

IN THE MATTER OF ROSSLYNE JUNE RIXON and JULIAN RIXON, solicitors
and ANTHONY EDWARD DIETRICH, an unadmitted person

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D Glass (in the chair)
Mr J N Barnecutt
Mr P Wyatt

Date of Hearing: 29th October 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“SRA”) by George Marriott, Solicitor and Partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 19th February 2009 that Mrs Rosslyne June Rixon and Mr Julian Rixon of Rixons Solicitors, 12 Cheriton Place, Folkestone, Kent CT20 2AZ might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

On the same date George Marriott applied on behalf of the Law Society, via the Solicitors Regulation Authority, that an Order under Section 43 of the Solicitors Act 1974 (as amended) be made by the Tribunal directing that from a date to be specified in such Order, no Solicitor, Recognised Body or Registered European Lawyer should employ or remunerate Mr Anthony Edward Dietrich of no fixed abode, but by email to Tony@dietrich.org.uk, who was employed or remunerated by Rixons Solicitors, 12 Cheriton Place, Folkestone, Kent CT20 2AZ, except in accordance with permission granted by the Law Society, via the Solicitors Regulation Authority, or that such other Order might be made as the Tribunal should think right.

The allegations against Mrs Rixon were that she:-

1. Misled the court by submitting a witness statement on behalf of Mr Dietrich which she knew or ought to have known was inaccurate, contrary to Rule 1 of the Solicitors Practice Rules 1990 (“SPR”).

2. Employed Mr Dietrich and permitted him to have direct contact with clients, knowing that he had an unspent conviction for intimidating a witness, juror or person assisting in investigation of offences, contrary to Rule 1 SPR.
3. Continued to employ Mr Dietrich and continued to permit him to have direct contact with clients, after becoming aware of expert psychiatric and other expert medical evidence which put her on notice that it would be undesirable to continue to do so, contrary to Rule 1 SPR.
4. Failed to adhere to the Law Society's Code for Advocacy, in breach of Rule 16A SPR.

The allegations against Mr Rixon were that he:-

1. Withdrawn (with the agreement of Mr Rixon and the consent of the Tribunal.)
2. Employed Mr Dietrich and permitted him to have direct contact with clients, knowing that he had an unspent conviction for intimidating a witness, juror or person assisting in investigation of offences, contrary to Rule 1 SPR.
3. Continued to employ Mr Dietrich, and continued to permit him to have direct contact with clients, after becoming aware of expert psychiatric and other expert medical evidence which put him on notice that it would be undesirable to continue to do so, contrary to Rule 1 SPR.

The allegation against Mr Dietrich was that he:-

Misled the court by submitting a witness statement which he knew, or ought to have known, was inaccurate, contrary to Rule 1 SPR.

The applications were heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 29th October 2009 when Richard Sones of Counsel appeared for Rosslyne June Rixon ("Mrs Rixon") and Julian Rixon ("Mr Rixon"). Anthony Edward Dietrich ("Mr Dietrich") appeared in person.

The Evidence before the Tribunal

The evidence before the Tribunal included the admissions of Mr and Mrs Rixon. Mrs Rixon admitted allegation 1 against her on the basis that she ought to have known that Mr Dietrich's statement was inaccurate and that she should have paid more attention to the matter. Mr Dietrich agreed that the Order sought should be made in respect of him but he made no admissions as to the facts.

At the conclusion of the hearing the Tribunal made the following Orders:-

The Tribunal Orders that the Respondent, ROSSLYNE JUNE RIXON of Rixons Solicitors, 12 Cheriton Place, Folkestone, Kent, CT20 2AZ, solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that she do pay the costs

of and incidental to this application and enquiry fixed in the sum of £11,000.00 on a joint and several basis.

The Tribunal Orders that the Respondent, JULIAN RIXON of Rixons Solicitors, 12 Cheriton Place, Folkestone, Kent, CT20 2AZ, solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.00 on a joint and several basis.

The Tribunal Orders that as from 29th October 2009 (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor; (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice; (iii) no recognised body shall employ or remunerate; (iv) no manager or employee of a recognised body shall employ or remunerate in connection with the business of that body Anthony Edward Dietrich of no fixed abode except in accordance with Law Society permission; (v) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit Anthony Edward Dietrich to be a manager of the body; (vi) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit Anthony Edward Dietrich to have an interest in the body and the Tribunal further Orders that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £1,500.00.

The facts are set out in paragraphs 1 – 28 hereunder:-

1. Mrs Rixon, born in 1953, was admitted as a solicitor in 1979. Mr Rixon, born in 1948, was admitted as a solicitor in 1973. Their names remained on the Roll. Mr and Mrs Rixon practised in partnership as Rixons Solicitors at Folkestone, Kent (the firm). Mr Dietrich an unadmitted person was employed by Rixons Solicitors, from 2002 until his resignation around 31st March 2008.
2. Mrs Rixon specialised in family law and was a member of the Law Society Children's Panel. Mr Rixon specialised in criminal law.
3. Mrs Rixon had got to know Mr Dietrich socially as they shared an interest in information technology, subsequently Mr Rixon also came to know him. Mr Dietrich had assisted their firm as a consultant before they agreed to employ him when his title was that of "Practice Manager".
4. At the time when Mr Dietrich's employment began he had an unspent conviction for intimidation of a witness.
5. In 2004, whilst working for the firm, Mr Dietrich decided to apply for an order which would allow him to see his son, A, who was in the care of a local authority. Neither Mr Dietrich nor his ex-wife were permitted to see A.
6. The firm, in particular Mrs Rixon, acted for Mr Dietrich. In the course of the proceedings experts' reports concerning Mr Dietrich were disclosed to Mrs Rixon.
7. The experts' reports expressed concern that Mr Dietrich had tendencies which might render children unsafe.

8. The Judge hearing the case recommended in his judgment dated 14th April 2005, that was before the Tribunal, that the firm be referred to the Law Society pointing out that it would be up to the Law Society to “take what action as they see fit.”
9. During the proceedings Mr Dietrich made various witness statements. In his fourth witness statement dated 12th April 2005 he stated:-

“I do not work as a fee earner within the firm. I have direct contact with members of the public on occasions to assist in form filling and the like and also on occasions where health and safety issues demand the presence of a second person at a client meeting. All the files within the office are allocated to a partner. A second person is then named on the file to deal with the day to day running of the matter. I am named as the second person on all files where persons are bailed to return to the Police Station after arrest. This is mostly for convenience, as I am responsible for scheduling police station attendances and thus can keep a close eye on bail dates.”
10. Mr Dietrich’s work in the firm caused him to have direct contact with clients and he undertook fee earning work. An SRA investigator ascertained that Mr Dietrich was recorded as being a fee earner in ten of the firm’s active matters.

“PVS”

11. A client care/retainer letter sent to PVS dated 30th September 2004 stated that the partner with responsibility for the matter was Mrs Rixon and went on to state that, “ [Mr Dietrich] who is a paralegal (and also acts as our Practice Administrator), will assist in the day to day running of your case. When you telephone the office to speak to someone about your case it would be helpful if in the first instance you asked for Mr Dietrich.”
12. An invoice of the firm issued at about the same time recorded that the firm’s paralegals charged their time out at £90.00 plus VAT per hour. The firm had been unable to provide PVS’s file as he had transferred his matter to another firm.
13. Three (CDB, SCE and GP) of the ten files which listed Mr Dietrich as the fee earner related to criminal matters.

“CDB”

14. CDB had been accused of theft. The front of the file recorded it being opened on 27th October 2004 and it was marked “FE:TD”. Under the heading of “fee earner” “TD” appeared.
15. There was a handwritten attendance note on the file dated 2nd October 2004 which stated “TD advising, JR Supervision.” The attendance note continued, “father and cl. trying to ‘take over’ interview. Interject to prevent this happening. I explain law of theft. Agreed advice given...Interview – no interventions by me.”

16. The file also contained a “Police Station Attendance Note” form amended to read Police Station tel Attendance Note which related to telephone advice provided by Mr Rixon to CDB. A note appeared at the foot of the form, stating “Notify TD to attend, I will also attend to supervise.”
17. A further attendance note dated 13th December 2004 relating to a telephone call taken by Mr Dietrich recorded him as the fee earner.
18. A client care/retainer letter to CBD dated 27th October 2004 stated that the conduct of his matter would be the responsibility of Mr Rixon and made reference to Mr Dietrich as “a clerk who will assist in the day to day running of your case.”

“SCE”

19. SCE had been accused of assault. The front of the file recorded that it was opened on 15th October 2004 and was marked, “FE:TD”
20. The “File Opening Form and CDS1 recorded, under the heading “Fee Earner”, “JR/TD”.
21. A client care/retainer letter to SCE dated 13th October 2004 stated that the conduct of the matter would be the responsibility of Mr Rixon and that Mr Dietrich was “a clerk who will assist in the day to day running of your case”.
22. It was accepted that Mr Dietrich had given consideration to obtaining police station accreditation which would have involved attending at police stations for training purposes. He had not pursued the accreditation.
23. Mr Dietrich’s explanation of the recording of his name on files was that it had been “mostly for convenience”.
24. Mr Rixon had in response to the SRA stated that he did not remember SCE’s matter but suggested that Mr Dietrich had been asked to complete the form as part of his police station accreditation training.

“GP”

25. The firm’s client, GP, faced an allegation of robbery. The file front recorded that JE was the fee earner. Mr Dietrich had sent an email concerning GP (some 5 months after the date of his witness statement). According to the email GP had been arrested at 22.36 and recorded that “A & A [advice and assistance] call completed 22.32. How I managed that when the police hadn’t yet arrested him according to their records, I have no idea.”

Family Matters

26. Of the ten files reviewed by the SRA, five related to family matters and in respect of four clients Mr Dietrich was described as a fee earner.

27. Those files demonstrated that Mr Dietrich had between 2004 and 2005 in matters involving non-molestation and injunctive relief taken instructions from clients; attended clients, face-to-face and over the telephone; attended witnesses; prepared witness statements; prepared applications for court; attended court with counsel and clients; given legal advice; recorded time for attendances, preparation, travel and waiting; written to clients referring to himself as a “paralegal”; corresponded with the courts, the Legal Services Commission, the police, counsel and the other side. He had signed himself as a fee earner on the firm’s forms and attendance notes.
28. The firm’s job description relating to “practice administrator” included responsibilities for matters relating to staffing, general administration and correspondence and assisting fee earners where appropriate in matters relating to file administration. The job description did not include, attending court, attending clients or taking client instructions.

The Submissions of the Applicant

29. It was accepted by Mr and Mrs Rixon that the witness statement made by Mr Dietrich in connection with the proceedings in which he was personally involved was inaccurate and misleading. They had come to accept that Mr Dietrich had been involved in a number of files in the capacity of fee earner rather than a mere administrator.
30. Mrs Rixon had known that Mr Dietrich had an unspent conviction relating to the intimidation of a witness at the time when the firm employed him and such a person should never have been engaged in a solicitors’ firm. It was accepted that by the date of the hearing that conviction was spent under the provisions relating to the rehabilitation of offenders as the conviction had been in 1998 and would have remained extant for seven years.
31. The expert reports provided during the course of Mr Dietrich’s own proceedings relating to him provided information to Mr and Mrs Rixon that should have led them, particularly as Mrs Rixon undertook family work, to have dispensed with Mr Dietrich’s services. Their failure to do so put Mrs Rixon in breach of the Law Society’s Advocacy Code.
32. Mr Dietrich had misled the court by making a witness statement in which he downplayed what he did within the Respondent’s firm.
33. The Tribunal was reminded that the threshold required for making a Section 43 Order was quite low, it being a regulatory order rather than a punitive one. The Tribunal had only to be satisfied that it had sufficient evidence to demonstrate that such an order should be made.
34. Mr and Mrs Rixon had sought over time to provide detailed explanations for the situation which had arisen. At the time of the hearing they had accepted the facts and the allegations.
35. The Applicant recognised that there had been considerable delay in pursuing the allegations and bringing the matter to the Tribunal. The Law Society had looked

carefully at the information supplied to it. A former employee of the Respondents had given the Law Society further information and as a result of that late in 2005 a decision had been taken to obtain files. There had been a change of caseworker at the Law Society and there had ensued delay in progressing the matter. There had been a delay from April 2006 of about one year. The delay was regretted. The Tribunal was assured that the Law Society/SRA's internal processes had been tightened up and such a delay would not occur in such circumstances again.

36. The Applicant sought the costs of and incidental to the application and enquiry and confirmed to the Tribunal that the global figure had been agreed at £12,500.00.

The Submissions on behalf of Mr and Mrs Rixon

37. Mr and Mrs Rixon were both held in high esteem by other professionals and those with whom they came into contact. Theirs was a small firm from which they derived a modest living. Both wished to practise in the fields of family and criminal law even though opportunities for practising in more lucrative areas of law had been available to them. Mr Rixon had become a prosecutor after qualification. He and Mrs Rixon joined each other in partnership in 1985. Over the years they had employed a number of people of diverse backgrounds and had judged potential staff on their apparent merits without any unfair discrimination of any kind. They hoped that they had succeeded in being good employers. A number of written references in support of Mr and Mrs Rixon had been placed before the Tribunal. They all spoke highly of their integrity and competence and surprise was expressed that they should find themselves answering allegations before their professional disciplinary tribunal.
38. Mr Rixon held higher rights in criminal matters and Mrs Rixon held higher rights in all matters. Mrs Rixon had formerly been a part time chairman in Special Educational Needs Tribunals but had given up that position owing to pressure of work.
39. The information provided to the judge who had referred the Respondent's firm to the SRA had not been entirely correct. Such information had painted a worse picture of Mr Dietrich's character than was in fact the case.
40. Mrs Rixon enjoyed the use of a computer and she had made contact with and become friendly with Mr Dietrich sharing as they did an enthusiasm for information technology. At the time Mrs Rixon had been unwell and her friendship with Mr Dietrich had been very helpful to her.
41. Later Mr Rixon had come to know Mr Dietrich.
42. Mr and Mrs Rixon had been aware that Mr Dietrich had been convicted for theft in 1968 and understood that the offence had been one of shoplifting of foodstuffs when his employer did not pay him. He had received a conditional discharge and the conviction had been "spent" for a very long time.
43. With regard to the witness intimidation in 1998, for which Mr Dietrich received a sentence of six months imprisonment, the circumstances of that conviction had been described to Mr and Mrs Rixon in the following way. At the time Mr Dietrich had

been working as a long distance lorry driver. He had allowed somebody to have access to his computer at his home. While away that person downloaded child pornography. Mr Dietrich had been accused of the offence of possession of indecent images because they were on his computer. He had been acquitted of this charge because his lorry tachograph records proved that he had been away from home when the indecent images had been downloaded. In the course of the proceedings he was foolish enough to threaten the person responsible for the downloading in an attempt to get him to tell the truth. He had been undergoing an acrimonious marital breakdown at the time.

44. The position of practice manager had become available at the firm when the previous person engaged had resigned. Mr and Mrs Rixon had discussed the possibility of offering the position to Mr Dietrich as prior to his appointment he had carried out work for the firm as an independent consultant working with the firm's computer systems. Both Mr and Mrs Rixon had considered that they could properly employ him and he was appointed initially on a temporary basis. Subsequently his position was made permanent as Mr and Mrs Rixon had been satisfied with his work and his behaviour. Mr Dietrich had worked hard and there was no reason to doubt his bona fides.
45. In 2004 Mr Dietrich had expressed an interest in becoming a police station accredited representative. He had been advised to write to the head of the duty solicitor schemes giving details of his previous conviction and he had received confirmation that his 1998 conviction would not prevent him from joining the police station register.
46. The Law Society provided little or no guidance as to the approach to be adopted by solicitors when considering employing a person who had previous convictions.
47. At the time when Mr Dietrich had been employed Mr and Mrs Rixon had not been aware of the expert reports produced during the course of his own proceedings.
48. Mr Rixon had not been concerned with Mr Dietrich's case at all. Mrs Rixon accepted that she had not taken the degree of care and had not paid an appropriate degree of attention to what Mr Dietrich had attested in his witness statement. In fact a hearing of Mr Dietrich's application for access to his son had never taken place as the matter had been resolved by agreement and Mr Dietrich's son had accepted that he should visit or be visited by his father.
49. The intention had been that Mr Dietrich should be the firm's practice manager undertaking administrative work. The Respondents had come to accept that his area of work had expanded and they had been compelled to accept that a number of persons employed by solicitors who would not be regarded as primary fee earners did in fact undertake a degree of fee earning work. An example of that would be where a secretary completed a routine form in a client matter where the client would be charged for that work. Mr Dietrich did not have a primary responsibility for earning fees.
50. Mr and Mrs Rixon both believed as members of an independent profession that they had a duty to act fearlessly and that they had to form their own opinions. The expert reports on Mr Dietrich provided during the course of the proceedings were guarded in

some respects and inconclusive in others. In some respects they provided a complete opposite of the impression that Mr and Mrs Rixon had gained of him.

51. Mr Dietrich had worked hard and neither Respondent had any reason to doubt his motives. They had had the opportunity to observe his conduct for an extended period of time and they had formed their own views about his personality. There appeared to be nothing sinister.
52. Mr and Mrs Rixon had considered that because of the lapse of time between the matter being reported to the Law Society, as required by the judge, and the time until they were contacted by the Law Society that the Law Society must have checked Mr Dietrich's previous convictions and had decided to take no action. The Law Society had taken no action for more than two years. By the time Mr and Mrs Rixon were contacted by the Law Society in 2007 the firm did not have a single file in Mr Dietrich's name.
53. Mr and Mrs Rixon had taken the view that something of a witch hunt had been taking place and they as professional and civilised persons had a duty to stand up to it.
54. Mr and Mrs Rixon believed that to dismiss Mr Dietrich at the time when the experts' reports came to their attention would have put them in a difficult position as employers. He had not breached his contract and had been working hard. They could not see that they had any grounds to dismiss him, although they had subsequently been advised that they were wrong in this. Mr and Mrs Rixon had subsequently dismissed Mr Dietrich.

The Submissions of Mr Dietrich

55. Mr Dietrich accepted that an Order pursuant to Section 43 of the Solicitors Act 1974 (as amended) should be made in respect of him.
56. He said he had to accept the preliminary diagnosis provided in the experts' reports that he suffered from Asperger's Syndrome. However the experts were not experts in that field and the tests which they had employed had been inappropriate.
57. Mr and Mrs Rixon had done their best for Mr Dietrich from proper and right motives and he regretted that they had ended up in trouble. He recognised that they had been more seriously affected by the offence than he had. Mr Dietrich held Mr and Mrs Rixon in high regard and he said he would, "hate to go away with a feeling of the huge damage that he had done to them."

The Findings of the Tribunal

58. Mr and Mrs Rixon had admitted the allegations. The Tribunal accepted that it had not been a calculated step on the part of Mrs Rixon to allow an incorrect or misleading statement to be placed before the Court. The Tribunal accepted that neither Mr nor Mrs Rixon considered Mr Dietrich to be a fee earner. To be correct his statement should have pointed out the primary areas of his work but also should have said that he undertook some fee earning work.

59. The Tribunal accepted that Mr and Mrs Rixon were held in high regard and persons who were significant within the legal profession had been surprised about the disciplinary proceedings against them.
60. The Tribunal recognised that Mr and Mrs Rixon considered themselves to be persons of the utmost integrity and probity and were anxious to behave in a fair and reasonable manner. Unfortunately what had happened in this case was that they had completely misjudged the situation.
61. The Tribunal recognised that Mrs Rixon's health was not good and had been adversely affected by the disciplinary proceedings and the events leading to them.
62. The Tribunal had also taken into account the fact that Mr and Mrs Rixon had not found it easy to make a living in the fields of law in which they practise which to a large degree provided a not inconsiderable service to the community.
63. The Tribunal wished to express its concern about the delay on the part of the Law Society/SRA in bringing the matter to a conclusion in particular the delay from April 2005 until November 2007.
64. The Tribunal also took into account Mr Dietrich's expression of regret and his financial situation, his having handed up a statement of means at the hearing. The Tribunal recognised that he was in a parlous financial situation and noted that he had told the Tribunal that at the time of the hearing he was living in his car.
65. The Tribunal concluded that it was both appropriate and proportionate to impose a fine of £2,500.00 upon each of Mr and Mrs Rixon. Such a fine was intended to demonstrate both to the profession and to the public that such behaviour on the part of a solicitor could not be taken lightly. The damage to the solicitors' profession was in this case the most important aspect, but their action could have placed the public at risk.
66. Mr Dietrich had accepted that the Order sought be made against him. The Tribunal made such Order and had framed it in the terms set down in the Legal Services Act 2007.
67. The parties had agreed between themselves that the Applicant's costs should be fixed in the sum of £12,500.00. The Tribunal therefore fixed the costs in that figure and ordered that Mr Dietrich should make a contribution of £1,500 towards such costs and that Mr and Mrs Rixon should each pay £5,500.00. The liability for Mr Dietrich's proportion of the costs to be on a several basis. The liability for Mr and Mrs Rixon's costs to be on a joint and several basis.

Dated this 23rd day of February 2010

On behalf of the Tribunal

D Glass
Chairman