

LEGAL PRACTICE TRIBUNAL

de JERSEY CJ

MR P MULLINS
MS M STEINBERG

No 7726 of 2007

LEGAL SERVICES COMMISSIONER

Applicant

and

KENNETH PETER TURLEY

Respondent

BRISBANE

..DATE 18/03/2008

ORDER

THE CHIEF JUSTICE: The respondent is a 66 year old solicitor who was admitted in 1967. He has not previously been found guilty of any professional breach. He admits the two charges which have been brought against him.

The first charge is that during child protection proceedings in the Magistrates Court at Gladstone he made scandalous and offensive submissions. He was acting for the respondent mother. He described the service of an affidavit on his client as:

"The lowest act of any department that this office has seen. Certainly the lowest act I have seen in 35 years by the department."

He referred to the Department of Child Safety officers in these terms:

"One has only to go through what the department has said and what appears in newspapers to see that one cannot trust the department. It is almost staffed by animals."

Then, referring to an order that the children undergo psychological treatment he said:

"I put it that you are asking the client, my client, to let her children be killed or destroyed by Dr Keane."

And:

"And that the children should be returned to my client and not put in the hands of these people who are almost like a (coven) of witches."

The second charge concerns a letter written by the respondent to the presiding Magistrate three days after that hearing. In the course of the hearing the Magistrate had mildly admonished the respondent in these terms:

"If you continue using language like that I will report you to the Law Society."

In his subsequent letter the respondent said:

"We are concerned with threats made by yourself during the conduct of the interim hearing on 2 January 2007. Our view is that your threats constitute a threat with menaces not only arising in this case but in other matters into the future. We note that you threaten in reference to the Legal Services Commission and in its context that reference to the Legal Services Commission was of a disadvantage. We feel that such was the degree of impropriety of that threat that you should disqualify yourself from further conduct of this matter."

That is characterised by the applicant as "an improper ex parte communication with the Bench". That is so. In addition, it was an untenable contention. The Magistrate had taken a perfectly proper course in referring to a possible report to the respondent's professional association. It was his reasonable attempt to pull the respondent into line. The Magistrate should not have been subjected subsequently to the intimidation which was involved in that letter or subjected to pressure that he should disqualify himself when there was simply no justification for the contention that he should do so.

At the time of these events the respondent was suffering from depression and other medical problems for which he is now undergoing proper treatment.

In the report of Dr Lynagh of 14 March 2008 the doctor says:

"In my assessment, Mr Turley is in dire need of psychological help and personal support. He certainly would benefit from psychological counselling in the first instance to assist with stress management and personal coping strategies. However, in time, more in-depth personal counselling and/or psychotherapy should be considered. As regards returning to legal practice I recommend to Mr Turley that he seek ongoing professional support and monitoring by an appropriate psychologist in relation to any debilitating stress he may experience so as to facilitate a smooth adjustment back into the workforce. It may be wise for him to consider a work role which involves less demanding legal tasks and intense adversarial court work."

Each of the breaches amounts to professional misconduct. Each surpasses unsatisfactory professional conduct. The use of grossly offensive language in the course of Court proceedings and an intimidatory approach to a judicial officer based on an untenable interpretation of what had occurred in the Court proceedings are matters of some gravity.

The appropriate response, allowing for the respondent's personal circumstances and his previously unblemished record, is certainly a public reprimand and an order that he pay the costs of the applicant. The amount of those costs has been agreed in the sum of \$1500.

But this Tribunal has the opportunity now to mould an order which will assist the respondent to avoid the recurrence of these sorts of problems. He has offered undertakings to undertake further psychological counselling and treatment and on that basis the applicant seeks the orders I have indicated

already; additionally, a fine and an order limiting the respondent's involvement in practice for the next 12 months.

Because compliance with the undertakings which he offers will involve the respondent in not inconsiderable expense, and notwithstanding that that treatment is in any event warranted and the expense would in any event be incurred, that is a consideration which in our view warrants our not ordering the payment of a pecuniary penalty in addition in this case.

There is also the circumstance that the amount of the costs agreed at \$1500 will itself be something of a burden upon the respondent.

The orders that we make are therefore as follows.

Upon the respondent, by his counsel, undertaking to the Tribunal as follows:

1. To undertake such psychological counselling and other treatment as Dr Ionnidis may recommend;
2. To obtain a report from Dr Lynagh or another appropriately qualified psychologist in respect of his mental state and provide that report to the applicant within the ensuing 12 months;
 - a) order that the respondent is publicly reprimanded;
 - b) order that the respondent pay the applicant's costs in the agreed amount of \$1,500;
 - c) order that for the ensuing 12 months the respondent engage only in legal practice under

supervision and not apply for a principal level practising certificate or other statutory equivalent;

- d) order that in the next 12 months the respondent obtain and provide to the applicant a report detailing established supervision arrangements within four weeks of commencing or recommencing employment as a legal practitioner.

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