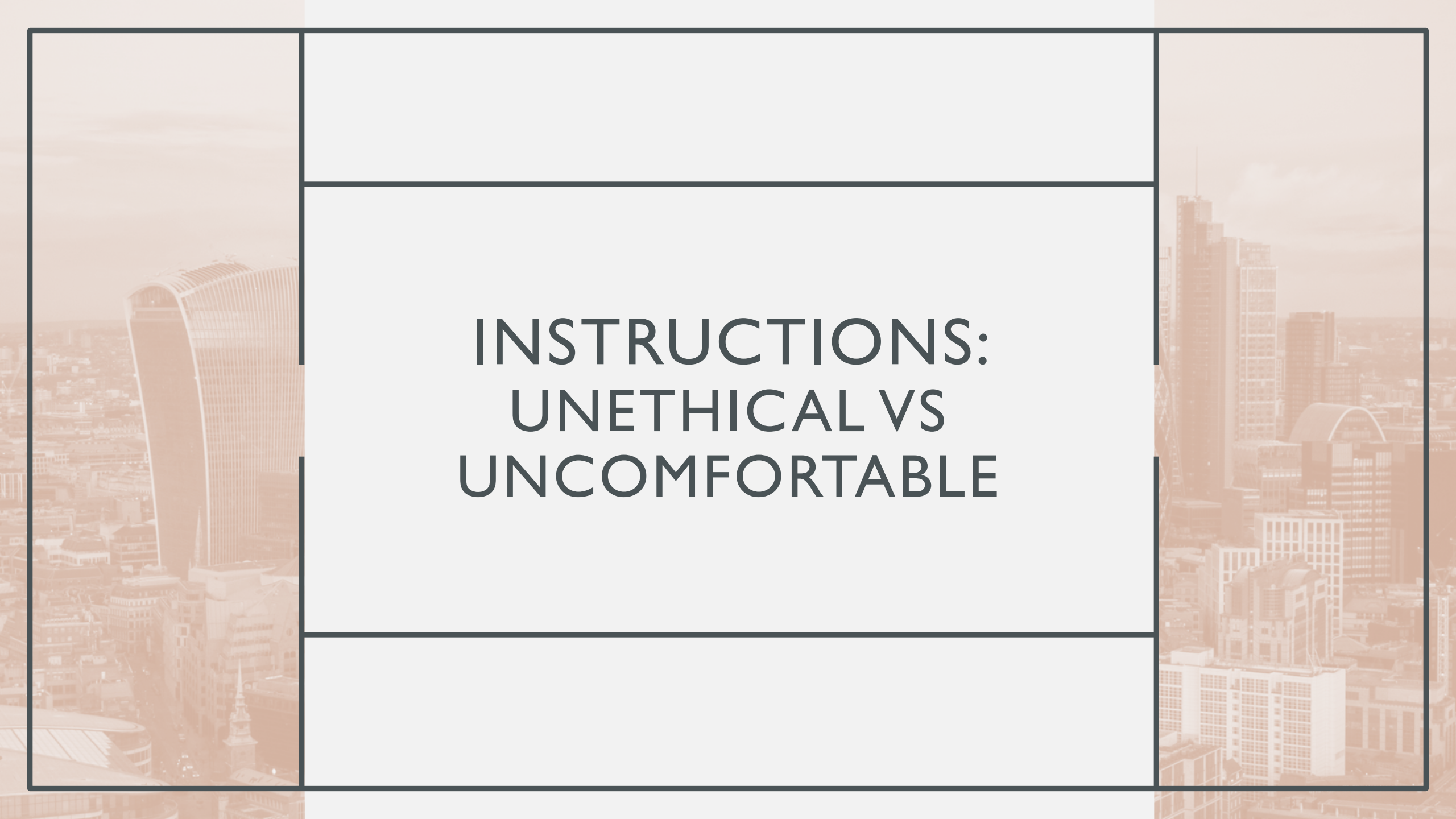


Ethics in the FCFCOA: Recent Warnings for Family Lawyers

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WHITFIELD

2026 FAMILY LAW CONFERENCE - 19 AUGUST

ETHICS IN THE
FCFCOA:
RECENT WARNINGS FOR
FAMILY LAWYERS



INSTRUCTIONS: UNETHICAL VS UNCOMFORTABLE

STRATEGIC
DISAGREEMENT:
CALLING A DAMAGING
WITNESS

The background of the slide features a grayscale photograph of a city skyline, specifically showing several high-rise apartment buildings with many windows. Overlaid on this image is a white grid consisting of several rectangular frames of varying sizes. The text is centered within one of the larger frames in the middle of the grid.

ETHICS IN ACTION: SOME DAY-TO-DAY CHALLENGES

KLIED & SCHNUR [2024] FedCFamC1A 236

Facts:

A barrister appealed personal costs orders made after a final parenting hearing was vacated before it could proceed. He had been retained under the section 102NA family violence cross-examination scheme and the matter had been listed for an eight-day hearing.

At the commencement of the trial, counsel informed the Court that he believed he had only been briefed to cross-examine the father. Further discussion revealed that he had not completed reading the affidavit material, had reviewed only one of the three expert reports, and had accepted another court commitment on the first day of the hearing.

It also emerged that he had not signed the High Court Register of Practitioners and therefore did not have standing to appear in the Federal Circuit and Family Court.

The hearing was vacated, personal costs orders were made against him, and those orders were ultimately upheld on appeal. The Full Court dismissed the appeal and directed that its reasons and transcript be forwarded to the Legal Services Commissioner

DISCLOSURE FAILURES AND ACCOUNTABILITY

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VENTER & VENTER (No 2) [2024] FedCFamC1F 862

Facts:

This judgment arose from a long-running property dispute involving former spouses, adult children, trusts and related corporate entities.

Although the substantive dispute concerned ownership and control of significant assets, the proceedings became dominated by disclosure issues.

In the lead-up to trial, approximately 96,000 documents were disclosed by the wife's legal team, many of which originated from hard drives that had been in existence and, at least partially, accessed for years.

As the hearing progressed, further material emerged, including notebooks, recordings, documents contained in a suitcase and storage containers, and material that potentially attracted legal professional privilege.

Much of the ten-day trial was consumed dealing with disclosure controversies rather than hearing evidence on the substantive claims.

The Court closely examined the disclosure process, the handling of privileged documents, undertakings given regarding compliance with disclosure obligations, and the conduct of the lawyers involved.

Following a detailed costs hearing, indemnity costs orders totalling approximately \$1.7 million were made jointly and severally against counsel and solicitors, together with referrals to professional regulators.

UNSUPPORTED ALLEGATIONS AND ADVOCACY LIMITS

8

LEGAL SERVICES COMMISSIONER V WRENN [2020] QCAT 184

The case arose from family law property proceedings that followed an earlier divorce. Acting for the wife, the barrister advanced allegations that the husband had relied upon false marriage documents and had engaged in fraud, criminal conduct, perjury and attempts to pervert the course of justice.

The allegations stemmed from the wife's belief that documents used to establish the marriage in earlier proceedings were not genuine. The husband responded by producing marriage-related documentation, including what he said was the original marriage certificate.

Importantly, there was already an existing divorce order in which the Federal Circuit Court had found that the marriage had been proved.

Judge Willis repeatedly expressed concern about the seriousness of the allegations being made and the absence of any findings supporting them. After the wife's application failed, the matter was referred to the Bar Association of Queensland and subsequently to the Legal Services Commissioner.

QCAT examined the material that had been available when the allegations were advanced and concluded that there was insufficient evidence to support accusations of fraud or criminality. The Tribunal found that the barrister had engaged in unsatisfactory professional conduct, publicly reprimanded him, imposed mentoring and ethics-related practising certificate conditions, and ordered him to pay costs.



SETTING THE RECORD STRAIGHT

NOT SO “FEARLES”
ADVOCACY

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THE ROAD TO ETHICAL
TROUBLE IS PAVED WITH
GOOD INTENTIONS

TITUS & KSENIA [2026] FedCFamC1F 104

Facts:

The judgment arose during parenting proceedings in which the father was legally aided. Difficulties emerged at a case management hearing when a junior solicitor attempted to appear on behalf of the father.

The solicitor held a restricted practising certificate, had only recently been admitted to practice, and was not a member of the Legal Services Commission's family law panel. Questions were raised about whether he was entitled to undertake the legally aided family law work at all.

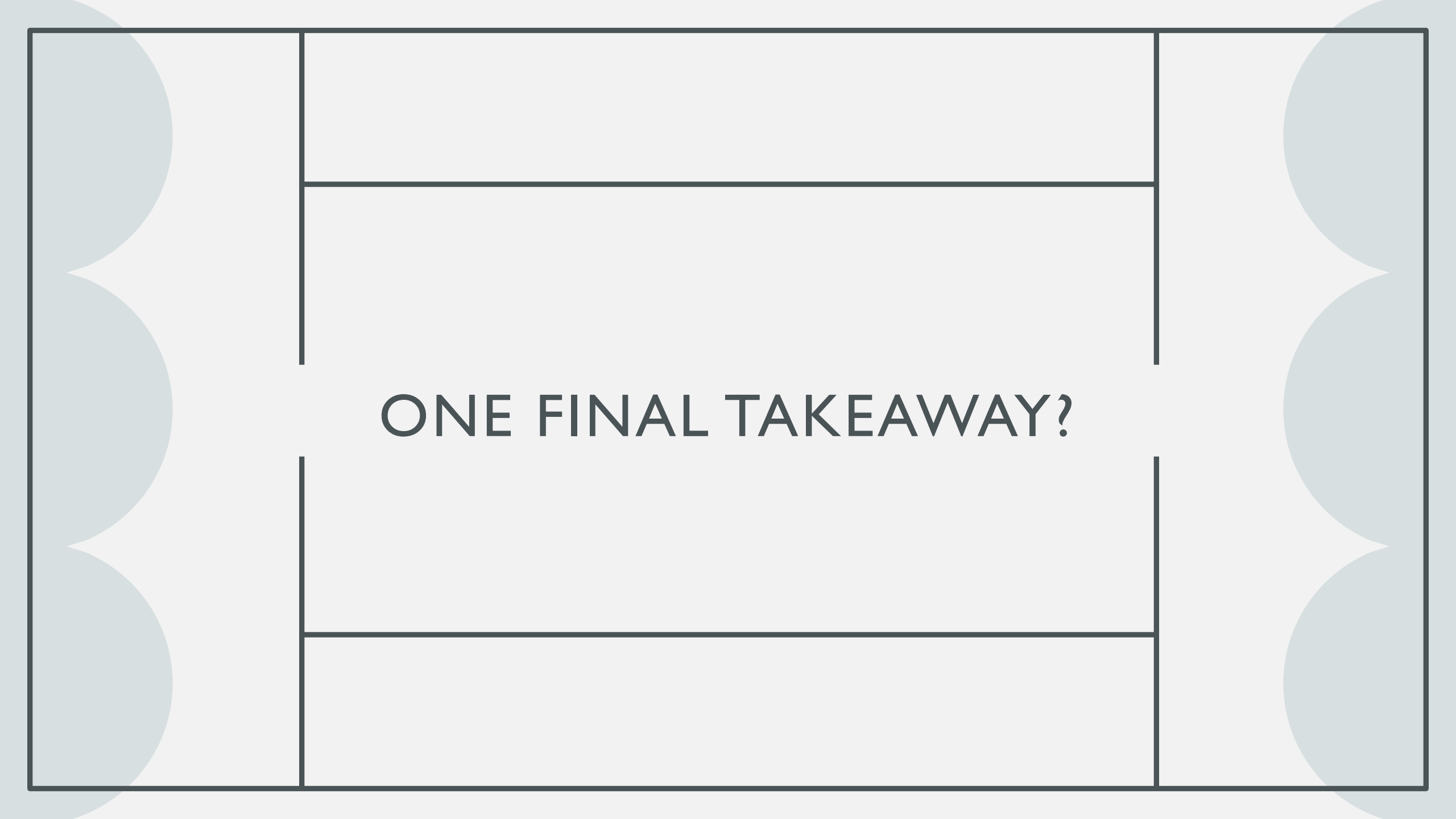
As a result, the hearing could not proceed and was adjourned. The Court subsequently conducted a show-cause process focusing on the conduct of the father's supervising solicitor.

Evidence revealed that junior practitioners had been routinely authorised to undertake family law appearances under the principal solicitor's supervision. The Court concluded that the junior solicitor was not entitled to undertake the work in question and was critical of the supervision arrangements that had been adopted.

The principal solicitor was ordered to personally pay the costs thrown away by the adjournment and was referred to the South Australian Legal Profession Conduct Commissioner and the Director of the Legal Services Commission for further consideration.



EARLY WARNINGS FOR YOUNG LAWYERS?



ONE FINAL TAKEAWAY?