

LEGAL PRACTICE TRIBUNAL

CITATION: *Legal Services Commissioner v Griffiths* [2008] LPT 17

PARTIES: **Legal Services Commissioner**
(applicant)
v
JAMIE DARREN GRIFFITHS
(respondent)

FILE NO/S: 11655/07

DIVISION: Legal Practice Tribunal

PROCEEDING: Discipline application

DELIVERED ON: 19 December

DELIVERED AT: Brisbane

HEARING DATE: 17 November 2008

JUDGE: Byrne SJA assisted by

PRACTITIONER PANEL MEMBER: Mr P J Lyons QC

LAY PANEL MEMBER: Ms K A Keating

ORDER: **1. That the respondent's name be removed from the local roll of persons admitted to the legal profession; and**
2. That the respondent pay the Commissioner's costs of the proceeding

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – SOLICITOR AND CLIENT – DUTIES AND LIABILITIES TO CLIENT – PROFESSIONAL MISCONDUCT – where the respondent failed to comply with Rule 84 of the Barristers Rules – where the respondent engaged in professional misconduct by offering to bribe a magistrate or member of the legal profession
Legal Profession Act 2007
Legal Profession (Barristers) Rule 2004

COUNSEL: Mr M M Stewart S.C. for the applicant
Mr R M C Burns solicitor for the respondent

SOLICITORS: Legal Services Commission for the applicant
Burns Law for the respondent

- [1] Mr Griffiths is a barrister. In 2005, he acted as such for Todd Filippa, without the intervention of a solicitor. Anouska Harris was Mr Filippa's *de facto* partner. She had occasion to deal with Mr Griffiths in relation to payment of his fees.
- [2] In this discipline application, three charges are preferred.
- [3] Charge 1 alleges that:

“Between 11 August 2005 and 21 March 2006 the respondent committed professional misconduct within the meaning of section 245 of the *Legal Profession Act 2004* by:

- (a) failing to comply with his obligations under rule 84(a) of the *Legal Profession (Barristers) Rule 2004* (“the *Barristers Rule*” to deposit in a bank account used solely for the purpose of holding fees paid for direct access work in advance of the performance of the work the sum of \$39,100 paid to the respondent as such fees.
- (b) failing to comply with his obligation under rule 84(a) of the *Barristers Rule* to retain such fees in that bank account until after the work in respect of the fees were paid was completed and (the client not having agreed to the contrary in writing) until fourteen days after the client had been given a memorandum of fees.
- (c) failing to comply with his obligation under rule 84(b) to give the client a memorandum of fees containing a note stating that the respondent was required to retain such fees in a special bank account until after the memorandum had been given to the client unless the client otherwise agreed in writing.”

Rule 84

- [4] Rule 84 of the *Legal Profession (Barristers) Rule 2004* provides:

- “84. (a) All fees paid for direct access work in advance of the performance of the work must be deposited and retained in a bank account established and used solely for the purpose of holding any such fees
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- (i) until the work in respect of which the fees are paid has been completed; and
- (ii) unless the client, after performance of the work and delivery of a memorandum of fees, otherwise agrees in writing, until a period of fourteen days has expired after the client has been given a copy of the memorandum of fees.

- (b) When fees for direct access work have been paid in advance of the performance of the work, a memorandum of fees given to the client for such work must contain a note stating that the barrister is required to retain the fees paid in respect of the work, the subject of the memorandum, in a special bank account, until fourteen days after the memorandum has been given to the client, unless the client otherwise agrees in writing.”

First Charge Admitted

- [5] In August 2005, at Mr Filippa’s house, Ms Harris gave Mr Griffiths \$39,100. The money was payment for direct access legal work done by Mr Griffiths for Mr Filippa and in advance of performance of more such work.
- [6] In April 2006, a search was conducted of the home of Mr Griffiths. Fifty dollar bills were located in a wall safe with serial numbers that matched those on the notes Ms Harris had handed over. During the search, Mr Griffiths said that he maintained only a “business banking” account, and that he drew on it to meet expenses. He also admitted that he did not account for moneys properly.
- [7] The \$39,100 had not been deposited to the business banking account.
- [8] Mr Griffiths informed the Legal Services Commission that:

“I have an asset line account which is effectively a revolving line of credit. This means there is always money available to me. Although this account was not used solely for the purpose of holding fees from clients it was the primary use. I was not aware at that time of the provisions of R.84 of the Barristers Rules. The account always had sufficient funds available in it to refund to a client if needed ...”

“Although I do not recall the date that I received the cash payment of \$39,100.00 I am aware that this transaction took place at Mr Filippa’s house in Warner. I did not provide a receipt for these funds nor did I provide Mr Filippa with an invoice for the work completed to that date.”

“I kept the money in the safe at home as I did not know what to do with it at the time of receiving it. I indicated to Mr Filippa that should he need to be refunded at any stage then that would not be a problem. Some of the money was slowly used for bills and living expenses and to support my gambling. I recall that a large portion, possibly \$25,000.00 to \$30,000.00 was deposited into my bank account over time.”

- [9] Mr Griffiths did not deposit the money which Ms Harris had paid him into a bank account established and used for the sole purpose of holding fees paid for direct access for an advance of the performance of the work.
- [10] Mr Griffiths admits the contraventions alleged in charge 1.

Charge Two Admitted

- [11] Mr Griffiths also admits charge 2, which is that:

“Between 18 October 2005 and 21 March 2006, the respondent committed professional misconduct within the meaning of section 245 of the *Legal Profession Act 2004* by:

- (a) failing to comply with his obligations under rule 84(a) of the *Legal Profession (Barristers) Rule 2004* (“the *Barristers Rule*”) to deposit in a bank account used solely for the purpose of holding fees paid for direct access work in advance of the performance of the work the sum of \$20,000 paid to the respondent as such fees.
- (b) failing to comply with his obligation under rule 84(a) of the *Barristers Rule* to retain such fees in that bank account until after the work in respect of the fees were paid was completed and (the client not having agreed to the contrary in writing) until fourteen days after the client had been given a memorandum of fees.
- (c) failing to comply with his obligation under rule 84(b) to give the client a memorandum of fees containing a note stating that the respondent was required to retain such fees in a special bank account until after the memorandum had been given to the client unless the client otherwise agreed in writing.”

- [12] In October 2005, Ms Harris gave Mr Griffiths \$20,000. The money was paid for direct access work by Mr Griffiths done and to be done.
- [13] Mr Griffiths did not deposit the money into a bank account established and used for the sole purpose of holding fees paid for direct access work in advance of the performance of the work. Nor did he produce a memorandum of fees for the work.

Third Charge

- [14] Charge 3 alleges that:

“On 18 October 2005 the respondent committed professional misconduct within the meaning of section 245 of the *Legal Profession Act 2004* by making statements to others which tended to bring the legal profession into disrepute”.

- [15] Mr Griffiths admits this charge also.
- [16] The charge arises out of a conversation involving Ms Harris, Mr Griffiths and Mr Tony Bellino concerning looming committal proceedings. During it, Mr Griffiths spoke words which, he accepts, were intended by him to be understood as meaning that he would lie by saying to others that he worked as Mr Filippa's barrister for nothing when in fact he was being paid substantial fees; he would conceal from others, including the Australian Taxation Office, the fees paid to him for acting as Mr Filippa's barrister; and he would deliver a tax invoice and receipt for those fees on the basis that the documents would be concealed from others, including the Australian Taxation Office, and kept by Mr Filippa to prevent Mr Griffiths from later claiming that he had not been paid.
- [17] Mr Griffiths accepts that what he said tended to bring the legal profession into disrepute and constituted professional misconduct.
- [18] The conversation involved other statements to Mr Bellino and Ms Harris that, Mr Griffiths now acknowledges, amounted to professional misconduct: about bribing the magistrate who would preside at a committal or the prosecutor at it.
- [19] Ms Harris adverted to the possibility of achieving "a good result" at the committal proceeding by paying \$50,000 to the magistrate. Mr Griffiths was, he said, "happy to explore the option". Shortly afterwards, he contributed the thought that: "we might have more chance with the prosecutor than we would with the magistrate", adding "anything's possible. There's plenty of ways to go."
- [20] In his statement in reply to the Discipline Application, Mr Griffiths contends that what he had said about bribery was not intended to be taken seriously.¹ A recording of the conversation, however, contains no indication that Mr Griffiths spoke in jest. And his reaction a few months later when asked whether he would have encouraged discussion about bribery also suggests that Mr Griffiths expected that what he said would be taken at face value.
- [21] In April 2006, Mr Griffiths spoke to Mr Morgan and other investigators. He was asked whether Ms Harris or Mr Filippa had spoken to him of an approach to a court official or "a member of prosecution" to pay money for a more favourable outcome. His initial reaction was to say that, had that been done, his "response would have been clear". He would have said: "don't be ridiculous". Mr Griffiths told the investigators that he did not recall such a thing having been proposed. If such a conversation had started, he would, he claimed, have "cut it off immediately". "I would have told them it's an absurd suggestion and not to raise it again ... I'm an officer of the court and ... I certainly wouldn't entertain a conversation let alone proceed to do something like that. It is a ridiculous suggestion ... I would never (have) done that." But he had, as he would have recalled.

¹ He does not suggest that his words were not taken seriously by Ms Harris and Mr Bellino.

- [22] In any event, Mr Griffiths must have appreciated that what he said conveyed to Ms Harris and Mr Bellino that a magistrate and the prosecutor were likely to be susceptible to bribery, and that he was willing to corrupt them.

Gravity of the Misconduct

- [23] Rule 84 regulates the manner in which a barrister who performs direct access work is to deal with fees paid in advance of performance of the work. Its evident intent is to protect clients. It follows Rule 83, which requires a barrister who proposes to accept a brief directly from a client to advise the client of restrictions under which the barrister works.
- [24] The *Legal Profession Act 2007* now prohibits a barrister from receiving trust money but recognises that the Bar Association of Queensland may make rules in relation to banking arrangements for fees received by a barrister in advance of performing work for a client².
- [25] Adherence to Rule 84 is important for the protection of clients. The Rule also provides a mechanism by which barristers may receive funds in advance of the performance of work when briefed directly by a client.
- [26] In many cases, clients who brief barristers in this manner will be people with limited financial resources. Particularly in criminal cases, they may also be disadvantaged socially, educationally and in other ways. The Rule is intended to protect them.
- [27] The special position in which barristers are placed by these arrangements makes it vital that Rule 84 be complied with. It is apparent from this case that the amounts involved may be substantial.
- [28] The seriousness of the misconduct in discussing the bribery of public officials requires no elaboration.

Disposition

- [29] It is not surprising that Mr Griffiths accepts that his conduct constituted professional misconduct, that there ought to be an order that his name be removed from the local roll of persons admitted to the legal profession, and that he should pay the Legal Services Commissioner's costs of the proceedings.

²

See s.246.