

IN THE MATTER OF MICHAEL PATRICK MALONE - Solicitor's Clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.W. Roome (in the Chair)
Mr. K.I.B. Yeaman
Mrs. C. Pickering

Date Of Hearing: 12th September 1995

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Roger Field solicitor, of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on the 2nd June 1995 that an Order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor should except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Law Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Michael Patrick Malone of Bispham, Blackpool, Lancs, (formerly of , Blackpool, FY4) a person who was or had been a clerk to a solicitor or that such other Order might be made that the Tribunal should think right.

The allegation was that the respondent had sworn an affidavit in support OF an application to set aside a judgement which affidavit contained material which was inaccurate and which was designed to mislead the court. Further he misled his client in relation to the matter.

The application was heard at the Courtroom, 60 Carey Street, London, WC2 on the 12th September 1995 when Roger Field solicitor and partner in the firm Messrs. Higgs & Sons,

Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands appeared for the applicant and the respondent appeared in person.

The evidence included the admissions of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that as from the 12th September 1995 an Order made pursuant to s.43 of the Solicitors Act 1974 should be enforced with regard to the respondent, and he was ordered to pay costs of and incidental to the application and enquiry fixed in the sum of £650.00

The facts are set out in paragraphs 1 to 3 hereunder:

1. The respondent, who was not a solicitor, was employed by Messrs. Atkinson, Cave & Stuart, solicitors of 45 Springfield Road, Blackpool, FY1 1PZ (hereinafter called "the firm")
2. The respondent was responsible under the supervision of the partners for the conduct of the professional business of the clients of the firm including the conduct of contentious matters. The respondent's employment with the firm ended on the 17th August 1994 when the respondent resigned. In his letter of resignation which was before the Tribunal, the respondent said that he saw resignation as his only option having regard to his admission that he had sworn an affidavit in support of an application to set aside a judgement which affidavit contained material which was inaccurate and which was designed to mislead the court. He acknowledged further that he had misled his client in relation to that matter.
3. On the 8th March 1995 the Adjudication and Appeals Committee of the Solicitors Complaints Bureau resolved that application should be made to the Tribunal for an Order under Section 43(2) of the Solicitors Act 1974.

The Submissions of the Applicant

4. The allegation, which the respondent admitted, concerned a serious matter. The respondent's actions had been wholly inappropriate for a person in his position of trust as clerk to a solicitor. An Order made pursuant to Section 43 of the Solicitors Act 1974 did not prevent a clerk from being employed within the solicitors' profession but its central purpose was to act as a mechanism for control of such employment - it was not intended to be punitive. Because of the respondent's behaviour in the cited matter it was appropriate that control over the respondent's employment within the profession should be exercised.

The Submissions of the Respondent

5. The respondent told the Tribunal that he felt he had to attend the hearing "to face the music". He apologised for what he had done. He hoped the hearing and the Tribunal's Order would not impact on his current situation where happily he found himself employed, although not within the solicitors' profession.
6. The respondent had taken a great pride in his job, and had been dedicated to it. Indeed he believed that his dedication to his work as a clerk to a solicitor had played a part in the breakdown of his marriage which had caused him great distress and had subjected

him to a great deal of pressure, resulting in his suffering a breakdown and an attempted suicide.

7. The respondent believed he had shouldered a large workload including complex matters which perhaps were more than he could properly handle at the then state of his knowledge and ability.
8. The respondent was greatly embarrassed by what he had done and had made a clean breast of it at the time of his resignation.

The Tribunal FOUND the allegation to have been substantiated, indeed it was not contested. Clearly the respondent, upon his own admission, had acted dishonestly in preparing an untrue affidavit and in misleading his client. The Tribunal accepted however, that it appeared to be an isolated incident and that there was no evidence of the respondent having sought financial gain. The respondent deserved credit for attending before the Tribunal and making a clear admission of his guilt. Credit had also to be given for the fact that he had disclosed the matter of his own accord to his employers and had honourably taken the step of resignation from his employment. It was clear that there had been a number of mitigating factors in addition to which the respondent had expressed contrition and made apology. It was however right that the Order sought be made, not as a punitive measure but to ensure that the respondent's employment within the solicitor's profession was subject to the control of the Law Society in the future. It was also right that the respondent should bear the costs of and incidental to this application and enquiry.

DATED this 9th day of October 1995

on behalf of the Tribunal



Chairman



