[2010] WASAT 135

JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
STREAM	**:**	VOCATIONAL REGULATION
ACT	**:**	LEGAL PROFESSION ACT 2008 (WA)
CITATION	**:**	LEGAL PROFESSION COMPLAINTS COMMITTEE and SEGLER [2010] WASAT 135
MEMBER	**:**	JUDGE J ECKERT (DEPUTY PRESIDENT) MR D R PARRY (SENIOR MEMBER) MR G POTTER (SENIOR SESSIONAL MEMBER)
HEARD	**:**	21 APRIL 2010 AND 23 JUNE 2010
DELIVERED	**:**	30 SEPTEMBER 2010
FILE NO/S	**:**	VR 199 of 2009
BETWEEN	**:**	LEGAL PROFESSION COMPLAINTS COMMITTEE Applicant AND MARTIN LEE SEGLER Respondent

Catchwords:

Legal practitioners - Professional misconduct - Unsatisfactory professional conduct - Suing for recovery of disbursement (counsel's fees) without serving bill for disbursement - Letter containing improper threats and inappropriate and intimidating demands - Knowingly misleading the court - Practitioner sought violence restraining order against client - Practitioner told court that client had a criminal record when client did not have a criminal record - Whether honest and reasonable belief - Failure to lodge statement of defence - Failure to notify client that practitioner had ceased to act for client

Legislation:

Criminal Code Act 1995 (Cth), s 474.17(1)
Legal Practice Act 2003 (WA), s 230, s 230(1), s 232(3), s 237(1)
Legal Profession Act 2008 (WA), s 403(1), s 404, s 438(1), s 438(2), s 442, s 622(1), s 622(2)
State Administrative Tribunal Act 2004 (WA), s 60(2), s 87(2)

Result:

Practitioner guilty of professional misconduct and unsatisfactory professional conduct

Category: B

Representation:

Counsel:

Applicant	:	Mr M Herron with Ms P Le Miere
Respondent	:	Self-represented

Solicitors:

Applicant	:	Law Complaints Officer
Respondent	:	Self-represented

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

Kyle v Legal Practitioners Complaints Committee [1999] WASCA 115; (1999) 21 WAR 56
Legal Practitioners Complaints Committee and Segler [2009] WASAT 205
Legal Practitioners Complaints Committee and Segler [2009] WASAT 91
Legal Practitioners Complaints Committee v Dixon [2006] WASCA 27
Vogt v Legal Practitioners Complaints Committee [2009] WASCA 202

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 The Legal Profession Complaints Committee sought a finding by the Tribunal that a legal practitioner, Mr Martin Lee Segler, engaged in professional misconduct.

2 The Tribunal determined that Mr Segler is guilty of unsatisfactory professional conduct:

- by suing his client, DC, for recovery of a disbursement (counsel's fees) without having served the client with a bill for the disbursement and failing to discontinue those proceedings, contrary to s 230(1) of the *Legal Practice Act 2003* (WA);

- by failing to comply with a written request dated 18 January 2008 from DC's new solicitor to lodge four bills of costs, dated 10 January 2008 with a taxing officer, contrary to s 237(1) of the *Legal Practice Act 2003*; and

- by failing to advise his client, NC, that he had received an itemised bill of costs and to seek NC's instructions as to whether Mr Segler should serve on the firm that had issued the bill of costs, a written notice of intention to have the bill taxed within 30 days of service of the itemised bill, that is, on or before 5 October 2007.

3 The Tribunal also determined that Mr Segler is guilty of professional misconduct:

- by sending a letter containing improper threats and inappropriate and threatening demands to his client, DC;

- in order to advance his own interests, by knowingly and intentionally misleading Magistrate Musk on 11 January 2008 during the hearing of an ex parte application filed by and on behalf of Mr Segler for an interim violence restraining order against DC by asserting that DC had a criminal record when that was not the case; and

- by failing to file a statement of defence by 27 December 2007 on behalf of his client, NC, and by

> failing to inform NC that he had not filed a statement of defence by 27 December 2007, or at all, failing to inform NC that his former solicitors were entitled to apply for default judgment without further notice, and failing to serve a copy of the notice of change of address for service on NC or to inform him that he had ceased to act for him.

4 The Tribunal required the parties to file written submissions in relation to the question of penalty.

Introduction

5 The Legal Profession Complaints Committee (LPCC) sought a finding by the Tribunal, pursuant to s 438(1) of the *Legal Profession Act 2008* (WA) (LP Act), that a legal practitioner, Mr Martin Lee Segler (practitioner), engaged in professional misconduct. The LPCC also sought consequential orders pursuant to s 438(2) of the LP Act and an order for costs pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA) (SAT Act).

6 Section 438(1) of the LP Act confers jurisdiction on the Tribunal to make a finding that an Australian legal practitioner has engaged in 'unsatisfactory professional conduct' or 'professional misconduct'. Section 442 of the LP Act enables the Tribunal to find a practitioner guilty of unsatisfactory professional conduct, even though the referral by the LPCC alleged solely professional misconduct.

7 The LP Act contains inclusive, rather than exhaustive, definitions of the terms 'unsatisfactory professional conduct' and 'professional misconduct'. As the Tribunal held in a previous decision concerning allegations of professional misconduct against the practitioner, these definitions are 'examples of conduct which will constitute "professional misconduct" and are not intended to be exhaustive of what constitutes "professional misconduct"': ***Legal Practitioners Complaints Committee and Segler*** [2009] WASAT 205 at [97]. Section 402 of the LP Act states as follows:

> For the purposes of this Act -
>
> ***unsatisfactory professional conduct*** includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

8 Section 403(1) of the LP Act states:

> For the purposes of this Act -
>
> ***professional misconduct*** includes -
>
> (a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
>
> (b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

9 The LPCC alleged that the practitioner was guilty of professional misconduct as follows:

> (a) [between 7 January 2008 and June 2009] by contravening the Legal Practice Act 2003 (***the Act***):
>
> (i) by suing [DC] for the recovery of disbursements without having served upon [DC] a bill for the disbursements and failing to discontinue these proceedings, contrary to section 230 of the Act [Ground 1]; [and]
>
> (ii) by failing to comply with a written request dated 18 January 2008 from [DC]'s solicitor to lodge four bills of costs dated 10 January 2008 with a taxing officer, contrary to s 237(1) of the Act [Ground 2];
>
> (b) [between 7 January 2008 and June 2009] by sending a letter containing threats and inappropriate and intimidating demands to [DC] [Ground 3][;]
>
> (c) [between 7 January 2008 and June 2009] in order to advance his own interests by intentionally or alternatively recklessly deceiving and misleading Magistrate Musk on 11 January 2008 during the hearing of an ex-parte application filed by and on behalf of the practitioner for an interim violence restraining order against [DC] by asserting that [DC] had a criminal record when that was not the case [Ground 4][; and]
>
> [d] on the grounds of:
>
> (i) neglect in connection with the practice of law;

> (ii) conduct occurring in connection with the practice of law involving a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner; or
>
> (iii) both of the conduct referred to in (i) and (ii);
>
> between September 2007 and January 2008 in the conduct of instructions from his client [NC] concerning payment of the legal fees of Mendelawitz Morton [Ground 5].

10 While the conduct alleged by the LPCC occurred or substantially occurred prior to the commencement of the LP Act on 1 March 2009, as a result of s 622(1) of the LP Act, Pt 13 of the LP Act, relating to complaints and discipline, applies whether the conduct occurred before or after the commencement of the LP Act. Furthermore, s 622(2) of the LP Act states that Pt 13 of the LP Act applies to conduct consisting of a contravention of the *Legal Practice Act 2003* (WA) (2003 Act) as if the conduct consisted of a contravention of the LP Act.

11 We will firstly set out the factual background in relation to Grounds 1, 2, 3 and 4, before addressing each of those Grounds in turn. We will then consider Ground 5, setting out the relevant factual background and our findings in relation to Ground 5.

Factual background in relation to Grounds 1, 2, 3 and 4

12 In October 2007, DC (first client) was sued for legal fees by his former solicitors, Mendelawitz Morton (MM), in the Magistrates Court (Civil). In November 2007, the first client instructed the practitioner to defend the action. The practitioner advised the first client to apply to strike out the claim on the basis that it disclosed no arguable cause of action. The first client accepted the practitioner's advice.

13 In early December 2007, the practitioner advised the first client that as the strike out application would be heard while the practitioner was overseas, the practitioner would need to engage counsel, Mr Phillip Laskaris, to appear on the application in his absence and Mr Laskaris' fee would be $2,000. The first client agreed that Mr Laskaris should be briefed to appear and agreed to his fee of $2,000.

14 The practitioner was on holiday overseas between early December 2007 and early January 2008. On 6 December 2007, Mr Laskaris issued a memorandum of counsel fees to the practitioner for $2,000 as 'agreed fee on brief'. On 17 December 2007, Mr Laskaris

appeared on behalf of the first client on the strike out application in the Perth Magistrates Court. The Court dismissed the strike out application. On 18 December 2007, Mr Laskaris informed the first client by telephone of the result. However, neither Mr Laskaris nor the practitioner reported to the first client about the hearing of the strike out application in writing or sent a copy of Mr Laskaris' memorandum of counsel fees to the first client.

15 The practitioner gave evidence that the first client undertook to pay Mr Laskaris' fee by electronic transfer to the practitioner's general bank account while the practitioner was overseas. The first client denied that he had agreed to this arrangement. The first client said that he had always previously paid the practitioner by personal cheque delivered to the practitioner's office. The first client said that he did not know the practitioner's bank account details and that, as the practitioner was a sole practitioner without a secretary, he would not have taken a cheque to the practitioner's office in the practitioner's absence.

16 Having observed the evidence of both the practitioner and the first client, including the cross-examination of the first client by the practitioner, we accept the first client's evidence and do not accept the practitioner's evidence on this point. The fact that the first client had always previously paid legal fees by personal cheque delivered to the practitioner's office and that the first client was not aware of the practitioner's bank account details (which evidence was not questioned by the practitioner) strongly indicates that the first client did not undertake to pay Mr Laskaris' fee by electronic transfer to the practitioner's general account while the practitioner was overseas.

17 On 8 January 2008, following his return to Perth, the practitioner sent a letter by facsimile to the first client as follows:

> Notwithstanding your undertaking to me prior to my departure for a leave of absence overseas, that you would attend to the payment to me of $2,000 that I disbursed to Mr Laskaris of Counsel on 6 December 2007 so as to ensure you received appropriate legal representation during my absence, I note with concern that even as late as today's date you have failed, refused or neglected to make such reimbursement to me as you had promised.
>
> As you are well aware, this legal practice does not extend credit facilities to its clients, nor are barristers briefed without monies at hand. In these circumstances, please take notice that **I now require immediate electronic payment of this disbursement by 5 pm Wednesday 9 January 2008** to the following [bank] account:

> [Bank account details not reproduced]
>
> **Please take further notice that in the event that such full reimbursement is not effected within the time prescribed, albeit limited, I will cease to act for you in relation to all pending litigation and proceed to recover in a court of competent jurisdiction, those monies paid on your behalf, interest in relation thereto and my costs of such action.** (Emphasis in bold added.)

18 On 10 January 2008, the first client responded to the practitioner by facsimile as follows:

> MARTIN, COULD YOU PLEASE SEND ME THE OUTCOME FROM THE MATTER MR LASKARIS ATTENDED THE COURT FOR ME RE MENDELAWITZ MORTON SOLICITORS.
>
> I ALSO REQUIRE THE APPEAL FILE FOR BODDINGTON AND THE DETAILS OF THAT SHOULD I LOSE THE APPEAL I HAVE AN ACTION AGAINST MENDELAWITZ MORTON.
>
> PLUS I WANT A COPY OF ALL MY FILES AND A DETAILED ACCOUNT OF HOW MUCH I HAVE PAID YOU TO DATE.
>
> **THE OUTSTANDING AMOUNT OF $2,000 WILL BE PAID AS SOON AS THE ABOVE IS ADDRESSED AND FILES GIVEN TO MY SOLICITORS** MR MURRAY WHEATER AT BLAKE DAWSON [Contact details not reproduced].
>
> MARTIN, **I REQUEST YOU ACT PROMPTLY SO I CAN PAY YOU LIKEWISE**. I AM NOT GETTING YOUR FEES TAXED BUT I REQUIRE A COPY OF MR LASKARIS['] BILL OF $2,000. AND CONFIRMATION IT WAS PAID BY YOU FOR WORK DONE FOR ME ONLY. (Emphasis in bold added.)

19 The practitioner responded to the first client's facsimile by letter dated 10 January 2008. He sent that letter by facsimile at 8 pm on 10 January and he also attached a report from Mr Laskaris dated 19 December 2007 together with a memorandum of counsel fees from Mr Laskaris. The practitioner also enclosed tax invoices of professional fees dated 10 January 2008 in relation to the Magistrates Court proceeding brought by MM against the first client and three Supreme Court proceedings, totalling $14,477.30. The letter stated:

> Upon my receipt of full payment, and not before, of these additional accounts which total $14,477.30 within seven days I will then make available to Mr Wheater of Blake Dawson Lawyers, the papers related to those files. In the interim I maintain a solicitor's lien in relation thereto.

20 In relation to Mr Laskaris' fee of $2,000, the practitioner stated as follows:

> Unless reimbursement of such is now effected to me as earlier demanded, I will proceed, on Monday 14 January 2008, to sue you for in respect of that disbursement. **Legal proceedings in that regard would culminate in an interlocutory judgment as against you in respect of which I would then issue a Bankruptcy Notice.**
>
> **Your failure to comply with that Bankruptcy Notice would inevitably result in my Creditor's Petition for your further sequestration**, on this occasion for a period not less than five years. (Emphasis in bold added.)

21 When the first client read the practitioner's letter late on 10 January 2008, he telephoned the practitioner on a number of occasions. The first client gave evidence that 'all I wanted to do was talk to' the practitioner, but the practitioner 'kept hanging up on me'. On a number of occasions, the first client left grossly abusive and threatening messages on the practitioner's voicemail. Among other things, the first client called the practitioner a 'Jewish cunt' and threatened to 'fuck [him] over'. The first client referred to the practitioner's wife as, among other things, a 'slut' or 'whore'. The first client also said that he intended to go to the practitioner's office to retrieve his files.

22 The practitioner and his wife heard the abusive and threatening messages left by the first client while they were driving home. They drove directly to the Fremantle Police Station and reported the incident to the Police. The Police advised the practitioner to seek an interim violence restraining order against the first client. The practitioner obtained bodyguard services from a security firm.

23 The first client was subsequently prosecuted in relation to the telephone messages. On 12 October 2009, the first client was convicted of having used a carriage service in a way that is menacing, harassing or offensive, contrary to s 474.17(1) of the *Criminal Code Act 1995* (Cth), and fined $1,000.

24 On 11 January 2008, the practitioner made an ex parte application in the Fremantle Magistrates Court for an interim violence restraining order against the first client. The application came before Magistrate Musk. The transcript of the hearing contains the following, the accuracy of which was not disputed by the practitioner:

> SEGLER, MR: Martin Lee Segler, your Honour. I'm a legal practitioner …

HER HONOUR: You're seeking this restraining order against [DC], have you ever sought one against him before?

SEGLER, MR: No.

HER HONOUR: And you say he was a client of your legal practice?

SEGLER, MR: Yes. I've acted for him in civil and criminal jurisdictions over the criminal, civil and tribunal jurisdictions – over the past seven years.

HER HONOUR: Oh, so you've known him a while in that capacity?

SEGLER, MR: Yes - but [DC] is known, as I've indicated in the papers, to have a violent predisposition. I've appeared for him and with him before such things as the Australian Crime Commission, and as such I am still prohibited, or inhibited, inasmuch as what I can say to you about his criminal activities.

HER HONOUR: (indistinct).

SEGLER, MR: He - - -

HER HONOUR: Just (indistinct) I must (indistinct). **Does he have a criminal record?**

SEGLER, MR: **Yes.**

HER HONOUR: You've known (indistinct) for seven years - - -

SEGLER, MR: Seven years.

HER HONOUR: - - - (indistinct) and you say that he's been known to have a violent predisposition.

SEGLER, MR: Yes. He has – he has - - -

HER HONOUR: And he's threatened to, 'Fuck you over'.

SEGLER, MR: Yes.

HER HONOUR: Well that's enough to grant this order as far as I'm concerned. There will be a complete and total ban on any form of contact or communication. … (Emphasis in bold added.)

25 As at the date of that hearing, being 11 January 2008, the first client did not have a criminal record.

26 On 14 January 2008, the practitioner issued a General Procedure Claim in the Magistrates Court (Civil) (summons) against the first client for Mr Laskaris' fee. However, the practitioner did not, at that time or subsequently, serve the summons on the first client.

27 On 18 January 2008, Hall and Hall Lawyers (HH) wrote three letters to the practitioner on behalf of the first client. In the first letter, HH responded to the practitioner's letter of 10 January 2008 including as follows:

> In relation to your threat to issue proceedings we remind you that you have not served an appropriate bill on [DC] as required by section 230(1) of the [2003 Act]. While it is open to you to serve a lump sum bill, if you do so an itemised bill will subsequently be requested. We will accept service of any bill on behalf of [DC].

28 In the second letter, HH required the practitioner 'to submit each of the [four bills enclosed with the practitioner's faxed letter of 10 January 2008] to a taxing officer of the Supreme Court for review of the amount of costs charged therein pursuant to s 232 of the [2003 Act]'.

29 In the third letter, HH advised:

> [DC] is prepared to pay $14,477.30 to our trust account forthwith and to irrevocably instruct us not to pay that sum out other than in accordance with the resolution of the dispute between him and you as to your accounts whether that be by agreement or otherwise.
>
> Please advise if you are willing to hand over [DC]'s files on that basis.

30 On 1 February 2008, the practitioner sent a facsimile letter in response to HH's 18 January letters. The practitioner enclosed 'an amended tax invoice of professional fees to supplant that dated 10 January 2008' in relation to the Magistrates Court proceedings brought by MM against the first client. The 'amended tax invoice of professional fees' included Mr Laskaris' fee of $2,000. The practitioner said that he 'will lodge a Bill for Solicitor and Client Taxation in the terms' of the amended tax invoice. The practitioner also said that he 'will lodge Bills for Solicitor and Client Taxation [in relation to the three Supreme Court proceedings] as requested'. The practitioner said that '[t]hese Bills will be filed next week'. However, the practitioner failed to file the bills with a taxing officer the following week or at any subsequent time.

31 On 18 February 2008, HH wrote to the practitioner enclosing the first client's cheque for $2,000 in respect of Mr Laskaris' fee.

32 On 18 March 2008, HH received a cheque from the first client for $14,477.30 'to be held by Hall and Hall as stakeholder pending resolution of dispute as to fees due to [the practitioner] as per letter Hall and Hall to [the practitioner] dated 18 January 2008'. HH provided a copy of the trust account receipt to the practitioner.

33 On 1 April 2008, HH wrote to the practitioner as follows:

> We note that despite not having served an appropriate bill on [DC] as required by section 230(1) of the [2003 Act] you have issued the [summons] but have had it withdrawn from being served.
>
> The issue of the [summons] has been noted by various credit agencies and may affect our client's credit.
>
> As there is no substance in your claim we suggest that you immediately discontinue the whole of the claim pursuant to Rule 29 and advise us accordingly.

34 On 18 April 2008, HH wrote to the practitioner as follows:

> By letter of 18 January 2008 I advised you that, in exchange for the release of his files, [DC] was prepared to pay $14,477.30 to our trust account pending the determination of your claimed legal costs. You agreed, the files (such as they were) were released and the money was paid to our trust account by [DC].
>
> Implicit in that agreement was an undertaking on your part to pursue the taxation of your accounts without delay. Three months have passed without your bills having been lodged for taxation.
>
> Accordingly, in view of your breach of the agreement, the funds are no longer held on the stated basis.

35 On 13 November 2008, the practitioner discontinued the proceedings the subject of the summons.

Ground 1 - Breach of s 230(1) of the 2003 Act

36 At the relevant times, s 230(1) of the 2003 Act was in the following terms:

> A legal practitioner must not sue for the recovery of any services, fee, charges or disbursements until a bill for the services, fee, charges or disbursements has been served upon the party charged.

37 Mr Laskaris' fee for appearing on the strike out application on 17 December 2007 is a 'disbursement' to the practitioner within the meaning of s 230(1) of the 2003 Act. At the time when, on

14 January 2008, the practitioner filed the summons for the recovery of this disbursement from the first client, the practitioner had not served on the first client a bill for the disbursement, as required by s 230(1) of the 2003 Act. The purported amendment of the practitioner's tax invoice of professional fees in relation to the proceeding brought by MM against the first client on 1 February 2008 to include the disbursement of Mr Laskaris' fee could not cure the breach of s 230(1) of the 2003 Act.

38 Although ultimately, under cross-examination, the practitioner acknowledged that 'section 230 [of the 2003 Act] had not been strictly complied with', earlier in the hearing he contended that he had not breached this section. In his opening, the practitioner argued that he had not breached s 230(1) of the 2003 Act for each of two reasons.

39 First, the practitioner submitted that providing a copy of Mr Laskaris' memorandum of counsel fees under cover of the practitioner's faxed letter of 10 January 2008, satisfied s 230(1) of the 2003 Act. However, it is implicit in s 230(1) of the 2003 Act that the 'bill' that is required to be served upon the party charged is the bill of the legal practitioner who is precluded from suing for the recovery of any services, fee, charges or disbursements until a bill for the services, fee, charges or disbursements has been served on the party charged. The provision of Mr Laskaris' memorandum of counsel fees to the first client did not therefore satisfy the requirement of s 230(1) of the 2003 Act.

40 Secondly, the practitioner submitted that he did not breach s 230(1) of the 2003 Act, because the first client agreed to pay Mr Laskaris' fee of $2,000 into the practitioner's general bank account while the practitioner was overseas. As indicated above, we do not accept the practitioner's evidence in support of this submission. However, even if the first client had agreed to pay the practitioner directly, without a bill being served on him, that agreement could not override the practitioner's obligation under s 230(1) of the 2003 Act.

41 Section 404 of the LP Act states that, without limiting s 402 or s 403, specified conduct is capable of constituting unsatisfactory professional conduct or professional misconduct, including:

> (a) conduct consisting of a contravention of this Act or a previous Act;

42 The practitioner's contravention of s 230(1) of the 2003 Act constitutes unsatisfactory professional conduct, because it is conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a

member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

43 However, that unsatisfactory professional conduct could be, at least initially, characterised as merely a 'technical breach', because the first client had expressly agreed to Mr Laskaris' fee of $2,000 and the practitioner had provided the first client with a copy of Mr Laskaris' memorandum of counsel fees prior to filing the summons.

44 In our view, what made the practitioner's breach of s 230(1) of the 2003 Act more serious unsatisfactory professional conduct, was the practitioner's failure to discontinue the proceeding commenced in breach of the section when his obligation under s 230 of the 2003 Act was brought to his attention by HH in one of the three letters dated 18 January 2008.

45 Subsequently, the unsatisfactory professional conduct became even more serious, in our view, when the practitioner failed to discontinue the proceeding commenced in breach of s 230(1) of the 2003 Act after he received payment for Mr Laskaris' fee on 18 February 2008.

46 The practitioner further compounded the degree of unsatisfactory professional conduct after HH observed in the letter dated 1 April 2008 to the practitioner that the proceeding had been noted by various credit agencies and could affect the first client's credit rating. Consequently HH sought the immediate discontinuance of the claim by the practitioner. Nevertheless, the practitioner failed to discontinue the proceeding for 10 months after the terms of s 230(1) of the 2003 Act were brought to his attention, for nine months after the amount in question was paid to him, and for seven months after HH noted the potential effect on the first client's credit rating and requested the immediate discontinuance of the proceeding.

47 We therefore find that the practitioner's breach of s 230(1) of the 2003 Act amounts to unsatisfactory professional conduct.

Ground 2 - Breach of s 237(1) of the 2003 Act

48 At all relevant times until its repeal, effective from 1 March 2009, s 232(3) of the 2003 Act stated as follows:

> A person charged with a bill of costs that contains detailed items may -

> (a) serve upon the legal practitioner, within 30 days from the service of the itemised bill, a written notice of intention to have the bill taxed; and
>
> (b) upon service of that notice, have the bill taxed by the taxing officer.

49 The practitioner's four tax invoices of professional fees dated 10 January 2008 were each 'a bill of costs that contains detailed items' within the meaning of s 232(3) of the 2003 Act. At all material times, between January 2008 and 1 March 2009, s 237(1) of the 2003 Act stated as follows:

> Within one month after service of the notice referred to in s 232(3) the legal practitioner must lodge the bill of costs with a taxing officer.

50 By one of its three letters dated 18 January 2008, HH, on behalf of the first client, served on the legal practitioner a written notice of intention to have the bills taxed for the purposes of s 232(3) of the 2003 Act. Consequently, s 237(1) of the 2003 Act obligated the practitioner to lodge the four bills of costs with a taxing officer, by 18 February 2008. As noted earlier, in his letter to HH dated 1 February 2008, the practitioner said that he would lodge the four bills of costs with a taxing officer the following week. However, despite that assurance and in breach of s 237(1) of the 2003 Act, the practitioner failed to lodge the bills of costs with a taxing officer by 18 February 2008, or at any subsequent time.

51 The practitioner argued that he did not comply with his obligation under s 237(1) of the 2003 Act, because he had handed over the first client's files to HH and there were ongoing negotiations between the practitioner and HH to resolve the practitioner's claims for outstanding fees. However, it is apparent that the files were only provided to HH after the first client paid $14,477.30 into HH's trust account on 18 March 2008. As noted earlier, the practitioner was under an obligation to lodge the bills of costs with a taxing officer one month earlier, by 18 February 2008. The practitioner could have done so as, indeed, he promised HH on 1 February 2008 that he would. Furthermore, it is clear from the letter dated 18 April 2008 from HH to the practitioner that, while the first client was prepared to pay $14,477.30 into HH's trust account pending the determination of the practitioner's claimed legal costs, in exchange for the release of the files, HH understood that the practitioner would pursue the taxation of his accounts without delay. It seems that, rather than providing an excuse or even an explanation as to why the practitioner did not comply with s 237(1) of the 2003 Act, the negotiations for the

resolution of the practitioner's claims for outstanding fees required the lodgement of the bills of costs for taxation.

52 We find that the practitioner's breach of his obligation under s 237(1) of the 2003 Act constitutes unsatisfactory professional conduct, because it is conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

Ground 3 - Threats and demands made in the letter dated 10 January 2008

53 As noted earlier, the 10 January 2008 letter faxed from the practitioner to the first client included the following:

> … Unless reimbursement of such is now effected to me as earlier demanded, I will proceed, on Monday 14 January 2008, to sue you for in respect of that disbursement. Legal proceedings in that regard would culminate in an interlocutory judgment as against you in respect of which I would then issue a Bankruptcy Notice.
>
> Your failure to comply with that Bankruptcy Notice would inevitably result in my Creditor's Petition for your sequestration, on this occasion for a period of not less than five years.

54 The significance of the reference to sequestration 'on this occasion for a period of not less than five years' is that the practitioner was aware that the first client had previously been made a bankrupt for the usual period of three years.

55 The practitioner conceded, under cross-examination, that this part of the letter was intended to put pressure on the first client to pay the $2,000 disbursement. However, the practitioner denied that he was guilty of professional misconduct by sending the letter.

56 We find that the threats and demands made in the extract from the letter set out above were improper for three reasons. First, the matter concerned a sum of only $2,000 in circumstances where the client had previously paid much larger sums to the practitioner for legal fees and had, in his facsimile dated 8 January 2008, said that he would pay the $2,000 promptly and as soon as the matters referred to in the facsimile were addressed by the practitioner.

57 Secondly, the threats and demands made in the letter were improper, because the practitioner's threat to commence immediate proceedings was in breach of s 230(1) of the 2003 Act.

58 Thirdly, the threats and demands made in the letter were improper, because the letter, being from a legal practitioner to a lay person, suggested that the first client would have no defence at all to the practitioner's claim, whereas the first client clearly had a defence because of the breach of s 230(1) of the 2003 Act. In response to a question to this effect put by Mr Herron, counsel for the LPCC, the practitioner said that the first client was 'no stranger to litigation' and 'a sophisticated client'. However, as this Tribunal said in ***Legal Practitioners Complaints Committee and Segler*** [2009] WASAT 91 at [54] and [56]:

> Legal practitioners enjoy particular privileges in our society. Those privileges carry with them responsibilities. Communications by a lawyer concerning matters of law bear special force by reason of the qualifications and authority of the author. …
>
> … Even if Mr Groves had a level of professional sophistication greater than the average citizen, it is reasonable to expect that he would take the threat by a lawyer as a serious matter of concern. His professional background might well lead him to assume that such a threat would not be made without adequate foundation. …

59 We find, therefore, that the practitioner engaged in professional misconduct by sending a letter to the first client that included improper threats and inappropriate demands.

Ground 4 - Misleading the Court

60 The practitioner told Magistrate Musk that the first client had a criminal record, when the first client did not, at that time, have a criminal record. Nevertheless, the practitioner argued in these proceedings that he honestly and reasonably believed that the first client had a criminal record. The practitioner said that the first client had 'a colourful history' and made 'colourful boasts'. In particular, the practitioner gave evidence that the first client had boasted in the practitioner's presence about having been involved in criminal activities concerning possession and supply of illicit drugs and violence, specifically, kidnapping. The practitioner also gave evidence that the first client had boasted in the practitioner's presence about having been apprehended and arrested by a particular police officer in relation to illicit drugs.

61 We find that the practitioner did not have an honest and reasonable belief that the first client had a criminal record when he told Magistrate Musk that the first client had a criminal record, for three reasons.

62 First, having observed the evidence of both the practitioner and the first client, including the cross-examination of the first client by the practitioner, we are not properly satisfied that the first client made the boasts as alleged by the practitioner. The first client freely admitted that he has been stopped and searched by police on a number of occasions. However, he was adamant that he has not been involved in the criminal activities referred to by the practitioner. He was also adamant that he has never been apprehended or arrested by the police officer named by the practitioner.

63 In any event, whether or not the first client boasted as alleged by the practitioner, we are not persuaded that those statements could, in all the circumstances and in light of how the practitioner seemed to view the first client's character, underpin a reasonable and honest belief by the practitioner in the way he asserts.

64 Secondly, even if the boasts alleged by the practitioner were made, the practitioner could not have honestly and reasonably believed that the first client had a criminal record based on those boasts. The practitioner has been in legal practice for 30 years. We think a senior legal practitioner of standing is likely to know the difference between involvement in criminal activities and having a criminal record.

65 Thirdly, under cross-examination, the practitioner conceded that he did not actually know whether the client had a criminal record, whereas he told the Court that he did.

66 In ***Kyle v Legal Practitioners Complaints Committee*** [1999] WASCA 115; (1999) 21 WAR 56 at [6], Ipp J, with whom Steytler J agreed at [23], held as follows:

> It is the essence of unprofessional conduct involving misleading the Court that the practitioner concerned is guilty of having done something dishonourable: see *Re Cooke* (1889) 5 TLR 407 at 408, per Lord Esher MR (with whom Fry and Lopes LJJ agreed). The dishonourable quality lies in knowingly misleading the Court: see *Tobling v Universal Bulb Co Ltd* [1951] 2 TLR 289 at 297, per Denning LJ; *Vernon v Bosley (No 2)* [1997] 3 WLR 683; (1997) 1 All ER 614. A practitioner who knowingly misleads a Court will do so dishonestly. Therein lies the unprofessional conduct. …

67 At [66], Parker J, with whom Steytler J agreed at [22], held as follows:

> The duty of counsel not to mislead the Court in any respect must be observed without regard to the interests of the counsel or of those whom the counsel represents. No instructions of a client, no degree of concern for the client's interests, can override the duty which counsel owes to the Court in this respect. At heart, the justification for this duty, and the reason for its fundamental importance in the due administration of justice, is that an unswerving and unwavering observance of it by counsel is essential to maintain and justify the confidence which every Court rightly and necessarily puts in all counsel who appear before it.

68 The Western Australian Court of Appeal recently said the following in ***Vogt v Legal Practitioners Complaints Committee*** [2009] WASCA 202 at [61] and [70]:

> For a practitioner, in the course of his or her practice, intentionally to mislead anyone is a serious breach of the practitioner's professional duty. But the finding in the present case that the appellant intentionally misled the Court is of particular significance. It goes to the very heart of a practitioner's duty as an officer of the Court and therefore to the proper administration of justice. We would respectfully adopt what was said in this respect by the Queensland Court of Appeal in *Council of the Queensland Law Society Inc v Wright* [2001] QCA 58, a case involving a solicitor who (among other things) misled a Court in relation to an affidavit relied upon to resist a summary judgment application and as to the availability of a witness. The Court said:
>
> > 'A practitioner's duty to the Court arises out of a practitioner's special relationship with the Court; it overrides the duties owed by a practitioner to clients or others … The lawyer's duty to the Court includes candour, honesty and fairness … The effective administration of the justice system and public confidence in it substantially depends on the honesty and reliability of practitioners' submissions to the Court. This duty of candour and fairness is quintessential to the lawyer's role as officer of the Court; the Court and the public expect and rely upon it, no matter how new or inexperienced the practitioner. Breaches such as this are hard to detect and once established to the requisite standard are deserving of condign punishment, not only as a deterrent, but also to reassure the public that such conduct on the part of lawyers will not be tolerated. (Footnotes omitted.)' …
>
> As we have observed, it is a matter of the utmost seriousness for a practitioner intentionally to mislead a Court. The effective administration of the justice system and public confidence in the system depends upon the absolute and conditional discharge by practitioners of their duty of honesty and candour to the Court. It is a duty so fundamental that factors such as relative inexperience and lack of supervision do not weigh so heavily in mitigation as they might in other situations. A deliberate departure from the duty must attract a substantial penalty. We consider that in the

> circumstances of this case the penalty of three months' suspension imposed by the Tribunal was appropriate. We would dismiss the ground of appeal.

69 Complete truthfulness and absolute candour with courts and tribunals is, as these authorities show, an essential and fundamental incident of being a member of the legal profession. It is no less the case when a member of the legal profession is engaged in court or tribunal proceedings in an individual capacity as when he or she represents a client. In striking off a legal practitioner for having misled the Family Court of Western Australia in relation to his assets in proceedings between himself and his wife, the Supreme Court of Western Australia (Full Bench) observed and held in ***Legal Practitioners Complaints Committee v Dixon*** [2006] WASCA 27 at [10] as follows:

> This was therefore a case of a practitioner who must have known that he had a duty to disclose his ownership of funds which would have a material impact upon the orders to be made by the Family Court in respect of the property settlement and maintenance. The evidence amply supported the conclusion of very serious unprofessional conduct in failing to make the necessary disclosure by deliberately concealing the true position from his wife, who was the applicant before the Family Court and, more importantly, from the Court itself. Further, the practitioner was guilty of illegal conduct in the form of perjury committed by the deliberately false statements made in his affidavits. That was a form of perjury which related directly to the practitioner's duty as an officer of the Court and to the integrity of the proceedings before the Court. (See also GE Dal Pont *Lawyers' Professional Responsibility* (Lawbook Company, 4th Edition, 2010) at [25.140]).

70 Courts and tribunals necessarily place great reliance and trust on legal practitioners. Legal practitioners occupy a privileged position in the administration of justice. When, in this case, the practitioner announced to Magistrate Musk that he was a member of the legal profession, Magistrate Musk was entitled to expect absolute truthfulness and full candour from the practitioner.

71 The practitioner informed Magistrate Musk that he had represented the first client in various proceedings, including criminal proceedings, over a period of seven years. Obviously, the practitioner must, therefore be aware of whether the first client had a criminal record. He also represented the first client in proceedings concerning a real estate licence in which a criminal record is material as to whether a person is a fit and proper person. The practitioner, therefore, knew that the first client did not have a criminal record and knowingly and intentionally misled the Court that the first client did have a criminal record. He did so in

order to advance his own interests in obtaining an interim violence restraining order. While the practitioner may have been motivated by genuine fear for his safety, owing to the grossly abusive messages and threats made by the first client over the telephone, that did not negate the practitioner's fundamental obligation of complete truthfulness and absolute candour in his dealing with the Court.

72 The practitioner also suggested that, had he said 'no' to Magistrate Musk's question as to whether the first client had a criminal record, he would still have received the interim violence restraining order, because of the first client's violent predisposition and threats made in the telephone messages. While this may be correct, it is entirely beside the point. It matters not whether the Court based its decision, wholly or in part, on the practitioner's assertions that the first client had a criminal record. What matters is that the practitioner knowingly and intentionally misled the Court in relation to whether the first client had a criminal record.

73 We therefore find the practitioner guilty of serious professional misconduct in terms of Ground 4.

Ground 5 - Neglect in relation to NC

74 On 14 August 2007, the practitioner accepted instructions to act on behalf of the first client's son, NC (second client), in relation to a District Court proceeding in which the second client was named as the third defendant. All instructions from the second client to the practitioner in relation to the District Court proceeding and related matters were given by the first client as his son's agent.

75 Previously, the second client was represented in the District Court proceedings by MM. On or about 21 August 2007, an issue arose between MM and the second client with respect to an account for professional fees in relation to the District Court proceeding. On 21 August 2007, the practitioner wrote a letter that he sent by facsimile to MM, in relation to this matter in terms including the following:

> Please take notice that I am instructed to accept service of any legal process on behalf of NC.
>
> Please take further notice that my client demands that you present to me an itemised bill of his costs in relation to this action for taxation pursuant to the *Rules of the Supreme Court 1971* and section 231 of the *Legal Practice Act 2003*.

76 On or about 3 September 2007, MM sent the practitioner an itemised bill of costs dated 3 September 2007, for $19,431.50, addressed to the second client at his father's address. As noted in relation to Ground 2 above, under s 232(3) of the 2003 Act, a person charged with a bill of costs that contains detailed items may serve on the legal practitioner, within 30 days from the service of the itemised bill, a written notice of intention to have a bill taxed. The practitioner failed to advise the second client that he had received the itemised bill or to seek instructions from the second client as to whether to serve on MM a written notice of intention to have the bill taxed, within 30 days from service of the itemised bill, that is, on or before 5 October 2007.

77 On 15 October 2007, the practitioner wrote to the second client at his father's address enclosing 'for your information and possibly attention the account directed to me by MM'. The practitioner said that he was 'at a lost [sic] to understand why a copy [of the MM bill of costs] was forwarded to my office by your former solicitors'. However, as noted earlier, in his letter to MM dated 21 August 2007, the practitioner stated that the second client 'demands that you present **to me** an itemised bill of his costs in relation to this action for taxation … ' (Emphasis in bold added.) It appears that MM simply followed the practitioner's instruction that letter.

78 On 25 October 2007, MM wrote to the practitioner, apologising for the delay in replying to his letter dated 21 August 2007. MM requested the practitioner to 'please confirm whether your client is seeking an itemisation of his costs or whether your client wants to have his solicitor/client costs taxed'. In response, on 15 November 2007, the practitioner wrote to MM to 'confirm that my client requests a solicitor/client taxation of costs under Pt 13 Division 3 of *The Legal Practice Act 2003*'. In response, by facsimile dated 15 November 2007, MM pointed out that the second client was out of time to have the costs taxed.

79 By facsimile dated 27 November 2007, MM informed the practitioner that that firm was about to commence proceedings in the Magistrates Court (Civil) against the second client for outstanding legal fees and asked the practitioner to confirm whether or not he had instructions to accept service. It does not appear that the practitioner responded to MM's facsimile of 27 November 2007. However, on 30 November 2007, MM wrote to the practitioner, referring to the practitioner's facsimile letter of 21 August 2007 in which he stated that he had instructions to accept service of any proceedings on behalf of the

second client, and enclosing by way of service a General Procedure Claim filed on 29 November 2007 in the Magistrates Court against the second client seeking payment of $24,575 for costs in relation to three bills of costs. Although the practitioner conceded that he received the correspondence and initiating process from MM, he did not advise the second client of the commencement of the proceeding against him. The second client only became aware of the proceeding when he received a letter dated 7 December 2007 from a firm of accountants offering him professional advice.

80 As noted earlier, the practitioner left Perth for an overseas holiday in early December 2007. Prior to his departure, on 6 December 2007, the practitioner completed a notice of intention to defend the proceeding on behalf of the second client and sent the document by post to the Magistrates Court. The notice of intention to defend was received and filed in the Magistrates Court on 13 December 2007. The Court issued a document to the practitioner advising that the second client had to file and serve a statement of defence by 27 December 2007. The practitioner failed to file a statement of defence on behalf of the second client by 27 December 2007 (as he was overseas), or subsequently.

81 As noted earlier, in early January 2008, shortly after the practitioner's return from his overseas holiday, he exchanged the correspondence dated 8 January 2008 and 10 January 2008 with the first client, received the abusive and threatening telephone messages from the first client late on 10 January 2008, and sought and obtained the interim violence restraining order from the Magistrates Court at Fremantle on 11 January 2008. On the next working day, Monday 14 January 2008, the practitioner filed a notice of change of address for service in the Magistrates Court proceeding brought by MM against the second client, in which the practitioner advised that the address for service of the second client was thereafter the address of the first client. However, the practitioner did not serve the notice of change of address for service on the second client, nor advise the second client, the first client or the first client's new solicitors, Blake Dawson and HH, of the fact that the practitioner had ceased to act on behalf of the second client in relation to the pending action by MM against the second client.

82 On 13 March 2008, MM obtained default judgment against the second client in the Magistrates Court proceeding. On 31 March 2008, the second client paid the default judgment to MM to avoid enforcement procedures.

83 The practitioner's failure to advise the second client that he had received the itemised bill and to seek the second client's instructions as to whether the practitioner should serve on MM a written notice of intention to have the bill taxed within 30 days from service of the itemised bill, that is, on or before 5 October 2007, in accordance with s 232(3) of the 2003 Act, constitutes unsatisfactory professional conduct. It is unsatisfactory professional conduct because it is conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

84 In our view, each of the following constitutes professional misconduct, because each is unsatisfactory professional conduct, being conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner and where the conduct involves a substantial failure to reach or maintain a reasonable standard of competence and diligence. The practitioner's failure to:

a) file a statement of defence by 27 December 2007;

b) inform the second client that he had not filed a statement of defence by 27 December 2007, or at all;

c) inform the second client that MM was entitled to apply for default judgment without further notice;

d) serve a copy of the notice of change of address for service on the second client; and

e) inform the second client that the practitioner had ceased to act for him in relation to the proceeding.

85 The professional misconduct involved substantial neglect of the practitioner's professional duties and materially prejudiced the second respondent ultimately by leading to the entry of default judgment against the second client.

86 The practitioner offered only feeble explanations for his conduct in relation to the second client. The practitioner said that MM's itemised bill of costs dated 3 September 2007 was addressed to the second client care of the first client's address, not to the practitioner. However, as noted

earlier, in his letter of 21 August 2007, the practitioner advised MM that the second client demanded 'that you present **to me** an itemised bill of his costs in relation to this action for taxation … ' (Emphasis in bold added). That argument of the practitioner therefore falls away entirely.

87 The practitioner also said that, as he had only ever received instructions on behalf of the second client from the first client (which, we find, was the case), the practitioner expected that the first client's new solicitors, Blake Dawson or HH, would take over the conduct of the proceeding on behalf of the second client and could seek an extension of time in which to file a statement of defence. However, the practitioner failed to serve a copy of the notice of change of address for service on the second client or to give notice to the second client that the practitioner had ceased to act on his behalf. Furthermore, the practitioner had failed to notify the second client that the practitioner had not filed a statement of defence when it was due, or at all, and to inform the second client that, by reason of the practitioner's failure to lodge a statement of defence, MM was entitled to apply for default judgment without further notice. This argument therefore also fails.

88 The LPCC alleged that the practitioner was also guilty of professional misconduct by his failure to obtain the consent of the second client to cease to act for him. However, in circumstances where the practitioner had received the abusive and threatening telephone messages from the first client late on 10 January 2008, and where all instructions in relation to the matter on behalf of the second client had been given to the practitioner by the first client, we do not consider that the practitioner's failure to obtain the consent of the second client to cease to act for him was relevantly either unsatisfactory professional conduct or professional misconduct. Having regard to the circumstances, it is understandable that the practitioner would wish to cease to act on behalf of either the second client or the first client. However, the practitioner was required to serve the notice of change of address for service on the second client or, at the very least, to give notice to the second client that the practitioner had ceased to act on behalf of the second client. As mentioned, he failed to do that.

Conclusion

89 The practitioner is guilty of unsatisfactory professional conduct:

- by suing the first client for recovery of a disbursement (counsel's fees) without having served on the first client a

bill for the disbursement and failing to discontinue those proceedings, contrary to s 230(1) of the 2003 Act;

- by failing to comply with a written request dated 18 January 2008 from the first client's solicitor to lodge four bills of costs dated 10 January 2008 with a taxing officer, contrary to s 237(1) of the 2003 Act; and

- by failing to advise the second client that he had received an itemised bill of costs and to seek the second client's instructions as to whether the practitioner should serve on MM a written notice of intention to have the bill taxed within 30 days of service of the itemised bill, that is, on or before 5 October 2007.

90 Furthermore, the practitioner is guilty of professional misconduct:

- by sending a letter containing improper threats and inappropriate demands to the first client;

- in order to advance his own interests, by knowingly and intentionally misleading Magistrate Musk on 11 January 2008 during the hearing of an ex parte application filed by and on behalf of the practitioner for an interim violence restraining order against the first client, by asserting that the first client had a criminal record when that was not the case; and

- by, in relation to the second client, failing to file a statement of defence by 27 December 2007, to inform the second client that he had not filed a statement of defence by 27 December 2007, or at all, to inform the second client that MM was entitled to apply for default judgment without further notice, and to serve a copy of the notice of change of address for service on the second client or to inform the second client that he had ceased to act for him.

Penalty

91 In view of our findings, it is appropriate that the LPCC file and serve its submissions on penalty by 22 October 2010 and that the practitioner file and serve his submissions in response on the question of penalty by 12 November 2010. We will then determine the question of penalty

entirely on the documents, pursuant to s 60(2) of the SAT Act, unless we consider it necessary to hear further from the parties.

Orders

92 The Tribunal makes the following orders:

1. The Tribunal finds that, between 14 January 2008 and November 2008, Martin Lee Segler was guilty of unsatisfactory professional conduct contrary to the *Legal Profession Act 2008* (WA) by contravening the *Legal Practice Act 2003* (WA) by suing his client DC for the recovery of a disbursement (counsel's fees) without having served on his client a bill for the disbursement and by failing to discontinue those proceedings, contrary to s 230(1) of the *Legal Practice Act 2003* (WA).

2. The Tribunal finds that, between 18 January 2008 and 1 April 2009, Martin Lee Segler was guilty of unsatisfactory professional conduct contrary to the *Legal Profession Act 2008* (WA) by contravening the *Legal Practice Act 2003* (WA) by failing to comply with a written request dated 18 January 2008 from DC's new solicitor to lodge four bills of costs dated 10 January 2008 with a taxing officer, contrary to s 237(1) of the *Legal Practice Act 2003* (WA).

3. The Tribunal finds that, between September 2007 and January 2008, in the conduct of instructions from his client NC, concerning payment of the legal fees of Mendelawitz Morton, Martin Lee Segler was guilty of unsatisfactory professional conduct by failing to advise NC that the practitioner had received an itemised bill of costs and to seek NC's instructions as to whether the practitioner should serve on Mendelawitz Morton a written notice of intention to have the bill taxed within 30 days of service of the bill, that is, on or before 5 October 2007.

4. The Tribunal finds that, on 10 January 2008, Martin Lee Segler was guilty of professional misconduct contrary to the *Legal Profession Act 2008* (WA) by sending a letter containing improper threats and inappropriate demands to his client, DC.

5. The Tribunal finds that, on 11 January 2008, Martin Lee Segler was guilty of professional misconduct contrary to the *Legal Profession Act 2008* (WA) by, in order to advance his own interests, knowingly and intentionally misleading Magistrate Musk during the hearing of an ex parte application filed by and on behalf of the practitioner for an interim violence restraining order against DC by asserting that DC had a criminal record when that was not the case and when the practitioner knew it was not the case.

6. The Tribunal finds that, between September 2007 and March 2008, Martin Lee Segler was guilty of professional misconduct contrary to the *Legal Profession Act 2008* (WA) in the conduct of instructions from his client, NC, concerning payment of the legal fees of Mendelawitz Morton, by:

   (a) failing to file a statement of defence by 27 December 2007;

   (b) failing to notify NC that he had not filed a statement of defence by 27 December 2007, or at all;

   (c) failing to inform NC that Mendelawitz Morton was entitled to apply for default judgment without further notice; and

   (d) failing to serve a copy of the notice of change of address for service on NC or to inform him that Martin Lee Segler had ceased to act for him.

7. The Legal Profession Complaints Committee is to file and serve its submissions on penalty by 22 October 2010.

8. Mr Segler is to file and serve his submissions on penalty by 12 November 2010.

9. Subject to any further order, the issue of penalty is to be determined entirely on the documents pursuant to s 60(2) of the *State Administrative Tribunal Act 2004* (WA).

I certify that this and the preceding [92] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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JUDGE J ECKERT, DEPUTY PRESIDENT