

1969
June 17

[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES,
LOIZOU AND HADJIANASTASSIOU, JJ.]

IN RE A.B.
AN ADVOCATE

IN THE MATTER OF SECTION 17(5) OF THE
ADVOCATES LAW, CAP. 2 (AS AMENDED),

and

IN THE MATTER OF A.B. AN ADVOCATE.

(No. 2/69).

Advocates—Conduct and Etiquette—Unprofessional conduct contrary to rule 23 of the Advocates (Practice and Etiquette) Rules 1966—Disciplinary Board—Advocates Law, Cap. 2 (as amended) section 17—Decision of the Disciplinary Board reprimanding respondent advocate—Reprimand is the lightest punishment in cases of unprofessional conduct by an advocate—Section 17(1) of the said Law—Review of the whole case by the Supreme Court of its own motion—Section 17(5) of the Law—Punishment of reprimand imposed by the Board set aside—Substituted by a sanction of £75 fine.

The respondent advocate was reprimanded by the Disciplinary Board for acting in contravention of Rule 23 of the Advocates (Practice and Etiquette) Rules, 1966. Rule 23 provides:

“An advocate shall not intervene on behalf of a person whose case is in the hands of a colleague, without giving previous notice except..... In any case he is under the duty to assure himself that his colleague’s fees have been paid”.

Section 17(5) of the Advocates Law, Cap. 2 reads as follows:

“The Supreme Court may of its own motion or on the application of the complainant or of the advocate whose conduct is the subject of the enquiry, review the whole case and either confirm the decision of the Disciplinary Board or set it aside or make such other order as it may deem fit.”

One of the punishments provided by section 17(1) of the Law is an order “to pay by way of fine any sum not exceeding five hundred pounds”.

The Supreme Court acting of its own motion took review proceedings under section 17(5) (*supra*) set aside the reprimand imposed by the Board and substituted therefor a fine in the sum of £75.

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The facts sufficiently appear in the judgment of the Court.

Review proceedings.

Review proceedings before the Supreme Court initiated of its own motion, under section 17(5) of the Advocates Law, Cap. 2 (as amended), for the review of the decision of the Disciplinary Board, established under section 12 of the Law, whereby a disciplinary sanction of reprimand was imposed on the respondent advocate for unprofessional conduct contrary to rule 23 of the Advocates (Practice and Etiquette) Rules, 1966.

L. Clerides, for the respondent advocate.

G. Ladas, for the Disciplinary Board, as *amicus curiae*.

The judgment of the Court was delivered by:—

VASSILIADES, P.: Learned counsel for the respondent advocate, has been of considerable assistance to this Court, in placing before us the mitigating circumstances which could be taken into consideration in dealing with this case. As it is already clear at this stage, we attach to the matter considerable importance. We think it is a serious breach of the rules of professional etiquette, as established by tradition and practice, and as now settled in the codified rules. We have also heard Mr. Ladas, Chairman of the Local Bar Committee of Nicosia, who appeared as *amicus curiae* on behalf of the Bar Council and the Disciplinary Board of the profession.

The proceeding before us was initiated under section 17(5) of the Advocates Law, Cap. 2, on the Supreme Court's own motion, for the review of respondent's case before the Disciplinary Board, originating from the complaint of another advocate against the respondent for unprofessional conduct, in contravention of rule 23 of the Advocate (Practice and Etiquette) Rules 1966.

The respondent is an advocate of eight years standing (he enrolled on 9/8/60) residing and mainly practising in Famagusta. On January 14, 1969, he agreed to undertake the defence of a person in police custody for the forgery of cheques of the value

of some twenty thousand pounds, knowing that the person in question, was already in the hands of another advocate, whose fee for the services rendered in that particular case, had not been settled, without communicating with the other advocate at all, either regarding the case or regarding the other advocate's fee.

Two days later, on January 16, 1969, the other advocate wrote to the respondent, stating the position; drawing his attention to rule 23; and informing him of the extent of the services rendered and of the fee claimed. The letter is part of the record before us. Receiving no reply to his communication, the other advocate reported the matter to the Chairman of the Disciplinary Board, attaching a copy of his letter to the respondent.

The Chairman of the Board wrote officially to the respondent on February 5, 1969, informing him of the complaint and soliciting his comments, if he wished to make any, before the matter was referred to the Board. On February 13, the respondent made his reply to the Chairman of the Board. This is also before us as part of the record. We find it unnecessary to deal with it in detail. The respondent admits that he was aware that the case was in the hands of the other advocate; but as the person in custody appeared to have lost confidence in the other advocate and as the preliminary inquiry was due to commence before the Court the following day, the respondent had no time, he said, to communicate with his colleague; and he considered it his duty, in the circumstances, to undertake the accused person's defence. As to his colleague's fee, the father of the accused, he (the respondent advocate) added, would be dealing with the matter, although it was considered "unacceptable".

Apparently respondent's explanations were not found satisfactory; and the matter went to the Disciplinary Board of the Bar Council, which the respondent was requested to attend on March 7, 1969, to answer a charge for acting in contravention of rule 23 of the Advocates (Practice and Etiquette) Rules, 1966. Rule 23 provides that:—

" 23. An advocate shall not intervene on behalf of a person whose case is in the hands of a colleague, without giving previous notice, except in those cases of express withdrawal of the latter. When the intervention is not discovered

until after the case has been undertaken, notice shall be immediately given thereafter. In any case, he is under the duty to assure himself that his colleague's fees have been paid ”.

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As it has already been stated, these Rules originate in the traditional practices of this honourable profession; they safeguard its high standing in the community; and they are intended to maintain and enhance its dignity. It is therefore a matter of the utmost importance that those who join the profession, should loyally respect its etiquette; and should strictly adhere to its rules. Else, they just disqualify themselves from being its members.

The object of this particular rule and the main reason for its existence, is to safeguard the proper professional relations of mutual respect, confidence and friendship which must exist between practising lawyers. They are colleagues in the service of the cause of justice; and they are colleagues in their duty to the Court of which they are very important officers. Their relations as such, are bound to suffer, if the etiquette underlying rule 23 is not strictly adhered to.

What took place before the Disciplinary Board at the hearing of respondent's case may be found in the Chairman's report (No. 143/39(A)(46) dated March 19, 1969) which is also on the record before us. After hearing the respondent, the Board took the view that he had acted in contravention of rule 23; but as he had not done so intentionally, the Board thought; and had now apologised for what happened; and as the other advocate concerned, requested that the matter should not “be pressed”, the Board “imposed the punishment of reprimand”.

Section 17(1) of the Advocates Law, Cap. 2, under which the Disciplinary Board were apparently acting, provides for different punishments in case of unprofessional conduct, of which reprimand is the lightest. Another punishment provided by the section, is an order “to pay by way of fine, any sum not exceeding five hundred pounds”. Sub-section (3) of the same section requires that a copy of the complaint and a copy of the Board's decision in the enquiry be forwarded forthwith to the Chief Registrar to enable him to make the necessary entries in the Roll of Advocates. And sub-section (5) provides that:—

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“The Supreme Court may, of its own motion or on the application of the complainant or of the advocate whose conduct is the subject of the enquiry, review the whole case and either confirm the decision of the Disciplinary Board or set it aside or make such other order as it may deem fit”.

The objects of these provisions are, obviously, to create the opportunity of a review of the matter at the instance of either the complainant or the advocate against whom the complaint had been made; and furthermore to give statutory form to what must be considered as the inherent power of the Supreme Court, to supervise and control the professional conduct of its officers.

Upon receiving the report of the Chairman of the Disciplinary Board, this Court directed a review proceeding. And as already stated we are grateful for the assistance received in this important matter, both from Mr. Ladas who represented the Board as *amicus curiae* and Mr. Clerides who appeared for the respondent advocate.

With all deference to the view taken by the Disciplinary Board, we had no difficulty or hesitation in reaching the conclusion that this is not a case for a reprimand. Unless the rules of professional practice and etiquette upon which the honour and dignity of the profession rest, are duly respected and strictly enforced, the proper relations between advocates cannot be maintained; and these important officers of the Supreme Court, cannot properly perform their duty.

What is the proper sanction in the circumstances of this case, was not an easy matter to decide. Indeed, we found considerable difficulty before we could reach a unanimous decision. On the one hand we had before us the gravity of the matter. On the other hand we had to look at the mitigating circumstances; the very good character of the respondent advocate; the satisfactory manner in which he performed his duty to the Court since his enrolment; the kindly attitude of his colleague; and last but not least, the extremely lenient view taken by the Disciplinary Board. And eventually we reached the decision to impose a monetary sanction in the sum of £75 fine (seventy five pounds).

I should like, however, to add two remarks:— first that this very lenient enforcement of the rules of professional

conduct, in these first cases after their codification, should not be taken as a precedent. It is earnestly hoped that such cases will not have to be reviewed again. Secondly, that the similarity of the fine in this case with that of the previous case (reported in this Part at p. 376 *ante*). (No. 1/69) is a mere coincidence; they are two cases of completely different nature.

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The result of the review in the present case, is an order under section 17(1)(c) of the Advocates Law, Cap. 2, against the respondent advocate to pay within 14 days, the sum of £75.— by way of fine for contravening rule 23 of the Advocates (Practice and Etiquette) Rules, 1966. With no order for costs as none have been claimed.

Order accordingly.