

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12142-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW ROMAN PENA

Respondent

Before:

Mr B. Forde (in the chair)

Mr P. Lewis

Mr M. R. Hallam

Date of Hearing: 6 January 2021

Appearances

There were no appearances as the matter was considered on the papers.

**MEMORANDUM OF
CONSIDERATION OF
NON-PARTY DISCLOSURE
APPLICATION**

Background

1. The Rule 12 Statement in this matter was dated 18 November 2020.
2. The matter was listed under Rule 20(3) of the Solicitors (Disciplinary Proceedings) Rules 2019 (“SDPR”) for consideration by a clerk of the Respondent’s non-compliance with directions (“the Non-Compliance Hearing”). The Non-Compliance Hearing was listed for 10.15 a.m. on 7 January 2021.

The Non-Party Disclosure Application

3. On 5 January 2021 Mr B requested a copy of the Rule 12 Statement (or equivalent). The reason for the request, and how granting the application would advance the open justice principle, was stated to be:

“I wish to read the Rule 12 statement so that I may understand what is alleged and follow the hearing which is listed for 7 January 2021. Disclosing it will be consistent with the practice of the courts (see CPR 1998 Rule 5.4(C)) and will advance the principle of open justice because it will enable members of the public (including me) to follow the proceedings on a properly informed basis”.

The Position of the Parties

4. In accordance with its Policy on the Supply of Documents to a Non-Party from Tribunal Records (June 2020) (“the Policy”) the parties to the proceedings were invited to make submissions on the disclosure application.
5. No response was received from the Respondent.
6. Mr Leigh, on behalf of the Applicant, noted in an email of 6 January 2021 that the decision was one for the Tribunal and put forward the following points for consideration:
 - The hearing on 7 January 2021 is an administrative non-compliance hearing and there will be very limited (if any) reference to the substantive points and issues covered in the Rule 12 Statement. Detailed knowledge of the same may not therefore be required to follow the issues covered in the hearing.
 - Beyond a desire to follow the non-compliance hearing (and the general principles of open justice), Mr B did not set out any specific reasons for his interest in or need to know the substantive issues in this case at this stage.
 - The Applicant was currently following its own publication procedure in relation to publishing a summary of the allegations on its website. A decision had been made, but under the Applicant’s published rules and procedures it was subject to an appeal period of 28 days before publication. Accordingly, a summary of the allegations was due to be published on the Applicant’s website on or around 3 February 2021 (subject to any appeal by the Respondent), i.e. 6 weeks before the

substantive hearing date when the issues covered by the Rule 12 statement were due to be heard in Tribunal.

- The Tribunal has its own publication policy for publishing the outcome / allegations, post hearing.
7. It was submitted that in light of the above disclosure of the Rule 12 Statement to third parties may be premature.
 8. On behalf of the Applicant, Mr Leigh requested that if the Tribunal decided to disclose the Rule 12 Statement the Anonymity Schedule be removed before disclosure. He also invited the Tribunal to consider whether seeking any assurance from the non-party applicant against onward transmission / publication would be appropriate.

The Tribunal's Decision

9. The Tribunal had regard to the Policy. The overarching principles, set out in the preamble to the Policy, are the principle of open justice, the importance of transparency in the Tribunal's decision-making processes and the interests of the parties or relevant third parties.
10. The SDPR has no direct equivalent of the CPR rule mentioned by Mr B. The Tribunal's default starting position under the Policy is that the public should be allowed access, not only to the parties' written submissions and arguments, but also to the documents which have been placed before the Tribunal and referred to during the hearing.
11. The disclosure application was for the Rule 12 Statement which included details of the allegations, submissions made by the Applicant and a detailed summary of the evidence relied upon. Whilst the disclosure application was for this statement 'or equivalent, there was no equivalent document and the Tribunal's deliberations focused on disclosure of the Rule 12 Statement.
12. Having regard to the factors listed in the Policy under "The Tribunal's Decision", the Tribunal considered the following factors to be relevant:
 - The stage of the proceedings at which the request is made
 - The potential value of the material in advancing the purpose of open justice
 - Any risk of harm which access to the documents may cause to the legitimate interests of others

The stage of the proceedings at which the request is made

13. The Non-Compliance hearing was listed for a clerk to consider the Respondent's compliance with directions and appropriate next steps under the SDPR. The Rule 12 Statement was very unlikely to feature in the hearing. The Tribunal considered that this procedural and administrative hearing could be followed and understood without a copy of the detailed pleadings underpinning the case.

14. The Tribunal noted that under the Applicant's publication procedure a summary of the allegations would be published on its website on or around 3 February 2021 (subject to any appeal by the Respondent). Accordingly, this information was likely to be publicly available prior to the substantive hearing date at which all the issues of the case would be rehearsed in public (subject to any direction from the Tribunal to the contrary). The Tribunal noted that the period for the Respondent to object to such publication by the Applicant had not expired and did not consider that it would be appropriate for the Tribunal to cut across that process when the Respondent may have a reasonable expectation that its protections would be applied to him. The absence of any representations on the disclosure application from the Respondent at this stage reinforced this view.

The potential value of the material in advancing the purpose of open justice

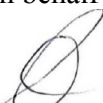
15. The Tribunal did not consider that Mr B had provided any specific reasons why the open justice principle would be advanced by the disclosure sought. Any non-party disclosure would increase the information available to the public, but this did not in itself inevitably advance the open justice principle.
16. The Tribunal did not consider that the disclosure, at this stage, of the Rule 12 Statement, which would be very unlikely to feature in the Non-Compliance Hearing, would help promote either public scrutiny of the way the Tribunal takes decisions or public understanding of how the solicitors' regulatory system works. These were the main purposes of the open justice principle and no particular reason why they would be advanced at this stage by the disclosure sought had been provided.

Any risk of harm which access to the documents may cause to the legitimate interests of others

17. As noted above, the absence of any representations from the Respondent was a factor which the Tribunal considered weighed against disclosure at this stage given that the Applicant's own publication procedure had not yet been completed.
18. The Tribunal sought to balance the principles and factors summarised above. Given the procedural and administrative nature of the hearing, the assessment that the Rule 12 Statement was not necessary to understanding the hearing and that the Applicant's own publication processes were not yet complete, the Tribunal considered that the requested Order for disclosure should not be made.
19. The Tribunal Directed:
 - 19.1 The disclosure application for a copy of the Rule 12 Statement (or equivalent) be dismissed.

Dated this 7th day of January 2021

On behalf of the Tribunal



B. Forde
Chair