

## DECISION

**Case number:** OCR032-17  
**Applicant:** Legal Services Commissioner  
**Respondent:** Anthony George Mirotsos


**Before:** Hon Peter Lyons QC, Judicial Member  
**Hearing Date:** 24 May 2018  
**Date Delivered:** 8 June 2018  
**Proceeding Type:** Tribunal Hearing

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IT IS THE DECISION OF THE TRIBUNAL THAT:

1. The respondent is publicly reprimanded.
2. The respondent is to pay the applicant's costs of and incidental to this application, to be assessed on the standard basis.

Signed



Hon Peter Lyons QC, Judicial Member  
Queensland Civil and Administrative Tribunal

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commission v Mirotsos* [2018] QCAT

PARTIES: **LEGAL SERVICES COMMISSIONER**  
(applicant)  
**v**  
**ANTHONY GEORGE MIROTSOS**  
(respondent)

APPLICATION NO/S: OCR032-17

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 8 June 2018

HEARING DATE: 24 May 2018

HEARD AT: Brisbane

DECISION OF: Hon Peter Lyons QC, Member

Assisted by:  
Mr D Murphy  
Mr K Revell

ORDERS: **1. The respondent is publicly reprimanded.**  
**2. The respondent is to pay the applicant's costs of and incidental to this application, to be assessed on the standard basis.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where information in public domain that barrister remained a solicitor – where Federal Circuit Court order made for respondent to file an affidavit – where respondent failed to file affidavit – whether unsatisfactory professional conduct

*Legal Profession Act 2007 (Qld), s 38(1)*

*Attorney-General for New South Wales v Mayas Pty Ltd* (1988) 14 NSWLR 342

*Legal Services Board v Forster (No 3)* [2012] VSC 640

*Pelechowski v The Registrar, Court of Appeal* (1999) 198 CLR 435

APPEARANCES &  
REPRESENTATION:

D008

Applicant: M Nicholson, instructed by the Legal Services  
Commission

Respondent: B Cohen, solicitor of Bartley Cohen

## REASONS FOR DECISION

- [1] On 10 May 2016, a Judge of the Federal Circuit Court of Australia made an order requiring the respondent to file an affidavit within a stated time, setting out the full extent of his involvement with a firm of solicitors. He failed to do so. As a result, the applicant has brought a discipline application against the respondent. Ultimately, the applicant contends that the respondent is guilty of unsatisfactory professional conduct; and contends that a number of orders should be made against him.

### Background

- [2] The respondent became a barrister on 7 April 2016. Before that, he had been a solicitor, and the principal of Omega Lawyers. That firm had represented a Ms Traill in a matter then current in the Federal Circuit Court. On 13 April 2016, the respondent appeared in the Federal Circuit Court on the matter. He then announced his appearance as Counsel, stating that his instructing solicitor was unable to appear.
- [3] In an order of 10 May 2016, made in the absence of the respondent, the Judge recorded that there was information in the public domain (on a website) suggesting that the respondent retained positions with Omega Lawyers, including as the principal lawyer; although on 13 April, the respondent had stated that he had nothing to do with this firm. The Judge then made the order previously mentioned.
- [4] There is before the Tribunal a report by the Bar Association of Queensland ('BAQ Report') recording the results of its investigation of a complaint subsequently made by the Federal Circuit Court to the applicant. The respondent has not challenged any of the factual matters recorded in the BAQ Report, and accordingly they should be accepted.
- [5] One of the matters recorded in the report is that the respondent became aware on 13 May 2016 of the order made on 10 May. Although he did not receive a copy of the order until some days later, he immediately took steps to have his name removed from the website of Omega Lawyers.
- [6] On the morning of 15 June 2016, the respondent wrote to the Bar Association of Queensland seeking guidance in relation to the order. In that letter, he questioned whether the Court should be giving public scrutiny to certain facts before referring his conduct to the Association, and he questioned the Court's power to make the order. He also expressed personal offence that certain matters had been dealt with in public orders, and were discussed in open court.
- [7] On the afternoon of 15 June 2016, a telephone conversation took place between the respondent and the Registrar of the Federal Circuit Court. On that day, after the telephone conversation, the Court made an order that matters be referred to the relevant regulatory authority, namely, whether the respondent had made a misleading statement to the Court, and his failure to comply with the order of 10 May 2016 by providing the affidavit evidence described in the order.

- [8] An email to the respondent apparently sent at 10:24 AM on 15 June 2016 provided a copy of the new website for Omega Lawyers (making no reference to the respondent) and promised that it would be uploaded as soon as possible.
- [9] On 27 June 2016, the respondent wrote to the Judge. The letter stated that the respondent had cancelled his practising certificate as a solicitor on 4 April 2016 and had finalised his application for a practising certificate as a barrister. The letter stated that on the same day, the respondent had resigned as the LPD (apparently Legal Practice Director) and an employee of Omega Lawyers, and had transferred his shares in that firm to the new LPD. He also set out steps which he had earlier taken to have the firm's website changed, and gave some explanation for the fact that the change had not yet occurred. On 13 May 2016, having learnt of the orders, he took further steps to have the website corrected. He enclosed a copy of the 'layout', apparently demonstrating that any reference to him had been removed from the firm's website.
- [10] In the course of the investigation by the Bar Association, the respondent provided a letter dated 16 September 2016. In it, he expressed doubt about the power of the Judge to make the order against him on 10 May 2016; and expressed the view that it was inappropriate. In part, he explained his failure to comply with the order by the fact that he was awaiting a response to his letter of 15 June 2016 to the Association.
- [11] In his response to the discipline application, the respondent admitted the allegations made against him. He confirmed the admission in an affidavit filed in these proceedings and accepted that his conduct constituted unsatisfactory professional conduct. He also accepted that the course he took was wrong, and that he should have either complied with the order, or appealed against it, or applied to have it set aside.
- [12] He also provided some matters as explanation for his conduct. He said that he was shocked and embarrassed when the Judge raised issues with him after he announced his appearance on 13 April 2016. He consulted with colleagues about the order made on 10 May 2016, and he was told that the order was inappropriate. He believed that it should not have been made, but he buried his head in the sand. His letter of 27 June 2016 responded to the order, although he acknowledged he should have responded by way of affidavit. He did not intend to defy the order. He wished to apologise to the Judge, but had not done so while these proceedings were on foot.
- [13] He also provided some information about his personal circumstances. In October 2017, he and his wife separated. They have six children. In January 2018 he moved to Melbourne to work.
- [14] The respondent was present in the court room for the hearing of these proceedings, having travelled from Victoria to attend. He was represented by Mr Cohen, a solicitor, who told the Tribunal, without objection, that the respondent is now employed by a legal firm in Victoria. He is seeking to practise as a solicitor in that State, and has informed the Legal Services Board of these proceedings.
- [15] The respondent also provided three references attesting to his professionalism and diligence, and his contributions to the community.

### **Barristers' duty to court**

- [16] Section 38(1) of the *Legal Profession Act 2007* (Qld) has the effect that the respondent is an officer of the court. Since the term 'court' is not defined, there is scope for debate

as to whether it extends to the Federal Circuit Court. It may be that the term extends to any court before which a person is entitled to practise by reason of the person's admission as a legal practitioner. There are duties to a court which are imposed on a practitioner as one of the court's officers. Even if the section did not have the effect that the respondent is an officer of the Federal Circuit Court, it is difficult to think he would not owe similar duties to that court, to those owed to any court of which he is an officer.

- [17] Rule 5 of the *Barristers' Conduct Rules* of the Bar Association of Queensland recognises that 'barristers owe duties to the courts'; and, that they also owe their paramount duty to the administration of justice.
- [18] These considerations strongly suggest that the obligation to obey a court order is of greater significance for barristers than for members of the public generally. In *Legal Services Board v Forster (No 3)*,<sup>1</sup> Emerton J dealt with a solicitor for contempt of court constituted by the solicitor's disobedience to a court order. His Honour said:<sup>2</sup>

... legal practitioners should be held to a higher standard when it comes to compliance with court orders and the preservation of the due administration of justice than ordinary members of the public. Legal practitioners are bound to uphold the rule of law, which is an essential element in any civilised and properly functioning community.

### Consideration

- [19] If the order of the Federal Circuit Court Judge were beyond power, then it would be a nullity, and any person might disregard it.<sup>3</sup> That would provide a complete answer to the discipline application. However, Mr Cohen made it clear that the respondent did not contend that the order was beyond power. Rather, he relied upon the respondent's uncertainty about that question as providing some explanation for his failure to comply with it. He also made it clear that it was unnecessary for the Tribunal to consider whether the order was beyond power.
- [20] The matters discussed earlier demonstrate the gravity of a failure by a barrister to comply with a court order made against the barrister. There can be no doubt that a barrister, like anyone else, has the right to apply to have the order set aside or varied. Otherwise, a barrister must obey the order, even if he thinks it inappropriate, or has other criticisms (justified or unjustified) of the making of the order.
- [21] It has not been suggested that, in the circumstances of this case, the respondent's failure amounted to professional misconduct. One mitigating factor is that, although late and somewhat irregular, the barrister's letter of 27 June 2016 substantially addressed the matters raised by the order. In the circumstances, it is appropriate to find that the respondent's conduct was unsatisfactory professional conduct. The finding, and the nature of the respondents conduct, warrant an order publicly reprimanding him.
- [22] It is somewhat concerning that the material suggests that injured pride played some role in the respondent's failure to comply with the order. However, the respondent

<sup>1</sup> [2012] VSC 640.

<sup>2</sup> Ibid [15].

<sup>3</sup> *Attorney-General for New South Wales v Mayas Pty Ltd* (1988) 14 NSWLR 342, 357; *Pelechowski v The Registrar, Court of Appeal* (1999) 198 CLR 435, [27].

was not cross-examined, and the material is not sufficiently clear to support a positive finding to this effect.

- [23] It is also concerning there is no indication that the respondent sought advice from his junior or senior pupil master, or another senior member of the Bar. It is likely that had he done so, his conduct would have been different. The response which the respondent received from those colleagues he consulted does not appear to have been adequate.
- [24] The applicant's written submissions contended that an order should be made that the respondent undertake ethics training as considered appropriate by the Tribunal. In the course of the hearing, the applicant indicated that he no longer pursued that order. Accordingly, it will not be made.
- [25] The applicant also contended that a fine of \$5000 be imposed on the respondent. Mr Cohen appeared not to accept that a fine should be imposed; if it were, it should be of the order of \$1000.
- [26] A significant reason to impose a fine is to mark the seriousness of any non-compliance by a legal practitioner with an order of a court. However, appropriate orders in proceedings such as this are to be determined by reference to all relevant factors of a particular case. In the present case, the respondent has shown remorse which appears to be genuine. An order for costs will be made against the respondent, and he has incurred the costs of attending at the hearing personally. Although late, and not by way of affidavit, he provided the substance of the information sought by the Judge. In all of the circumstances, a fine should not be imposed in the present case.

### **Orders**

- [27] The following orders will be made:
- (a) The respondent is publicly reprimanded; and
  - (b) The respondent is to pay the applicant's costs of and incidental to this application, to be assessed on the standard basis.