

In the Matter of Practitioner X

Case No: SCT/27
Date of Hearing: 18 November 1999
Appearing before: Mr J S P O'Keefe (Chairperson)
Ms C C Endicott
Ms D A Wilson (Lay Member)
Mr G Stephenson (Ombudsman)

Penalty: Fined \$500.00

Charges

1. In breach of Section 5G of Queensland Law Society Act 1952, the practitioner failed upon request to provide to the Council of the Queensland Law Society Inc within a stated reasonable time an explanation of a matter being investigated by the Council namely a complaint by D.

Particulars

- 1.1 At all material times D, a solicitor, was acting as agent for the practitioner in Family Court proceedings on behalf of one N.
 - 1.2 By written complaint dated 20 November 1998 received by Queensland Law Society Incorporated ('the Society') on 23 November 1998, D complained that the practitioner had failed to pay certain accounts rendered by him to the practitioner.
 - 1.3 By letter dated 24 November 1998, the Society, under the hand of its Secretary, forwarded a copy of the complaint to the practitioner and requested, pursuant to Section 5G(a) of *Queensland Law Society Act 1952*, that he forward a sufficient and satisfactory explanation of the matters referred to in the complaint by 17 December 1998 failing which a Notice under the provisions of Section 5H(2) of the Act would be issued.
 - 1.4 The practitioner did not reply to the Society's letter of 24 November 1998.
2. In breach of Section 5H Queensland Law Society Act 1952 the practitioner failed upon request to provide to the Council of the Queensland Law Society within 14 days an explanation in writing of matters referred to in a complaint by D the subject of a Notice issued to him by the Council of the Queensland Law Society pursuant to Section 5H(2) of the Act dated 21 December 1998.

Particulars

- 2.1 (Repeat and rely on paragraphs 1.1, 1.2, 1.3 and 1.4)
 - 2.5 On 21 December 1998, the Society, under the hand of its Secretary, forwarded to the practitioner a Notice pursuant to Section 5H of the Act notifying him that if his failure to furnish an explanation in writing to the matters referred to in the Society's letter of 24 November 1998 continued for a period of 14 days after his receipt of the Notice he would be liable to be dealt with for professional misconduct.
 - 2.6 The practitioner failed to provide an explanation in writing within the said 14 day period.
3. In breach of Section 5G of *Queensland Law Society Act 1952*, the practitioner upon request failed within a stated reasonable time to provide to the Council of the Queensland Law Society an explanation of a matter being investigated by the Council namely a complaint by D, when requested so to do.

Particulars

- 3.1 (Repeat and rely on paragraphs 1.1, 1.2, 1.3, 1.4, 2.5 and 2.6)
- 3.7 By letter dated 11 January 1999, the practitioner purported to respond to the Society's letter dated 24 November 1998.
- 3.8 By letter dated 15 January 1999, the Society wrote to the practitioner acknowledging receipt of his letter of 11 January 1999 and advising that his response to the complaint was not satisfactory and invited a proposal for payment of D's fees. The practitioner did not reply to that letter.
- 3.9 By letter dated 5 February 1999, the Society wrote to the practitioner seeking a response to its letter to him of 15 January by 10 February 1999 and advising that failing which a Notice pursuant to Section 5H of *Queensland Law Society Act 1952* would be issued.
- 3.10 The practitioner did not respond to the Society's letter of 5 February by 10 February 1999 as requested.

4. In breach of Section 5H of the *Queensland Law Society Act 1952*, the practitioner failed to provide to the Council of the Queensland Law Society within 14 days an explanation in writing of matters referred to in a complaint by D the subject of a Notice issued to him by the Council of the Queensland Law Society pursuant to Section 5H(2) of the Act and dated 11 February 1999.

Particulars

- 4.1 (Repeat and rely on paragraphs 1.1, 1.2, 1.3, 1.4, 2.5, 2.6, 3.7, 3.8, 3.9 and 3.10)
- 4.11 On 11 February 1999 the Society under the hand of its Secretary, forwarded to the practitioner a Notice pursuant to Section 5H of the *Queensland Law Society Act 1952* notifying him that if his failure to furnish an explanation in writing to the matters referred to in the Society's letters to him dated 15 January 1999 and 5 February 1999 continued for a period of 14 days from the date of receipt of the Notice he would be liable to be dealt with for professional misconduct.
- 4.12 The practitioner failed to provide an explanation in writing within the said 14 day period.
5. The practitioner, in breach of a Ruling of the Council of the Queensland Law Society first published by the Council on 1 October 1983, failed to pay the fees of D whom he instructed to assist him in certain Family Court proceedings.

Particulars

- 5.1 At all material times the practitioner acted for one N in certain Family Court proceedings in Brisbane.
- 5.2 On or about 13 February 1996 the practitioner instructed another solicitor, D, to assist him in the said proceedings.
- 5.3 Pursuant to the retainer D carried out certain work on behalf of the practitioner and rendered an account for \$627.09 on 20 February 1996 and a further account of \$1,185.00 on 26 March 1996 for such work.
- 5.4 The practitioner failed to pay the said costs with the result that D commenced proceedings against the practitioner to recover them and on 16 February 1998 obtained judgment in the Magistrates Court against the practitioner for \$2,216.54.

- 5.5 The Council of the Queensland Law Society first published on 1 October 1983 the following Ruling for the conduct of Solicitors:

'Except where otherwise agreed a practitioner who instructs another practitioner, whether or not the other practitioner practises in a jurisdiction outside Queensland, to advise on or to assist in a matter is responsible for the payment of the other practitioner's fees'

- 5.6 In breach of that Ruling, the practitioner has to date failed to pay the said fees.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr D G Searles, solicitor of McCullough Robertson, solicitors.
- (b) For the practitioner:
Mr A Duffy of Counsel, instructed by Murphy Schmidt, solicitors.

Findings and Orders

1. The Tribunal found the practitioner guilty of unprofessional conduct.
2. The Tribunal ordered that the practitioner pay a penalty of \$500.00 to the Fidelity Fund.
3. The Tribunal ordered that the fine imposed be paid no later than 18 January 2000.
4. The Tribunal further ordered that the practitioner pay the costs incurred by the Society as agreed between the parties, or failing agreement as assessed by Monsour Legal Costs Pty Ltd.

Reasons

The Chairman summarised the five charges saying that they arose out of one complaint, that being the complaint by D by letter dated 23 November 1998. Charges 1 and 3 alleged offences under Section 5G of the Act relating to the correspondence dated 24 November 1998 and 5 February 1999. Charges 2 and 4 alleged breaches of Section 5H of the Act namely failure to respond to the final Notices dated 21 December 1998 and 11 February 1999. The final Charge, being Charge 5, was the failure to pay the fees in accordance with the Ruling of the Council of the Queensland Law Society which was promulgated on 1 October 1983.

Through his counsel, the practitioner admitted the Charges and the facts alleged in the Charges and submitted that there ought to be a finding of unprofessional conduct only.

Mr Searles agreed that the practitioner had demonstrated a reasonable excuse sufficient to exculpate him from professional misconduct and that it was the submission of the Society that no other conduct in the Charges constituted professional misconduct.