

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the [City] Standards Committee

BETWEEN

MS
Applicants

AND

HF
Respondent

The names and identifying details of the parties in this decision have been changed

DECISION

Introduction

[1] This is an application for review of a decision of the [City] Standards Committee which considered a complaint by MS (the Applicants) against Mr HF (the Practitioner).

Background

[2] MS share a boundary with a retirement village. Trees which border the MS's property and the retirement village were trimmed in approximately 2008. MS were unhappy with the outcome of this work. In July 2012 the manager of the retirement village requested further permission to have his workers enter the MS's property to trim the boundary trees. They declined permission. They report a history of previous issues with the manager.

[3] A three page attachment to their formal complaint comprehensively details the history of this current dispute and the efforts to resolve it. At the time the complaint was filed court proceedings instituted by the retirement village were not concluded.

[4] The MS's level a number of serious allegations against Mr HF. They criticise his personality, allege that he may be a drug abuser, criticise what they describe as the unsavoury tenor of his communications with MS and their solicitor, and suggest that he "suffers from a mental disorder to the extent that it makes him unfit to practise law".¹

[5] MS asked the Law Society to suspend Mr HF and "require him to undergo psychiatric assessment", and sought direction that he be required to refund their legal costs and reimburse them the costs they had incurred in engaging a contractor. Filed with the formal complaint are a number of emails which are cited as providing "examples of the tirades that [Mr HF] has directed to our lawyer".²

[6] The Committee delivered its decision on 3 April 2013.

[7] The Committee posed the issue before it as whether the Standards Committee should "intervene in a matter where the instructions to the lawyer which may explain the way a matter was conducted are protected by client confidentiality".³ The Committee noted that:⁴

A difficult feature of this complaint is that it is about matters that inevitably will have, as part of the explanation, information about what was discussed within the confidential relationship between lawyer and client.

[8] After referring to a lawyer's duty to conduct dealings with third parties "with integrity, respect and courtesy" [Rule 12, Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules)] the Committee confirmed that "lawyers also have a fundamental duty to act on instructions from their clients and to keep these confidential".⁵

[9] The decision cites a Court of Appeal decision which examined a lawyer's duty to their client, and concludes its discussion of the complaint by stating that:⁶

To investigate [the complaint] would unavoidably require inquiry into the instructions between lawyer and client and in the circumstances of this case it is not an appropriate request to make of Mr HF or his client.

[10] The Committee recorded its decision in the following terms:⁷

¹ Attachment to MS complaint to New Zealand Law Society Lawyers Complaints Service (NZLS) dated 11 March 2013 at 1.

² Above n3 at [3].

³ Standards Committee decision 3 April 2013 heading to [3].

⁴ Above n3 at [3].

⁵ Above n3 at [3].

⁶ Above n3 at [5].

...having considered the complaint [the Standards Committee] is of the view that Mr HF's conduct did not, on the face of the information presented by MS, amount to a breach of his obligation to act with integrity, respect and courtesy in his dealings with MS and that to investigate the matter further would require inquiry into the instructions between lawyer and client, which would be inappropriate.

and accordingly decided to take no further action.

Application for Review

[11] MS submitted that the Standards Committee "was incorrect in its decision" and detailed in a written submission where they considered the committee had erred.

[12] They take issue with the Committee's finding that Mr HF had not breached the rule requiring him to deal with third parties "with integrity".

[13] They allege that because he was "short of work" Mr HF "sought to maximise his fees to his client by lies and obstructing a speedy resolution of the dispute by every means he could think of."⁸ In support there was a reference to Mr HF's "deliberately antagonistic tirade of 14 January".⁹ In suggesting a motive for that "typical temper tantrum" they allege that he "considerably increased [their] costs which he should be ordered to reimburse".¹⁰

[14] The outcome sought by MS is three-fold: the reimbursement of their costs of \$6,000, censure for the alleged misconduct, and the referral of Mr HF to a psychiatric assessment.

[15] Mr HF rejected the allegation that he had behaved in a discourteous or disrespectful manner to [MS's] In his view,

this complaint follows a pattern of conduct by [MS] where everyone involved for the [retirement village] on the above proceeding has been the subject of intemperate allegations of professional misconduct or criminal behaviour. The targets of these allegations include the (retirement village) itself, its officers and [its] solicitor.¹¹

[16] MS replied to Mr HF's response. They made further adverse comment on Mr HF's "conduct to date" and again referred to his need for "appropriate treatment from a psychiatrist".¹²

⁷ Above n3 at [6].

⁸ MS application for review, 14 June 2013, "supplementary sheet" at [2].

⁹ Above n8 at [2].

¹⁰ Above n8 at [2].

¹¹ HF response, 23 July 2013 at [3].

¹² MS response, 29 July 2013 at [2].

[17] They comment on Mr HF's allegation that the complaint against him reflected a pattern of conduct by the MS's against all parties in the dispute, and conclude by emphasising that there had been difficulties with the retirement village, its manager and some staff "for some five years..... That is in any event irrelevant to this complaint about [Mr HF]. The correspondence received by [their] solicitor from [Mr HF] speaks for itself".¹³

[18] In a letter dated 17 October 2013 Mr HF advised this Office that:

When the proceeding came for hearing in the District Court on 30 July [2013] the MSs (who were represented by counsel) consented to the orders sought by [his] clients. Costs were reserved. The Court has now awarded costs of \$9,997.50 against the MSs. The Judge recorded that the 'defendants' conduct at times fell short of the standards expected of litigants.

[19] On 24 October 2014 I heard from MS in support of their application for review. Mr HF was not present.

Analysis

[20] The evidence provided by MS in support of their initial complaint to the NZLS complaints service, identified as "examples of the tirades that (Mr HF) has directed at (their) lawyer",¹⁴ is contained in a number of emails, sent by Mr HF to the MS's counsel, between January 2013 and March 2013. I have closely perused that correspondence.

[21] The first, dated 14 January 2013 is a lengthy detailed email replying to one earlier that day from the solicitor. While MS (presumably) have added the comments in pen challenging the various paragraphs in Mr HF's email, I have focused on the email's tone and language.

[22] This first and lengthy email is a typical exchange between counsel, written in appropriate language. MS may not appreciate the reference to their need for a "serious reality check" but that assessment is no more than Mr HF's appraisal of the stance adopted by the MS's, and is couched in correspondence which considered in its totality is respectful and courteous. The email concludes with a suggested proposal for resolving the dispute.

[23] Four days later (18 January 2013), Mr HF writes further to opposing counsel. This correspondence presents as a typically conventional communication between

¹³ Above n12 at [3].

¹⁴ HF response, 17 October 2013.

lawyers. Later that day, Mr HF makes a “respectful suggestion” to counsel which is expressed in unremarkable terms.

[24] The final two emails which are relied on by the MSs in support of their allegation that Mr HF was not engaging with their lawyer in courteous fashion, are despatched on the 5 and 6 of March 2013. In the first, Mr HF records that his client is not happy with the tree cutting work carried out up to that date, and refers to the steps he considers need to be taken to resolve the matter. He offers to meet with the MSs and their lawyer on site. Neither the tone nor content of that email support allegation that Mr HF was communicating in a discourteous or disrespectful manner.

[25] In the second email Mr HF refers to communications between two other parties involved in resolving the matter. His correspondence while firm in tone could not be reasonably described as objectionable or rude. I note this correspondence does not make reference to MS.

[26] The 6 March email attaches a Minute from the Court recording the agreement reached at the judicial settlement conference. In this email Mr HF identifies the steps set out in the Court document that allegedly have not been carried out. There is nothing untoward in this correspondence

[27] I do not consider that any of the email correspondence relied on supports an allegation that Mr HF behaved inappropriately. The emails are reflective of perfectly orthodox, respectful exchanges between counsel in the course of litigation.

[28] At hearing MS were invited to identify any elements in the emails produced which could support allegation that Mr HF had behaved in a discourteous fashion. They were unable to do so.

[29] They continued to overlook the fact that Mr HF was not their lawyer. This was best illustrated in the criticisms they made of Mr HF’s fees (a matter between him and his client) and the strategic approach he adopted to having the dispute resolved (again a matter for him and his client).

[30] I am reluctant to make criticism of MS, but in fairness to Mr HF, many of the criticisms made of him are of such an extreme and personal nature that it would be remiss not to record that those criticisms are intemperate, inappropriate, and totally lacking in substance.

[31] I agree with the Standards Committee decision but have taken a different approach in reaching a similar conclusion to the Committee. The Committee places

particular weight on the issue of lawyer/client relationship. In my view the MS's complaint about Mr HF was simply based on his behaviour and in particular communications between himself, and the MS's solicitor. I do not see the issue of "client confidentiality" being particularly relevant to the complaint.

[32] The tenor of these complaints imply breaches of Rule 10.1 ("a lawyer must treat other lawyers with respect and courtesy") and Rule 12 ("a lawyer must, when acting in a professional capacity, conduct dealings with others ...with integrity, respect and courtesy"). The Committee quite rightfully concluded on the evidence presented to it that Mr HF's conduct did not amount to a breach of his obligation to act with integrity, respect and courtesy in his dealings with MS, and by implication their solicitor.

[33] I need not be concerned with the client confidentiality issue raised in the Standards Committee's decision; the significant point is that I have seen nothing in the evidence presented to the Committee, nor in the material received from the parties, and in particular from MS, which illustrates any breach of the Rules by Mr HF.

[34] While it has had no impact on my decision in this review I note that proceedings were resolved in Court by the filing of consent orders and that subsequently MS were ordered to pay costs of nearly \$10,000.

[35] MS lay the blame for the costs incurred at Mr HF's door. They sought recovery of the costs awarded against them. They argued that costs had escalated as a consequence of Mr HF prolonging the proceedings for his own financial gain.

[36] That submission neglects to take into account that costs awarded by the Court are at the discretion and supervision of the Court. A fundamental cost principle is that the successful party is entitled to costs. It would be unlikely that the Court would award excessive costs in circumstances where it considered that the successful parties counsel had caused unnecessary delay.

[37] Having carefully considered all the material on both the New Zealand Law Society and Legal Complaints Review Office files, and the relevant Rules of Conduct, I find no breach of the Rules and therefore endorse the conclusion of the Standards Committee to take no further action on the complaint. Accordingly, I dismiss the application for review.

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

DATED this 30th day of October 2014

R Maidment
Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

MS as the Applicants
Mr HF as the Respondent
[City] Standards Committee
New Zealand Law Society