

LCRO 277/2011

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of the [Auckland Standards Committee]

**BETWEEN**

**MR VU**

Applicant

**AND**

**MR AP**

Respondent

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

**DECISION**

**Introduction**

[1] The Standards Committee declined to uphold a complaint made by Mr VU against law practitioner [Mr] AP.

[2] The background is that Mr AP had, at the instructions of another lawyer (Mr AQ), written a letter to the Ombudsman, seeking her intervention in respect of a decision by the New Zealand Immigration Department which declined to grant a residency application to Mr AQ's client, Mr VU.

[3] Mr VU claimed to have known nothing of the involvement of Mr AP, and he objected to Mr AP having acted without his authority.

[4] Mr AP informed the Standards Committee that he had been instructed to act by Mr AQ on behalf of Mr and Mrs VU, and accordingly he acted on those instructions. He said that he reported back to Mr AQ.

[5] The Standards Committee took the view that Mr AP was entitled to act on Mr AQ's instructions, and decided to take no further action pursuant to s 138(2) of the Lawyers and Conveyancers Act.

[6] Mr VU sought a review because he felt that the core issue of the matter had not been looked at. His complaint was that Mr AP had acted on behalf of himself and his wife without their authority or knowledge, and there was also the concern that Mr AP had breached Rule 11.1 of the Rules of Conduct and Client Care.<sup>1</sup>

[7] Rule 11 deals with proper professional practice. Rule 11.1 states that a lawyer must not engage in conduct that is misleading or deceptive or likely to mislead or deceive anyone on any aspect of the lawyer's practice.

[8] Mr VU also objected to Mr AP having become party to information belonging to Mr VU and his family. He complained that Mr AP (and Mr AQ) had breached his privacy.

[9] A review hearing took place attended by Mr VU, his wife and a relative in support. The Practitioner had the opportunity to attend but declined to do so.

[10] At the review hearing we discussed the practice of lawyers instructing other counsel from time to time, and to brief that counsel. That practice often involves no direct contact between the instructing lawyer and the second counsel.

[11] All of the evidence on the file indicated that Mr AP acted on the instructions of Mr VU's lawyer, Mr AQ. The letter that was signed by Mr AP was, according to evidence, drafted by Mr AQ, and signed out by Mr AP on his letterhead.

[12] It is common ground that Mr VU never met Mr AP and never instructed him. However, insofar as it is alleged that there was a breach of privacy, it is by no means uncommon that a lawyer will act on the instructions of another lawyer who will, by this means, come into possession of private or personal information of the instructing lawyer's client. That of itself would not usually attract disciplinary criticism because the second lawyer is bound by the same professional obligations of confidentiality as binds the original lawyer.

[13] This obligation is set out in Rule 8 of the Rules of Conduct and Client care as follows:

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<sup>1</sup> Lawyers & Conveyancers Act (Lawyers: Conduct & Client Care) Rules 2008.

A lawyer has a duty to protect and to hold in strict confidence all information concerning a client, the retainer, and the client's business and affairs acquired in the course of the professional relationship

[14] The remaining aspects of the complaint are (a) that Mr VU knew nothing of the referral to Mr AP, and (b) that the letter itself is misleading.

[15] In respect of the Mr AP's awareness of Mr VU's knowledge, there appears to be been nothing out of the ordinary to have alerted Mr AP to this situation, and he was entitled to assume that the referral was with the knowledge and consent of the instructing lawyer's client. It appears that he responded to Mr AQ's request in good faith and I do not see any professional concerns arising by his having done so.

[16] In respect of the complaint that Mr AP's letter was misleading, there is a proper basis for this complaint because the opening paragraphs indicate that Mr AP received instructions directly from Mr and Mrs VU which clearly was not the case. He wrote, "we have now been approached by Mr VU to act on his behalf in relation to all his immigration matters. We are instructed to write to you and request your intervention into our clients' application."<sup>2</sup> He had never been instructed by Mr or Mrs VU, and it is commonly agreed that there was no direct contact between them.

[17] The content of the letter signed by Mr AP indicates that the Ombudsman's intervention was sought to overcome the refusal by the Residence Review Board (RRB) to consider Mr VU's appeal which had been filed outside the statutory time frame. ( It was filed a day late.) The appeal to the Ombudsman was based on the late filing being the fault of Mr AQ, it being submitted to the Ombudsman that the consequences of Mr AQ's error should not be suffered by Mr VU.

[18] While it was open to Mr AP to assist the parties in this way, the concern is that Mr AP signed his name to a letter that in effect contained misleading information about acting on Mr VU's instructions. That information was not, in this case, material to the larger message. However, it is not acceptable that a lawyer should sign his name to correspondence unless that lawyer stands by the content of the correspondence. The second lawyer will be assumed to know and accept the content and accuracy of the letter, and obvious risks may arise when that lawyer simply signs out a letter written by another, and is unable to explain the content if called on to do so.

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<sup>2</sup> Letter signed by Mr AP (written by Mr AQ) to Ombudsman dated 23 August 2010.

[19] It may be that Mr AP transferred Mr AQ's letter directly onto his own letterhead without reading it before it was sent it off to the Ombudsman.

[20] While I do not consider the overall circumstances warrant an adverse finding in this case, Mr AP is alerted to the risks of simply signing his name to correspondence of others, and keep in mind that he is professionally accountable for his own conduct.

**Decision**

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

**DATED** this 5<sup>th</sup> day of June 2013

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Hanneke Bouchier  
**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:

Mr VU as the Applicant  
Mr AP as the Respondent  
The Auckland Standards Committee 1  
The New Zealand Law Society  
Secretary for Justice