

1987 May 19

[TRIANAFYLLIDES P MALACHTOS DEMETRIADES PIKIS AND KOURRIS JJ]

IN THE MATTER OF THE ADVOCATES LAW, CAP 2. S 17(5),  
AS AMENDED BY LAW 40/75, etc.

AND

IN THE MATTER OF I A AN ADVOCATE,

*(Disciplinary Appeal No 1/87)*

*Advocates — The Advocates Rules of Etiquette — Ambit — Not confined to conduct directly and inextricably connected with formal steps in litigation but cover, also, acts of misconduct associated with the exercise of the profession in a broader sense*

5 *Advocates — Unprofessional conduct — Involvement with client's interests — Undertaking by advocate given by affidavit in maintenance proceedings to meet, in case of default, client's obligations under a maintenance order — Undertaking given in order to facilitate removal of client's name from stop list — The Advocates Rules of Etiquette Rules 16(1) (2) and (3)*

10 *Advocates — Disciplinary proceedings against — Standard of proof*

The appellant is an advocate. His client was adjudged by the District Court of Nicosia to pay an amount of £60 per month for the maintenance of his wife and children. The name of the client was put by the Authorities on the stop list. The authorities would not agree to remove his name from the stop list unless sufficient security was given for the discharge in future of the obligations under the maintenance order.

15 To remove his client's said impediment of leaving the country, the appellant gave an undertaking embodied in an affidavit sworn to in the course of the maintenance proceedings that in the event of default he would meet the obligations of his client. As a result the impediment was removed and the appellant's client left the country. A while later the maintenance order was varied and the obligations of the appellant's client were increased from £60 = to £90 = per month.

20 To remove his client's said impediment of leaving the country, the appellant gave an undertaking embodied in an affidavit sworn to in the course of the maintenance proceedings that in the event of default he would meet the obligations of his client. As a result the impediment was removed and the appellant's client left the country. A while later the maintenance order was varied and the obligations of the appellant's client were increased from £60 = to £90 = per month.

25 As a result of default to meet the obligations under the order the wife of appellant's client instituted civil proceedings for the recovery of the amount due against the appellant. The trial Court found that in view of the said variation of the order the guarantee ceased to be effective, but disapproved the conduct of the appellant on the ground that he impermissibly involved himself in the affairs of his client, criticizing in particular his evidence to the effect that whatever he had done he did it out of a sense of duty to his client.

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Eventually disciplinary charges were brought against the appellant who was found by the Advocates Disciplinary Board guilty on three counts for unprofessional conduct contrary to rules 2, 3 and 4 of the Advocates Rules of Etiquette. One of the three charges was also founded on the provisions of rule 16 enjoining in effect advocates not to involve themselves in the affairs of their clients beyond advising them on the case. 5

As a result the present appeal was filed. The first point taken by counsel for the appellant was that the conduct of the appellant could not justify disciplinary charges because it was outside his professional duties. The second point was that the Disciplinary Board relied on inadmissible evidence, namely the said criticisms of the Judge. Lastly the third point that the facts did not disclose conduct incompatible with the exercise of the profession of an advocate. 10

Held dismissing the appeal (1) The facts of the present case make it unnecessary to identify exhaustively the range of application of the rules of etiquette. What can be said with certainty is that they are not confined to conduct directly and inextricably connected with formal steps in litigation. Moreover they cover acts of misconduct associated with the exercise of an advocate's profession in a broader sense. They certainly cover the conduct of the appellant in this case. What is required from an advocate under rule 16(1) that is not to involve himself in the factual merits of the case of his client is perfectly warranted by his status as an officer of justice (Section 15 of the Advocates Law as amended by s. 7 of Law 40/75). 15 20

The distinction which the present appellant failed to heed is the one between his client's rights and his interests. While an advocate must defend the rights of his client fearlessly (rule 2) he must not associate himself with his client's interests. The Disciplinary Board is in a unique position to earmark the boundaries of professional conduct of advocates. The public has a vital interest in the sustenance of the integrity of the profession and such interest must be heeded both by the Board and the Supreme Court in reviewing decisions of the Board. 25 30

(2) In the submission of counsel for the appellant section 17(7) of the Advocates Law, Cap. 2, providing that the Disciplinary Board shall «conduct the inquiry as nearly as may be as a Court of summary jurisdiction» makes applicable the rules of evidence in summary criminal proceedings and that being the case, the extract of the judgment criticizing appellant's conduct should be held inadmissible in virtue of s. 4(3) of the Evidence Law, Cap. 9. 35

In this case the Disciplinary Board did not rest its findings on such criticisms, but simply referred to the judgment in order to show the repercussions upon the profession from conduct as that of the appellant. It is not necessary to decide in this case the nature of disciplinary proceedings against advocates, that is whether they are of a civil or criminal character. It is sufficient to repeat dicta that a high degree of certainty is required in order to sustain disciplinary charges. 40

5 (3) The findings of the Disciplinary Board made the conviction of the appellant inevitable. He involved himself in a wholly reprehensible manner in the affairs of his client. His conduct thereafter fell short of the standards required by rules 2 and 3. The litigation in which he found himself involved, his conduct and the statements made in those proceedings are a reminder of the contempt in which an advocate may bring the profession as a result of deviating from the etiquette of the profession.

*Appeal dismissed*

*Cases referred to*

- 10 *Re XY an Advocate* (1981) 1 C L R 401,  
*Allinson v General Council of Medical Education and Registration* [1984] 1 Q B 750,  
*Rex v General Medical Council* [1930] 1 K B 562,  
*Re H (a Barnster)* [1981] 3 All E R 205,
- 15 *Re C D an Advocate* (1969) 1 C L R 376,  
*Andreou v Andreou, then Valene Burns* (1969) 1 C L R 533,  
*Re A B an Advocate* (1969) 1 C L R 388,  
*Mavrovouniotis v Nicolaides*, 14 C L R 272,  
*Erotocntou and Others v Soutsos* (1965) 1 C L R 162,
- 20 *Ousmanis v Nicolaou* (1981) 2 J S C 314,  
*Ahapittas v Roc-Chik Ltd* (1968) 1 C L R 1  
*Re C H an Advocate* (1969) 1 C L R 1 C L R 561,  
*Re T (a barnster)* [1981] 2 All E R 1105,  
*Re X W an Advocate* (1980) 1 C L R 187

25 **Disciplinary appeal.**

Appeal by I.A., an advocate against the decision of the Advocates Disciplinary Board whereby he was convicted on three counts for unprofessional conduct, contrary to rules 2, 3 and 4 of the Advocates Rules of Etiquette.

30 *M. Kyriakides*, for the applicant.

*L. Clerides*, for the Disciplinary Board, as amicus curiae.

*Cur. adv. vult.*

**TRIANTAFYLLIDES P.:** The judgment of the Court will be delivered by Mr. Justice Pikis; though I might add that as far as I am

concerned I should not be taken as necessarily subscribing to everything expounded in the judgment.

*PIKIS J.:* This is an appeal of an advocate directed against a decision of the Advocates Disciplinary Board whereby he was convicted on three counts for unprofessional conduct, contrary to Rules 2, 3, 4, of the Advocates Rules of Etiquette. One of the three charges (count 2) was also founded on the provisions of R. 16 enjoining in effect advocates not to involve themselves in the affairs of their clients beyond advising them on the case. The three charges were founded on the same facts to which we shall presently refer before examining the grounds raised on appeal.

In order to facilitate the departure of his client abroad, the appellant gave an undertaking to the Welfare Department that in the event of default on the part of his client to meet his obligations under a maintenance order (made by the District Court of Nicosia), he would himself remedy the default by personally paying the amount due; an obligation in the nature of a guarantee for the faithful discharge of the obligations cast on his client under the maintenance order. His client had been adjudged by the District Court of Nicosia to pay an amount of £60.- per month for the maintenance of his wife and two children, that is, £10.- for the wife and £25.- for each child. Seemingly the authorities aware of the impending departure of the father abroad (where he resided), they took steps to put his name on the stop-list, a list kept at ports of exit with a view to prohibiting the departure from the territory of the Republic of persons named therein. And the Welfare Dept. which took the initiative in the matter, would not agree to remove his name from the stop-list unless sufficient security was given for the discharge in future of the obligations of the father under the maintenance agreement.

To remove the impediment in the way of his client leaving the country, the appellant gave an undertaking embodied in an affidavit sworn to in the course of the maintenance proceedings whereby he agreed, as aforementioned, to meet in the event of default the obligations of his client. It is necessary to heed the wording of the undertaking for the light it sheds on the capacity in which it was sworn to by the appellant and the details of the undertaking given. Introducing the affidavit the appellant identifies himself as an advocate. In the first paragraph of the affidavit he informs that the respondent in the proceedings, that is, the husband and father, is his client and further informs that he had

been in practice as an advocate for 11 years. In paras. 2 and 3 he refers to the details of the maintenance order and specifies the obligations of his named client (indicated above). In para. 4 he states that his client had, until that date, met his obligations under the order of the Court and further asserted that he would continue doing so in future. In the last paragraph he undertakes to make good in future any default on the part of his client in meeting his obligations under the order and declares that he guarantees the faithful discharge of the obligations of his client. Following his undertaking and acting upon it, the Welfare Dept. agreed to the removal of the name of his client from the stop-list, facilitating thereby his departure.

A while later the maintenance order was varied and the obligations of the father were increased from £60.- to £90.- In face of default on the part of the father to meet his obligations under the new maintenance order and the refusal of the appellant to make good the amount due, civil proceedings were instituted by the wife against the appellant for the recovery of the monies due. The trial Court found that though the guarantee given by the appellant through the aforementioned affidavit was valid, it ceased to be effective after the variation of the maintenance order. Nevertheless the trial Judge expressed disapproval at the conduct of the appellant. The appellant had, in the opinion of the trial Judge, impermissibly involved himself in the affairs of his client criticising in particular his evidence to the effect that whatever he had done he did it out of a sense of duty to his client. The file of the civil action as well as the affidavit given by the appellant were produced before the Disciplinary Board.

The points taken by counsel for the appellant were three in substance. The first and foremost was that the conduct of the appellant, blameworthy though it might be in the opinion of some, could not ground disciplinary charges because it constituted conduct outside his professional duties. The second was that the conviction was founded on inadmissible evidence, namely, the part of the judgment of the District Court of Nicosia criticising the conduct of the appellant. Specifically the submission was that s. 17(7) of the Advocates Law binds the Disciplinary Board to follow the same rules of evidence as a criminal Court of summary jurisdiction. That being the case s. 4(3) of the Evidence Law, Cap. 9, rendered the judgment of the Court an inadmissible piece of

evidence since proceedings had commenced before the Disciplinary Board before delivery of judgment and on that account the Judge should be considered as a party with an interest in those proceedings. Lastly, appellant challenged the conviction on the merits claiming that the facts did not disclose conduct incompatible with the exercise of the profession of an advocate. We shall examine below in some detail the merits of the submissions raised.

In support of the submission that only conduct strictly and directly associated with the exercise of the professional duties of an advocate can found a disciplinary charge, counsel referred us, inter alia, to the decision of the supreme Court *In Re XY an Advocate\**. Contrary to the submission of counsel, the case does not decide that only conduct relevant to the exercise of the professional duties of an advocate stricto sensu can be the subject-matter of disciplinary proceedings. The ratio of the case (majority judgment) is confined to deciding that the chairman of a local Bar Association had no right to challenge by way of appeal a judgment of acquittal given by the Disciplinary Board. Nor do the English cases cited\*\* in support of the submission here under consideration establish the proposition put forward. Recent English authority suggests that the range of application of the code of etiquette of the English Bar is not confined to misconduct strictly associated with the carrying out of professional duties but extends to acts tending to bring the profession of a barrister into disrepute - *Re H (a barrister)\*\*\**. To the same effect are dicta of the Supreme Court of Cyprus in *Re C.D. and Advocate\*\*\*\**. The following passage\*\*\*\*\* from the judgment of the Court reflects the majority opinion in that case and is indicative of the ambit of the Cyprus Advocates Rules of Etiquette: «... Their practices and their general conduct must strictly conform to the rules and the etiquette of an honourable profession, enshrined in the dignity of a noble tradition»\*\*\*\*\*

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\* (1981) 1 C.L.R. 401

\*\* *Allinson v General Council of Medical Education and Registration* [1984] 1 Q.B. 750, at p. 760-1; *Rex v General Medical Council* [1930] 1 K.B. 562, at p. 569

\*\*\*[1981] 3 All E.R. 205.

\*\*\*\* (1969) 1 C.L.R. 376

\*\*\*\*\* Page 380

\*\*\*\*\* See also *Panayiotis Andreou v Valene Panayioti Andreou then Vasilis Burns* (1969) 1 C.L.R. 533.

On a number of occasions the Supreme Court took pains to stress\* that the conduct of advocates is not merely a matter of interest to members of the profession but also a matter of vital importance to the general public because of the association of the profession with the administration of justice

The rules of etiquette do not in terms limit the application of the code of etiquette to misconduct directly and inextricably associated with the exercise of professional duties. On the contrary examination of the content of the rules suggests that their ambit is wider and covers conduct likely to bring the profession into disrepute. Rule 3 in particular binds an advocate to maintain the honour and dignity of the legal profession. Furthermore, R 4 provides that the conduct of an advocate must always be characterized by honesty, straightforwardness and a sense of justice

On the other hand R 16(1) requires advocates not to involve themselves in the factual merits of the case of their client confining their duties to advising them. This stance of aloofness required by the rules is perfectly warranted by the status of an advocate under the law, an officer of justice as the law proclaims him to be (s 15, Advocates Law, as amended by s 7, Law 40/75). Advocates who fail to keep their distance and involve themselves in the factual merits of the case of their clients were repeatedly criticized\*\*. By the same token strictures were administered on advocates who swore affidavits in the cause of the case of their client. Such conduct should be avoided unless indispensable in the interest of justice\*\*\*

The facts of the present case make it unnecessary to identify exhaustively the range of application of the rules of etiquette. What can be said with certainty is that they are not confined to conduct directly and inextricably connected with formal steps in litigation. Moreover, they cover acts of misconduct associated with the exercise of an advocate's profession in a broader sense and certainly cover the conduct of the appellant, as subject-matter of present proceedings. The appellant as can be noticed from his

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\* See *inter alia* *In Re A B an Advocate* (1969) 1 C.L.R. 388, *In Re C H an Advocate* (1969) 1 C.L.R. 561

\*\* See, *inter alia*, *Mavrovouniotis v Nicolaidis* 14 C.L.R. 272, 290, *Maria N Erotocritou and two Others v Nicos Costi Soutsos* (1965) 1 C.L.R. 162, *Ousmanis v Nicolaou* (1981) 2 J.S.C. 314 (a decision of the District Court)

\*\*\* *Michael Ahapittas v Roc Chik Ltd* (1968) 1 C.L.R., 1

affidavit, proclaimed his status as an advocate and specified his capacity to be that of advocate of the person whom he guaranteed Evidently he invoked his status as an advocate in order to secure an extrajudicial advantage for his client The affidavit, we remind, was sworn to and given in the cause of the maintenance proceedings Before the District Court he asserted that whatever he did he did it out of a sense of duty to his client If that was his case he was certainly misguided in the appreciation of his duties The allegations made in the course of his defence before the Disciplinary Board are truly disturbing First he alleged that he did not give the undertaking embodied in the affidavit on his own free will but after being blackmailed, allegedly by the Welfare Department authorities Then he alleged that he did not believe tha the affidavit he gave was legal The most disturbing of his allegations before the Disciplinary Board was the one to the effect that he did not give the undertaking in order to serve the interests of the wife but in order to facilitate his client to depart

Luckily for the appellant the Disciplinary Board did not take his allegations on their face value and did not attribute to him the motives he claimed to have inspired his actions According to their finding he was merely overzealous in supporting his client, overstepping in the process the boundaries of his professional duties Had they accepted on their face value his allegations, the punishment imposed, a sentence of £200 -, would have been wholly inadequate It is a very grave matter for the profession for one of its members to use his professional capacity for an ulterior purpose, as appellant claimed to have used it There is no appeal against sentence and that question, we must clarify, was not debated at all on appeal

The distinction that appellant failed to heed is the one between his client's rights and his interests While an advocate must defend, as the rules of etiquette acknowledge (R 2), the rights of his client fearlessly, he must not associate himself with the interests of his client as distinct from his rights If he does that and fails to keep the necessary distance from the factual aspects of the case of his client and he becomes, be it indirectly, a party to the cause of his client, a course expressly prohibited by R 16 (Rules of Etiquette), action inconsistent with his status as an officer of justice

The Disciplinary Board is as noticed *In Re C H an Advocate*\* a highly responsible and specially qualified body with special responsibility to sustain the standards of the profession in the

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\* (1969) 1 C L R 561



interest of the profession itself and the public at large. The public has an equally vital interest in the sustenance of the integrity of the profession, an interest that must be duly heeded both by the Disciplinary Board and the Supreme Court in reviewing decisions of the Disciplinary Board. The Disciplinary Board is in a unique position to earmark the boundaries of professional conduct at the Bar and the form it must take in the continuously changing circumstances of the modern world - *Re T (a barrister)\**.

Are the findings of the Disciplinary Board vulnerable to be set aside for misreception of evidence? This is the second issue we must resolve in this appeal. The submission of counsel in connection with this aspect of the case rests on a two-fold legal argument founded on the provisions of s. 17(7) of the Advocates Law, Cap. 2, and those of s. 4(3) of the Evidence Law, Cap. 9. Section 17(7) provides that in carrying out an inquiry into complaints of professional misconduct, it shall have the same powers and shall «conduct the inquiry as nearly as may be as a Court of summary jurisdiction». In the submission of counsel this provision makes applicable the rules of evidence, in force in summary criminal proceedings; that being the case, the extract from the judgment of the trial Court criticising the applicant should be declared inadmissible in virtue of the provisions of s.4(3) of the Evidence Law, Cap. 9. Otherwise the appellant raised no objection to the production before the Disciplinary Court of the file of the civil action instituted by the complainant against the appellant. In the first place the Disciplinary Board did not rest its findings on the comments of the trial Court. They referred to the relevant extract of the judgment of the Court in order to indicate the repercussions upon the profession from conduct such as that of the appellant and the way confidence in the profession could, as a result of such conduct, be undermined. In that regard it was perfectly legitimate to refer to the criticism made of the conduct of the appellant coming from a Court of law respecting the conduct of an officer of justice. It is unnecessary to decide in this appeal whether proceedings before the Disciplinary Board are essentially of a civil or criminal character. In England disciplinary proceedings against members of the Bar are treated as a civil matter with the burden of proof varying with the gravity of the accusation; the greater the accusation the greater the degree of probability required to tip the balance. We need not give a definite answer to

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\*. [1981] 2 All E.R. 1105.

this question, save repeat dicta *In Re XW an Advocate*\* that a high degree of certainty is required in order to sustain disciplinary charges.

Finally we shall examine the merits of the conviction of the appellant by the Disciplinary Board. In our judgment the findings of the Board made the conviction of the appellant inevitable. He crossed the boundaries of his professional duties and involved himself in a wholly reprehensible manner in the affairs of his client. His conduct thereafter fell far short of the standards required of members of the legal profession by Rules 2 and 3. He failed to observe the honour and dignity of the legal profession. The acrimonious litigation in which he found himself involved as a result of deviating from his professional duties, and his conduct and statements made in those proceedings, are a reminder of the contempt in which an advocate can bring the profession as a result of deviating from the etiquette of the profession.

We find the appeal to be wholly devoid of merit. For that reason we considered it unnecessary to call upon Mr. Clerides to reply to the submissions of counsel for the appellant.

*Appeal dismissed.*

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\* (1980) 1 C.L.R. 187.