[2008] LPT 6

LEGAL PRACTICE TRIBUNAL

de JERSEY CJ

MR M WOODS
DR S DANN

No 1121 of 2007

LEGAL SERVICES COMMISSIONER Applicant

and

YORKE MACKERETH Respondent

BRISBANE

..DATE 19/03/2008

ORDER

THE CHIEF JUSTICE: The respondent is a 41 year old solicitor who was admitted in 1995. He has not previously been the subject of any disciplinary proceeding.

The circumstances giving rise to the instant discipline application are as follows.

On 4 October 2006 in the Magistrates Court the respondent pleaded guilty to two counts of forgery, two of uttering and one of making a false statement on oath. He was sentenced to a fully suspended 12 month term of imprisonment.

The respondent was retained by the defendants to a District Court proceeding which had been listed for hearing on 3 August 2004. The respondent properly advised his clients of that hearing date but apparently himself thereafter overlooked it.

On 21 July the respondent wrote to the plaintiff's solicitors falsely asserting that he had not been notified of the 3 August hearing date and requesting the arrangement of new dates.

On the following day the respondent filed an application in the Magistrates Court for the vacating of the trial dates supported by an affidavit, apparently by one of his clients, Mr Sam Proskevalis, and an affidavit by himself. In the affidavit supposedly by his client - obviously prepared without his client's knowledge - the respondent forged the client's signature, falsely witnessing that forged signature.

In his own affidavit the respondent falsely swore the absence of any notification to himself of the hearing date and that his clients had informed him that they had received no such notification.

Then on 28 July 2004 or thereabouts the respondent filed two further affidavits. One was a purported affidavit by his other client, Mr Harry Proskevalis, again prepared without that client's knowledge obviously, in which the respondent again forged the client's signature and falsely witnessed the signature. In it, he untruthfully asserted that the client had not received notification of the hearing dates and would be unavailable on those dates in any event.

On 30 July 2004 the Magistrates Court refused the application for the vacating of the hearing dates. Following upon that determination the respondent filed an affidavit by himself asserting prospective injustice to his clients were the matter to proceed on 3 August. In that affidavit he falsely asserted that his clients would be unavailable for the hearing on the relevant dates, Mr Sam Proskevalis being interstate.

The respondent has committed serious criminal offences. He has forged his client's signatures on documents which he presented to a Court of law. The documents contained wilfully false assertions. The respondent presented those documents to the Court in what was, albeit extremely foolish, really a devious attempt to conceal the consequences of his own default in losing track of the hearing dates. He wilfully misled his

clients and the Court and the other parties to the litigation. He preferred his own interests over those of his clients, and in a protracted, and as I say, devious way. The question arises what response this Tribunal should make. He is guilty of professional misconduct as charged.

Mr Wilson, who appears for the respondent, has referred to the decision of the Court of Appeal, Attorney-General v. Bax (1999) 2 Qd.R 9, especially at pages 14, 20, 22 and 23, where the various members of the Court speak of the possible relevance of pleas of guilty and acknowledgements of remorse in diminishing the so-called penalty to be imposed.

I would say first that the word "penalty" is of doubtful appropriateness in this jurisdiction. The objective is not to penalise an errant practitioner, it is to make an order which will protect consumers of legal services.

That said, it may be noted the Court, while acknowledging the possible significance of those considerations, nevertheless did in that case order a striking off.

There is no question here but that the pleas of guilty and the remorse of the solicitor, and his cooperation with the Commission and the authorities generally, are relevant factors. The issue for the moment is whether, assessing them in the context of this particular misconduct, they can prevail against a prima facie inclination in the Tribunal to order a striking off.

The misconduct in Bax concerned the backdating of a deed of loan and a second mortgage, and misinforming a creditors meeting about various things. The particular complexion of the misconduct in this case, which I consider assumes great significance when one comes to assess the operation of the other factors, the plea of guilty, the cooperation and the remorse and so on, is that in this case, on a number of occasions, the respondent practitioner deliberately set out to mislead a Court of law, and did so.

In my view it is that consideration which, in this particular case, means that, notwithstanding remorse and cooperation with the authorities, the response of the Tribunal should be to strike off. That is because the misconduct which the respondent has acknowledged patently demonstrates his unfitness for practice.

Mr Wilson has asked that the Tribunal consider what amounts to a lengthy period of suspension. The orders he seeks are that the respondent's local practising certificate be cancelled and that a local practising certificate not be granted before the end of five years from today. Such a lengthy period of suspension would be unusual, and it seems to me itself provides an indication of the current unfitness for practice of the practitioner which warrants his being struck from the roll.

The purpose of suspension is to facilitate a period of retraining or reflection or re-education of a practitioner,

where there has been some departure from acceptable standards but not so much as to demonstrate longterm unfitness for practice. This is not such a case. The misconduct of which the respondent was guilty goes to the heart of the legal and justice system. As I say it was devious, it was protracted, and full of design. It provided ample demonstration of an unfitness for practice, not just tomorrow or the next day or next week, but in the longterm, which necessitates in my view this Tribunal ordering that he be struck off.

The order I would make is that the name of the respondent be removed from the roll and that he pay the applicant's costs of the proceeding, in an amount to be assessed if not agreed.

MR WOODS: I agree.

DR DANN: I agree.

THE CHIEF JUSTICE: Those are the orders then of the Tribunal.
