

**SUPREME COURT OF SOUTH AUSTRALIA**  
(Full Court)

**LEGAL PRACTITIONERS CONDUCT BOARD v HANNAFORD**

**Judgment of the Full Court**

(The Honourable Justice Perry, the Honourable Justice Williams and the Honourable Justice Gray)

20 August 2002

**PROFESSIONS AND TRADES — LAWYERS — REMOVAL OF NAME FROM ROLL**

**PROFESSIONS AND TRADES — LAWYERS — SOLICITOR AND CLIENT — DUTIES AND LIABILITIES TO CLIENT — DEALINGS WITH CLIENT**

Legal practitioner found guilty of unprofessional conduct by Legal Practitioners Disciplinary Tribunal - conduct related to dealings with client counsel and the Legal Services Commission - practitioner asserted that client needed money to secure certain counsel - money received from client - legal aid then sought and obtained - practitioner grossly overcharged client - misappropriation of client's money - used for own purposes - failure to comply with provisions of Legal Practitioner's Act as to trust accounting - practitioner mislead Legal Services Commission by asserting that no likelihood of private funds becoming available - conduct in breach of Legal Services Commission Act - dishonesty and gross departure from proper professional standards - practitioner's conduct disgraceful and dishonourable - solicitor client relationship - duties and obligations of legal practitioners - practitioner removed from roll of practitioners.

*Legal Practitioners Act 1981 (SA), s 81; Legal Services Commission Act 1977 (SA), referred to.*

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Plaintiff: LEGAL PRACTITIONERS' CONDUCT BOARD    Counsel: MR S COLE - Solicitors:  
A RATHBONE  
Respondent: BRUCE GARFIELD HANNAFORD    Counsel: MR TIM BOURNE - Solicitors:  
BOURNE LAWYERS

Hearing Date/s: 09/07/2002.

File No/s: SCCIV-02-147

A1

Judgment No. [2002] SASC 260

**THE LEGAL PRACTITIONERS CONDUCT BOARD v HANNAFORD**  
**[2002] SASC 260**

**Full Court: Perry, Williams and Gray JJ**

1 PERRY J. By order made on 9 July 2002, this Court ordered that the name of the defendant, Bruce Garfield Hannaford, be struck off the roll of legal practitioners. The Court reserved the right subsequently to publish reasons for doing so.

2 Mr Hannaford was admitted as a legal practitioner in December 1991, following which he commenced practice on his own account at Elizabeth. He practised for about three years before the conduct occurred which has resulted in the order striking him off the roll.

3 During that time, he suffered from ill health, more particularly a depressive illness, for which he received medical treatment. This affected his work. Before long his practice fell into disarray. Amongst other shortcomings, his book-keeping was haphazard, and he fell into financial difficulties.

4 In January 1995, Marek Mucha, who was charged with the murder of his wife, instructed Mr Hannaford to represent him. Mr Mucha was mentally ill and had been diagnosed as suffering from schizo-affective psychosis. He resided with his father, Jozef Mucha.

5 Soon after he had been instructed in the matter, Mr Hannaford approached Jozef Mucha and requested money on account of legal costs. He told him that he needed the money in order to ensure that the services of particular counsel, whom he named, could be secured to represent his son at the trial. In response to Mr Hannaford's request, Jozef Mucha paid to him \$10,000 in two instalments, which he received in January and February 1995.

6 Mr Hannaford did not pay the moneys into his trust account, but instead paid it into his office or operating account. The small amount of work which he had done could not possibly have justified such a substantial payment which represented a gross overcharge.

7 Shortly after receiving the payment, Mr Hannaford made an application to the Legal Services Commission for the grant of legal aid to fund Marek Mucha's defence. In a letter to the Commission which was forwarded together with the application, Mr Hannaford stated:

"Despite our best searches Mr Mucha appears to have no prospects of private funding. He has no assets other than personal effects."

8 Mr Hannaford failed to disclose to the Commission that he had received \$10,000, and failed to disclose the names of any relatives living with his client.

9 After the Commission granted legal aid, Mr Hannaford successfully made several requests at various times thereafter for an extension of the funding.

10 Marek Mucha was eventually found not guilty of murder by reason of insanity.

11 The Commission then certified total costs, including counsel fees and disbursements, at about \$20,000, from which Mr Hannaford paid the two counsel whom he had briefed in the matter, who were the counsel he had informed Jozef Mucha he would retain, and retained the balance.

12 In May 1997, the Legal Practitioners Conduct Board ("the Board") commenced an investigation of its own motion into Mr Hannaford's conduct in the matter. In December 1999, the Board charged Mr Hannaford before the Legal Practitioners Disciplinary Tribunal ("the Tribunal") with unprofessional conduct. In the charge the Board particularised the unprofessional conduct as follows:

"The Board says that the evidence of unprofessional conduct of the practitioner is that he:

20.1 Falsely stated to Jozef Mucha that the \$10,000.00 was needed to ensure the services of Kane and Borick;

20.2 Falsely stated to the Commission:

20.2.1 That Mucha did not have prospects of private funding;

20.2.2 That Mucha had no relatives living with him at the time of making the application for funding on his behalf;

20.3 Failed to account properly to Jozef Mucha, or to the Commission, for the \$10,000.00

20.4 Failed to deposit into his trust account the \$10,000.00, being trust money, contrary to section 31(1) of the Act."

13 When the charge came on for hearing before the Tribunal, Mr Hannaford did not contest it. Furthermore, he did not oppose a recommendation by the Tribunal that disciplinary proceedings against him be pursued in the Supreme Court (see s 82(6)(a)(v) of the *Legal Practitioners Act 1981*).

14 As I have already indicated, the application which was subsequently made by the Board to this Court for an order striking off Mr Hannaford's name from the Roll of Legal Practitioners was not opposed by Mr Hannaford, whereupon the Court made the order sought.

15        There can be no doubt that having regard to the circumstances of  
Mr Hannaford's misconduct, that order was appropriate.

- 16 WILLIAMS J In the course of representing a client in criminal proceedings Mr Hannaford misappropriated his client's funds and dishonestly failed to disclose to the Legal Services Commission this private funding. As personal integrity is an essential attitude of a legal practitioner the findings of the Legal Practitioners Disciplinary Tribunal show that Mr Hannaford is unfit to practise. His name should be removed from the roll of practitioners.

17 GRAY J. On 2 November 2001 the Legal Practitioners Disciplinary Tribunal found Bruce Garfield Hannaford ("the practitioner") guilty of unprofessional conduct. The tribunal recommended that disciplinary proceedings be commenced in the Supreme Court.

18 The practitioner did not contest the charge of unprofessional conduct. He did not oppose the tribunal recommending that disciplinary proceedings against him be pursued.

19 The unprofessional conduct related to the practitioner's dealings with a client and the Legal Services Commission ("the Commission"). The facts can be summarised as follows:

- in January 1995 the practitioner was instructed to represent a client who had been charged with murder.
- at about the same time and on more than one occasion the practitioner approached the client and requested money for legal costs. He informed the client that the money was needed to ensure that particular counsel could be engaged.
- two cheques totalling \$10,000 were provided dated 13 January 1995 and 6 February 1995.
- the practitioner failed to deposit the \$10,000 into his trust account
- between January and March 1995 the practitioner undertook work on behalf of the client.
- on or about 2 March 1995 the practitioner prepared an application for legal aid and forwarded that and other related documents to the Commission. The practitioner's letter stated:

"Despite our best searches [the client] appears to have no prospects of private funding. He has no assets other than personal effects."
- the practitioner failed amongst other things to disclose to the Commission that he had received \$10,000.
- the Commission granted legal aid effective from 6 March 1995.
- the practitioner made several requests to extend the Commission's funding.

- the total funding granted by the Commission was:  
Solicitor's fees \$ 4,885.00  
Counsel fees \$ 13,015.00  
Disbursements \$ 2,600.00  
Total \$ 20,500.00
- counsel were not advised of the private funding arrangements.
- in November 1995 the client was found not guilty by reason of insanity.
- the practitioner forwarded to the Commission a claim for counsel fees totalling \$10,960. The Commission paid \$10,960 as per the request. The practitioner rendered his account for fees for the total sum of \$5,087.50.
- in December 1995 the practitioner paid counsel their fees in the sums of \$5,645.00 and \$5, 315.00.

20 The practitioner conceded that he misappropriated his client's money and used it for his own purposes. His evidence to the tribunal included:

"Q. Are you able to tell the tribunal what happened to that money.

A. Well it would have been consumed in the course of the practice I suppose.

Q. You have no specific recollection of doing anything specific with it.

A. No it's not secreted, there's nothing clever, no there's nothing like that, no. I wish I'd planned my bankruptcy as some people do better, but I certainly haven't done that at all.

Q. You don't have a specific recollection of what you actually physically did with the money when it was handed over to you.

A. I think it was banked, it was in the accounts. I don't think there's any question about that.

Q. Banked and used as part of your general practice revenue.

A. Yes, I think that's quite clear from the - that was quite clearly there yes. I don't think there's any dispute about that, yes."

21 The tribunal found that the practitioner grossly overcharged the client. He falsely asserted to the Commission that the client appeared to have no prospects

of private legal funding. He failed to disclose that the client had paid \$10,000 towards the practitioner's legal fees. He failed to account to the client or to the Commission for the \$10,000 and failed to deposit the money, being trust money into his trust account contrary to section 31(1) of the *Legal Practitioners Act, 1981 (SA)*.

### **Personal Antecedents**

22 The practitioner was admitted on 16 December 1991. He commenced in sole practice at Elizabeth and then later opened an office in Adelaide. He practised primarily in the areas of criminal and family law. The practitioner experienced financial pressures including "cash-flow problems". He was assisted in practice by his partner of some years. She was initially employed as a clerical assistant and later as a business manager. She suffered from a mental illness and in 1994 was declared psychotic. This caused stress to the practitioner in his personal life and in his practice.

23 In August 1995 the practitioner's relationship with his partner ended. He sought medical treatment for depression which he had suffered since the mid 1970's. He was also advised to cease practising but continued until December 1995. In 1998 the practitioner became bankrupt on the application of the Australian Taxation Office. He has not sought to discharge his bankruptcy. He has not sought to remove his name from the roll of practitioners. He continues to undergo medical treatment for depression.

24 Whilst the medical condition of the practitioner's partner may go some way to explaining his conduct it can provide no excuse. Many practitioners are subjected to stress in their working lives. This is part of professional life. Practitioners must understand that personal stressors cannot ameliorate the seriousness with which professional obligations are viewed and the need for strict compliance at all times. A practitioner's professional standards must not be compromised or eroded.

### **Unprofessional Conduct**

25 Legal practitioners play an integral part in the administration of justice. The obligations which accompany their position are commensurate with the responsibility involved. Practitioners have a number of duties including a duty to uphold the law, a duty to the court, a duty to their clients and a more general duty to members of the public. The court and the public demand a high standard from practitioners. This is reflected in the legislative provisions that regulate the admission of practitioners and govern their conduct.

26 The legal practitioner in this case was blatantly dishonest. Not only did he fail to honour his duty to his client he also deceived counsel and the



Commission. His actions were contrary to Section 31 of the *Legal Practitioners Act* which relevantly provides:

“(1) Subject to subsection (2), a legal practitioner must, as soon as practicable after receipt of any trust money in the course of practice, deposit the money in a trust account and must not withdraw or permit it to be withdrawn except as authorised by this Part.

...

(4) The legal practitioner must keep detailed accounts of all trust money received, and of any disbursement or other dealings with the money in a manner —

(a) that accurately discloses the state of any trust accounts maintained by the legal practitioner; and

(b) that enables the receipt and disposition of trust money to be conveniently and properly audited.

(5) The legal practitioner must keep detailed accounts of any trust money received that is, by virtue of a direction to which subsection (2) relates, not paid into the practitioner's trust account, and of any disbursement, or dealing, affecting that money.

(6) A legal practitioner —

(a) must not, without the approval of the Supreme Court, permit trust money to be intermixed with other money; and

...

(7a) A legal practitioner who receives trust money in the course of acting in a matter must provide the person who instructed him or her in the matter with trust account statements in accordance with the regulations.

(8) A person who contravenes this section or a condition imposed by the Supreme Court under this section, is guilty of an offence.

Maximum penalty: \$10 000.

27

By failing to deposit the \$10,000 into his trust account and by failing to keep proper accounts the practitioner acted in breach of the *Legal Practitioners Act*. In addition, he acted illegally, dishonestly and in breach of his fiduciary duty. His conduct was disgraceful.

28 The *Legal Services Commission Act 1977* (SA) provides a service through which money for legal representation can be obtained on a needs basis. Section 10 provides:

“(1) The Commission shall—

...

(b) provide, or arrange for the provision of, legal assistance in accordance with this Act; and

(c) determine the criteria upon which legal assistance is to be granted in pursuance of this Act; and

...

(2) In determining the criteria upon which legal assistance is to be granted in pursuance of this Act, the Commission shall have regard to the principles—

(a) that legal assistance should be granted in pursuance of this Act where the public interest or the interests of justice so require; and

(b) that, subject to paragraph (a) of this subsection, legal assistance should not be granted where the applicant could afford to pay in full for that legal assistance without undue financial hardship....”

29 Section 11 of the *Legal Services Commission Act* provides that when exercising its powers and functions the Commission shall—

“(a) seek to insure legal assistance is provided in the most efficient and economical manner;

(b) use its best endeavours to make legal assistance available to persons throughout the State;

...

(d) have regard to the following factors:—

(i) the need for legal assistance to be readily available and easily accessible to disadvantaged persons;

(ii) the desirability of enabling all assisted persons to obtain the services of legal practitioners of their choice; ...”

30 In furtherance of its purposes, the *Legal Services Commission Act* makes it an offence to withhold relevant information from the Commission. Section 21 provides:

“(1) A person who applies to the Commission for legal assistance and, with intent to deceive or mislead the Commission, withholds any relevant information that he is required by the Commission to furnish, or makes any statement or representation that is false or misleading in any material particular, shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(2) If the Commission has made a payment for the provision of legal assistance for a person who has been convicted of an offence against subsection (1) of this section, the Commission may recover the amount of that payment, as a debt due to the Commission from the convicted person, in any court of competent jurisdiction.”

31 The Law Society of South Australia Professional Conduct Rules provide further guidance for practitioners. Under the heading Legal Assistance, Rule 12.3 provides:

“Subject to any requirements of any legal aid agency:

...

(b) if a practitioner acting in a matter the subject of a grant of legal aid, becomes aware of any change in the financial position or other circumstances of the client, and if such change may be relevant to the continuing grant of aid or the terms upon which such aid may be continued, the legal aid agency shall be informed by the practitioner forthwith of such change;

(c) a practitioner who communicates matters pursuant to Sub-rules (a) and (b) hereof to the Legal Services Commission or any other legal aid agency shall inform the assisted person of the matters communicated.”

Under the heading *Dealings Between Solicitor and Counsel*, Rule 11.3 provides:

“A practitioner who receives moneys from a client for the express purpose of paying counsel’s fees shall apply the money for that and no other purpose.”

32 As earlier observed the practitioner was dishonest in his dealings with his client. He deceived the client into believing that money was required to secure

counsel. He failed to advise the client of the true position and the availability of legal aid funding. He took money from his client for one purpose and used it for another. He failed to deposit the money into his trust account as the *Legal Practitioners Act* required. He failed to account for that money. He mixed that money with his own and used it as part of his general practice revenue. He used it for his own purposes. The practitioner's conduct was in breach of his professional obligations to his client. He took that money in contravention not only of his professional obligations but his actions could well amount to criminal conduct. He was less than candid in his approach. He took advantage of his client for his own ends. A large amount of money was involved.

33 The need for practitioners to keep their client's money separate from their own has been consistently recognised by legislation and the courts over many years<sup>1</sup>. Observations in *Cordery on Solicitors*<sup>2</sup> are apposite:

“Any dishonesty, whether or not leading to a conviction, is also extremely likely to result in an order that a solicitor be struck off, the most grave example being the deliberate misuse of client's money.

Dishonesty does not always take the form of theft, there is dishonesty implicit in statements which deliberately mislead others, whether clients or not.

Any actions on the part of a solicitor preferring his own interests to those of his client will be regarded seriously, as in cases of culpable over-charging (including seeking to obtain fees on a private basis from a legally aided client), or obtaining a loan from a client without the client being independently represented.”

34 The practitioner also failed to act honestly in his dealings with the Commission. When he applied for funding on behalf of his client he knew that he had already received a substantial sum of money for fees. He misled and deceived the Commission by failing to inform it of this relevant fact. The practitioner's letter in which he wrote:

“Despite our best searches [the client] appears to have no prospects of private funding. He has no assets other than personal effects.”

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<sup>1</sup> (See for example *R v H O'Donnell* (1895) 10-12 NSW WN 42 and 42 and 43) “Solicitors have been warned over and over again that their client's moneys should not be mixed with their own, but should be placed in a trust account; under no circumstances whatever should a solicitor pay the money of his client into his own banking account. If it is discovered that solicitors mix the money of their clients with their own, that fact alone, apart from any defalcation, should render them liable to punishment, even though the next day they might be in a position to draw a cheque for the money.

...  
 “[It must be]...thoroughly understood by the public and the profession that an attorney who receives money of his client and misappropriates it should not be allowed to remain a single hour the member of an honourable profession, no matter what the amount may be.”

<sup>2</sup> Butterworths 10<sup>th</sup> edition Vol 1, I “Professional Conduct” [1422], [1423] and [1426]

is telling. This statement was profoundly incorrect and written in an effort to obtain funding in continuance of his deception.

35 The practitioner failed to inform the Commission of the true position prior to the grant of legal aid and after the grant of legal aid. Even once aid was granted, the practitioner's deception continued. On a number of occasions he requested that the funding be extended. He failed to provide the Commission with the information necessary to make an informed decision about the client's needs. His conduct may well have affected others. It may well have prevented them from having the opportunity to receive legal aid funding at this time.

36 The breach of section 21 of the *Legal Services Commission Act* is a serious matter. The practitioner had a duty to act honestly with respect to all dealings with the Commission. He had duties of disclosure and frankness. His conduct has denied those in need the opportunity of legal aid, access to professional advice and representation. His conduct was selfish, dishonest, in breach of the *Legal Services Commission Act* and unprofessional.

### Conclusion

37 The practitioner's conduct represented a gross departure from proper professional standards. It amounted to an abuse of the privileges which accompany a practitioner's admission to this court. The practitioner's treatment of his client and the Commission was disgraceful and dishonourable. He also deceived other members of the profession. The practitioner has shown a complete disregard for his obligations and duties. His conduct was of such a kind that if tolerated would bring the legal profession into disrepute. It was of a nature that would erode public confidence in the legal profession. There is a need to protect the public from unprofessional and dishonest practitioners. The public must be protected from those who ignore the basic rules which govern proper professional practice and who are indifferent to rudimentary professional requirements. The practitioner's conduct necessitates his removal from the roll of practitioners.