SUPREME COURT OF SOUTH AUSTRALIA

(Full Court: Application)

MANCINI v LEGAL PROFESSION CONDUCT COMMISSIONER

[2016] SASCFC 77

Judgment of The Full Court

(The Honourable Justice Blue, The Honourable Justice Stanley and The Honourable Justice Bampton)

26 July 2016

PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - DISCIPLINARY PROCEEDINGS - SOUTH AUSTRALIA - ORDERS

Application to amend the terms of a supervision order the practitioner deposes in an affidavit filed in support of the application that he has closed his solicitor's practice and is practising as a barrister in the area of criminal law and child protection – the respondent agrees to the terms of the proposed variation reflecting matters deposed to in the practitioner's affidavit.

Held:

1. Application to amend the terms of the supervision order granted.

Mancini v Legal Practitioners Conduct Board [2014] SASCFC 31, referred to.

Applicant: GEORGE MANCINI In Person
Respondent: LEGAL PROFESSION CONDUCT COMMISSIONER Counsel: MR M BARNETT - Solicitor: LEGAL PROFESSION CONDUCT COMMISSIONER

Hearing Date/s: 01/07/2016

File No/s: SCCIV-13-1659

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MANCINI v LEGAL PROFESSION CONDUCT COMMISSIONER
[2016] SASCFC 77

Full Court: Blue, Stanley and Bampton JJ

1 **THE COURT:** By interlocutory application dated 28 April 2016 (FDN 16), George Joseph Stephen Mancini ("the practitioner") applied to amend the terms of a supervision order ("the Order") made on 15 April 2014.

2 In his affidavit sworn on 28 April 2016 filed in support of the application, the practitioner deposed that:

- in early December 2015 he decided to close his solicitor's practice with effect on 31 January 2016;
- he informed the Law Society of South Australia ("the Law Society") of his decision;
- he also informed his supervisor, John Ward, and liaised with him regarding the closure of his practice;
- all existing clients of George Mancini & Co have been released to other solicitors or their matters have been concluded;
- he has worked with the Law Society Law Practice Compliance Investigator to finalise and draw cheques for all client trust account balances and all such cheques have been drawn and posted;
- the George Mancini & Co Trust Account would be audited by the trust account auditor in the next 90 days;
- he has resigned from all Law Society related committees;
- from 1 February 2016 he has sought to practise exclusively as a barrister in the areas of practice referred to in the Order and his undertakings to the Court, that is, in criminal law and child protection;
- he has negotiated with the Aboriginal Legal Rights Movement to undertake counsel work and his instructing solicitors are aware of the Order;
- he has met with Mr Ian Robertson SC on behalf of the South Australian Bar Association and advised him of his arrangements to perform counsel work; and
- he has arranged with Mr Mark Griffin QC to be his supervisor.

3 The practitioner and the Legal Profession Conduct Commissioner agreed to the terms of a proposed variation of the order reflecting the matters deposed to in

the practitioner's affidavit. Having regard to the matters deposed to by the practitioner in support of his application for a variation to the Order and the consent of the Commissioner to the proposed orders, the Court made the following order varying the Order on 1 July 2016:

1. The Order made by this Court on 15 April 2014 in matter number 1659 of 2013 be varied such that paragraph 2 thereof ceases to have operation on 1 July 2016 and is replaced by the following:

2. The practitioner shall enter into a period of three years' supervision of any legal practice conducted by him or in which he is involved in the following terms:

   2.1. That the period of supervision shall commence on 1 May 2014 and conclude on 30 April 2017.

   2.2. That for the balance of the period of supervision the practitioner shall confine his practice to the work set out and described in Rule 15 of the Rules of the South Australian Bar Association Incorporated Barristers' Conduct Rules ("the SABA Rules") and shall practise only in criminal law.

   2.3. That until further order the supervisor of the practitioner shall be Mark Andrew Griffin QC.

   2.4. That any costs attendant upon the supervision of the practitioner by the supervisor shall be paid by the practitioner.

   2.5. That the supervisor shall supervise the practitioner by face-to-face meetings of at least a half hour's duration occurring not less than once per fortnight during the period of supervision.

   2.6. On request by the supervisor, the practitioner will give the supervisor unfettered access to his diary, briefs, correspondence, accounts, computers, staff members and all documents and things necessary for the supervisor to have a full understanding of the practitioner's court and advice commitments, his arrangements and communications with instructing solicitors, his costs disclosures, time management, financial management, practice administration and billing as well as any complaint made against him.

   2.7. That each new instructing solicitor who briefs the practitioner during the period of the supervision shall receive from the practitioner written notification of this order and the terms of practitioner's supervision within 7 days of agreeing to brief the practitioner and be asked for written authorisation for the supervisor to examine any brief or other papers pertaining to the solicitor's client and to discuss the same with the practitioner. The instructing solicitor is to be invited to contact the supervisor if any difficulties or issues arise in relation to the work by the practitioner.

2.8. That the supervisor shall monitor the conduct of the practitioner to the extent necessary to enable the supervisor to report on the matters referred to in paragraph 2.10 below.

2.9. The practitioner shall ensure that all and any records and information are provided to the supervisor as required and shall provide such information and answer such enquiries as may be made, whether in writing or orally as requested by the supervisor upon demand or as soon as reasonably practical thereafter.

2.10. That during the period of supervision the supervisor shall provide a written report to the Commissioner at intervals of every three months with the first such report to be due no later than 1 October 2016. By reference to his direct knowledge and observations arising from the carrying out of his supervisory role in accordance with these terms of supervision the supervisor shall report on the practitioner's level of co-operation and responsiveness to the supervision and the practitioner's observance of any advice, counsel or warning by the supervisor and any other matter relating to or arising out of the supervision at the discretion of the supervisor. Again by reference to his direct knowledge and observations and also from any information the supervisor may have received from any instructing solicitor of the practitioner, the report in each case shall set out the opinion of the supervisor upon whether the practitioner:

2.10.1. is observing the professional obligations of a barrister in a timely manner, including his obligations as an officer of the Court, whether such obligations are set forth in the Legal Practitioners Act, Regulations, SABA Rules or the Australian Solicitors' Conduct Rules as amended from time to time or otherwise;

2.10.2. is attending to the completion and finalisation of matters in a prompt manner, including the provision of a reporting letter and tax invoice or Commitment Certificate to the instructing solicitor at the conclusion of his involvement in any matter;

2.10.3. is communicating regularly and courteously with instructing solicitors and where appropriate, opponents, and responding to correspondence and telephone calls as appropriate;

2.10.4. is organising his time and resources in such a way that minimises the practitioner's need to seek adjournments of matters; and

2.10.5. is otherwise conducting his practice in a professional manner.

2.11. In the event that it shall be the opinion of the supervisor that the practitioner is not meeting these standards in all respects, the supervisor shall set forth in the report the grounds for such an opinion and any recommendations he sees fit to make.

2.12. The Commissioner shall be authorised to provide to the supervisor a copy of any current complaint or charge against the practitioner or any new complaint received by him during the period of supervision and any email, correspondence, determination or order in relation thereto, and to discuss the same with the supervisor. The supervisor will use his best endeavours to ensure that the practitioner is responding fully to emails and correspondence from the Commissioner's office within the timeframes required.

2.13. The practitioner will not conduct or engage in legal practice other than in accordance with these orders for the duration of the period of supervision.

2.14. The practitioner is to notify the Commissioner and the supervisor in writing within seven days of any change in the practitioner's practice or in his personal circumstances which may affect his practice.

3. In all other respects the Order of the Court dated 15 April 2014 is confirmed.

4. The practitioner is discharged from the undertakings given by him to this Court on 22 June 2015.