
An attitude of cooperation. How should lawyers respond to complaints against them? Continued from page 5

However annoying the task of responding to a complaint, a lawyer who “takes the law into his own hands” by pressuring the complainant, aside from risking a finding of misconduct, undermines the role and value of the complaints and investigation process.

It follows from the foregoing that a lawyer (A) engaged to act on behalf of a lawyer (B) who is the subject of the complaint has a duty to advise B of the obligation to cooperate and assist reasonably with the investigation of the complaint.

It also follows that neither A or B should correspond with the complainant in a way that could be construed as pressuring for the withdrawal of the complaint.

Mullins J, sitting as the Queensland Legal Practice Tribunal in *Legal Services Commissioner v O'Connor*⁷, took the opportunity of addressing this point. There the respondent, who was advising a solicitor the subject of a complaint,

orchestrated the sending of a letter to the complainant alleging that complaint amounted to defamation of the solicitor who was the subject of the complaint, and requesting an apology and retraction of the allegations. Her Honour held that sending the letter not only undermined the statutorily prescribed process for the protection of the public and the profession, it also breached the respondent’s professional duty to the solicitor-client to advise cooperation with the investigation and in so doing the respondent’s duty to uphold the law. The respondent was found to have engaged in unsatisfactory professional conduct, being saved from a finding of professional misconduct (and a disciplinary sanction more severe than a reprimand) by the fact that he had formed his opinion about the nature of the complaint bona fide.

Of course, it is preferable to avoid complaints in the first instance. Prudent lawyers will therefore pay particular heed to client dissatis-

faction and ensure open lines of communication with their clients.

Reproduced with the author’s permission.

Footnotes

1. See, for example, *Veghelyi v Council of the Law Society of New South Wales* (unreported, SC(NSW), Smart J, September 1989); *Kerin v Legal Practitioners Complaints Committee* (1996) 67 SASR 149.
2. *New South Wales Bar Association v Thomas* (CA(NSW), Kirby P, Samuels and Clarke JJA, 9 May 1989, unreported), at 19; *Legal Practitioners Conduct Board v Phillips* (2002) 83 SASR 467 at [34] per Gray J.
3. *Johns v Law Society of New South Wales* [1982] 2 NSWLR 1 at 6 per Moffitt P.
4. *Council of the Queensland Law Society Inc v Whitman* [2003] QCA 438 at [36] per de Jersey CJ.
5. (1966) 84 WN (Pt 1) (NSW) 136 at 141–2.
6. *Law Society of South Australia v Jordan* (FC(SA), 21 August 1998, unreported) at 46 per Doyle CJ, with whom Millhouse and Nyland JJ concurred.
7. [2006] LPT 001.

CONFERENCES

24 November 2008 Written Evidence and Discovery in International Arbitration: New Issues and Tendencies ICC, Paris, France Phone : 33-1 49 53 28 91 http://www.iccwbo.org/events	http://www.aic.gov.au/conferences/2008-homicide/index.html	Phone : 02 62576353 Fax : 02 62576620 http://www.nisekoconference.com/	www.qls.com.au Southbank, Brisbane, QLD
28 – 29 November 2008 QLS presents Property Law Conference http://www.qls.com.au/content/lwp/wcm/connect/qls/home/ Gold Coast, QLD	5 – 6 December 2008 Introduction to Collaborative Practice Melbourne, Vic http://www.cpd.liv.asn.au/product.asp?PID=1605&cID=43	25 – 27 February 2009 Superannuation Conference Canberra, ACT Email to: NHeath@conferenceworld.com.au	5-9 April 2009 16th Commonwealth Law Conference Commonwealth Lawyers Association Phone: (852) 2559 9973 www.commonwealthlaw2009.org
3 – 5 December 2008 International Conference on Homicide Surfers Paradise, QLD	7-14 January 2009 Australian Accountants & Lawyers Conference Venue: Aspen, Colorado USA www.aalc.com.au	6 March 2009 QLS and ACLA present the Company Law and in-house Counsel State Conference Brisbane, QLD www.qls.com.au	23 - 26 August 2009 5th World Congress on Family Law & Children’s Rights World Trade & Convention Centre, Halifax, Nova Scotia, Canada Phone: +61 2 9999 6577 www.lawrights.asn.au
	19 – 22 January 2009 Internet Law for Professionals Niseko, Hokkaido, Japan	27 – 28 March 2009 QLS presents the 47th Annual Symposium	