

# Legal Practitioners Complaints Committee

## Reasons for Decision regarding Christopher Neil Raphael

The Committee recently considered a number of matters concerning the above-named practitioner. The Committee, with the consent of the practitioner, exercised its summary professional disciplinary jurisdiction and found the practitioner guilty of unsatisfactory conduct by unprofessional conduct as follows:

### Mr and Mrs FI

The practitioner was found guilty of unsatisfactory conduct by unprofessional conduct on or about 30 and 31 July 2004 by engaging in conduct likely to bring the legal profession into disrepute.

The agreed facts of the matter were that between about 1 November 2003 and 28 February 2005 the practitioner represented Ms F (the client) in child-related proceedings in the Family Court of Western Australia (the proceedings). At all relevant times the other party to the proceedings was Mr H who was married to Mrs H (collectively, Mr and Mrs H). The practitioner was a close friend of the client.

At about 12.30pm on or about Saturday 31 July 2004 the practitioner drove the client to the home of Mr and Mrs H to collect the child of the client and Mr H at which time a disagreement arose between the client and Mr and Mrs H over whether the latter would allow the child to be taken by the client. The practitioner intervened in the discussion and stood between the client and the front door behind which Mrs H was standing. In response to a statement to him made by Mrs H the practitioner raised his voice to Mrs H and said "screw you bitch", alternatively "screw you".

The Committee imposed a fine of \$1000 in respect of this matter. In finding the practitioner guilty, the Committee gave the

following reasons. The practitioner had acted unwisely in entering into and becoming involved in the altercation between Ms F and Mr and Mrs H. During the altercation the practitioner had acted in a manner, and used language, which was likely to increase the level of animosity between the parties and which would be viewed by most members of the public as distasteful and inflammatory. The Committee was of the view that the conduct was likely to bring the profession into disrepute and was unprofessional.

### Mrs L

The practitioner was found guilty of unsatisfactory conduct by unprofessional conduct:

1. In the period December 2004 to March 2005, in that he engaged in a sexual and social relationship with his client Mrs L, whilst in the course of acting for her in property settlement proceedings against her then estranged husband Mr L, and thereby:
  - (a) engaged in conduct which had the potential to affect adversely the client's interests in the matter in which he was retained and which was not then concluded; and
  - (b) used his position as the client's solicitor to advance his own emotional and sexual gratification, inconsistently with his duty to provide the client with independent and objective advice and representation in the proceedings.
2. On 27 June 2006, whilst giving evidence as a witness for the prosecution in the matter of the State of Western Australia and Mr L, made statements that were not frank and accurate and which the practitioner later admitted under cross-examination were untrue.

The agreed facts of the matter were that between on or about 1 June 2003 and on or about 10 September 2004 from time to time the practitioner was consulted for advice in relation to family law matters by Mrs L (the client). During this period the practitioner attended at the client's home in the evening on a date in June 2003; and on a date in March 2004 when he took a bottle of wine to share with the client.

On or about 10 September 2004 the client retained the practitioner to advise and represent her in relation to the obtaining of orders in the Family Court of Western Australia (the Family Court) against the client's husband, Mr L. The parties were able to reach agreement as to issues between them and on or about 21 December 2004 the client attended the practitioner's office to sign a Minute of Proposed Consent Orders to be made in the Family Court (the Minute) which had been countersigned by Mr L. Soon after the client had signed the Minute and while they were still in the practitioner's office the practitioner kissed the client.

On the date of the signing of the Minute as referred to, the practitioner sent to the Family Court the Minute and other documents for the making of orders by consent in terms of the Minute. The letter and the Minute and documents were received by the Family Court on about 22 December 2004. On about 24 December 2004 the Family Court wrote to the practitioner and Mr L with requisitions to be answered before the Family Court would make the orders by consent in the terms of the Minute.

On the evening of 24 December 2004 the practitioner and the client commenced a sexual relationship. On 27 December 2004 the practitioner stayed with the client at the client's home. At about 6.30 in the morning on 27 December 2004 Mr L came to the client's home and an incident occurred (the

incident) as a result of which Mr L was charged with criminal offences in relation to an assault on the practitioner (the charges). Shortly after Mr L's solicitor notified the Family Court that Mr L withdrew his consent to the making of the consent orders in terms of the minute previously signed by him on or about 21 December 2004. The family law matter then continued as contested proceedings between the client and Mr L in the Family Court. Between 27 December 2004 and about 31 March 2005 the practitioner and the client continued a relationship on a social basis and the client's retainer of the practitioner was not terminated until on or about, alternatively after, 31 March 2005.

On 26, 27 and 28 June 2006 a trial took place in respect of the charges against Mr L in the District Court of Western Australia at Perth (the trial). In the course of the trial each of the practitioner and the client testified as witnesses for the prosecution. In the course of cross examination of the client, counsel for Mr L introduced a video tape which, unknown to the client and the practitioner, Mr L had made of the incident (the video tape). During the cross examination of the practitioner, he:

- (a) admitted that early in the cross examination he had not told the truth to the jury about whether, before entering the court, he had been reading the statement he had made to police concerning the assault the subject of the charges and whether he had discussed his evidence in that regard with police officers;
- (b) admitted that the evidence in chief he had given of the incident and in particular of the assault on him was an entirely different account from that which he had given in a statement to the police; and
- (c) could not explain how the video tape showed Mr L with a bloody face and ripped t-shirt when the practitioner's evidence in chief was that he had not defended himself at all against Mr L's assault but had only held his hands in front of his face to protect himself.

The Committee imposed a fine of \$2,500 in respect of this matter. In finding the practitioner guilty the Committee gave the following written reasons.

It is always undesirable and potentially unprofessional for a practitioner to have a sexual relationship with a client during the course of his or her retainer and this is especially so in family law matters. A practitioner is ordinarily in a position of advantage in relation to a client. There is commonly a relationship whereby the practitioner is in a position of power vis a vis the client which the practitioner should be careful not to take advantage of, not least by engaging in sexual conduct with the client. Further a practitioner must ensure that he or she is able to provide a client with independent, objective advice and that requirement is likely to be put at risk by a sexual relationship between a solicitor and a client. Family law clients are often emotionally vulnerable which places practitioners in a particular position of power and advantage. This is equally applicable in financial matters where a client's economic welfare is at stake as in matters concerning children. The practitioner clearly had an inappropriate sexual relationship with his client in the course of acting for her in this instance.

Further, the practitioner's conduct in the matter had the potential to prejudice the agreement between the client and the husband. The affair between the practitioner and the client may have induced the husband to believe that the practitioner had potentially a personal interest in the property settlement. There was a real and sensible possibility that the husband would not proceed with the agreement reached until he himself sought and obtained independent advice. That would increase the risk that the settlement would at best be delayed and at worst be disrupted, to the disadvantage of the client. The practitioner's conduct arguably had the potential to affect adversely his client's interests and was unprofessional.

In relation to the practitioner's evidence at the trial that evidence was shown under

cross examination to be unreliable, the Committee was concerned that in this matter the practitioner had not, despite the fact that he was giving evidence under oath, conducted himself with the utmost candour and honesty.

The Committee also determined to write to the Legal Practice Board recommending that the Board consider imposing a restriction on the practitioner's practice certificate regarding his future interaction with female clients, and that restriction should be considered together with expert medical opinion.

#### Mr SL

The practitioner was found guilty of unsatisfactory conduct by neglect in that from on or about 11 July 2007 he failed to file written submissions on behalf of his client Mr S L within 14 days as ordered by the Family Court on 25 June 2007.

The agreed facts were that from on or about 15 April 2005 to approximately the end of November 2007 the practitioner was employed as a solicitor by the firm Friedman Lurie Singh & D'Angelo. From on or about 15 December 2006 the practitioner acted for Mr S L (the client) in Family Court proceedings (the proceedings).

On 25 June 2007 the practitioner appeared for the client at a hearing in respect of the proceedings. At the conclusion of the hearing the Court ordered that the client file written submissions in relation to the matters the subject of the proceedings within 14 days. By letter dated 26 June 2007 the practitioner advised the client that he would provide the submissions to the Court and provide a copy to the client. The practitioner failed to file the submissions at the Court within 14 days of 25 June 2007 or at all.

In respect of this matter the penalty imposed by the Committee was a reprimand. The reasons were that the practitioner had provided submissions which set out various mitigatory factors concerning the practitioner's professional and personal circumstances.