

NOTICE OF DETERMINATION

A notice made under section 318 of the *Legal Profession Uniform Law (Victoria)*.

Complainant: [REDACTED]
Respondent Lawyer: Mr David Kent-Hughes
Ref: [REDACTED]

ORDERS

Pursuant to section 299(1) of the *Legal Profession Uniform Law (Victoria)* ("the Uniform Law"), I have decided that Mr David Kent-Hughes has engaged in unsatisfactory professional conduct and I make the following orders –

1. Mr Kent-Hughes is reprimanded pursuant to section 299(1)(b) of the Uniform Law;
2. Pursuant to section 299(1)(e)(i) of the Uniform Law, Mr Kent-Hughes is required to participate in not less than 9 hours of counselling for stress and anger management with Dr [REDACTED], Psychologist, at his expense, or with such other counsellor as may be agreed between Mr Kent-Hughes and the Victorian Legal Services Commissioner ("VLSC") or his or her delegate, from the date of this determination to be completed before his local practising certificate is next renewed. Dr [REDACTED], Psychologist, or such other counsellor as agreed between Mr David Kent-Hughes and the VLSC or his or her delegate, is to report back to the VLSC following the completion of 3, 6 and 9 hours of counselling to advise of Mr Kent-Hughes' progress; and
3. Mr Kent-Hughes is required to undertake education at Court Network Inc ("Court Network") of the role of Court Network and the services and duties performed by its volunteers to be completed before his local practising certificate is next renewed, at a time and duration agreed by Mr Kent-Hughes and [REDACTED], Executive Director, Court Network, pursuant to section 299(1)(e)(i) of the Uniform Law.

STATEMENT OF REASONS

BACKGROUND

1. The complaint was received on 24 August 2015 from [REDACTED], the Executive Director of Court Network ("the complainant"), about Mr David Kent-Hughes of counsel. The complainant raised concerns about Mr Kent-Hughes' inappropriate and aggressive manner and conduct towards [REDACTED], a Court Network volunteer, and her manager, [REDACTED], on three separate occasions.
2. The first and second incidents were said to have occurred in late June 2015 and on 29 July 2015, respectively, at the Federal Circuit Court and involved the conduct of Mr Kent-Hughes towards [REDACTED]. The third incident was said to have occurred on 7 August 2015 during a telephone conversation between [REDACTED] and Mr Kent-Hughes.
3. The complainant further states that [REDACTED] felt embarrassed, intimidated and bullied by Mr Kent-Hughes due to the verbal abuse and his aggressive manner towards her.

ISSUES UNDER INVESTIGATION

4. Whether Mr Kent-Hughes acted in an inappropriate and aggressive manner towards [REDACTED], including verbal abuse, in late June 2015;
5. Whether Mr Kent-Hughes acted in an inappropriate and aggressive manner towards [REDACTED] and/or [REDACTED], including verbal abuse, on 29 July 2015; and
6. Whether Mr Kent-Hughes acted in an offensive and threatening manner during a phone call with [REDACTED] on 7 August 2015.

INVESTIGATION

7. On 29 October 2015, Mr Kent-Hughes and the complainant were given notice of the complaint and the VLSC's decision to delegate the investigation of the complaint to the Victorian Bar Incorporated ("Victorian Bar") pursuant to section 56(1)(b) of the *Legal Profession Uniform Law Application Act 2014 (Vic)* ("the Act").
8. On 18 November 2015, the Victorian Bar wrote to Mr Kent-Hughes and sought a full written explanation of his conduct to all the incidents outlined in the complaint, including relevant information and documents in support, pursuant to section 371(1) of the Uniform Law.
9. On or about 14 December 2015, the Victorian Bar received a detailed response from Mr Kent-Hughes in which he offered to write letters of apology as requested in the complaint. Mr Kent-Hughes also enclosed a reference letter from a solicitor who had briefed him for over ten years, [REDACTED]. The letter made no reference to the complaint made against the barrister.
10. On 23 February 2016, the Victorian Bar again wrote to Mr Kent-Hughes querying whether the letters of apology referred to in his 14 December 2015 letter had been written and sent.
11. Apology letters to the complainant and [REDACTED] were provided to the Victorian Bar on 31 March 2016.
12. On 20 April 2016, the Victorian Bar sought particulars from the barrister as to the 'significant family loss' referred to in the barrister's apology letter to [REDACTED]. The barrister responded later that day detailing a financial dispute between him and his wife on the one hand and his father in law and his father in law's new partner on the other.
13. On 5 May 2016, the Victorian Bar sent a letter to the barrister advising that the conduct towards [REDACTED] and [REDACTED] would likely constitute a breach of rule 8(a), (b) and (c) of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* ("the Conduct Rules") (and the equivalent predecessor rules with respect to the conduct in late June 2015) and the conduct towards [REDACTED] would likely constitute 'workplace bullying' as outlined in rule 123(c) of the Conduct Rules. The Victorian Bar sought submissions as to which of the proposed orders available under section 299(1) of the Uniform Law would be the most appropriate and requested an apology letter be written to [REDACTED].
14. On 9 June 2016, the Victorian Bar sent a follow up letter to Mr Kent-Hughes requesting a response to the 5 May 2016 letter.

15. On 29 June 2016, the barrister provided a further response to the complaint outlining the emotional and financial stress he has been under, acknowledging the behaviour towards [REDACTED] and [REDACTED] was 'inappropriate and unprofessional' and apologizing unreservedly. The barrister proposed the making of the following orders:
- He receive a caution and reprimand;
 - He make a further apology, if necessary, or a donation to a charity of the complainant's choice; and
 - He continue to undertake counselling.

Mr Kent Hughes advised that he was facing severe financial hardship and would have extreme difficulty meeting a fine. The letter also enclosed a copy of an apology letter to [REDACTED] which had been hand delivered that day, a letter from his treating psychologist, a letter from his treating General Practitioner since 2010, a further reference letter from [REDACTED], in similar terms to the letter enclosed in the barrister's letter dated 14 December 2015, and two reference letters from clients.

16. On or about 12 September 2016, the VLSC gave notice of the proposed determination to the complainant and Mr Kent-Hughes and invited any further written submissions.
17. On 27 September 2016, the VLSC wrote to Mr Kent-Hughes stating that no written submissions had been received and providing a final opportunity to provide submissions by 11 October 2016.
18. On 14 October 2016, Mr Kent-Hughes emailed [REDACTED] of this office confirming that he agreed to undertake counselling and education at Court Network.

FINDINGS OF FACT ON ISSUES UNDER INVESTIGATION

19. Where there was a difference in account between the complainant and Mr Kent-Hughes, the version of events provided by [REDACTED] and [REDACTED] have been accepted as they represent a contemporaneous record of events.
20. The first incident was said to have occurred in late June 2015 at the Federal Circuit Court. [REDACTED] was assisting a woman appearing before the Honourable Justice Riley. Mr Kent-Hughes was representing the woman's husband. The matter was stood down to allow the woman to see a duty lawyer. The complainant states that subsequently Mr Kent-Hughes approached the Court Network office and verbally abused [REDACTED].
21. Mr Kent-Hughes has not denied this version of events.
22. In the response received from Mr Kent-Hughes on 14 December 2015, he explained the details of the matter before the court that day. Mr Kent-Hughes was acting for a husband seeking contact with his daughter; the wife was assisted by [REDACTED]. Mr Kent-Hughes justified his actions towards [REDACTED] on the basis that:
- [REDACTED] had 'prevented' him from acting in the best interests of the child.

- b. Blamed ██████ for an adjournment being granted stating that the ‘Mother was once again successful in stalling the Father’s time with the child’ and that ‘██████ enabled the Mother to take advantage’.
 - c. ‘... ██████ who made my attempt to communicate with the Mother impossible telling her that “she did not have to listen to me” or “do anything I said”.’
 - d. ‘I firmly believe my role as a lawyer was being hindered hence my frustration with ██████.’
 - e. ██████ conduct was ‘obstructive’.
 - f. He believed ‘her actions were inappropriate and were not in line with the role of a network volunteer.’
23. From a review of the abovementioned response, it is apparent that Mr Kent-Hughes has a limited understanding of the role of Court Network and its volunteers. The complainant has expressed interest in providing him with training/education of the role of Court Network and as such this is reflected in the orders above.
24. The verbal attacks on ██████ occurred in a public place. The explanation provided supports a finding that Mr Kent-Hughes targeted ██████ in an aggressive manner and demonstrated that he thought such behaviour was suitable given his interpretation of ██████ conduct. The explanation for such conduct is not accepted as fair or appropriate in the circumstances. Such conduct is unprofessional, unjustified, serious and due to the public nature likely to diminish public confidence in the legal profession and the administration of justice.
25. The complainant alleges that, on 29 July 2015, ██████ was providing assistance to an applicant grandmother who had approached the Court Network Office seeking the advice of a duty lawyer. ██████ helped the Applicant register her appearance with the Judge’s Associate and sat in the body of the court with the Applicant. It was complained that Mr Kent-Hughes, appearing on behalf of the second Respondent, entered the courtroom with his client and crossed the courtroom and proceeded to verbally abuse ██████, including telling her that she was an ‘interfering trouble maker’, and aggressively told the applicant that he would not allow her to have the matter stood down to seek legal assistance. Mr Kent-Hughes further allegedly told ██████ to “get out of my way” and that she “wasn’t a lawyer and had no place in court”.
26. The matter was stood down as there was a double conflict of interest as both the Applicant and first Respondent requested to see the duty lawyer. Outside of court, ██████ alleges that Mr Kent-Hughes was verbally abusive towards her again and called her an ‘interfering trouble maker’.
27. Following a phone call from ██████, ██████ attended court to check on her wellbeing and to discuss the incident with Mr Kent-Hughes. ██████ advised Mr Kent-Hughes that ██████ was upset and felt bullied by his actions. It was alleged that Mr Kent-Hughes referred to ██████ as “a trouble maker and an interfering one at that.” ██████ requested a meeting with the barrister to discuss the matter to which Mr Kent-Hughes provided him with his mobile phone number. As Mr Kent-Hughes left he said “I will do whatever it takes to make sure she never works in this building again”.

28. Counsel did not deny the version of events put forward by the complainant. While Mr Kent-Hughes acknowledged that he said 'get out of my way' to ██████████, he says that it was in reference to her standing in the way of him doing his job rather than referring to a physical act.
29. In Mr Kent-Hughes' first response he stated as follows:
- That ██████████ thwarted any attempt made by him to communicate with the litigant as per the Judge's direction.
 - '██████████ totally railroaded me'.
 - Blamed ██████████ for the court findings.
 - He notes that he 'did infer that ██████████ was "making trouble" as I strongly believed that she was acting outside of her role as a volunteer and more like a lawyer.'
30. Mr Kent-Hughes denies saying 'I will do what ever it takes to prevent ██████████ from entering the building.' However, he acknowledged telling ██████████ that '██████████ should not be allowed in the building as she had seriously impinged on my capacity to do my job.'
31. He further stated that '[o]n all of the occasions I have had dealings with ██████████ this year, she has portrayed me to the litigant in person that I was a Barrister who was seeking to take advantage of them.' This comment and the comments above demonstrate the strong views Mr Kent-Hughes held and the frustration he felt. His response supports ██████████ account that she experienced an aggressive verbal attack. It is seen as unfair and misguided to blame ██████████ for the outcome of the matters listed in late June and on 29 July 2015.
32. In Mr Kent-Hughes' second response, received by the Victorian Bar on or about 29 June 2016, he acknowledged that his conduct was 'unprofessional' and that he 'should have been contained and polite and perhaps mentioned the issues I experienced during our interactions in an appropriate fashion to ██████████.'
33. Mr Kent-Hughes' verbal comments to ██████████ were made in a public arena in the presence of the parties, the courtroom, members of the public and a duty lawyer from the Family Law Legal Service. Such behaviour is unprofessional, unjustified and of a serious nature. Accordingly, such conduct is discreditable to the barrister and to the legal profession generally.
34. The complainant states that '██████████ felt embarrassed, intimidated and bullied by Mr Kent-Hughes' actions.' Due to the public nature of the verbal abuse and the targeting nature of the continued attacks of ██████████, it is reasonable to expect that ██████████ would feel humiliated, alienated, isolated and intimidated by such conduct and in the circumstances it had such an effect on ██████████.
35. The third incident was said to have occurred on 7 August 2015. ██████████ telephoned Mr Kent-Hughes to book in a meeting time. Mr Kent-Hughes responded saying "██████████, I am having major family issues at the moment and I don't need your f██████████ing harassment. I will take out an intervention order against you" and then hung up on ██████████.
36. It is noted that Mr Kent-Hughes has not denied ██████████ version of events. ██████████ version of events has thus been accepted and there is no evidence to suggest ██████████ was unduly

pressing towards Mr Kent-Hughes or unsympathetic. In Mr Kent-Hughes' response received on 14 December 2015, he stated that he recalled telling █████ they he 'did not appreciate the continued harassment from court network.'

37. In the second response received from Mr Kent-Hughes, he stated that the exchange was 'entirely out of character and a once off situation.'
38. Mr Kent's Hughes' language and manner during the phone call is found to be offensive and threatening in nature and entirely inappropriate in the circumstances.
39. On the basis of Mr Kent-Hughes' non-denial of the complainant's version of events, █████ and █████ contemporaneous record of events and the abovementioned assessment of evidence, I find the following proved:
- Mr Kent-Hughes acted in an inappropriate and aggressive manner towards █████, including verbal abuse, in late June 2015;
 - Mr Kent-Hughes acted in an inappropriate and aggressive manner towards █████ and █████, including verbal abuse, on 29 July 2015;
 - Mr Kent-Hughes' conduct in late June 2015 and on 29 July 2015 made █████ feel embarrassed, intimidated and bullied; and
 - Mr Kent-Hughes acted in an offensive and threatening manner during a phone call with █████ on 7 August 2015.
40. It is noted that Mr Kent-Hughes did not notify the VLSC of this conduct prior to the complaint being made.

RELEVANT LAW

41. Rule 4 of *The Victorian Bar Incorporated Practice Rules* prescribes that a barrister must not engage in conduct which is –
- dishonest or otherwise discreditable to a barrister;
 - prejudicial to the administration of justice; or
 - likely to diminish public confidence in the legal profession or in the administration of justice or otherwise bring the legal profession into disrepute.
42. Rule 30.1.2 of the *Professional Conduct and Practice Rules 2005* (Victoria) prescribes that a practitioner must not engage in conduct, whether in the course of practice or otherwise, which is calculated, or likely to a material degree, to:
- be prejudicial to the administration of justice;
 - diminish public confidence in the administration of justice;
 - adversely prejudice a practitioner's ability to practise according to these rules.

43. Rule 4 of the Conduct Rules prescribes that:

- (a) barristers owe their paramount duty to the administration of justice;
- (b) barristers must maintain high standards of professional conduct;
- (c) barristers as specialist advocates in the administration of justice, must act honestly, fairly, skillfully, bravely and with competence and diligence.

44. Rule 8 of the Conduct Rules prescribes that a barrister must not engage in conduct which is:

- (a) dishonest or otherwise discreditable to a barrister;
- (b) prejudicial to the administration of justice; or
- (c) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.

45. Rule 123 of the Conduct Rules prescribes that a barrister must not in the course of practice, engage in conduct which constitutes:

- (d) workplace bullying.

‘workplace bullying’ is defined in rule 125 of the Conduct Rules as ‘unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate, or cause serious offence to a person working in a workplace.’

46. Section 298(b) of the Uniform Law prescribes that, without limitation, conduct capable of constituting unsatisfactory professional conduct includes conduct consisting of a contravention of the Conduct Rules.

DETERMINATION & REASONS

47. By reason of the above findings of fact, I find that Mr Kent-Hughes has breached the following rules:

- a. In relation to Mr Kent Hughes’ conduct in late June 2015, I find that he has breached rule 4(a), (b) and (c) of *The Victorian Bar Incorporated Practice Rules* and rule 30.1.2 of the *Professional Conduct and Practice Rules 2005* (Victoria).
- b. In relation to Mr Kent Hughes’ conduct on 29 July 2015, I find that he has breached rule 4(a), (b) and (c), rule 8(a), (b) and (c) and rule 123 of the Conduct Rules; and
- c. In relation to Mr Kent Hughes’ conduct on 7 August 2015, I find that he has breached rule 4(b) and 8(a) of the Conduct Rules.

48. These breaches constitute unsatisfactory professional conduct pursuant to section 298(b) of the Uniform Law.

49. In making this determination, I have considered analogous decisions of my office and the Victorian Civil and Administrative Tribunal (“VCAT”). Of the decisions considered, conduct of this nature, involving inappropriate, aggressive, threatening and offensive behaviour, profane language and verbal attacks, has been characterised as unsatisfactory professional

conduct. In my view, there is nothing in this matter to suggest that departure from these authorities is warranted.

50. Of the decisions I have considered, a range of sanctions have been ordered including reprimands, cautions, attendance at relevant Continuing Professional Development courses and no further action where apologies have been made and accepted and/or an undertaking to undergo counselling has been given.

51. I have taken into account the following mitigating factors in making the above orders:

- a. Mr Kent-Hughes apologised in writing to the complainant and [REDACTED] on 31 March 2016 and to [REDACTED] on 29 June 2016;
- b. Mr Kent-Hughes has acknowledged that his behaviour was inappropriate and unprofessional;
- c. Mr Kent-Hughes has demonstrated an openness and willingness to improve his understanding of Court Network by agreeing to attend upon their office for education of their role;
- d. Mr Kent-Hughes has outlined the financial and severe emotional stress he was under at the time the incidents occurred;
- e. Mr Kent-Hughes has undertaken counselling of his own initiative and recommended to both the Victorian Bar and the VLSC that he be ordered to continue attending counselling to focus on stress and anger management; and
- f. To a lesser extent, regard has been had to the reference letters Mr Kent-Hughes has provided.

52. I have also considered the following aggravating factors:

- a. The delay in Mr Kent-Hughes making written apologies;
- b. The initial lack of insight, acceptance of responsibility and remorse shown in the initial apologies and responses received; and
- c. Mr Kent-Hughes has had one previous complaint about conduct of a similar nature, which was withdrawn following the receipt of a written apology.

53. 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.

APPEAL

54. Pursuant to section 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 VCAT or seek a review by VCAT of this determination made under section 299 of the Uniform Law.

NON-COMPLIANCE

55. A failure to comply with a determination made under section 299 is capable of constituting unsatisfactory professional conduct or professional misconduct pursuant to section 298(h) of the Uniform Law.



Michael McGarvie, Victorian Legal Services Commissioner
Date: 18 November 2016