

IN THE MATTER OF DIANE KAY WHISTON,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr P Kempster (in the chair)
Mr P Haworth
Mrs C Pickering

Date of Hearing: 13th June 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill Solicitors, 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY on 12th December 2005 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 a period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor Diane Kay Whiston of Stanley, Wakefield, a person who was or had been clerk to a solicitor or that such other order might be made as the Tribunal should think right.

The allegation was that the Respondent having been employed by a solicitor but not being a solicitor had in the opinion of the Law Society occasioned or been a party to with or without the connivance of the solicitor by whom she was employed an act or default in relation to the solicitor's practice which involved conduct on her part of such a nature that in the opinion of the Society it would be undesirable for her to be employed or remunerated by a solicitor or registered foreign lawyer in connection with his or her practice or by an incorporated solicitor's practice.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Stephen John Battersby appeared as the Applicant and the Respondent did not appear and was not represented. The evidence before the Tribunal included correspondence addressed by the Respondent to the Applicant and to the Law Society. She indicated that she would not attend the hearing. She had been served with Civil Evidence Act Notices and no counter-notices had been received.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that as from 13th day of June 2006 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Diane Kay Whiston of Stanley, Wakefield, a person who is or was a clerk to a solicitor and the Tribunal further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,377.69.

The facts are set out in paragraphs 1 to 5 hereunder:-

1. The Respondent, born in 1955, was from 2001 until 29th August 2003 employed as a receptionist by a solicitors' firm, the Lister Croft Partnership, at Pudsey, Leeds.
2. During 2003 the Respondent was involved in a relationship with Mr J who was in the process of obtaining a divorce from his wife Mrs J. His wife was represented by a solicitor employed by the Lister Croft Partnership.
3. The final hearing in the divorce proceedings was scheduled for 14th April 2004 in the Wakefield County Court. During the hearing, it became apparent that those representing Mr J were in possession of a document which had come from a client file at the Lister Croft Partnership. It subsequently transpired that the document (a list of assets) had been copied from the file by the Respondent and handed to Mr J.
4. The Lister Croft Partnership complained to the Law Society by letter of 9th September 2004 about the Respondent's action. The Lister Croft Partnership's office manual stated:-

“CONFIDENTIALITY

It applies to every item of information concerning our Clients, their business, or indeed the Firm's business.

Breach of this essential requirement will always be viewed with the utmost seriousness. If you have seen or heard any information about or concerning the Firm or its Clients you should not speak about it to third parties even within the Firm, (unless in a professional conversation about your job) and under no circumstances to anyone outside the Firm.”

5. On 7th December 2004 the Law Society wrote to the Respondent seeking her explanation for her conduct. Her response on 17th December 2004 was that her actions had prevented a gross miscarriage of justice.

The Submissions of the Applicant

6. The Respondent acted deceitfully towards her employers in removing confidential information and handing it to her employers' opponents in litigation in connection with a matter in which she had a close personal interest. Whatever the rights and wrongs of the situation between the parties to the divorce, her actions were plainly wrong and amounted to a breach of trust on her part. Had she been concerned, as she purported to be, about the justice of the situation then the proper course to have taken would have been to report the matter to her supervisor and bring things out into the open.

The Submissions of the Respondent

7. The Respondent indicated in a letter addressed to the Applicant dated 14th January 2006 that she would not be attending the hearing and had no intention of working as a receptionist in the legal profession at any time in the future. She had separated from Mr J and was a single mother claiming Working Tax Credit. She was extremely concerned that she would not be in a position to meet any costs associated with the proceedings.

The Findings of the Tribunal

8. The Tribunal found the allegation to have been substantiated. Firms of solicitors were entitled to rely upon members of staff to treat all client matters as being confidential regardless of any personal interest. Not only is this a fundamental issue about which solicitors' employees would inevitably be aware, but in the case of the Lister Croft Partnership the firm's office manual contained a paragraph dealing specifically with confidentiality. The Respondent's breach was a serious one and such behaviour on the part of a solicitor's employee could not be ignored. It was right that the Respondent's future employment within the legal profession should be controlled. The Tribunal made the Order sought. It was further right that the Respondent should bear the costs of and incidental to the application and enquiry. The Applicant sought costs in the sum of £1,377.69. This figure seemed to the Tribunal to be entirely reasonable and in order to save further expenditure of time and money the Tribunal fixed the costs to be paid by the Respondent in the sum of £1,377.69.

Dated this 1st day of August 2006

On behalf of the Tribunal

P Kempster
Chairman