



DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED. ✓

2002-11-26

DATE

SIGNATURE

IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSCAAL PROVINCIAL DIVISION)

CASE NO. 992/2001

IN THE MATTER BETWEEN

THE LAW SOCIETY OF THE  
NORTHERN PROVINCES

APPLICANT

AND

PETER CLIVE SOLLER

RESPONDENT

JUDGEMENT

BERTELSMANN J:

1. The applicant, The Law Society of the Northern Provinces, applies for the striking off of the respondent from the roll of attorneys.
2. The application is advanced on a number of grounds which will be enumerated below.
3. The respondent has raised a veritable welter of defences against the application, which will be dealt with during the course of this judgement.

4. During argument, the applicant was represented by Mr. Labuschagne, whereas the respondent appeared in person. He was assisted in court by one Paul Rheeders. ("Rheeders"). The respondent alleged that Rheeders was not acting in a capacity as attorney, but as an assistant or a friend. The relationship between Rheeders and the respondent will be examined later.

### THE APPLICANT

The applicant is the Law Society of the Northern Provinces incorporated as the Law Society of the Transvaal.

It is a society as contemplated in Chapter 3 of the Attorneys' Act, Act 53 of 1979, ("the Act") in which the Law Society of the Transvaal is described as a juristic person in s 56 (c).

In terms of s 57 of the Act, every practitioner in any province must be a member of the Law Society of that province.

Because of the disappearance of the former Transvaal Province, the applicant society has renamed itself as the Law Society of the Northern Provinces.

### THE RESPONDENT

The respondent is Peter Clive Soller, an adult attorney admitted to practice as such on the 2<sup>nd</sup> of September 1969, presently practicing as Soller and Associates at 54 Grenville Road, Savoy, Johannesburg, Gauteng.

### THE ISSUES

The issues before the court are the following :-

1. Whether the respondent is a fit and proper person to be allowed to continue in practice as an attorney of this court, which involves an inquiry into the question whether the applicant has proved its allegations of misconduct and incompetence against the respondent;

2. Whether the applicant has the necessary *locus standi* to bring the present application;
3. Whether, if any flaw is to be found in the respondent's conduct or competence, he should be suspended from practice rather than struck off.
4. Whether the application can be determined on the papers or needs to be referred to oral evidence.
5. Whether the applicant was obliged to conclude a disciplinary enquiry before launching the present proceedings or not.
6. Whether the applicant allowed itself to be unduly influenced by outside parties to launch this application rather than to continue with a disciplinary enquiry.

#### THE APPLICANT'S *LOCUS STANDI*

1. The respondent challenged the applicant's *locus standi*, alleging that, as it had changed its name to the Law Society of the Northern Provinces (which he may have misconstrued as "The Law Society of the Northern Province"), it had ceased to exist as the Law Society operating in the former Transvaal, and in particular in Gauteng, where the respondent has his practice. For this reason, so the argument ran, the Law Society had no *locus standi* to approach this court.
2. The respondent had hardly commenced upon this part of his argument when he realized that he had proceeded from an incorrect premise of fact. He wisely abandoned any further reliance upon the argument that the applicant did not have the required *locus standi* to apply for his striking off.
3. In any event, this Court has the inherent power to take cognizance of the conduct of its officials. The respondent is an attorney of

this Court. Should it become clear that he is no longer fit to practice, this Court can act *mero motu* in suspending him or striking him off. The Court can act in this fashion on its own accord, or can receive information from any interested party or any *amicus curiae*.

4. Even if the applicant had no *locus standi*, this would not assist the respondent in preventing this Court from dealing with the matter and from acting upon those facts which are established on the papers.

### THE HEARING

As the respondent appeared in person, and particularly as he was inclined to stray beyond the bounds of the papers from time to time, the Court requested that a running record of the arguments be prepared. Where necessary, reference will be made to the transcript.

### THE RESPONDENT'S COMPLAINT THAT APPLICANT FAILED TO CONCLUDE A DISCIPLINARY ENQUIRY

1. It is common cause that the respondent appeared at a disciplinary enquiry that had been arranged by the applicant prior to the present proceedings being launched.
2. The disciplinary proceedings in turn were preceded by a meeting of the applicant's council held on the 3<sup>rd</sup> of April 2000, at which the respondent appeared.
3. He was then charged with :-
  - 3.1 A failure to consistently attend disciplinary enquiries;
  - 3.2 A failure to account in terms of the rules of the Law Society to his clients or former clients;
  - 3.3 A failure to keep a proper accounting record;

- 3.4 Having conducted inappropriate correspondence with colleagues and the applicant;
- 3.5 A conviction for contempt of court by the Cape of Good Hope Provincial Division of the High Court of South Africa;
- 3.6 Inappropriate conduct toward a colleague who had acted for his former wife in certain maintenance proceedings.

The respondent made some reply to these charges, but eventually it was decided that the complaints would be referred to a disciplinary committee which would meet on the 5<sup>th</sup> of May 2000.

The respondent was taken ill before that date, whereupon the proceedings were postponed *sine die* and the respondent was requested to provide medical certificates within fourteen days that he had indeed been incapacitated .

On the 19<sup>th</sup> of May 2000 these medical certificates had not yet been produced and the applicant decided to launch the present enquiry.

The respondent has argued at some length that this decision:

- 1. has deprived him of fair administrative procedure;
- 2. constitutes an unlawful step on the part of the applicant because the applicant is in terms of the provisions of ss 71 and 72 of the Act obliged to conduct a disciplinary enquiry prior to lodging an application for the striking off or suspension of an attorney; and
- 3. has deprived him of an opportunity to lead oral evidence, to call for the viva voce evidence by complainants and witnesses against him and to cross-examine them.

The respondent also attributes improper motives to the applicant, which are said to underlie the decision to launch the present proceedings. This aspect of the matter will be dealt with *infra*.

The first objection raised by the respondent, namely that he was deprived of a fair administrative procedure by the institution of the present application, is clearly without merit and can be dismissed out of hand. The respondent was given the opportunity to deal with all complaints against him in open court before an independent tribunal. There is no suggestion that the trial that he received in these proceedings was anything but fair and strictly in

accordance with the Constitution as well as the rules of this Court's procedure and the law relating to evidence.

There can be no suggestion of any prejudice in the proceedings themselves.

The argument that the applicant society is obliged to conduct a disciplinary enquiry, or to finalize disciplinary steps that have been embarked upon before deciding to launch an application to strike off, is misconceived. S 71 of the Act reads *inter alia* as follows under the heading

**"Inquiry by council into alleged cases of unprofessional or dishonorable or unworthy conduct –**

A council may in the prescribed manner enquire into cases of alleged unprofessional or dishonorable or unworthy conduct on the part of any attorney, notary or conveyancer..."

S 72 reads as follows under the heading

**"Council's disciplinary powers -**

"(1) A council conducting an enquiry in terms of s 71 may find the person concerned guilty of unprofessional or dishonorable or unworthy conduct and may...."

S 22 of the Act says the following under the heading

**"Removal of attorneys from roll. –**

(i). Any person who has been admitted and enrolled as an attorney may on application by the society concerned be struck off the roll or suspended from practice by the court within the jurisdiction of which he practices....."

Quite apart from the foregoing, the present proceedings are disciplinary proceedings conducted by this court –

"Hierdie Hof het inherent die jurisdiksie om te beslis oor die geskiktheid van prokureurs. Sy jurisdiksie ontleen hy nie uitsluitlik aan a.22 van die Wet op Prokureurs nie. *Law Society of the Cape of Good Hope v C* 1986 (1) SA 616(A) op 638 C tot 639 F. Kyk ook *Pesskin v The Incorporated Law Society* 1966(3)SA 719(T), waarin beslis is dat die Hof inherente jurisdiksie het om prokureurs toe te laat. Dit volg dat waar hierdie Hof hierdie bevoegdheid het, die Hof ook die applikant kan toelaat om die

nodige gegewens voor hom te plaas. Hierdie Hof het die bevoegdheid om sy eie prosedure te reël. Dit is per slot van rekening 'n dissiplinêre ondersoek, nie 'n siviele geding nie. Die vraag of die jurisdiksie wat die applicant aan a. 22 van die Wet op Prokureurs ontleen geldig is, is dus nie wesenlik nie. Die geskilpunte draai om die geskiktheid van die respondent om as prokureur te praktiseer, nie om die applicant se *locus standi* nie..."

Per Van Dijkhorst J in *Prokureursorde van Transvaal v Kleynhans*, 1995(1)SA 839 (T) at 851 E to G.

It follows that the respondent has no right to insist upon a disciplinary enquiry being held prior to steps being taken for his removal from the roll. In fact, this Court could *mero motu* initiate steps to strike the respondent's name off the roll of attorneys, and could do so, albeit notionally, without reliance upon the applicant's co-operation or, indeed, against the applicant's wish.

It may further be argued that the respondent would have been subjected to more prejudice had the applicant first conducted a disciplinary enquiry and thereafter launched the present proceedings. This would have involved the respondent in considerable additional cost and waste of time.

Regarding the respondent's third argument that he has been deprived of the opportunity to have witnesses testify and cross examined, and thereby to extract evidence from persons who might otherwise be reluctant to support his cause, a moment's consideration will indicate that this objection, too, is without merit. The applicant is in terms of s 22 of the Act obliged to launch application proceedings for the respondent's removal from the roll. It is trite that in application proceedings, the court may consider only those facts which are common cause, not truly challenged or, if *bona fide* in dispute, those which are placed before court by the respondent. The respondent has the right to request that deponents supporting the applicant's claim should be cross-examined in an appropriate case. No specific request of this nature was directed to this Court during the present proceedings. No actual prejudice has been shown to have been caused to the respondent by the nature and form of the present litigation against him. In particular there exists no factual basis upon which it could be argued that any deponent who testified under oath against him would, or might, have sung a different tune

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if subjected to cross-examination. It will further clearly emerge from this judgment that the findings that are made against the respondent are based upon matters that are common cause on the papers or have crystallized incontrovertibly into proven fact.

**THE RESPONDENT'S ALLEGATION THAT THE APPLICANT WAS UNDULY INFLUENCED BY OUTSIDE PARTIES TO ABANDON THE DISCIPLINARY ENQUIRY AND TO LAUNCH THE PRESENT PROCEEDINGS FOR STRIKING OFF.**

1. The respondent is firmly convinced that he is the victim of a conspiracy against him by various individuals, institutions and governments.
2. During the course of the hearing he identified four categories of participants in the conspiracy against him –
  - (a) A former president of the applicant society, a former chairman of the Legal Aid Board and a former director of the Legal Aid Board;
  - (b) The United States Government;
  - (c) The South African Government; and
  - (d) The entire Bench of the Cape Provincial Division of the High Court of South Africa.
3. These four entities are said by the respondent to have individually and collectively improperly influenced the applicant to abandon the disciplinary proceedings against him and to institute the present application.
4. Each of the four entities was alleged by the respondent to have ulterior motives to destroy him by way of these proceedings. They were the following –
  - (a) In respect of (a) above  
Like other practitioners, the respondent experienced considerable frustration during the second half of the nineties in his attempts to collect payment of his fees due to him by the Legal Aid Board. He was apparently involved in some vigorous exchanges with the Legal Aid Board on this issue. He also made submissions to the Parliamentary Portfolio Committee on Justice relating to the sorry state of affairs prevailing in legal aid matters. This, the

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respondent surmises, could not have endeared him to the three personalities he mentioned by name.

In his answering affidavit filed during February of 2001, he further relates that during the second half of 1999, he received information from a well placed source whose name he declined to reveal, that the three personalities concerned were engaged upon downloading pictures of child pornography at the offices of the Legal Aid Board at the taxpayer's expense.

He was handed a several hundred pages of computer print-outs, which he found necessary to annex to his answering affidavit.

Not one of these computer print-outs is linked directly to any of the three persons he has accused of this practice.

The respondent stated in argument, however, that he had been told that the agency responsible for the Legal Aid Board's access control system would provide him with proof that the three persons were indeed responsible for the alleged immoral conduct. No such proof was ever forthcoming, but in spite thereof the respondent reported the matter to the Head of the South African Police, the Health Commission, the Head of the Child Protection Unit, the Minister of Justice and the Minister of Police.

No action appears to have been taken upon the respondent's reports, probably because of the absence of any evidence connecting the three persons to the alleged misconduct. In spite thereof, the respondent in his answering affidavit states some fifteen months after the event that ".....regrettably so it is obvious, my report of and concerning (the name of one of the persons involved) went unheeded, although not by the press ...."

It is clear that the respondent at no stage had any evidence linking any of the three personalities to the alleged misconduct. In an affidavit filed at the last day of the hearing, the respondent relates a further conversation with another prominent individual, who allegedly was told that one of the persons concerned admitted having looked at some of the offending material on six or seven occasions for purposes of establishing whether such material was indeed available on the internet. The evidence presented by the respondent is not enough to justify an investigation by any of the organs he approached with his information. Much less does it justify the suggestion that the information is true or, as he would have it, a proven fact. His papers are devoid of any suggestion how the three persons, apart from their official status, influenced

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the decision of the applicant's council to launch the present proceedings in preference to a disciplinary enquiry.

The foregoing demonstrates that the respondent is prepared to level extremely serious accusations at persons who occupy responsible positions in society without a shred of proof, and to staunchly maintain thereafter that the averments are true.

It also demonstrates that the respondent is able to convince himself of the truth of far-fetched allegations without any tangible evidence to support the same.

This event is no isolated incident, but one of a series of similar statements made by the respondent.

Ad (b) The United States Government:-

The respondent relates that he was requested by a member of the FBI to conduct investigations on its behalf prior to the Federal Bureau of Investigation opening a South African office.

In spite of the fact that he did perform his mandate, his fees were not paid and he was forced to bring an application for the arrest *tanquam suspectus de fuga* of the FBI member concerned.

Respondent alleges further that he received an oral undertaking from the American ambassador that his fees would be paid, whereupon the gentleman concerned was released. Respondent was not paid.

The self-same gentleman has remained in contact with persons in South Africa and sent a derogatory e-mail to the respondent after learning of the present application. From this the respondent concludes that the applicant must be in contact with the American Government (the gentlemen concerned is alleged to be a Judge in the United States of America at the moment) and must have been influenced by the American Government to prefer the present proceedings against the respondent.

*Prima facie*, this reasoning appears to be flawed. It is certainly not the most plausible conclusion to which one could come on the "evidence" presented by the respondent. It cannot meet the standard of proof in civil proceedings – see *Hoffmann, Evidence*, 4<sup>th</sup> ed., p. 590.

What interest the United States of America's Government might have in ensuring that the present proceedings are brought against

the respondent rather than see a disciplinary enquiry conducted, has remained largely unexplained; as has the alleged conspiratorial contact between the United States Government and its alleged co-conspirators.

**Ad (c) The South African Government.**

The respondent has been involved in a most acrimonious divorce from his former wife, which has led to protracted and bitter litigation about access to the only child of that marriage, Ross. The litigation has had unfortunate implications for the respondent and other parties, some of which are enumerated in the decision of *Soller v Soller* 2001(1)SA 570(C).

As part and parcel of this protracted litigation, the former Ms. Soller apparently contacted certain members of Parliament and the present Deputy Minister of Justice in an attempt to enlist their support for her efforts to retain custody of her child and to restrict the respondent's access to the boy.

Certain correspondence passed between the Deputy Minister of Justice, the Member of Parliament and the applicant, in which the complaints raised by the respondent's former wife were brought to the applicant's attention.

Given the grave implications of the judgement by Thring, J., to which I will turn in a moment, the applicant was in duty bound to investigate the complaints which were laid before it.

The respondent has seen therein the dark hand of conspiracy and collusion between the Government, the Cape Provincial Division's Judges, and the other co-conspirators against him.

What motive the South African Government and the other co-conspirators might have to influence the applicant to choose the present form of proceedings still remains unexplained.

**Ad (d) The Judges of the Cape of Good Hope Provincial Division of the High Court of South Africa**

After the aforesaid divorce, the respondent's former spouse moved to Cape Town, which became the forensic battleground where repeated jousts between the former partners were carried out in the High Court. The respondent experienced intense frustration at

repeated failures to gain access to his son in the manner which he desired.

Eventually, during the year 2000, the aforesaid judgement was delivered by Thring J. describing the conduct of the respondent against the then Judge President of that division as well as its present Deputy Judge President. It is unnecessary to repeat what is stated there. Suffice to say that the respondent's remarks are flagrantly and expressly contemptuous of the judges concerned. The applicant has advanced the respondent's attitude toward the Judges of the Cape High Court as one of the grounds upon which the respondent ought to be removed from the roll of attorneys. The respondent's actions are common cause, as indeed they must be. More significantly, however, the respondent has not only confirmed that he attributed the actions and sentiments to the Judges as set out in the judgement, but emphasized before us that he stood by every word that he said.

Not content therewith, he included the whole of the Cape Judiciary and an acting Judge of that division in the accusation that all of them were biased and prejudiced against him.

Developing this theme further, the respondent accused a former Judge President of that division of having participated in an attempt to murder the respondent while the said former Judge President was still an eminent silk. The attempt to murder the respondent was allegedly perpetrated by placing oil drums on a landing strip upon which the respondent was about to land a private aircraft that he piloted himself.

The evidence which the respondent advanced for this accusation – which in turn was said to have motivated the former Judge President to act unfairly and dishonestly toward him – was far-fetched, to say the least.

In addition, the respondent accused the Deputy Judge President of the division of having harbored a grievance against him for many years, resulting from an incident in which she and the respondent were involved while she was still a member of the Bar. The language in which her actions were described by the respondent was unbridled and extreme.

The collective bias of the Cape of Good Hope Provincial Division's Judges was then said to have led to a conspiracy, together with the respondent's other opponents, to improperly bring about the applicant's decision to institute these proceedings.

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The respondent is visibly tormented by his personal conviction that these powerful entities are conspiring against him. However sad this situation may be, it does not detract from the fact that the respondent has seen fit to attack all the Judges of an entire division of the High Court of South Africa in the most ill - tempered and unrestrained fashion possible, and has hurled accusations of gross misconduct at other persons and entities without any evidence that could pass muster at all. Regardless of the respondent's personal pain, his actions, deplorable in themselves, clearly evidence his utter inability to consider these matters objectively and dispassionately. Whatever his personal feelings, as an officer of the court he must have appreciated that his contemptuous actions towards the judiciary constituted a very serious professional transgressions. His insistence that his accusations, grotesque as they are, are the truth, not only adds insult to injury, but demonstrates clearly that the respondent does not have, or does no longer have, the ability to reflect maturely upon matters upon which he is engaged as an attorney. His uncritical assertion of his own convictions as the absolute truth demonstrates that he is a danger not only to himself, but also to his clients and the public at large. The transgressions I have described are serious. The mindset which produced them renders the respondent unfit to practice as an attorney of this court.

During argument, the respondent emphasized that his altercations with the Cape Judiciary should be seen as an isolated chain of events prompted by his concerns about his son and his frustrations in failing to gain proper access to him. There was no chance that this inappropriate behaviour would be repeated in future, the respondent asserted. This prediction had no sooner been made than it was proved to be false; angered by the judgement of Southwood J., with which I deal below, respondent launched a vicious personal attack upon the Judge in his notice of appeal and an application to have the judgement set aside. His comments yet again constitute a contempt of this Court. The respondent is a serial offender in this regard: disappointment with the result of litigation in which he is involved habitually results in unprofessional and unbecoming actions toward the judiciary and the Court.

## **THE RESPONDENT'S APPLICATION AGAINST THE APPLICANT TO INTERDICT THE LATTER'S ANNUAL GENERAL MEETING**

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On the 22<sup>nd</sup> of October 2002, the respondent, as applicant, launched an urgent application to interdict the applicant, as respondent, from holding its annual general meeting on Saturday, the 2<sup>nd</sup> of November 2002.

The application was launched as a matter of urgency, based upon the respondent's objection to a meeting being held on the Jewish Sabbath. It was of the essence of the averments of urgency, and the explanation for the lateness of the day upon which the application was brought, that the respondent allegedly received notice of the meeting only on the 1<sup>st</sup> of October 2002.

In its answering affidavit, the applicant provided compelling evidence that the respondent had indeed received notice of the Annual General Meeting during August of this year already. In particular, the applicant provided proof that the respondent had on the 26<sup>th</sup> of September 2002 himself given notice of his intention to raise a constitutional objection against the applicant's present composition, on much the same grounds as those which were abandoned during these proceedings. The respondent's notification to the applicant referred to the notice of the Annual General Meeting, which he clearly had received.

Southwood J. dismissed the urgent application with costs. In his judgement, he said the following :

"the (applicant) has demonstrated convincingly that there are objective grounds for concluding that the (respondent) is not truthful about when he first received notice of the meeting..... On the evidence it can safely be concluded that the (respondent) received notice of the meeting on a date earlier than the 11<sup>th</sup> of October 2002 and there are objective reasons for finding that he is not being truthful about when the meeting was first brought to his attention or to his notice."

Southwood, J. referred the papers in the urgent application to this court to consider the respondent's apparent untruthfulness as well as other *prima facie* transgressions committed by the respondent that emerged during the hearing of that matter, and to which I will refer below. The respondent was given leave to file a replying affidavit in the present proceedings to deal with the question of when he received the notice of the meeting. The respondent reacted to this judgement by filing an application for leave to appeal. The finding of apparent untruthfulness on his part is not adverted to in this application, but a severe personal attack is launched upon Southwood J, alleging that he was prejudiced and biased against the

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respondent because of a long standing personal and acrimonious relationship between respondent, and the learned Judge.

When the Court enquired further about the respondent's startling failure to avail himself of the opportunity to dispel any suggestion that he had been untruthful in an application before the High Court, the respondent initially referred us to an application which was apparently launched on or about the 6<sup>th</sup> of November 2002 for an order setting aside Southwood J's order and judgement. This application is based upon the averment that Southwood J was clearly prejudiced and biased against the respondent. Such prejudice and bias was said to have arisen from the fact that the respondent and Southwood J, when he was still eminent silk, were on opposite sides in the matter of *Van Rensburg v. Milliner*, Case no. 1952690 heard in the Witwatersrand Local Division on the 28<sup>th</sup> of September 1990. A copy of the application to set aside Southwood's judgement and orders, under case no. 31282002, was made available to the Court. The respondent again fails to deal with the alleged untruthfulness on his part, although he refers to the passage in the judgement that I have had already quoted in part.

Eventually, and on the fourth day of the hearing, the respondent saw himself constrained to file a further affidavit, in an attempt to place yet further documentation relating to the Government's interference in his affairs before the court. Although the issue of his affidavit in the matter before Southwood J had been raised in argument more than once, and it had been brought to his attention that it was important to dispel the impression that he had failed to speak the truth under oath, the respondent again did not deal with that issue at all.

The failure to do so at this late stage, after the matter had been repeatedly and expressly brought to his attention, admits of only one plausible conclusion – the respondent did lie in his application against the applicant when he stated that he received notice of the applicant's Annual General Meeting only on the 11<sup>th</sup> of October 2002.

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Once this finding has been made, it is almost unnecessary to deal with other issues which arise on the papers. A practitioner who knowingly lies under oath to the court whose officer he is, is unfit to practice and there can be but one way of dealing with him— he must be struck off. The situation is aggravated by the fact that Spoelstra J., in his aforesaid judgement in the case of *Van Rensburg v Milliner*, held that the respondent had designedly and deliberately subverted the truth in those proceedings.

### **THE RESPONDENT'S RELATIONSHIP WITH MR. PAUL RHEEDERS**

It emerged during the proceedings before Southwood J. that the respondent presently employs a professional assistant, Mr. Paul Rheeders, who has been suspended from practice by an order of this court dated the 7<sup>th</sup> of June 2002. In his judgement, Botha J. records that Mr. Rheeders described himself as a minority partner in the respondent's practice at that stage. The respondent's letterhead indicated that Mr. Rheeders was a partner in the firm. Mr. Rheeders did not have then, and still does not have, a fidelity fund certificate.

We were informed from the Bar that Mr. Rheeders was suspended because of a shortfall in his trust account. Whatever the reason, leave was sought to appeal against Botha J.'s judgement, which was refused. A petition to the Honourable Chief Justice was also unsuccessful.

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The respondent claims to have received news of the dismissal of the petition only shortly before the start of the hearing in this matter. He staunchly defended his decision to employ Mr. Rheeders in his last affidavit, citing his own poor health and Mr. Rheeders' commitment to his clients and their interests as reasons to justify this state of affairs. He also indicated that the Constitutional Court would be approached in the near future on Mr. Rheeders' behalf, although the grounds for an appeal to that court were not outlined.

It is self-evident that in the absence of a special dispensation, no practitioner is entitled to employ a suspended attorney in a professional capacity. It is not only contemptuous of this court to do so, but constitutes in itself a flagrant breach of the duty which rests upon every officer of this court to maintain the integrity of his profession. To employ an unqualified person is a criminal offence, committed by both the respondent and Mr. Rheeders. Even if considered on its own, this transgression might be sufficient to justify the respondent's removal from the roll. Seen in the light of the respondent's other actions, it supports the finding that the respondent is a serial offender who habitually holds the High Court and its Judges in contempt and treats its orders in similar fashion.

#### **THE RESPONDENT'S REMARKS CONCERNING SOUTHWOOD J. IN THE APPLICATION TO HAVE THE LATTER'S JUDGEMENT SET ASIDE**

The papers in this application demonstrate that the respondent has yet again, and on the flimsiest of grounds, seen fit to impugn the integrity, honesty and competence of a Judge of the High Court in intemperate language. The fact that this attack was perpetrated only a few days before the hearing of this application commenced, which seeks the removal of the respondent's name from the roll of attorneys on the grounds of *inter alia* similar misconduct against the Judges of the Cape High Court, proves conclusively that the respondent does not learn from the past mistakes and reacts with compulsive aggression whenever thwarted by a court. This reveals a personality totally unsuited to meet the demands of the attorneys' profession.

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| 2015 -01- 29                                           |
| A. P. MABONA<br>PRETORIA 0001                          |
| GRIFFIER VAN DIE NOORD GAUTENG<br>HOË HOF, PRETORIA    |

## THE RESPONDENT'S ATTACK UPON MR. STEMMETT

On the 15<sup>th</sup> of October 2002, and while the urgent application to interdict the applicant's Annual General Meeting was being prepared, the respondent wrote a letter to the applicant's president, Mr. J. Stemmett.

A copy thereof was annexed to the papers by the applicant.

The letter consists of a string of vile, offensive and derogatory personal attacks upon the character, intelligence and integrity of the applicant's president. It is a prime example of the respondent's unfortunate tendency to resort to language redolent of Billingsgate and to insult and defamation whenever he, rightly or wrongly, perceives himself to be unfairly hampered in the pursuit of a personal goal.

The letter, sent to a professional colleague holding his own society's highest elected office, is utterly unbecoming of an officer of this court. It confirms the conclusion that the respondent habitually lapses into unprofessional conduct whenever his interests are not advanced by those in authority to the extent which he demands. This reveals a flaw in the respondent's character which is so grave that he cannot be permitted to practice as an attorney any longer.

## THE CASE OF MR. G.J. VAN MELSEN

Mr. Van Melsen is a non-custodian father who has been divorced from his wife. Like the respondent, he experienced problems in the exercise of his access to his child.

On the papers it is not denied that the respondent advised Van Melsen to pay monies into the respondent's trust account which he ought to have paid in respect of maintenance. The respondent does not deny that he received, and accepted, at least initially, instructions to raise the defence that a father who is denied access to his child in respect of whom a maintenance order exists, is not obliged to pay such maintenance. This defence was to be tested in courts of higher jurisdiction than the Maintenance Court.

As the law stands at present, that defence does not avail a father who has been ordered by a competent court to pay maintenance for his children. It is furthermore a criminal offence to fail to pay maintenance, and to advise or encourage a client not to do so, is to become a *particeps criminis*.

It is clear that such conduct is unbecoming of an officer of the court.

Mr. Van Melsen has also complained to the applicant that the money that had been paid into the respondent's trust account was not repaid to him. The respondent raises the defence that he is entitled to retain the moneys in respect of fees as agreed with Mr. Van Melsen or with a certain Mr. Deavall, who assisted Mr. Van Melsen on behalf of an association acting for maintenance - paying fathers experiencing problems to gain access to their children.

In the light of the findings of fact made on the issues dealt with above, it is unnecessary to resolve this dispute on the papers.

### **THE COMPLAINT OF MRS KUHNERT**

The respondent prides himself on his ability to handle intricate medico - legal matters.

Mrs. Kuhnert was a client who suffered damage to her skin after having undergone specialist treatment.

The respondent instituted a damages action on her behalf against the two practitioners involved, who are regarded as the leading lights in their field.

The particulars of claim were drafted by the respondent without the assistance of an expert and the proceedings were basically abandoned once it became clear that no medical evidence supporting the patient's claim would be forthcoming.

The action is indicative of the piratical recklessness with which the respondent approaches important litigation.

He admittedly failed to deal with Mrs. Kuhnert's queries and thereby transgressed the rules of the applicant.

A similar situation may have existed with regard to another client, Mr. Chait, who had a similarly horrific experience as Mrs. Kuhnert, although he suffered from a different medical condition. Again, the findings on the issues dealt with already render it unnecessary to delve deeper into these allegations against the respondent.

### **THE COMPLAINTS RELATING TO NON PAYMENT OF ACCOUNTS AND FAILURE TO REACT TO CORRESPONDENCE**

Several complaints that the respondent failed to communicate with his clients, failed to pay his correspondents and failed to react to letters which were addressed to him have been made on the papers. A particularly

serious complaint relates to respondent's dealings with Mr. Silva, from whom he admittedly received R94 000 00. Respondent alleges that this money was devoted to payment of his fees. The relationship between the respondent and Mr. Silva is seriously fractured, however, because of the fact that the respondent accuses Mr. Silva of having broken into his office together with the respondent's former partner, and of having removed his files and the electronic equipment upon which accounting data were stored. In the light of what has been stated above, it is not necessary to deal in detail with the various averments in this respect, or indeed with the various complaints raised by the applicant's witnesses. It is clear that at some stage, or another, the respondent's accounting records were not written up properly, allegedly because his records were stolen.

It does appear as though it took an inordinate amount of time for the respondent to restore his bookkeeping to some semblance of order. Ordinarily, these charges would be serious in themselves, but they pale into insignificance compared to the findings that the respondent has

1. deliberately lied to this court in the application to interdict the applicant's Annual General Meeting;
2. failed to deal with this charge of dishonesty on three separate subsequent occasions although given the opportunity to do so;
3. made grossly contemptuous remarks of the members of the Bench of the Cape of Good Hope Provincial Division;
4. made completely unsubstantiated charges of attempted murder against the former Judge President of that division;
5. made serious defamatory allegations of and concerning another Judge, a former president of the applicant and a senior official of the Legal Aid Board in regard to their alleged involvement in studying child pornography;
6. made further contemptuous remarks of Southwood J on facts which can by no stretch of the imagination justify this action;
7. written a grossly offensive letter to the president of the applicant;
8. employed, and continues to employ, a person who has been suspended from practice in a professional capacity;
9. failed to purge his contempt of the Judges of the Cape Provincial Division, although invited to do so;
10. aided and abetted a client to disobey a court order and commit a crime;
11. advanced fanciful theories about international conspiracies on the flimsiest of grounds and thereby demonstrated that he no longer

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possesses the clarity of mind and detachment which is required from an officer of this court.

All the above findings are based, as I have already said, upon common cause facts as they appear on the papers, or as they emerge incontrovertibly from the respondent's affidavits, heads of argument or the respondent's address to the Court. None require further evidence and none could be changed by any facts which have not yet been brought to the Court's notice. Issues which are not crystal clear on the papers have not been taken into consideration.

### **THE CONDUCT OF THE PRESENT LITIGATION**

The respondent suffers from a severe disability to separate the grain from the chaff. This is demonstrated in striking fashion by the way in which he conducted the present litigation.

Technical defences were raised against the application which had no hope of success. On the merits, reams of paper were filed which bore no, or only passing, relevance to the issues at hand. In particular, the filing of hundreds of examples of computer printouts from the internet, allegedly demonstrating that child pornography sites had been accessed, was clearly unnecessary, irrelevant and vexatious. His affidavit and some of the letters that respondent has written are couched in a garrulous, rambling and loquacious style, often missing the point at issue altogether. The respondent is clearly unable to identify issues, concentrate thereupon and deal with them appropriately.

### **THE CONCLUSION**

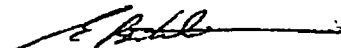
The above facts prove that the respondent is not only unfit to practice, but also that he is no longer able to practice. He has developed unfortunate deficiencies in his character, which have made him prone to serial unprofessional conduct. He is also afflicted by serious shortcomings in his personality resulting in a lack of insight, detachment, objectivity and professional judgement. The respondent

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cannot continue to practice – he has become a danger to society and an embarrassment to his profession.

There can consequently be only one order –

The respondent is struck off the roll of attorneys in terms of the draft order, annexure X hereto.

  
E. BERELSMANN  
JUDGE OF THE HIGH COURT

I agree.

  
I.W.B. DE VILLIERS  
JUDGE OF THE HIGH COURT