

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : VOCATIONAL REGULATION

ACT : LEGAL PRACTICE ACT 2003 (WA)

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE and GAUNT [2005] WASAT 152

MEMBER : JUDGE J CHANEY (DEPUTY PRESIDENT)
MS J STANTON (SENIOR SESSIONAL MEMBER)
MS A LISCIA (SENIOR SESSIONAL MEMBER)

HEARD : 2 JUNE 2005

DELIVERED : 25 JULY 2005

FILE NO/S : VR 4 of 2004

BETWEEN : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE
Applicant

AND

SALLY ANNE GAUNT
Respondent

Catchwords:

Professions - Legal Practitioners - Unprofessional conduct - Threats -
Appropriate penalty
Practice - Consent order - Proposed orders unacceptable to Tribunal -
Role of Tribunal in disciplinary matters

Legislation:

Inheritance (Family and Dependants Provisions) Act 1972 (WA)

Legal Practice Act 2003 (WA)

Result:

Practitioner reprimanded, fined and ordered to pay costs

Category: B

Representation:

Counsel:

Applicant : Ms KA Williams
Respondent : Mr PR MacMillan

Solicitors:

Applicant : Legal Practitioners Complaints Committee
Respondent : Mr PR MacMillan

Case(s) referred to in decision(s):

Nil

Case(s) also cited:

Nil

REASONS FOR DECISION OF THE TRIBUNAL:

Overview

1 On 16 June 2004, the applicant referred a complaint of unprofessional conduct by the practitioner to the Legal Practitioners Disciplinary Tribunal. The conduct complained of was the making of improper threats to the client of another legal practitioner, Mr G. In December 2004, the practitioner provided her answer to the complaint by statutory declaration in which she admitted writing the letter, and gave the background and some explanation for its content.

2 Upon amendment to the *Legal Practice Act 2003* (WA), which came into effect on 1 January 2005, the functions of the Legal Practitioners Disciplinary Tribunal were transferred to this Tribunal. Upon receipt of the reference by this Tribunal, a directions hearing was set down, and directions were made for setting the matter down for hearing on 2 June 2005. Two days before the matter was due to be heard, a minute of consent orders was lodged with the Tribunal. The minute recited the relevant facts, declared a finding of unprofessional conduct in sending a letter to a solicitor containing improper threats directed at the solicitor's client, provided for the payment of a fine of \$1000 within 42 days, and provided for payment of the Complaints Committee's legal costs of \$750 within 42 days. Finally, the consent orders provided for publication of the decision by the Tribunal.

3 Having read the relevant correspondence, and considered the practitioner's answer to the reference, the Tribunal members were concerned as to whether the proposed consent orders reflected an appropriate outcome to the complaint. At the hearing that concern was expressed to counsel for each of the parties. Submissions were then made by each counsel, in relation to that concern. Having heard those submissions, the Tribunal members remained of the view that the proposed outcome did not adequately reflect the seriousness of the conduct. Rather, the Tribunal considered that the orders made should convey to the practitioner that the conduct was unacceptable and that like conduct in future is likely to be treated very seriously. Although a fine is capable of conveying that message, the Tribunal considered that a reprimand should also be administered. After taking instructions, counsel for the practitioner advised the Tribunal that the addition of a reprimand to the proposed consent orders would not be opposed by the practitioner.

Orders were made accordingly, and the Tribunal indicated that it would provide reasons to explain the position which it adopted. These are those reasons.

The conduct the subject of complaint

4 The essential facts which founded the finding of unprofessional conduct were set out in the particulars of complaint, and in the consent order filed. The facts, admitted by the practitioner, were that she acted for the executrix of an estate of a deceased person. Mr G represented a client in his claim against the estate of the deceased person under the *Inheritance (Family and Dependants Provision) Act 1972 (WA)* and as a creditor of the estate. On 9 May 2003, the practitioner wrote to Mr G. The letter contained *inter alia*:

- (a) various allegations in relation to the conduct of Mr G's client including allegations of abuse, marital infidelity and attending prostitutes;
- (b) immediately following these allegations the sentence "I have photographs in my possession depicting some of his frolics and I suggest that you advise your client to drop this matter and I enclose a formal retraction for him to sign and return to me"; and
- (c) a final paragraph which said: "I enclose a document for your client to sign being a relinquishment of this malicious and greedy pursuit. Please return signed acknowledgment and photos will be returned to you".

5 The letter, the subject of complaint, was a response to two letters from Mr G. Those letters were couched in entirely appropriate terms. As recited above, the practitioner's response of 9 May 2003 contained quite inappropriate and improper threats. The making of such threats is obviously serious, but the position is aggravated by the context in which they appeared. The letter was three pages long. It contained expressions such as "you say my client consented to this? My brow beaten, dominated client – what happened to her defender?", "I am advised by my client that he has a dollar sign for a heart, that money is his god", and "I enclose a police certificate as indication of (the deceased client's) positive history of honesty and request a police certificate from your client or a certificate of convictions to determine his". The letter contained allegation of sexual misconduct on the part of Mr G's client, couched in emotive and inappropriate terms.

6 In her answer to the allegations, the practitioner explained the purpose of the derogatory remarks was to demonstrate that Mr G's client's character or conduct was such as to lead a court to disentitle him to the benefit of an order under the *Inheritance (Family and Dependants Provisions) Act 1972*. The practitioner accepted that the letter was inappropriate, and said that it was written at a time when she was under stress and had been unwell. She acknowledged having been overborne by the executor of the estate and said that she had adopted that person's language in the letter of 9 May 2003. It may be said in the practitioner's defence that allegations concerning the conduct of Mr G's client could have been relevant to his claim under the *Inheritance (Family and Dependants Provisions) Act 1972*. The tone of the letter, and the language used, was, however, wholly inappropriate in a letter from a legal practitioner. It demonstrates a lack of understanding of the proper role of a lawyer. The threats which the letter contained, in the context of the letter as a whole, amounted to conduct falling well short of the standards of conduct expected of legal practitioners.

7 The proposal contained in the original minute of consent orders, namely for the payment of a fine of \$1000 and costs of \$750, with publication of the decision, did not, in our view, adequately fulfil the proper objectives of penalties for professional misconduct. We were told from the bar table, and we accept, that the practitioner's financial position was such that the pecuniary penalty proposed would amount to a significant burden for her. The penalty imposed in any particular case of unprofessional conduct will always be heavily dependent upon the particular circumstances of each case. In this case, we took the view that imposing a fine and order for costs, without more, would not meet the need to demonstrate to the practitioner, other legal practitioners and the public generally that this type of conduct by a legal practitioner is unacceptable. Nor would it be a sufficient deterrent to such conduct in the future. The proper administration of the law is heavily dependent upon practitioners maintaining a proper level of objectivity and balance in their communications in relation to matters upon which they are acting. The resort to intemperate threats is inclined to inflame rather than resolve disputes and hinder the proper administration of the law.

8 It was for that reason that we considered that, in addition to an order for the payment of a fine and costs, the practitioner should be reprimanded.

9 The fact that the Tribunal chose not to accept the orders that the parties sought by consent should not be seen as in any sense a disapproval

of a process by which parties, in vocational regulation matters attempt to reach agreement as to an appropriate outcome. Indeed, by the use of mediation, the Tribunal frequently attempts to achieve that very situation. But consent orders in such matters are always subject to the requirement that the Tribunal be satisfied that the public interest in the appropriate disposition of professional disciplinary matters is met in each case. Usually where a regulatory board, which itself has a public function to perform, agrees with the practitioner concerned as to an appropriate outcome, it is likely that the Tribunal will, having considered the relevant public interest considerations, reach the same conclusion. In this case, when the Tribunal's concerns were raised with the parties, on further consideration, they were prepared to consent to the outcome suggested by the Tribunal. The process of negotiation between the complaints committee and the practitioner thus greatly assisted in the efficient and appropriate disposition of the matter in an efficient and cost effective way.

I certify that this and the preceding [9] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

JUDGE J CHANEY (DEPUTY PRESIDENT)