

NOTICE OF DETERMINATION

A notice made under s318 of the *Legal Profession Uniform Law (Victoria)*.

Complainant: Legal Services Commissioner
Respondent Lawyer/Law Practice: Ms Roxanne McCardle / Saines Lucas Solicitors
Ref: COM-2016-1365

ORDERS

Pursuant to s299(1) of the *Legal Profession Uniform Law (Victoria)* ("the Uniform Law"), I have decided that Ms Roxanne McCardle (the Respondent Lawyer) has engaged in unsatisfactory professional conduct and I make the following orders –

1. The Respondent Lawyer is reprimanded pursuant to s 299(1)(b).

STATEMENT OF REASONS

BACKGROUND

2. On 26 April 2016, the Respondent Lawyer applied to renew her employee practising certificate for the 2016-17 year.
3. On 3 May 2016, it came to the Victorian Legal Services Board's ('the Board') attention that the Respondent Lawyer failed to make disclosures required at the time of renewal under the Uniform Law (see r 13 *Legal Profession Uniform Law General Rules* (the Uniform Rules)).
 - a. The Respondent Lawyer failed to disclose adverse disciplinary findings relating to the Lawyer's legal practice in Western Australia; and
 - b. The Respondent Lawyer failed to disclose unresolved complaints made to the Office of the Legal Commissioner in South Australia.
4. By letter dated 24 August 2016, the Board asked the Respondent Lawyer about the non-disclosures.
5. By letter dated 6 October 2016, the Respondent Lawyer acknowledged that she should have disclosed the disciplinary finding and unresolved complaints to the Board. The Respondent Lawyer also apologised for her failure to disclose.

ISSUES UNDER INVESTIGATION

The issues that have been investigated are as follows:

6. Whether the Respondent Lawyer failed to disclose relevant matters to the Board when applying to renew her practicing certificate; and
7. If so, whether the Respondent Lawyer's conduct in failing to disclose matters to the Board amounts to unsatisfactory professional conduct or professional misconduct.

RELEVANT LAW

8. Section 45(2) of the Uniform Law provides that the Board must not grant a practising certificate unless it considers that the applicant is fit and proper to hold the certificate.
9. In considering whether a person is 'fit and proper', the Board may have regard to the matters in r 13 of the Uniform Rules (see s 45(3) of the Uniform Law).
10. Most relevant to the determination of the Respondent Lawyer's fitness to practise are rr 13(1)(b)(i) and 13(1)(f).
11. Rule 13(1)(b)(i) states that the Board may consider whether an applicant for a practising certificate is an 'insolvent under administration'.
12. Rule 13(1)(f) states that the Board may consider whether an applicant for a practising certificate:
 - a. is currently subject to an unresolved complaint or investigation relating to the legal profession (r 13(1)(f)(i));
 - b. has been the subject of adverse findings in a disciplinary action relating to the legal profession (r 13(1)(f)(ii)).
13. Rule 12(1)(c) provides that an application for an Australian practicing certificate must address each of the matters in r 13(1).
14. Section 296 of the Uniform Law states that unsatisfactory professional conduct includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonable competent lawyer.
15. Sections 298(a) and (b) of the Uniform Law provide respectively that conduct consisting of a contravention of the Uniform Law or the Uniform Rules is capable of constituting unsatisfactory professional conduct.

FINDINGS OF FACT ON ISSUES UNDER INVESTIGATION

16. The key issue under determination is whether the Respondent Lawyer failed to make disclosures required by the Uniform Law, when applying to renew her practising certificate.
17. The Respondent Lawyer in her written statement:
 - a. explained that she believed that such information would have been provided to the Board by the regulatory bodies in those other jurisdictions;
 - b. advised that she had sought legal advice in regards to her obligations to disclose certain matters;
 - c. acknowledged that she should have disclosed adverse disciplinary findings and unresolved complaints relating to her engaging in legal practice;
 - d. apologised for not making the relevant disclosures at the time of applying to renew her practising certificate;
 - e. informed the Board that she suffers from poor memory which may have been caused by stress.
18. There is no doubt, then, that the Respondent Lawyer failed to make relevant disclosures. Further, those disclosures were required by r 12(1)(c) of the Uniform Rules. This is conduct that may amount to unsatisfactory professional conduct.

DETERMINATION & REASONS

19. Having considered all of the evidence and relevant law, and having made the above findings on the issues under investigation, I determine that it is fair and reasonable in all the circumstances to make the orders detailed above.
20. In an email dated 22 November 2016, the Respondent Lawyer agreed to be reprimanded.

APPEAL

21. Pursuant to s 314 of the Uniform Law, a respondent lawyer or a legal practitioner associate of a respondent law practice may, in accordance with the applicable legislation appeal to the Victorian Civil and Administrative Tribunal, or seek a review by the VCAT, of this determination made under s 299 of the Uniform Law.



Michael McGarvie
Victorian Legal Services Commissioner
Date: 30 November 2016