

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2017] NZLCDT 13

LCDT 029/16

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 1**

Applicant

AND

OSCAR RUDOLPH HINTZE

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Ms F Freeman

Ms C Rowe

Mr T Simmonds

Mr I Williams

HEARING at Specialist Courts and Tribunal Centre, Auckland

DATE 29 May 2017

DATE OF DECISION 7 June 2017

COUNSEL

Ms S Earl for the Applicant

Mr D Gardiner for the Respondent

**REASONS FOR THE DECISION OF THE NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING PENALTY**

[1] The respondent has admitted five charges of misconduct within the meaning of s 7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 (Act) in that he wilfully or recklessly contravened the provisions of the Act and/or the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules).

[2] Charges 6 and 7 are laid in the alternative and the applicant did not pursue them.

[3] The details of Charges 1 to 5 are attached as Appendix 1.

[4] The first four charges relate to complaints by four former clients of the respondent. The specific facts of each charge differ, but there is a common theme to each charge which in summary is as follows:

- (a) Each client contacted the respondent for assistance with a legal matter.
- (b) The respondent asked for payment in advance of doing the work.
- (c) No invoice was issued for the work.
- (d) There was some initial communication between the respondent and the client and some initial but limited work done by the respondent at the commencement of each retainer (with the exception of Charge 1, where no work was done except for emailing that client).
- (e) The clients complain that the respondent became difficult to contact and in two of the cases he failed to appear at Court for those clients.

- (f) All four clients subsequently had to instruct other counsel; obtain the return of their files; and seek a refund of the money that had been paid in advance.
- (g) The respondent did not refund any fees and in two of the cases was slow to return the files.
- (h) The respondent did not comply with the rules relating to:
 - (i) the acceptance of direct instructions;
 - (ii) not paying money received in advance into a trust account;
 - (iii) the requirement to take instructions from a person holding a practising certificate as a barrister and solicitor;
 - (iv) failing to provide his clients, in advance, with written information on the principal aspects of client service.

[5] The fifth charge concerns ten complaints made to Legal Aid Services by former legal aid clients of the respondent. They all complain that the respondent failed to attend Court for them on the dates of scheduled appearances. Some of those clients also complain that they were unable to contact the respondent.

[6] The respondent failed to engage with Legal Aid Services about the complaints and also about five earlier complaints of which he was issued with a final notice.

[7] The respondent is 38 years old. He was born in South Africa where he obtained a LLB degree. He moved to New Zealand in 2003 where he worked outside the law for five years. While working, he studied part-time to convert his qualifications to the New Zealand equivalent, taking four years to do so. He was employed with barristers until mid-2014 when he commenced practice as a barrister on his own account. He concentrated on criminal law and was an approved legal aid provider and duty solicitor. He ceased practice in February 2016. He has been unemployed since then and has had no income. He is supported by his partner.

[8] The respondent has acknowledged a serious alcohol and drug addiction. He has worked on his problems since May 2016. He attended meetings with the Higher Ground Drug and Alcohol Rehabilitation Trust for 10 weeks, a pre-admission phase, the purpose of which was to assess his drive and willingness to be clean and sober. He was admitted into the Higher Ground Residential programme on 22 August 2016. He completed the programme on 19 December 2016. That programme is well recognised and is challenging to the participants. The respondent graduated from the programme at the highest level.

[9] Since completing the programme, the respondent attends AA and NA meetings a number of times every week. He also interacts with ex Higher Ground residents at the Zen detox centre. He has rented out the spare bedroom at home to an ex addict with whom he attended Higher Ground. He says that the arrangement is a good support network for each of them.

[10] The respondent told the Tribunal that he has learnt to deal with his addiction triggers and inner conflicts. He said he was confident that he will remain drug and alcohol free and will not be a risk to his future clients.

[11] Dr Rob Shieff, a General Adult Psychiatrist, has prepared a report in which he expresses the opinion that the respondent's conduct in respect to the charges was directly attributable to "*a sustained period of Methamphetamine Misuse*". He went on to conclude that the respondent has regained a stable and predictable mood state. He considered that the respondent had developed excellent insight into the factors that led him into drug and alcohol dependency. Dr Shieff went on to comment on the respondent's high motivation to maintain abstinence in the future, well-supported by his immediate family and attending appropriately to his physical fitness.

[12] The respondent has the support of his partner, his parents and the parents of his partner all of whom have written expressing confidence in his commitment to living a life in recovery and referring to his remorse for his behaviour.

[13] The respondent has, with the assistance of his parents, reimbursed the monies that his former clients paid to him as well as reimbursing the father of one of those clients for expenses he had incurred.

[14] Both Counsel for the applicant and for the respondent have submitted that a term of suspension would meet the relevant purposes relating to penalty. There was difference between them as to the length of a suspension from practice.

[15] Counsel for the applicant acknowledged that the steps the respondent had taken to address the underlying causes of his addiction were significant and mitigatory. She submitted that suspension for 18 – 24 months should be considered having regard to the following aspects of seriousness:

- (a) Not completing work, leaving clients unrepresented.
- (b) Lack of professionalism, not forwarding files, not providing adequate advice.
- (c) His breach of ethical requirements meant that his clients were not “protected”.
- (d) Retention of fees which was dishonest.

[16] Counsel for the respondent argued for a lesser period of suspension from practice. He submitted that account should be taken of the respondent having gained insight and understanding of the extent to which he had let down his clients and that he was at the time a man of limited experience whose alcohol and drug dependency had impaired his judgment.

[17] In reaching our decision to impose a period of suspension of 18 months we have been influenced by the following factors:

- (a) The respondent’s genuine remorse.

- (b) The rehabilitative steps he has taken and continues to take to address his addictions.
- (c) The supports he has around him to ensure that he does not relapse.
- (d) His voluntary undertaking to submit to random drug testing.
- (e) His acknowledgment that he is not yet ready to return to the practise of the law and that when he does so he would not practise on his own account.
- (f) That he is not likely to pose a risk to clients in the future.
- (g) That he has no previous disciplinary history.

[18] We have had regard to the principle of the least restrictive outcome as emphasised in *Daniels*¹.

[19] In making the orders detailed below, we are confident that the Law Society will bear in mind the matters raised in this decision in the event that the respondent applies for a practising certificate and will make appropriate conditions such as area of practice, supervision, mentoring, and further ethical training.

[20] The applicant sought an order for costs amounting \$31,748.00. The respondent does not have the means to pay. He has the support of his parents who are prepared to contribute to any award that is made. We have decided that the respondent should be required to pay \$15,000.00 towards those costs.

[21] We record the orders that we made at the conclusion of the hearing.

- (a) An order suspending the respondent from practice as a barrister and solicitor for 18 months from 29 May 2017.

¹ *Daniels v Complaints Committee No 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

- (b) An order that the respondent pay \$15,000.00 towards the costs of the New Zealand Law Society.
- (c) An order that he refund to the New Zealand Law Society the costs of the Tribunal which are certified in the sum of \$2,326.00.

DATED at AUCKLAND this 7th day of June 2017

BJ Kendall
Chairperson

Charges

Auckland Standards Committee 1 (**Committee**) hereby charges Oscar Rudolph Hintze (**Former Practitioner**) with:

Charge 1: Client – W

Misconduct within the meaning of s 7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 (**Act**) in that he wilfully or recklessly contravened provisions of the Act and/or the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**), namely any or all of:

- (i) Section 4(c) of the Act;
- (ii) Rules 3, 3.2, 3.4, 4.2, 4.4.1, 9, 14.4 of the Rules.

Particulars

- 1 At all material times the Former Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand, practising as a barrister.
- 2 In March 2015, the Former Practitioner agreed to act for W in relation to an immigration matter.
- 3 The Former Practitioner:
 - (a) Did not carry out any significant work for Mr W and did not complete the regulated services required by the client (s 4(c); rules 3, 4.2);
 - (b) Did not refund the fixed fee, or a portion of it, when his instructions were terminated without having completed the regulated services required by the client (rules 3, 9);
 - (c) Did not maintain regular contact with Mr W and/or respond to inquiries from or on behalf of Mr W in a timely manner (rules 3, 3.2);
 - (d) Did not act upon requests made on behalf of Mr W to return all documents held by the Former Practitioner in relation to Mr W's matter without undue delay, in particular, when the request was made on Mr W's behalf, he did not take active steps to facilitate the transfer of the file, such as seeking authority from Mr W to release his documents (rule 4.4.1);
 - (e) In accepting instructions from Mr W, accepted instructions other than from a person who holds a practising certificate as a barrister and solicitor (rule 14.4);
 - (f) Did not provide Mr W, in advance, with written information on the principal aspects of client service (rule 3.4).

Charge 2: Client – N

Misconduct within the meaning of s 7(1)(a)(ii) of the Act in that he wilfully or recklessly contravened provisions of the Act and/or the Rules, namely any or all of:

- (i) Section 4(c) of the Act;
- (ii) Rules 3, 3.2, 3.4A, 4.2, 4.4.1, 9, 14.10, 14.7.2, 14.7.3 of the Rules.

Particulars

- 1 At all material times the Former Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand, practising as a barrister sole.
- 2 In August 2015, the Former Practitioner agreed to act for N in relation to criminal charges he was facing.
- 3 The Former Practitioner:
 - (a) On 7 December 2015, did not arrange for another lawyer to appear for Mr N at court to seek an adjournment of his hearing (s 4(c); rule 3);
 - (b) On 22 March 2016 did not appear for Mr N the hearing of his charge and did not make arrangements for another lawyer to appear on his behalf (s 4(c); rule 3);
 - (c) Did not explain to Mr N what his defence to the charge was to be (s 4(c); rule 3);
 - (d) Did not maintain regular contact with Mr N and/or respond to inquiries from Mr N in a timely manner (rules 3, 3.2);
 - (e) Did not carry out any significant work for Mr N and did not complete the regulated services required by the client (s 4(c); rules 3, 4.2);
 - (f) Did not refund the fixed fee, or a portion of it, upon request from Mr N and when his instructions were terminated without having completed the regulated services required by the client (rules 3, 9);
 - (g) Accepted direct instructions Mr N without complying with the requirements of rules 14.7.2 and 14.7.3 (rules 14.7.2, 14.7.3);
 - (h) Having accepted direct instructions from Mr N, did not pay money received in advance of work into a trust account of a fund holder specified in rule 14.10 of the Rules (rule 14.10);
 - (i) Did not act upon Mr N's request to transfer his file to his new barrister without undue delay (rule 4.4.1);
 - (j) Did not provide Mr N, in advance, with written information on the principal aspects of client service (rule 3.4A).

Charge 3: Client – E

Misconduct within the meaning of s 7(1)(a)(ii) of the Act in that he wilfully or recklessly contravened provisions of the Act and/or the Rules, namely any or all of:

- (i) Section 4(c) of the Act;
- (ii) Rules 3, 3.2, 3.4A, 4.2, 9, 14.10, 14.7.2, 14.7.3 of the Rules.

Particulars

- 1 At all material times the Former Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand, practising as a barrister sole.
- 2 In January 2016, the Former Practitioner agreed to act for E in relation to a criminal charge.
- 3 T, E's father, paid the Former Practitioner's fee and had direct contact with the Former Practitioner about E's charge.
- 4 The Former Practitioner:
 - (a) On 4 March 2016, did not appear for E at court and did not make arrangements for another lawyer to appear on his behalf (s 4(c); rule 3);
 - (b) Did not maintain regular contact with E or T and/or did not respond to inquiries from T in a timely manner (rules 3, 3.2);
 - (c) Did not carry out any significant work for E and did not complete the regulated services required by the client (s 4(c); rules 3, 4.2);
 - (d) Did not refund the fixed fee, or a portion of it, upon request from T and when his instructions were terminated without having completed the regulated services required by the client (rules 3, 9);
 - (e) Accepted direct instructions E without complying with the requirements of rules 14.7.2 and 14.7.3 (rules 14.7.2, 14.7.3);
 - (f) Having accepted direct instructions from E, did not pay money received in advance of work into a trust account of a fund holder specified in rule 14.10 of the Rules (rule 14.10);
 - (g) Did not provide E, in advance, with written information on the principal aspects of client service (rule 3.4A).

Charge 4: Client – R

Misconduct within the meaning of s 7(1)(a)(ii) of the Act in that he wilfully or recklessly contravened provisions of the Act and/or the Rules, namely any or all of:

- (i) Section 4(c) of the Act;
- (ii) Rules 3, 3.2, 3.4A, 4.2, 9, 14.4 of the Rules

Particulars

- 1 At all material times the Former Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand, practising as a barrister sole.
- 2 In November 2015, the Former Practitioner agreed to act for R in relation to a criminal matter.
- 3 The Former Practitioner:

- (a) Did not maintain regular contact with Ms R and/or did not respond to inquiries from Ms R in a timely manner (rules 3, 3.2);
- (b) Did not carry out any significant work for Ms R and did not complete the regulated services required by the client (s 4(c); rules 3, 4.2);
- (c) Did not refund the fixed fee, or a portion of it, when his instructions were terminated without having completed the regulated services required by the client (rules 3, 9);
- (d) In accepting instructions from Ms R, accepted instructions other than from an instructing lawyer (rule 14.4);
- (e) Did not provide Ms R, in advance, with written information on the principal aspects of client service (rule 3.4A).

Charge 5: Ministry of Justice complaints

Misconduct within the meaning of s 7(1)(a)(ii) of the Act in that he wilfully or recklessly contravened provisions of the Act and/or the Rules, namely any or all of:

- (i) Section 4(c) of the Act;
- (ii) Rules 3, 3.2 and 10 of the Rules

Particulars

- 1 At all material times the Former Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand, practising as a barrister sole.
- 2 The Former Practitioner was, at all material times, a provider of Legal Aid services.
- 3 Between 14 December 2015 and 7 March 2016, the Ministry of Justice received ten complaints from legal aid clients of the Former Practitioner about the Former Practitioner's conduct.
- 4 The Former Practitioner:
 - (a) Failed to appear at scheduled court hearings for the complainants referred to in paragraph 3 (s 4(c); rule 3); and/or
 - (b) Did not respond to inquiries from the complainants referred to in paragraph 3 in a timely manner (rule 3.2).
- 5 The Former Practitioner failed to engage with Legal Aid Services about the complaints, or about five prior complaints in respect of which he was issued with a final notice (rule 10).