

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 3

BETWEEN

MS FC

Applicant

AND

MR RU

Respondent

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

Application for review

[1] This matter concerns a complaint by Ms FC about the conduct of Mr RU. Ms FC made her complaint on 28 July 2012. The conduct in question took place when Mr RU acted for her from 1999 until 2008.

[2] [City] Standards Committee 3 decided to take no further action on the complaint. That decision was made on the basis that Ms FC had previously complained about the conduct of Mr RU and that complaint had been dealt with.

[3] Ms FC has applied for a review of that decision.

[4] In the complaint of 28 July 2012, Ms FC complained that:

- a. Mr RU was negligent in his representation of Ms FC in relation to matrimonial proceedings against her ex-husband.
- b. Mr RU deducted fees from monies held in the trust account of his firm without authorisation from Ms FC.

- c. Mr RU failed to advise of, or take, appropriate action when Ms FC's ex-husband repeatedly failed to comply with court orders to provide Ms FC with information that would have enabled her to gain a fair settlement.

[5] Ms FC alleged that Mr RU' actions had resulted in her not receiving the settlement that she believed she was entitled to, and had led to her facing legal fees in the region of \$500,000. For these reasons, Ms FC said that she did not believe that she owed Mr RU \$43,994.59 in outstanding legal fees.

Earlier decisions of the Committee and the LCRO

[6] On 26 May 2009 [City] Standards Committee 4 considered Ms FC's original complaint made in December 2008 that Mr RU had not adhered to a fee arrangement; that Mr RU had pressured her to pay outstanding invoices; that he failed to seal a judgment of the Family Court; that a bill was excessive; that he failed to follow her instructions that all communication be in writing; and that he failed to pay her a refund from the Court of Appeal when an appeal was abandoned.

[7] The Committee declined to consider the complaint further, because all but one of the complaints did not warrant disciplinary proceedings, and that with regard to the failure to seal the judgment of the Family Court, no further action was necessary.

[8] Ms FC applied for a review of the Committee's decision, saying that the Committee had not considered all of her complaints and that the failure to seal the judgment of the Family Court was so serious as to warrant disciplinary proceedings.

[9] The Legal Complaints Review Officer (LCRO) fully considered Ms FC's complaints and concluded that Mr RU deducted fees without authority from funds held on account for Ms FC contrary to s 110 of the Lawyers and Conveyancers Act 2006 (the Act). This constituted unsatisfactory conduct for which Mr RU was fined \$1000 and ordered to pay costs to the New Zealand Law Society of \$1,200. With regard to all other aspects of Ms FC's complaint, the LCRO upheld the decisions of the Committee.

Consideration of the Committee's decision of 19 September 2012

[10] As stated, the Committee decided that it had no jurisdiction to consider the same matters that had been considered previously by [City] Standards Committee 4 and the LCRO.

[11] In *OG v PV*¹ the LCRO considered a situation very similar to this one. The applicants complained about the conduct of a practitioner which the Standards Committee declined to uphold. The applicants applied to the LCRO for a review of that decision, with the LCRO subsequently confirming the decision of the Standards Committee as correct. The applicants then lodged a further complaint about the practitioner. The Committee declined to consider the complaint on the basis that the complaint was basically the same as the one that had been previously considered. The applicants applied to the LCRO on the basis that the complaint was not the same as the original one.

[12] The LCRO noted, at [12], that s 138(2) of the Act confers on Standards Committees a discretionary power to take no action or no further action on a complaint if it appears to the Committee that after having regard to all of the circumstances of the case, any further action is unnecessary or inappropriate.

[13] The LCRO further noted that if the Committee's assessment of the second complaint was correct then the Committee's decision to take no further action under s 138(2) of the Act would be a proper exercise of a discretionary power.

[14] The key issue in *OG v PV* was whether the focus of the second complaint was materially different from the original complaint. The LCRO looked at both complaints and concluded that they arose from the same set of facts, concerned the same grievance and alleged, in substance, negligence on the part of the practitioner. As such, there were no discernible differences to reasonably conclude that different issues arose in each complaint, despite the use of different words and sometimes having a different focus on issues as more facts came to light. The LCRO decided that the content of the second complaint was in essence the same as the content of the earlier complaint and therefore the decision of the Committee was confirmed.

[15] I have carefully looked at the grounds for complaint in Ms FC's two complaints and it is helpful to lay them out in some detail.

First complaint

[16] In essence, Ms FC complained about unprofessional and/or negligent conduct by Mr RU in relation to his representation of her interests in the relationship property proceedings between herself and her ex-husband. Specifically, Ms FC's complaints were:

¹ *OG v PV* LCRO 203/2011.

- a. Mr RU used sums remitted by the court for Ms FC to pay invoices for his legal work without authorisation from Ms FC to do so.
- b. Mr RU failed to adhere to a fee arrangement made between himself and Ms FC.
- c. Mr RU pressured Ms FC to pay his outstanding invoices.
- d. Mr RU failed to act on the Family Court decision of Judge McAloon.
- e. There was a failure to put all communication with Ms FC in writing.
- f. She should not have to pay an invoice, number 100406, as the work to which it related was not what she had wanted.

[17] When the Committee gave its decision on 3 June 2009 it indicated that it was aware of allegations by Ms FC that her husband had forged her signature on a document and that Mr RU should have filed documents more promptly.

Second complaint

[18] Ms FC complained that Mr RU's representation of her interests in the relationship property matter was "entirely unsatisfactory" and "was negligent service".² Ms FC supplied a typed document as part of her complaint, in which she outlined the grounds of her complaint. In essence, Ms FC alleged negligence on the part of Mr RU, by:

- a. failing to promptly investigate and correctly tell Ms FC of the basis of sale of the matrimonial home in 2001;
- b. failing to obtain related documents that would have shown that the signature purporting to be hers was a forgery;
- c. failing to file documentation promptly; and
- d. failing to ask the court for remedies when Ms FC's husband failed to comply with court orders.

[19] Ms FC also complained that Mr RU had taken monies for payment of his legal fees without her authorisation.

[20] I have carefully considered the grounds of Ms FC's original and subsequent complaints and I conclude that they arise from the same set of circumstances, contain

² Complaint to NZLS dated 28 July 2012.

the same grievances, and allege negligence on the part of Mr RU. As such, the content of Ms FC's second complaint is in essence the same as the earlier complaint. It is my view that the decision of the Committee to decline to investigate further Ms FC's second complaint, in accordance with s 138 (2) of the Act, was correct as the matters raised by her had already been properly considered.

[21] It can be further noted that while s 132 of the Act gives any person a right to complain about the conduct of a lawyer, that does not give a person the right to complain about the same conduct repeatedly. Accordingly if a complaint is in substance identical to a complaint that has already been made, then the Complaints Service and the Standards Committee will have already discharged its obligations under the Act and will not be required to consider the complaint again. I consider that this is what occurred here.

[22] It can also be observed that in the present case the conduct in question occurred a very long time ago. This is clearly relevant to the exercise of the discretion under s 138 not to take any further action. I consider that even if there were some areas which were not fully covered by the original complaint, the long passage of time, and the fact that the complainant had already exercised the right to make a complaint weighs heavily in favour of the decision to take no further action.

Decision

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

DATED this 11th day of July 2014

O W J Vaughan
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 FC as the Applicant
Mr RU as the Respondent
Ms XX as counsel for the Respondent
Mr YY as a related person
The [City] Standards Committee 3
The New Zealand Law Society