

Our Ref: RR: 71020571

12 July 2021

***Private & Confidential***

Mr P Horwath  
20 Sanctuary Lane  
BOORAL QLD 4655

***BY EMAIL: peterhorwath03@gmail.com***

Dear Mr Horwath

**COMPLAINT AGAINST KADE EAMES**

I refer to the Commission's previous correspondence and advise that I have now had an opportunity to consider your complaint.

You retained Mr Kade Eames of Gold Law Hervey Bay to act for you in an industrial relations matter against your former employee, Mr Kurt Yelds, on 20 November 2019. Mr Eames terminated the retainer on 13 December 2019.

**Complaint**

In essence, your complaint is that Mr Eames:

1. did not provide you with a valid reason for why he was not prepared to continue representing you in your legal matter;
2. charged you excessive legal costs for the work undertaken on your behalf; and
3. colluded with the opposing party's legal representatives, Ms Lindy Robbins and Ms Melissa Guilfoyle of McDuff & Guilfoyle Lawyers Pty Ltd (previously known as McDuff & Daniel Lawyers).

Please find below my consideration of your complaint.

**Jurisdiction**

Chapter 4 of the *Legal Profession Act 2007* (Act) enables my office to investigate complaints about legal practitioners, law practice employees or unlawful operators. In particular, I may investigate complaints of professional misconduct or unsatisfactory professional conduct as defined in the Act.

*Unsatisfactory professional conduct* is limited to conduct by a practitioner which occurs in connection with the practice of law. That is, conduct which occurs during the course of work usually undertaken by legal practitioners.

*Professional misconduct* is defined more broadly and may include personal conduct by a practitioner which does not occur in connection with the practice of law, but only if that conduct is so serious that it demonstrates the practitioner is not a fit and proper person to continue as a member of the legal profession.



The Act is the governing legislation and the *Australian Solicitors Conduct Rules 2012* (ASCR) form part of the obligations on legal practitioners. Conduct found to be in breach of the ASCR is capable of amounting to unsatisfactory professional conduct or professional misconduct as defined in the Act, but it is not automatic.<sup>1</sup>

As you may appreciate, I have an obligation to make my decisions according to the provisions of the Act.

### **Analysis of Complaint**

On review of the Commission's records, I note that you made a previous complaint about the conduct of Mr Eames on 2 June 2020. The complaint was dismissed on 29 June 2020.

Points 1 and 2 were addressed in your previous complaint and I do not consider that there are any grounds to review those issues.

In relation to point 3 of your complaint, you have alleged that Mr Eames has colluded with Ms Robbins and Ms Guilfoyle of McDuff & Guilfoyle Lawyers Pty Ltd. Mr Eames was employed at McDuff & Daniel Lawyers from January 2016 to April 2018. You assert that Mr Yelds retained the firm to act for him around October 2018.

Mr Eames became the Incorporated Legal Practice Director of Gold Law Hervey Bay on 9 April 2019. You retained Mr Eames to act for you on 20 November 2019 and he subsequently terminated the retainer on 19 December 2019. You indicated in your email to the Commission dated 1 June 2021 that Mr Eames is a personal friend of Ms Robbins and that some office staff transferred from McDuff & Daniel Lawyers Pty Ltd to Gold Law Hervey Bay.

You allege that Mr Eames and his staff were talking to Mr Yelds and Ms Thompson (a previous employee of McDuff & Daniel Lawyers Pty Ltd) who then disclosed information with Ms Guilfoyle and Ms Robbins. While you believe this a conflict, you have not provided any evidence about what information was disclosed to your detriment or any evidence of collusion.

### **Tests**

Section 432 (1) of the Act provides that a complaint may be dismissed for a number of reasons, including:

*“(b) the complaint does not disclose conduct that the commissioner considers may be—*

- (i) conduct to which this chapter applies; or*
- (ii) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner or misconduct of a law practice employee in relation to the relevant practice”*

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<sup>1</sup> *Legal Profession Act 2007* section 420.

*WJ*

**Decision**

For the reasons outlined above, your complaint does not disclose any conduct that I consider may amount to unsatisfactory professional conduct or professional misconduct by Mr Eames.

Accordingly, pursuant to section 432(1)(b)(ii) of the Act, I have decided to dismiss your complaint.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'M Mahon', written in black ink.

**Megan Mahon**  
**Legal Services Commissioner**