

LEGAL PRACTICE COMMITTEE OF QUEENSLAND

OFFICE: Brisbane
NUMBER: 01/2014

Applicant: LEGAL SERVICES COMMISSIONER

AND

Respondent: STEPHEN THOMAS MURRAY DRING

ORDER

Before: P M Schmidt (Chair), B Houlihan (Solicitor member)
L Lynch (Lay member)

Date: 17 November 2016

Basis for Judgement: Discipline Application filed on 20 January, 2014

THE ORDER, FINDINGS AND REASONS OF THE COMMITTEE:

The Respondent was born on 24 November 1962 and is currently 53 years of age. He is an Australian Legal Practitioner within the meaning of section 6(1) of the *Legal Profession Act 2007*, having been admitted to practice on 29 January 1996.

The charge against the Respondent is that between 16 November 2011 and 3 April 2012, the Respondent breached a condition of his practising certificate, in contravention of section 58 of the *Legal Profession Act 2007*.

Between 1 September 2009 and 2 February 2012, the Respondent was retained as a consultant for Colville Johnston Lawyers: ("the firm") by way of an arrangement between the firm and the Respondent as to the basis upon which he could perform legal work and the allocation of fee charged.

At all material times, the Respondent was the holder of an unrestricted employee practising certificate which did not entitle him to practise as a principal or sole practitioner in private practice.

Between 16 November 2011 and 7 February 2012, the Respondent acted for a client as a sole practitioner and not as a consultant of the firm.

Between 1 December 2011 and 3 April 2012, the Respondent acted for a client as a sole practitioner and not as a consultant of the firm.

The Respondent admits the charge.

The Committee finds the conduct complained of amounts to unsatisfactory professional conduct and finds the Respondent guilty of unsatisfactory professional conduct.

In considering penalty, the Committee is mindful of the objective of protection of the public and the maintenance of proper professional standards by way of both personal and general deterrence. It has taken into account the following mitigating factors:

1. The Respondent has not had any other disciplinary proceedings brought against him prior to or since the conduct which is the subject of the charge;
2. The Respondent has cooperated with the Commission;
3. The Respondent has expressed remorse for his conduct;
4. The events which are the subject of the charge occurred in excess of 4 and half years ago, during which time the Respondent has completed the Practice Management Course, obtained a principal practising certificate and has gained further experience in the requirements and responsibilities of running a legal practice.
5. The Respondent's personal financial and health circumstances.

The Committee orders:

1. The Respondent is publically reprimanded.
2. The Respondent is ordered to pay a fine of \$1,000 payable within 3 months of today's date.
3. The Respondent is ordered to pay the Applicant's costs, if agreed between the parties within 30 days of agreement, or failing agreement, to be assessed and payable within 30 days of the date of Assessor's Certificate.

Notice of Intention to Seek Compensation Order was filed on 17 February, 2014. The Complainant seeks a Compensation Order pursuant to section 464 of the Legal Profession Act 2007. The Committee does not consider the Respondent satisfies the meaning of law practice as prescribed by section 464(d) and, furthermore, does not consider that the alleged losses flow from the conduct which is the subject of the charge as required by section 465(1) (a).

In the alternative, the Complainant seeks a Compensation order pursuant to Section 456(1) and 456(4) of the Legal Profession Act 2007(Qld). In respect of the application of the general power under these provisions, the Committee adopts the position taken in Legal Services Commissioner- v- Jiear [2012] QCAT 221 SC and Legal Services Commissioner v Kellahan [2012] QCAT 263. In any event, there are unresolved issues between the Complainant and the Respondent as to the terms of their arrangement and that is not a matter for the Committee to determine. The alleged losses may be pursued in another jurisdiction if the complainant wishes. Accordingly, the Committee does not exercise its discretion to make a Compensation order.

We direct that this order be placed on the Committee's website.



Chairperson

18 November, 2016.

Date

ORDER
Filed on behalf of the Applicant
Form 59 r661

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