

CONCERNING

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

AND

CONCERNING

a determination of [Area] Standards Committee

BETWEEN

HN

Applicant

AND

TR

Respondent

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

DECISION

Introduction

[1] Mr WM is Ms HN's father.

[2] Mr TR acted for Ms HN's brother and his wife.

[3] Mr TR wrote to Mr WM, requesting that Mr WM convey to Ms HN, her sister and their mother that all contact and correspondence between them and Mr TR's clients and their children, was to cease.¹

[4] Ms HN complained to the New Zealand Law Society Complaints Service.

[5] The Standards Committee determined to take no further action in respect of the complaints.²

[6] Ms HN applied for a review of the determination.

¹ Letter TR to WM (30 April 2014).

² Standards Committee determination, 19 December 2014.

Background

[7] The full text of Mr TR's letter to Mr WM (referred to in [3]) reads:³

Dear Sir

We have been engaged by your son (VN) and daughter in law (CL). As you are aware a rift has developed between our clients and your wife and daughters. This has resulted in a series of unpleasant incidents over the last 5 years.

We enclose copies of some of the correspondence received by our clients from HN and ER during the last 12 months.

We are instructed to write to you for you to convey to your wife and daughters that all contact or correspondence between them and our clients is to cease. This is to include direct contact or any contact by means of letter, e-mail, text or telephone.

Our clients also request that your wife and daughters respect their parental rights and do not make any attempts to contact their children, or turn up uninvited at any events or activities in which they are involved.

If any such contact continues our clients reserve the right to seek appropriate orders under the Harassment Act or Domestic Violence Act without any further notice.

Our clients have instructed these requests are directed through you as any direct correspondence with your wife and/or daughters is likely to result in further hostile responses typical of the enclosed correspondence. Our clients acknowledge this places you in a very difficult position, but see they have no other alternative.

Yours faithfully

[8] All of the facts relating to the events giving rise to this letter, and as to what ensued, have been fully recorded in the Standards Committee determination and have been taken into account in this review.

Ms HN's complaints

[9] Ms HN complained on behalf of herself, her sister and their mother.⁴

[10] The complaints were that, in sending the letter, Mr TR had breached rules 2.3 and 2.7 of the Conduct and Client Care Rules.⁵ She emphasised the stress the letter had caused her parents.⁶

³ Above n 1.

⁴ Letter HN to Lawyers Complaints Service (29 June 2014). Ms HN said she wrote on behalf of her sister and their mother. It is apparent she wrote as a complainant also.

⁵ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

⁶ Ms HN advised that Mr WM died within four weeks of receiving the letter.

[11] Ms HN considered Mr TR "... should not have used the threat of the Harassment Act or Domestic Violence Act if his wife and daughters did not cease communication or contact with his clients". Her letter of complaint continued:⁷

To place this responsibility on our father was not only unfair and unreasonable but also unprofessional. We therefore believe the threat of proceedings under the Harassment Act or Domestic Violence Act was inappropriate and is an example of Mr TR's unsatisfactory conduct.

[12] She also considered Mr TR had breached the privacy of herself and her sister by including with his letter to Mr WM, copies of correspondence and text messages that she and her sister had sent to Mr TR's clients.

The Standards Committee determination

[13] The Standards Committee set out in some detail the facts giving rise to Mr TR's instructions and noted Mr TR's response.

[14] The Committee noted Mr TR's duty to act in accordance with his instructions and "to exercise independent professional judgment (sic) within the bounds of the law and the professional obligations of the lawyer, solely for the benefit of the client".⁸

[15] The Committee also noted:⁹

A lawyer is not expected to make moral judgment (sic) of his or her client. It is not over to a lawyer to determine if the client's version of an event or events is correct.

[16] Having considered all the facts, the Committee determined that "it ha[d] not been established that there was a threat to disclose something about a person for an improper purpose."¹⁰

[17] It also considered whether "Mr TR had met his professional obligations of integrity, respect and courtesy as required by rule 12"¹¹ and reached the view that:¹²

... the letter demonstrated ... [integrity, respect and/or courtesy] ... It clearly sets out that Mr TR is acting on instructions, it identifies what could happen if contact continues and it explains why the letter was sent to Mr WM. The language is courteous and respectful to Mr WM.

⁷ Above n 4, at 2.

⁸ Above n 2 at [27].

⁹ At [28].

¹⁰ At [32].

¹¹ At [25](b).

¹² At [33].

[18] In reaching this view the Committee carefully considered the four page letter Mr WM himself had written to Mr TR after receiving Mr TR's letter and formed the view that "There is no evidence that [Mr WM] was embarrassed or distressed by Mr TR's actions – though he was clearly distressed by his son's behaviour".¹³

[19] Having considered all the issues, the Committee determined pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 that further action was unnecessary.

The application for review

[20] Set out here are portions of Ms HN's application for review:¹⁴

The standards committee did not fully consider sections 2.3 and 2.7 of the Conduct and Client Care Rules

In particular the threat made against our mother (Mrs WM). The threat had absolutely no basis. The standards committee note (refer 15) Mr TR states "there was sufficient evidence to raise the issue as a possibility if the behaviour continued and the raising of it as a possibility did not constitute a threat".

There was absolutely no evidence to include a threat to our mother. Our parents had every right to attend public events in which their grandchildren may have been involved in – this is not against the law. Mr TR's letter to our father (dated 30 April 2014) lacked integrity and respect and had no basis to threaten our mother.

...

b) ... The standards committee are wrong in their findings that Mr TR's letter to our father did not cause him distress ...

[21] Ms HN also felt the Committee "had taken a biased view" of an incident where her sister-in-law had called the police when Ms HN refused to leave their property.¹⁵

[22] Ms HN requested that she and her sister attend the review hearing in person.

Review

[23] The review progressed by way of an applicant only hearing in [City] on 3 August 2017 attended by Ms HN who was accompanied by a support person. Mr TR was not required to attend but did. He advised he felt it would be insensitive not to do so.

¹³ At [34].

¹⁴ Application for review at Part 7.

¹⁵ At (b).

[24] The hearing was conducted by Mr Vaughan acting as a delegate duly appointed by the Legal Complaints Review Officer (LCRO) pursuant to cl 6 of sch 3 of the Lawyers and Conveyancers Act 2006. Mr Vaughan reported to me and the final determination of this review as set out in this decision is made following a full consideration of all matters by me after receipt of Mr Vaughan's report and discussion.

Analysis

Rule 2.3

[25] Rule 2.3 of the Conduct and Client Care Rules provides:

A lawyer must use legal processes only for proper purposes. A lawyer must not use, or knowingly assist in using, the law or legal processes for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person's reputation, interests, or occupation.

[26] Mr TR's instructions were to protect his clients from further unwanted communications or attendances. At the suggestion of his clients, Mr TR wrote to Mr WM, rather than direct to the persons his clients did not want to have further communications from. That was not an "improper purpose" and I have reservations that the letter, in itself, constituted a "legal process" or use of the law.

[27] It is not disputed that Mr WM became distressed on receiving the letter but the root cause of that was the conduct of his son and daughter in law. The purpose of Mr TR's letter was not to cause distress – it was sent to try and ensure there would be no further communications with his clients.

[28] Any moral outrage must attach to Mr TR's client. In the text *Ethics, Professional Responsibility and the Lawyer* the author says:¹⁶

... clients will be far more likely to use the services of a lawyer if they can be sure of the lawyer's loyalty and confidence. The law and the Conduct and Client Care Rules have relieved lawyers of moral duties which would make their profession difficult if not impossible were they imposed. The existence of such rules provides a welcome compulsion to lawyers rather than leaving them in a moral and practical quagmire. In most cases a lawyer is not called on to decide whether confidential information may be disclosed or whether the client's cause is worthy. The rules provide guidance, relieving the lawyer of a difficult decision.

(Footnote omitted)

¹⁶ Duncan Webb, Kathryn Dalziel and Kerry Cook *Ethics, Professional Responsibility and the Lawyer* (3rd ed, LexisNexis, Wellington, 2016) at [5.1].

[29] Mr TR is not in breach of rule 2.3

Rule 2.7

[30] Rule 2.7 provides:

A lawyer must not threaten, expressly or by implication, to make any accusation against a person or to disclose something about any person for any improper purpose.

[31] Mr TR reserved the right for his clients to “seek appropriate orders under the Harassment Act or Domestic Violence Act without any further notice”. Exercising one’s rights to apply to the court cannot constitute a “threat”. Again whether or not Ms HN’s brother and his wife should exercise the right to apply to the court for orders against their elderly mother (and mother-in-law) was not a moral decision for Mr TR to make.

[32] The purpose of any such application would be to provide the remedy his clients sought. That is not an “improper purpose.”

[33] This rule does not apply.

Privacy

[34] The Standards Committee did not address Ms HN’s allegation that Mr TR had breached the privacy of Ms HN and her sister by enclosing copies of correspondence and text messages sent by them to Mr TR’s clients. These communications must have been provided to him by his clients. It is unknown whether or not they were expressed to be confidential communications but it is difficult to conceive how any protection of confidentiality exists for the senders of such communications.

[35] In any event, Mr TR had no duty of confidentiality to the senders of the messages.

Bias

[36] Ms HN’s allegation of bias relates to the reference by the Committee to the incident involving the Police, referred to at [24] of the Standards Committee determination. The recounting of the event is neutral in tenor and the Standards Committee does not seem to have placed any weight on this issue at all. There is nothing to support Ms HN’s allegations.

Conclusion

[37] Having considered all of the material and Mr Vaughan's report, who heard from Ms HN in person, I reach the same conclusion as the Standards Committee, namely, that further action on Ms HN's complaints is unnecessary. I add, that neither is it appropriate (as provided for in s 138(2)).

Decision

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

DATED this 18th day of September 2017

D Thresher
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 HN as the Applicant
Mr TR as the Respondent
Mr N as the Related Person
[Area] Standards Committee
The New Zealand Law Society