

In the Matter of Frank Nicholas Cop

Case Number: SCT/116
Date of Hearing: 3 February 2004
Appearing Before: Mr G C Fox (Presiding Member/Practitioner Member)
Mr M Conroy (Practitioner Member)
Ms I Vallin-Thorpe (Lay Member)
In Attendance: Mr J W Broadley (Clerk)
Penalty: Fined \$5,000

Charge 1

1. In breach of his duty as a solicitor and/or in breach of his duty to maintain reasonable standards of competence or diligence, the practitioner failed, within a reasonable time after being requested in writing by his client to do so, to render to his client a bill of costs covering all work for that client to which such request related.

Particulars

- (a) On or about 20 December 2002, the practitioner rendered a memorandum of costs to his client, SG, for work performed to 20 December 2002.
- (b) By letters dated 20 December 2002 and 17 January 2003, CL for SG requested the practitioner to provide an itemised bill of costs with regard to the account rendered by the practitioner dated 20 December 2002.
- (c) Notwithstanding such requests, and until 30 May 2003, the practitioner failed to render a bill of costs covering all work for the said client to which such request related.
- (d) The practitioner's failure to render a bill of costs to his client until 30 May 2003, was contrary to r84(1) of the *Queensland Law Society Rules 1987*.

Charge 2

2. In breach of his duty as a solicitor and/or in breach of his duty to maintain reasonable standards of competence or diligence, the practitioner having failed or neglected to render a bill of costs to his client pursuant to r84(1) of the *Queensland Law Society Rules 1987*, failed, despite request, to deliver to his client, SG, all documents which he is holding on her behalf.

Particulars

- (a) On or about 20 December 2002, the practitioner rendered a memorandum of costs to his client, SG, for work performed to 20 December 2002.
- (b) By letters dated 20 December 2002 and 17 January 2003, CL for SG requested the practitioner to provide an itemised bill of costs with regard to the account rendered by the practitioner dated 20 December 2002 and requested that the practitioner make the file available for collection.
- (c) Notwithstanding such requests, and until 30 May 2003, the practitioner failed to render a bill of costs covering all work for the said client to which such request related.
- (d) On 9 April 2003, the said client requested the practitioner to immediately deliver up the file to her.
- (e) On 28 April 2003, FS, on behalf of the said client, requested that the practitioner deliver up the file (including the original Will of JVE and all other documents) on or before 30 April 2003.
- (f) During the period February 2003 to May 2003, the Queensland Law Society requested, on various occasions, that the practitioner deliver up the file.
- (g) On 28 May 2003, the practitioner delivered the file (but not the documents held in safe custody) to officers of the Queensland Law Society and he authorised the Society to release the file to SG.
- (h) On 16 June 2003, the practitioner forwarded by mail to the Queensland Law Society, the documents held in safe custody and he authorised the Society to release those documents to SG.
- (i) The practitioner's failure to deliver all documents to SG until 16 June 2003, notwithstanding that he might otherwise be entitled to a lien upon those documents for payment of his bill of costs, was contrary to r84(2) of the *Queensland Law Society Rules 1987*.

Charge 3

3. In breach of s5H(1) of the *Queensland Law Society Act 1952* ("the Act"), the practitioner failed in the respects particularised below, to comply with a requirement:
 - (i) to give the Council of the Queensland Law Society Incorporated ("the Council"), within a stated reasonable time, an explanation in writing of a matter being investigated pursuant to s5G(a) of the Act; and
 - (ii) to deliver up to the Council, within a stated reasonable time, his client file to assist in the investigation of a complaint pursuant to s5G(c) of the Act.

Particulars in connection with the investigation of a complaint by SG

- (a) By a letter dated 5 February 2003, the Council, by its then Acting General Manager, Legal Investigations and Prosecutions, being duly authorised in that regard, requested the practitioner, pursuant to s5G(a) and (c) of the Act, to:
 - (i) forward a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 31 January 2003 received by the Society from SG, by 21 February 2003; and
 - (ii) forward his client file to the Society by 21 February 2003.
- (b) No written explanation was received from the practitioner within the time specified.
- (c) By letters dated 13 March 2003, 27 March 2003 and 8 April 2003, the Society again requested the practitioner to produce his client file.
- (d) Other than to advise the Society by facsimile letter dated 15 April 2003 that his client file would be delivered with the original letter by post, when in fact his client file was not enclosed with the original letter, the practitioner failed or refused to deliver his client file to the Society until the 28 May 2003 when he delivered the client file to the Society's officers.

Charge 4

- 4. In breach of s5H(1) of the *Queensland Law Society Act* 1952 ("the Act"), the practitioner failed in the respects particularised below, to comply with a requirement to give the Council of the Queensland Law Society Incorporated ("the Council"), within a stated reasonable time, an explanation in writing of a matter being investigated pursuant to s5G(a) of the Act;

Particulars in connection with the investigation of a complaint by PE

- (a) By a letter dated 14 April 2003, the Council, by its General Manager, Legal Investigations and Prosecutions, being duly authorised in that regard, requested the practitioner, pursuant to s5G(a) of the Act, to forward a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint dated 7 February 2003 received by the Society from PE, by 28 April 2003;
- (b) No written explanation was received from the practitioner within the time specified.

Charge 5

- 5. The practitioner failed to comply with two separate Notices given by the Council under s5H(2) of the Act for a period of 14 days after the giving of the Notices.

Particulars

- (a) **In connection with the investigation of a complaint by PE**
 - (i) On 2 May 2003, the Council, by its General Manager, Legal Investigations and Prosecutions, being duly authorised in that regard, gave the practitioner a written notice pursuant to s5H(2) of the Act.
 - (ii) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto or to deliver his client file as provided by the notice.
- (b) **In connection with the investigation of a complaint by SG**
 - (i) On 9 May 2003, the Council, by its General Manager, Legal Investigations and Prosecutions, being duly authorised in that regard, gave the practitioner a written notice pursuant to s5H(2) of the Act.
 - (ii) The practitioner failed, within the 14 day period specified in the notice, to deliver his client file as provided by the notice.

Charge 6

- 6. The practitioner engaged in gross overcharging and/or charged legal fees to which he had no entitlement to receive.

Particulars

- (a) On or about 18 October 2002, SG, in her capacity as executor for the estate of JVE deceased, engaged the practitioner to act in the administration of the estate.
- (b) Notwithstanding that the practitioner had commenced work in the matter, the practitioner failed to make a written Client Agreement with SG either within a reasonable time after commencing the work, or at all, as required by s48(2) of the *Queensland Law Society Act* 1952.
- (c) On 20 December 2002 and, following a previous request made by the practitioner to SG to pay the sum of \$1,100 on account of his costs and outlays, SG terminated the retainer and requested the practitioner to provide an account for the legal work performed to that date together with the return of various documents belonging to SG.
- (d) On 20 December 2002, the practitioner rendered his unitemised account to his client SG in the sum of \$3,036.00 which amount comprised:

Legal fee	\$2,760.00
GST	\$276.00
	\$3,036.00

- (e) The account did not include any reservation of the practitioner's rights to charge a higher amount in the event of the said client requesting a bill of costs in itemised form and the itemised bill being assessed at a higher amount.
- (f) By letters dated 20 December 2002 and 17 January 2003, CL for SG requested the practitioner to provide a bill of costs in taxable form with regard to the account rendered by the practitioner dated 20 December 2002.
- (g) On or about 21 March 2003, the practitioner obtained from H&A, costs assessors, an itemised bill of costs for the matter in the sum of \$1,894.83 for the purpose of complying with the client's previous requests (made on 20 December 2002 and 17 January 2003) to render an itemised account. The practitioner did not forward this account to the client until 30 May 2003.
- (h) On 30 May 2003 at about 12.34pm, the practitioner's client, SG, received by facsimile, a letter dated 23 May 2003, enclosing the itemised account for the sum of \$1,894.83 together with a further itemised account (also dated 23 May 2003) for the sum of \$1,405.11 for the period 17 January 2003 to 23 May 2003. The practitioner's covering letter required payment of the amount of \$1,894.82.
- (i) On 30 May 2003 at about 1.15pm, the practitioner's said client received a further facsimile letter from the practitioner advising her that the amount mentioned in his earlier letter (\$1,894.83) for payment was incorrect and that the correct amount was \$3,629.93.
- (j) The practitioner's further account dated 23 May 2003 for the sum of \$1,405.11, recorded many attendances made by the practitioner after the retainer had been terminated and did not include legal work performed for the client and the practitioner knew that he had no entitlement to charge the fees contained therein.

Charge 7

- 7. (i) The practitioner engaged in professional misconduct or unprofessional conduct on or about 2 June 2003, when he caused BG, and SG to receive a document dated 2 June 2003 demanding, without reasonable cause, that BG and SG pay to him the sum of \$1,250 by 5pm 16 June 2003.
- (ii) BG was never a client of the practitioner and no money was owing by him to the practitioner.
- (iii) The said written demand contained threats of detriment to be caused to BG and SG if the demand was not complied with.

Particulars of threats of detriment

- (a) The practitioner will commence court action against either BG or SG or both, for the recovery of money including legal costs and interest;
- (b) The practitioner will refuse to return documents held by him on trust for SG and which the practitioner had no lawful entitlement to keep.

Charge 8

- 8. (i) The practitioner engaged in professional misconduct or unprofessional conduct on or about 2 June 2003 when, with intent to cause the Council of the Queensland Law Society Incorporated ("the Council") to cease its investigations into complaints made by SG against the practitioner, he caused Brian and SG to receive a document demanding, without reasonable cause, that:
 - (A) SG withdraw all complaints she may have against the practitioner with the Queensland Law Society; and
 - (B) SG make a written submission to the Queensland Law Society that any complaint or charge against the practitioner brought by the Council be withdrawn to the fullest extent possible;
 and containing threats of detriment to be caused to BG and SG if the demand was not complied with.

Particulars of threats of detriment

- (a) The practitioner will commence court action against either BG or SG or both persons for the recovery of money including legal costs and interest;
- (b) The practitioner will refuse to return documents held by him on trust for SG and which the practitioner had no lawful entitlement to keep.
- (ii) The practitioner engaged in professional misconduct or unprofessional conduct on or about 16 June 2003 when, with intent to further cause the Council of the Queensland Law Society Incorporated ("the Council") to cease its investigations into complaints made by SG against the practitioner, he caused BG and SG to receive a document dated 14 June 2003 demanding, without reasonable cause, that:
 - (A) SG pay to him the sum of \$1,250 by 5pm Monday, 16 June 2003; and
 - (B) containing threats of detriment to be caused to BG and SG if the demand was not complied with.

Particulars of threats of detriment

- (a) In the event, the Queensland Law Society proceeds with disciplinary action against the practitioner, he will make public certain confidential information thereby causing SG to possibly lose her entitlements under a Will.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr I R Foote, Solicitor
- (b) For the Practitioner:
Mr I F Dearden, Solicitor of Deardens Lawyers
- (c) For the Complainant:
There was no appearance on behalf of the Complainant

Findings and Orders

1. The Tribunal granted leave to the Queensland Law Society Incorporated to amend the Notice of Charge dated 26 November 2003 in charge 3(a)(ii) by deleting "21 February 2003" and inserting "19 February 2003".
2. The Tribunal finds the charges set out in the Notice of Charge dated 26 November 2003, as admitted by the Practitioner, including in charge 6 that the Practitioner charged legal fees to which he had no entitlement to receive, proved. The Tribunal finds the Practitioner not guilty of gross overcharging.
3. The Tribunal finds that those charges constitute professional misconduct and that the Practitioner is guilty of professional misconduct.
4. Upon the undertaking of the Practitioner to become a member and maintain membership of his local district law association and regularly attend meetings of that association, the Tribunal orders as follows:
 - (a) That the Practitioner pay a penalty to the Fund in the amount of \$5,000.00.
 - (b) that the Practitioner attend and satisfactorily complete the next available module of the Practice Management Course conducted by the Queensland Law Society known as professional standards.
5. The Tribunal further orders that the Practitioner pay the applicant's costs of and incidental to this application including the costs of the Clerk and the recorder, to be agreed, and failing agreement to be assessed by Monsour Legal Costs Pty Ltd.
6. The Tribunal orders that the penalty be paid by equal monthly instalments over a period of 18 months.
7. The Tribunal further orders that the Practitioner pay the applicant's costs, when ascertained, by equal monthly instalments to be paid over the balance of the same 18 months period.
8. The Tribunal further orders that it is satisfied that the Practitioner has caused pecuniary loss to the Complainant and orders that the Practitioner pay compensation to the Complainant in the amount of \$1,000.00 by monthly instalments of \$200.00, the first payment within one month of today.

Reasons

These proceedings arise essentially out of the solicitor's representation of a client in an estate matter and failure to comply with Law Society notices and correspondence.

The Charges relate to failure to render a Bill of Costs when required and maintaining a lien when not entitled to do so, demanding payment without reasonable cause, and demanding withdrawal of complaint on threat of detriment.

Charge 6 relates to overcharging, with a charge in the alternative of charging fees when not entitled to do so.

The Practitioner pleads guilty to all charges save that over over-charging, and acknowledges that these charges amount to professional misconduct.

We are not satisfied there is sufficient evidence to uphold a charge of gross over-charging, and we find the Practitioner not guilty of this charge.

We find the balance of the charges proven.

We find the Practitioner guilty of professional misconduct.

Some of the charges brought would not in themselves attract professional sanction.

The issues have been exacerbated by correspondence by the Practitioner to his former clients in terms that can only be described as childish and unacceptable.

The arrogant and foolish disregard he has shown to his professional body would in normal circumstances likely attract a suspension. This is the first time the Practitioner has appeared before this Tribunal. His solicitor has described a lack of judgment and insight compounded by professional isolation.

It would appear that professional isolation is a significant factor in his behaviour. He is not a member of his local Law Association. He has not availed himself of peer support or senior counsellor assistance.

The Tribunal is well aware of the lack of objectivity and perspective this environment can generate. The Tribunal endorses the Society's initiative in sending an officer to physically attend at the Practitioner's premises to bring this matter to its eventual resolution from the clients' viewpoint.

The Tribunal has long supported early intervention in this vein and hopes it will continue.

One wonders whether these proceedings could have been avoided altogether by an earlier approach in this case.

We also take into account the Practitioner's early plea of guilty, his expression of remorse, his waiver of all fees, and the destruction of his practice that a suspension would cause.

His decision not to challenge needlessly individual charges has resulted in a significant saving of costs in these proceedings.

Claim for Compensation

A claim for compensation has been made by the applicant pursuant to s6.R(4) of the *Queensland Law Society Act 1952*. We are satisfied that the Complainant has suffered pecuniary loss because of the Practitioner's professional misconduct.

We are satisfied the Complainant has given notice of the claim for compensation.

This Tribunal has had some difficulty in the establishment of the amount of compensation which should be ordered. The material before us is meagre. The bill from CL would suggest that the great bulk of it relates to addressing the problems occasioned by the Practitioner's conduct.

The account from MDRN Lawyers is simply not itemised and we are unable to say what it relates to.

Many of the items in the account from FS, the great bulk of them, seem to relate more to the administration of the estate than these proceedings, or the difficulties associated with the Practitioner's misconduct.

We are unable to allow the claim for \$350 for loss of time. There was no itemisation of the time kept. One would have thought she is entitled to an executor's commission in any case, which will no doubt deal with this issue.

We have considered the waiver by the Practitioner of his fees in terms of assessing the loss suffered by the Complainant. It is difficult for us at this stage to identify how much of that account was in fact wasted, or the benefit of the work done was prejudiced by the applicant's refusal to hand over the documents until the middle of June 2003.

Doing the best we can, we order that the Practitioner pay to the Complainant the sum of \$1,000, being the Tribunal's best estimate of the loss suffered by the Complainant as a result of the Practitioner's misconduct.