

**PROFESSIONAL
STANDARDS**
THE LAW SOCIETY
OF NEW SOUTH WALES

Contact Person: Lee Anderson
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Our Ref: 39887

20 August 2013

PRIVATE AND CONFIDENTIAL

Mr Luke Geary
Salvos legal Limited
85 Campbell Street
SURREY HILLS NSW 2010

Dear Mr Geary

Complaint against you by Ralph Doughty

I have completed my investigation of this complaint, and reported to the Professional Conduct Committee.

That Committee has now dismissed the complaint.

The Committee was satisfied that there is no reasonable likelihood that the Administrative Decisions Tribunal, Legal Services Division, would find that you had engaged in unsatisfactory professional conduct or professional misconduct.

The Committee's reasons were as follows.

Reasons for Decision

- Failing to ensure that the details on the letterhead of Salvos Legal comply with the requirements of Rules 41.1 and 41.2 of the Revised Professional Conduct and Practice Rules 1995.

The relevant Rules state:

"41.1 A practitioner must place, in legible form on any letterhead of the practitioner's practice, the name under which the practitioner practices; the address of the practitioner's principal place of practice; the practitioner's telephone number and, if appropriate, any Document Exchange number and facsimile transmission number, and the practitioner must, in any written communications with clients or other parties, identify the author by name.

"41.2 A practitioner must not conduct the practitioner's practice solely, or in association with another service provider, under a business name which might reasonably be expected to mislead or deceive a person seeking the provision of legal or associated services, as to the nature and identity of the provider, or as to the nature and quality of the services offered."

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The Solicitor in his legal practice occupies the following positions: Principal of Salvos Legal Limited; Principal of Salvos Legal (Humanitarian) Limited; General Counsel for the Salvation Army.

Some considerable contact had occurred between the Complainant and the Solicitor prior to the making of the present complaint. At the time of making the present complaint, the Complainant sought to have it recorded as being made against the firm Salvos Legal, not against the Solicitor himself. The Legal Profession Act 2004 does not permit this to occur. Faced with a choice between withdrawing the complaint or accepting that it would be investigated as a complaint against the Solicitor as the principal of the firm Salvos Legal, the Complainant pursued the complaint.

The Complainant included with his complaint an example of Salvos Legal letterhead, and that example (with the body of the letter redacted) is appended to this memorandum as "A"; a second example, provided by the Complainant, is appended as "B".

Complaint of breach of Rule 41.1.

The Complainant does not particularise the aspects of the Salvos Legal Letterhead which, in his opinion, cause it to be in breach of Rule 41.1. However, he quotes the following commentary from Riley Solicitors Manual ("Riley") at paragraph 32,050.20 on the scope of Rule 41.1:

"[Rule 41.1] adds that correspondence from the firm should state the name and status of the person responsible for it, so that the public and other lawyers dealing with a principal or employee of the firm know that person's name and status"

[underlining added for the purposes of this Memorandum].

The Complainant's quotation of the passage from Riley is accurate; however, Riley's reference to the scope of Rule 41.1 is not. Specifically, while Rule 41.1 requires the author of correspondence to be identified by name it does not require that the "status" of the author (whatever that might mean) be stated.

The Solicitor has submitted that the stationery of Salvos Legal (see appendices "A" and "B") complies with the requirements of Rule 41.1. That submission is accepted.

Complaint of breach of Rule 41.2.

The Complainant in his complaint under the heading "offences" makes reference to a number of matters in respect to the "*stationery and published materials*" of Salvos Legal, apparently in particularisation of the alleged breach of Rule 41.2. These references can be grouped into three clusters, to the effect that the stationery and published materials:

1. include references to other entities which "*give rise to a problem because the practice name must convey the notion that it is a legal practice*";

2. suggest that the practice is aligned with a very large organisation, specifically identified as the Salvation Army, "*which unfairly [attracts] business to the firm*"; and
3. mislead as to the firm's structure and status of persons named by inaccurately describing the Solicitor as a "partner" and "managing partner" rather than as a director of an incorporated practice.

He has attached to his complaint unedited excerpts from Riley which comment on Rule 41.2 but he does not indicate how these excerpts relate to his concerns about the stationery and published materials of Salvos Legal.

In reply to the complaint, the Solicitor has provided the following information about Salvos Legal:

"As an incorporated legal practice, Salvos Legal Limited is a corporation ... which engages in legal practice in New South Wales. Salvos Legal is wholly owned by The Salvation Army (New South Wales) Property Trust (ABN 57 507 607 457). In turn The Salvation Army (New South Wales) Property trust is the legal entity through which The Salvation Army Australia Eastern Territory conducts its operations. ... The Red Shield of the Salvation Army [appearing on the right side of the letterhead] is a part of the [Salvation Army] branding. ... Very clearly immediately underneath ... is the specifics of the legal entity putting forward the content of the letter and running the law practice. A full description of that legal entity and its trading name, as well as its ABN is clearly provided. We therefore submit that the use of The Salvation Army logo and reference to The Salvation Army Australia Eastern Territory on our letterhead is in no way deceptive or misleading. It is a clear and accurate representation of the ownership of our firm and the direct and interdependent relationship between The Salvation Army Australia Eastern Territory and Salvos Legal."

Although the Solicitor does not expressly refer to the logo at the foot of the page on annexure "B" it seems safe to assume that it is also part of The Salvation Army branding.

The Committee accepts the Solicitor's explanation as being a complete answer to the first and second of the Complainant's clusters of concerns. It notes that, as the practice is aligned to the Salvation Army, there is no inherent unfairness in any advantage (or for that matter, disadvantage) which that alignment might provide.

In support of his final concern – that the stationery is misleading in describing the Solicitor as a "Partner" of Salvos Legal rather than as a director of it – the Complainant had referred to a view put forward by the Ethics Committee of the Law Society in 2003 (see 41 LSJ 34, at 35) to the effect that lawyer-directors of an incorporated legal practice, not being partners in the practice, should not describe themselves as such.

The Solicitor has submitted that:

- (a) the point is not one which falls to be considered under Rule 41.2; and
- (b) If submission (a) is not accepted, the position stated by the Ethics Committee in 2003 was not a statement of law and should not now be accepted as correct. In support of this second point of submission, he:

- (i) notes that the development of new business models including "partnerships" which are comprised of both equity and salaried partners, has resulted in the original usage of the word "partner" to denote ownership of the practice, no longer being applicable; and
- (ii) has supplied a list of some 26 incorporated legal practices in NSW which, he says, "*use the title 'Partner' in the same circumstances as our practice does*".

The Committee does not accept the Solicitor's submission at point (a), as the legal structure of a service-providing entity and the status of a service provider within it are matters which properly go to the "*nature and identity of the provider*". However, on the facts in this instance, where the description of the Solicitor as a "*Partner*" is in close proximity to the naming of the service provider as "*Salvos Legal Limited T/AS Salvos Legal ABN: 14 147 213 214*" the Committee finds that there can be no "*reasonable expectation*" that a "*person ... seeking the provision of legal or associated services*" could be "*[misled or deceived] as to the nature and identity of the provider*" of those services.

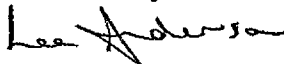
It is therefore unnecessary for the Committee to consider the Solicitor's submission at point (b).

The Committee dismisses the complaint.

The Society has now closed its file. I have informed the complainant of the right to ask the Legal Services Commissioner to review the Society's treatment of the complaint.

Thank you for your assistance in dealing with the complaint.

Yours faithfully



LEE ANDERSON
Solicitor
Professional Standards