period necessary to avoid communication to after the commencement of the trial (at [16], omitting footnotes);

...

It may be accepted that many judges and lawyers, barristers in particular, may have continuing professional and personal connections. The means by which their contact may be resumed is by a judge making orders and publishing reasons, thereby bringing the litigation to an end ... (at [22]).