ADDENDUM

1. NSW CASES

In the Matter of Constantine Karageorge - No 12 of 1986

In 1987 the Solicitors Statutory Committee was asked to consider whether six separate and unrelated complaints concerning conduct by the practitioner Constantine Karageorge amounted to disgraceful or dishonourable conduct and, if the conduct did amount to disgraceful and dishonourable conduct, whether Karageorge was guilty of professional misconduct. The six complaints were as follows:

(1) that Karageorge during a telephone conversation with another solicitor said to the solicitor, "Send me another contract without the special conditions pursuant to the option, you Fucking Arab" and after the solicitor asked Karageorge to apologise Karageorge stated, "I don't apologise to fucking Arabs, sonny" and hung up;
(2) that Karageorge during a conversation to a solicitor said in response to an enquiry by the solicitor about Karageorge's aggressive attitude, "Because you give me the fucking shits" and when the solicitor asked Karageorge to repeat what he had said, Karageorge stated, "You heard me, I said you give me the fucking shits." When the solicitor responded stating "A solicitor wouldn't say that. Are you a solicitor...I can't believe that..", Karageorge interrupted the solicitor and said, "You are a fucking Jew";
(3) that Karageorge during a telephone conversation with a member of the public concerning the sale of that person's business said, "You are a fucking lousy Arab. I am going to cut your balls. You are a fucking dirty Arab";
(4) that Karageorge during a telephone conversation with a member of the public concerning the person's former legal representatives said, "Do you know you are mad, you should be in an asylum";
(5) that Karageorge forcibly seized a member of the public who was attending Karageorge's office and pushed that person out of the office onto the stairs leading to the street; and
(6) that Karageorge during a telephone conversation with a solicitor threatened the solicitor staying, "It is easy to get a contract out on people, so don't get funny."

In relation to the first complaint in which Karageorge called a fellow practitioner a "fucking Arab", Karageorge initially sought to justify what he had said on the ground of provocation although later conceded that the words he used were grossly offensive adding, "They were said in anger when I said them." When questioned by the Committee as to the use of such language amongst members of the profession Karageorge agreed that the language was inappropriate and said, "But sometimes some of these matters get out of hand unfortunately." Karageorge further tried to excuse what he had said by

asserting that he was not speaking to the solicitor in a professional context but in a personal context. Nonertheless, the Committee considered the conduct amounted to professional misconduct.

In relation to the second complaint in which Karageorge called a fellow practioner a "fucking Jew", Karageorge although admitting he had used such language, sought to justify his language as occurring in a personal context and not in a professional context. The Committee found that the language used by Karageorge was "grossly offensive and unprofessional" and that there was no justification for the use of this language. The Committee again expressed the view that Karageorge's conduct was "disgraceful and dishonourable and amounted to professional misconduct."

In relation to the third complaint., Karageorge agreed that the language he used towards the member of the public was "foul and offensive" and that the words were grosslly offensive and unprofessional. However, Karageorge maintained that he did not have a professional duty towards a member of the public who is not a client. The Committee found that Karageorge's view of his professional duty towards a member of the public was enitrely misconcieved, commenting:

> "If the Solicitor in pursuit of his profession deals with a member of the public he should do so in accordance with the profession's standards as to how its members should conduct themselves in such circumstances. It may be that the conduct complained of would amount to reprehensible rudeness or churlish discourtesy of it were conduct on the part of someone other than a solicitor. There may be some acts which, although they would be not be disgraceful in any other person, yet if they are done by a solicitor in relation to his profession may fairly be considered disgraceful and dishonourable conduct: see Lord Esher M.R. in *Allinson v General Counsel of Medical Education and Registration (1894) 1 Q.B. 750 at 760.* Clearly such acts may include acts perpretrated towards members of the public."

According to the Committee the language used by Karageorge was "grossly offensive and his conduct in this regard is in no way excused by his misapprehension of a solicitor's duty to members of the public or by his exasperation at the conduct of the complainant. The Committee found that the conduct was "disgraceful and dishonourable and amounted to professional misconduct."

In relation to the fourth complaint, Karageorge conceeded that he was angry and that his conversation with the complainant, an 80 year old pensioner got out of hand. The Committee considered that Karageorge's conduct was "inappropriate and amounted to conduct unbefitting a Solicitor." Similarly, in relation to the fifth complaint, the Committee was satisfied that Karageorge wrongfully seized hold of the complainant and that the conduct was "unbefitting a solicitor for which there was no justification." Lastly, in relation to the sixth complaint the Committee was unable to find Karageorge guilty of any

conduct because there was a substantial conflict concerning what was said during the course of the telephone conversation. The Committee did however find that the conduct fell short of acceptable professional behaviour.

New South Wales Bar Association –v- Jobson [2002] NSWADT 171

This matter concerned the discourteous behaviour of a barrister. The conduct in question concerned an altercation between Jobson and a solicitor outside a courtroom of the Supreme Court of New South Wales at the conclusion of a hearing in which both Jobson and the solicitor appeared. The evidence of the solicitor was that there was a serious altercation between him and Jobson which resulted in him being assaulted by Jobson. The solicitor submitted as follows:

> "I was standing in the corridor on level 7 when Mr Jobson approached me. Mr Jobson said: "Who the fuck do you think you are? How dare you make those remarks to the Court, they're patently false and outrageous. You don't even have a right to appear. I intend to report you and the Trustees for misconduct."

According to the solicitor after Jobson had made these comments the solicitor indicated to Jobson that he did not understand the remarks, and, on stating this, the solicitor proceeded to leave but Jobson grabbed him by the shoulder, turned him around and proceeded to grab the front of his suit coat, using expletive language such as "You fucking prick. You little smartarse." The solicitor stated that he then took the lift down to the ground floor and Jobson followed him into the lift continuing to make allegations.

A witness who was in the vicinity of the altercation gave similar but not identical evidence to the solicitor. The witness heard Jobson say to the solicitor certain things including: "You are a fuckwit who is just eating up costs, you are a smartarse, a prick, you have no right to be here and I should report you and the trustee for sale who is a fuckwit" and that the solicitor was a "stupid solicitor" and a "disgrace." The witness also gave evidence that Jobson grabbed the lapels of the solicitor's coat and that Jobson's stomach touched the solicitor's torso as part of an agressive act.

Jobson denied that he used the expletive language and said "the words used in that manner used to a professional I would regard as disgusting." Jobson did however concede that he may have said to the solicitor "don't be such a smartarse." Jobson explained his touching the lapel of the solicitor as a spontaneous gesture as he did not want the solicitor to leave because he wanted to finish the conversation. Jobson said that as soon as he had toched the lapels of the solicitor he realised that he had "overstepped his personal boundaries" and that a "cold shudder went through his body." Jobson however denied that he caught the lift down with the practitioner.

The Administrative Decisions Tribunal was asked to determine, inter alia, whether Jobson's conduct constituted unsatisfactory professional conduct and if so, what orders were appropriate.

Due to the divergence in the accounts of Jobson, the solicitor and the witness the Tribunal were unable to be satisfied that all of the facts alleged by the solicitor and the witness were made out. Nevertheless the Tribunal was satisfied that an aggressive confrontation did occur outside the courtroom and that the confrontation was initiated by Jobson. The Tribunal accepted that the solicitor felt embarassed and some apprehension as a result of the confrontation and that Jobson did realise he had gone too far. The Tribunal commented as follows:

> "In summary, the Tribunal regards what occurred as a short but most unfortunate incident: what might be termed a "flare-up." Unfortunately, this occurred in the precints of the Court, in a public place, in a manner which drew attention to the Practitioner's actions, and in a way which caused embarassment and apprehension to Mr R, a fellow practitioner."

The Tribunal held that Jobson's conduct involved a departure from standards of responsibility expected of a practitioner toward a fellow practitioner and therefore constituted unsatisfactory professional misconduct . In determining the appropriate penalty the Tribunal accepted that Jobson's conduct was a "one-off" and that he had endured some embarassment and stress as a result of the proceedings. The Tribunal however noted that Jobson's conduct did take place in public, and worse, in the court complex, in view of the profession and members of the public. The Tribunal issued a public reprimand.

New South Wales Bar Association –v- Di Suvero [2000] NSWADT 194 and 195

In this matter the Tribunal was asked to consider whether the conduct of a barrister, Henry di Suvero, during the course of a trial whilst he was defence counsel amounted to unsatisfactory professional misconduct as alleged by the New South Wales Bar Association. The alleged conduct generally included as follows:

(i) that di Suvero made statements that were discourteous to the Court and disrespectful to the presiding Judge and that those statements had the potential or tendency to bring the Court and the presiding Judge into disrepute;

(ii) that in the presence of the jury, di Suvero made two statements with respect to the cross examination of a witness, which statements "in the context in which they were made, wrongly indicated that the barrister was entitled to be selective in the cross examination of a witness in the proceedings without any regard to his duty of being fair to a witness and did not have a duty of fairness, only a duty to his client."

(iii) that di Suvero made offensive and insulting statements to the Crown Prosecutor, displayed a lack of professional courtesy to the Crown Prosecutor and alleged dishonesty by the Crown Prosecutor

which had the potential or tendency to inflame the jury against the Crown Prosecutor.

The Bar Association submitted that di Suvero's conduct was a tactical measure to gain sympathy from the jury designed to show that there was a stark divide between the judge and the accused. The Tribunal was not convinced by this submission stating:

> "We have found that some of the conduct of the barrister was unsatisfactory professional conduct and we have come to the conclusion as a matter of probability that the "background material" caused him to hold beliefs about the Judge and the prosecution which may have been genuinely held beliefs but which were not justified by the facts. Further, it is our opinion, that he lost objectivity in the trial and became too personally involved in his client's cause. This caused him to say and do things, which were not justifiable.
>
> Finally we are also of the opinion that the barrister still finds it difficult to accept that some of his conduct was unsatisfactory. He has agreed that some things he said could have been better expressed, but generally he seems to hold the belief that what he did was justified by the circumstances of the trial and by his duty to act fearlessly on behalf of his client."

In discussing whether di Suvero's behaviour amounted to unsatisfactory professional conduct the Tribunal considered the obligations of a barrister in New South Wales under the New South Wales Barristers' Rules and the authorities on contempt of court cases. According to the Tribunal, conduct that does not amount to contempt of court could still amount to unsatisfactory professional conduct:

> "The courts, in our opinion, have made it clear that if a barrister insults a judge that may be a contempt of court, but mere rudeness or arrogance would not necessarily be a contempt of court. In our opinion, rudeness and arrogance by a barrister directed to a Judge, whilst it may not be sufficient to ground a charge of contempt of court, may be sufficient to ground a complaint for unsatisfactory professional conduct. However, the facts in each case necessarily determine whether the conduct is unsatisfactory professional conduct. Therefore, we reject the submission as imposing on the complainant the need to satisfy a test which is too high."

In their determination as to the kind of behaviour that could amount of unsatisfactory professional conduct the Tribunal stated that the following would suffice:

- The making of unsubstantiated allegations of dishonesty against another legal practitioner;
- The making of insults directed to another legal practitioner or the judge, unsubstantiated allegations of bias on the part of the judge;
- The unjustified attribution of bad motives to another legal practitioner in the conduct of a trial; and
- Conduct, which aims without justification to procure a discharge of a jury.

The Tribunal found di Suvero guilty of unsatisfactory conduct in respect of his conduct in making statements which were discourteous to the Court and disrespectful to the presiding judge, alleging improper conduct or impropriety against the Crown Prosecutor, accusing the presiding judge that she was giving the Crown Prosecutor preferential treatment and accusing the presiding Judge that she was being untruthful. The Tribunal suspended di Suvero from practicing for six months and ordered that di Suvero's practising certificate not be re-issued until a lapse of three months from the date that the cancellation of the practising certificate took effect. The Tribunal's determination was upheld by the Appeal Panel.

2. ACT DECISIONS

In a 2001 unreported and anonymised decision of the Professional Conduct Board of the Law Society of the Australian Capital Territory, a practitioner was found guilty of unsatisfactory professional conduct for failing to comply with the Law Society of the Australian Capital Terirtory Professional Conduct Rules and obligations of courtesy at common law. The conduct involved making statements calculated to intimidate a professional witness of his opponent and failing to satisfy a requirement of the Law Society for information in relation to his conduct. The intimidation was conducted in a series of letters sent by the practitioner to a doctor, the expert witness for the defendant insurance company. An example of one letter is as follows:

> "Dear Dr - ,
> Re Medico Legal Reports and [VC]
> I act for many injured plaintiffs and from time to time for medical practitioners. I have two sons studying medicine, one just completing his course. I am not regarded as anti-doctor by any means and in fact the Medical Defence Union recently funded me in a matter.
> I am however, a critic of medical practitioners who sell their principles for money, or who fail to listen to what people tell them, or who write what insurance companies (they think) want to read, or who adopt certain ideologies in relation to matters, either within or outside their fields of expertise.

I have read many reports written by you in relation [sic] to my clients. In not one case where I have acted have your findings been adopted in the sense that they have been mirrored in the outcome of my client's claim.
I refer in particular now to the report you wrote on 19 June 1998 to – of – in connection with VC.
In that report, you wrongly reported history, you wrongly failed to diagnose both physical injury and a mental disorder, you adopted the findings of Drs – and -, rheumatologist, you made judgments and expressed opinions about the personality and credibility of my client, and you described her in effect as a malingerer and liar by inference.
In writing that report, in my respectful view, you breached your fundamental medical ethic which is to do no harm. In your capacity as a person who did not have a duty of care, and who was not seeing a patient but a client, you obviously forgot the basic and fundamental ethic of not doing harm.
You may recall or you may not that [VC] was quite assertive, having seen Dr -, who conducts himself in a way which is clearly designed to impress the audience but without regard to the harm caused to the client, who has very little respect in judicial circles and whose views are not treated seriously. I ask you to consider very carefully the role you play when you report to insurance companies. I appreciate that there may be a commercial imperative to keep business when one is no longer actively looking after patients. I do not, however, think that your are doing yourself or your reputation much good when you write the kind of nonsense you wrote about [VC],
Notwithstanding what you and Dr. - and Dr. – wrote, my client successfully negotiated a favourable outcome to her claim. More importantly she redressed some of the harm that examinations by yourself and others had caused her.
I do not write this letter with any malice or desire to be smart, clever or to put you down personally or professionally. I just ask you to reflect on what I am saying."

During the hearing of the complaint it became evident that this was not the first time the practitioner had written to a professional in such terms. On another occasion he had written to a doctor who was also involved in the same case as follows:

"If you are going to do work for grubby insurance companies you should at least make the effort to do more than a cursory examination, you should be willing to listen to the patient's account of her history rather than telling her to answer your questions only and you should allow sufficient time for rthe true facts to emerge. You should, above all else, have an open mind.
You should **not** form a view of her credit based on not listening to her version of events or reading what her treating practitioners have to say.

> In short, you should approach the medical task in front of you as an exercise in which you must not do any harm. You have breached medical ethics."

According to the practitioner he wrote these letters on instructions from his client. The practitioner said that he did have evidence to support his assertions but denied that the Law Society was entitled to look at this evidence since no complaint had been made by his client. The practitioner accused the Law Society of a fishing expedition and suggested that the actions of the panel solicitor considering his case and the Executive were "improper and oppressive."

In finding the practitioner guilty of unsatisfactory professional conduct the Tribunal relied on the New South Wales decision of *Karageorge*. The practitioner was reprimanded.

3. VICTORIAN CASES

In the Matter of Victor Horoch – No 880 of 1992

In 1992 the Solicitors Board in In the Matter of Victor Horoch found Horoch guilty of professional misconduct in relation to continued offensive and discourteous correspondence to fellow practitioners and the Law Institute of Victoria and a threat of physical assault toward a fellow practitioner at the Magistrate's Court both of which were denied by Horoch. In reprimanding Horoch the Board commented as follows:

> "The conduct here extends over the period December 1989 to April 1991. It is moreover undoubtedly repeated conduct. Tested by the criterion set out in the Act, does it show a serious and continued disregard for proper professional behaviour? In the Board's view it is both a serious and a continued disregard for proper professional behaviour. All three aspects are satisfied. It was not proper professional behaviour falling well short of the required standard; it was continued over a long period of time; and it was serious. In considering the interpretation of the word serious one has to realise that we are dealing with standard breaches which in themselves are generally individually less heinous than misconduct in the techincal sense. The seriousness is not directed however at the gravity of any one act or omission but whether by repitition there has been a serious disregard for proper professional behaviour. In that context,a serious disregard probably means a deliberate maintenance of a course of behaviour in disregard of proper standards. The word "serious" probably also conveys a sense of significant flouting of ordinary acceptable rules of conduct. To that extent, Mr Berglund's expressions "substantial", and "to a significant degree", may be acceptable as synonyms for "serious". There may be other attributes also implied in the epithet. Suffice

again that the Board is not dealing with a border-line case here. It is satisfied that the behaviour of Mr Horoch comes within the statutory definition of misconduct".

In the Matter of Basil Stafford – T0603 of 1997

In this matter the Legal Profession Tribunal was faced with the behaviour of a barrister who within the confines of a courtroom, after the presiding magistrate had left the Bench, approached a police witness in a threatening manner and said, "you are a disgrace to the uniform, you are a fucking disgrace, I will fix you on appeal". The barrister had been appearing for his wife on a charge of failing to comply with the directions of a traffic control signal. The wife was found guilty but no conviction was recorded. The barrister approached the police witness out of anger and had to be pulled away by his wife. During this confrontation there were other practitioners in the courtroom as well as several members of the public. The barrister was found guilty of professional misconduct and fined $1,000.

In the Matter of David Anthony Perkins – T0070 of 2004

In 2004, the Legal Profession Tribunal found Perkins, a barrister, guilty of professional misconduct for using offensive language whilst applying to have the presiding member of the Victorian Civil and Administrative Tribunal disqualify himself from hearing a matter in which Perkins was appearing. Abusive remarks made by the barrister to the presiding member included:

> "... You behaved towards me personally in a dishonest ... cowardly and craven way ... in a way which was utterly disgraceful ... you are utterly incapable of bringing anything other than bigotry to a case in which I am involved".

The Tribunal held that his conduct was "intemperate and vituperative" and, as such, was discreditable to a barrister, prejudicial to the administration of justice and likely to bring the profession into disrepute. He was reprimanded and suspended from practice for 3 months.

4. WESTERN AUSTRALIAN CASES

C L Lovitt QC – LPDT R1 of 1997

The barrister was found guilty of unprofessional conduct for exchanges with a trial judge during the course of a criminal trial. The final exchange was in response to a question by the trial Judge to the practitioner about how the witness could help with what was being put to her after the

prosecution had objected to the practitioner's cross-examination of the witness. The practitioner replied: "Is your Honour totally oblivious to anything that emanates from the defence in this case? Is your Honour oblivious to the problem that is clearly demonstrated here?" Following this comment the practitioner then accused the trial Judge of being against him for failing to put on the record that the same witness had looked toward the jury. The practitioner said: "who's running this court" and "why can't I get in the transcript that she turned and looked at the jury. I mean whose side really, Your Honour, are you on."

The barrister was found guilty of unprofessional conduct but, given his longstanding service in the profession and his deep and genuine concern for his clients, the sanction applied was a reprimand.

C L Lovett QC (2nd case) – LPDT R7 of 1997

The barrister was again brought before the Tribunal following exchanges with a judge in a criminal trial. A further reprimand was ordered.

A B Shand QC

The Tribunal found the barrister guilty of unprofessional conduct for the following exchange with the presiding magistrate at a directions hearing in which the barrister sought to have the magistrate disqualify himself. The barrister was reprimanded.

> "Mr Shand: Now your Worship, the second matter is a more general one.
> Court: Yes.
> Mr Shand: And I regret to have to put this but it seems to me that the evidence compelled me to do so; it's my submission that your Worship is not fitted to hear this case, and that's another way of saying your Worship is not fit to hear it, and I say that because following upon the way in which Your Worship conducted the Dempster matter it was inevitable that I should see the publicity given to matters that you have been the subject of review on appeal and the like from your Worship's decision to the Supreme Court, and I have therefore read at least two newspaper reports of the judgments of Mr Justice Ipp – two, I think, in number – and as recently as today a newspaper account of the judgment of Mr Justice Murray in a matter where your Worship gaoled a man for contempt for five months –
> Court: Oh, yes.
> Mr Shand:-- for reasons which Mr Justice Murray deliberated upon finding, as I read in the newspaper, that your Worship had failed to follow sanctified and necessary and proper procedures required before a person is put in peril of imprisonment for contempt, and

secondly, that your Worship's imposition of a penalty for five months was manifestly excessive.
Now, your Worship, I regret it as individious to compare the judicial qualities or lack thereof that your Worship displayed in those three cases each with the other, they speak for themselves. It is my view, in my respectful submission, that if your Worship cannot show the necessary judicial qualities there is an absolute necessity that a person in this defendant's position, who comes here at very considerable expense to defend his vital interests, shouldn't run the risk of a miscarriage of justice arising from qualities displayed by the officer. It is grossly unfair that he should have to be exposed to the peril, and on my knowledge of the matters that I have been referring to which have been the subject of Supreme Court decision, the risk is material and that is enough.
Now, your Worship, that's my application.
Court: All right, thank you.
Mr Shand: I have to say this – that if your Worship insists upon hearing this matter I shall go to the Chief Magistrate and I shall present the case to him as I've presented it to your Worship and if that is unsuccessful I will publicly, upon the calling of this matter for hearing in due course, present the same submission and ask your Worship to disqualify yourself.
Court: All right.
Mr Shand: I don't want that course to follow because in my view it is very injurious to the Bench and the image the Bench should have to the public, but I will be forced to do it if these particular measures that I'm asking for now are not acceded to.

Legal Practitioners Complaints Committee –v- Quigley [2005] WASAT 215

The Tribunal found the practitioner guilty of unprofessional conduct which included threats to institute legal proceedings against the Complaints Committee if it did not withdraw the complaint and writing a number of letters to the Committee, its members and the Law Complaints Officer, as well as to the Disciplinary Tribunal, asserting that they had all commenced and maintained the disciplinary proceedings against him for an improper purpose and that they continued to maintain the disciplinary proceedings against him at the dictation of the then Chairman of the Anti-Corruption Commission. The practitioner alleged that the Complaints Committee acted in bad faith for an improper purpose and with intent to "pervert the course of justice." The practitioner in correspondence claimed that the Committee and its officers were guilty of "serious impropriety", "arrogance and foolishness", "invention and misrepresentation", "unprofessional conduct", "deceit and malice", "perjury". The Complaints Committee submitted that that the practitioner's course of conduct was both "disgraceful and dishonourable" and "to a substantial degree fell short of the standard of professional conduct observed or approved by members of the profession".

5. QUEENSLAND CASES

Legal Services Commissioner –v- Baker 006/05

The practitioner was, inter alia, found guilty of 2 counts of unprofessional conduct for using crude and offensive language to or in the presence of clients:

> "(a) In the course of dictating a note to his secretary in the presence of [a client], the respondent said words to his secretary: I can't deal with ###morons. Get out of my office." He later said to the client: "You're an absolute moron to have signed the contract without knowing what you were doing."
>
> (b) Later in the course of a telephone conversation with [a client], the respondent said: "the whole thing has got out of hand. A lot of bullshit is going in with this contract."
>
> (c) On or about 7 August 2002 the client attended at the firm's offices at the Gold Coast. While he was sitting in the reception area the respondent approached him and said: "what the #### are you doing here ... You don't have the right to waste our ####ing time. I have spent enough ####ing time on the ####ing file. You are a ###ing moron. If you had signed the ###ing contract properly in the first place, we wouldn't be in the ####ing mess. #### off out of my reception area."

In relation to the offensive conduct concerning employees, it was alleged that the practitioner frequently used insulting and offensive language in direct verbal communication and on dictation tapes to employees.

Counsel for the practitioner submitted to the Tribunal that, if found guilty of the charges, the practitioner should be disciplined by way of reprimand. The Tribunal rejected the submission and commented on the allegations as follows:

> "There is no doubt that this conduct occurred. It is inconcievable that the behaviour the subject of Charges 17 and 18 could ever be regarded as acceptable behaviour by a solicitor towards a client or an employee. It is bound to bring the profession into disrepute. The practitioner has been slow to recognise that and apparently does not accept it.
>
> .....
>
> Each of Charges 17 and 18 is made out. The conduct, particularly in relation to staff, given the vulnerable position of staff, the potential effect on the conduct of the practice from the perspective of support and supervision, the practitioner's persistence and reluctance to accept the implications of his behaviour constitutes a high degree of unprofessional conduct."

Legal Services Commissioner –v- Murrell, 007/05

The practitioner was found guilty of unprofessional conduct and fined $2,000 for using offensive language used in correspondence with an opposing party in a professional negligence claim. The terms of the letter were as follows:

> "As you will remember, I acted for Gladys Knight who unfortunately, died on 28 May 2003. Her husband and daughters happened to note that your mother also passed away last week. At their request they have asked me to write to you and to remind you of what you did to their mother and to tell you of the pain, suffering and problems that she experienced as a result of the incompetent manner in which you treated their mother when she was alive.
>
> Although my clients are not privy to the circumstances in which your mother died, they hope that she experienced the same hurt, harm and detriment before she died, or if not, that you experience suffering of the likes that their mother suffered and the pain and anguish that they went through as a consequence thereof."

6.NEW ZEALAND CASES

In the Matter of Christopher Lloyd Harder (unrep, 15/02/06), Harder, apparently a flamboyant Auckland barrister, was struck from the Roll of Legal Practitioners for conduct unbecoming a barrister or solicitor. The proceedings, which involved five separate complaints all, alleged Harder was guilty of inappropriate and lewd behaviour. In one complaint made by a junior solicitor, the solicitor alleged that she was sexually harassed by Harder. According to the complainant, Harder's offensive behaviour consisted of him persistently asking her out for coffee during a sentencing hearing which had been deferred, making lewd noises during the hearing and being harassed by numerous telephone calls in which Harder left several "uncomfortable" messages. In one of the messages the complainant alleged that she could hear the Elvis song "Hot Headed Woman" in the background. The complainant alleged that Harder was slurring his speech whilst leaving the following message: "Ms E, how am I going to nominate you as the best looking prosecutor if you don't return my calls. Please call me back." The complainant did not ring Harder.

The complainant also alleged that she was subjected to offensive behaviour when on another occasion, Harder, again appearing as defence counsel in another matter where the complainant was the prosecutor, said to the complainant when she suggested he phone her in the Crown room when he was ready to proceed with the matter, "Do you want to go and have sex for half an hour?" The complainant, taken aback said, "Oh God no, I don't think so", to which Harder replied, "What, an hour then?" The complainant then said to Harder "Absolutely not" and told him to call her when he was ready to

appear in court. Harder said, of his behaviour that he was just joking. The complainant again reported these events to her supervisor. The complainant was however so distressed that she rang the police and gave them a statement.

The complainant further alleged that Harder harassed her on another occasion when she attempted to return his telephone call about another prosecution matter in which he was the defence counsel. On this occasion she alleged that when she called Harder she could hear a man's voice "making sounds as if he was having sex, or masturbating and about to orgasm." The complainant believed it was Harder's voice. The complainant was immediately upset and burst into tears. She said that she felt disgusted and threatened by Harder's behaviour and made a complaint to the Auckland District Law Society.

In relation to the other complaints, Harder was alleged to have told a client to "fuck off", drank alcohol whilst attending to that client and asked the client to provide him with takeaway dinners, cigarettes and cash. It was also alleged that in relation to this client, Harder had required the client to accompany Harder to a brothel and required the client to simulate the sex act he had been charged with committing for "forensic purposes" and that Harder had sworn and threatened the client when the client advised Harder that he was terminating the retainer.

Before the Tribunal, Harder admitted and acknowledged that he had made inappropriate or suggestive comments toward the complainant and that he had made suggestive and persistent phone calls. Harder further admitted and acknowledged that his behaviour amounted to professional misconduct and on the third day of the hearing Harder informed the Tribunal that he was prepared to admit to a single charge of misconduct in his professional capacity and consent to his name being struck from the Roll. The Tribunal agreed and on 15 February 2006 Harder was struck off the Roll of Legal Practitioners.

This was not the first time that Harder had appeared before the Disciplinary Tribunal. Harder had appeared on 5 other occasions in 1991, 1992, 1994, 2000 and 2005. The 2005 appearance was for aggressive, argumentative, discourteous and hostile behaviour towards a District Court Judge during a trial in 2002.

7. THE UNITED STATES

The Alabama State Bar Code of Professional Courtesy states as follows:

1. A lawyer should never knowingly deceive another lawyer.
2. A lawyer must honor promises and commitments made to another lawyer.

3. A lawyer should make all reasonable efforts to schedule matters with opposing counsel by agreement.

4. A lawyer should maintain a cordial and respectful relationship with opposing counsel.

5. A lawyer should seek sanctions against opposing counsel only where required for the protection of the client and not for mere tactical advantage.

6. A lawyer should not make unfounded accusations of unethical conduct about opposing counsel.

7. A lawyer should never intentionally embarrass another lawyer and should avoid personal criticism of another lawyer.

8. A lawyer should always be punctual.

9. A lawyer should seek informal agreement on procedural and preliminary matters.

10. When each adversary proceeding ends, a lawyer should shake hands with the fellow lawyer who is the adversary; and the losing lawyer should refrain from engaging in any conduct which engenders disrespect for the court, the adversary or the parties.

11. A lawyer should recognize that adversaries should communicate to avoid litigation and remember their obligation to be courteous to each other.

12. A lawyer should recognize that advocacy does not include harassment.

13. A lawyer should recognize that advocacy does not include needless delay.

14. A lawyer should be ever mindful that any motion, trial, court appearance, deposition, pleading or legal technicality costs someone time and money.

15. A lawyer should believe that only attorneys, and not secretaries, paralegals, investigators or other non-lawyers, should communicate with a judge or appear before the judge on substantive matters. These non-lawyers should not place themselves inside the bar in the courtroom unless permission to do so is granted by the judge then presiding.

16. A lawyer should stand to address the court, be courteous and not engage in recrimination with the court.

17. During any court proceeding, whether in the courtroom or chambers, a lawyer should dress in proper attire to show proper respect for the court and the law.

18. A lawyer should not become too closely associated with a client's activities, or emotionally involved with a client.

19. A lawyer should always remember that the purpose of the practice of law is neither an opportunity to make outrageous demands upon vulnerable opponents nor blind resistance to a just claim; being stubbornly litigious for a plaintiff or a defendant is not professional.

The Guidelines for Professional Courtesy of the Oklahoma Bar Association are set out in similar terms. The Comment to the Oklahoma Guidelines states that Oklahoma attorneys are urged to comply with the Guidelines "in the interests of judicial economy, professional harmony and, ultimately, enhancement of the public's perception of the system and the profession." The Comment also states that as the Guidelines are not exhaustive where a specific guideline is "not involved in a transaction which is troubling or offensive, the lawyers involved are urged to apply the Golden Rule to guide their actions: Do unto attorneys (and judges) as you would have them do unto you."

US Cases

In Corsini v U-Haul Int'l Inc. (212 NY AD 2d 288, 630 NYS 2d 45), disruptive deposition tactics were considered. The plaintiff lawyer during a deposition attacked defence counsel by calling him "scummy and so slimy", a "slimebag", a "scared little man" and "in the sewer." The trial court ordered that the lawyer reimburse the defendants for half the cost of the deposition because the conduct of the lawyer was "obstreperous and antagonistic, and that his answers were argumentative and non-responsive." On appeal it was determined that there had been discovery abuse and the plaintiff's behaviour "was so lacking in professionalism and civility that dismissal is the only appropriate remedy."

Another disruptive deposition natter was considered in Castello v St. Paul Fire & Marine Ins. Co.(938 F 2d 776 (7th Cir 1991), where counsel for the plaintiff repeatedly advised him not to answer deposition questions and claimed harassment when defence counsel demanded answers. At a second deposition the plaintiff's counsel continued to instruct his client not to answer certain questions even though these questions were approved by the court. The trial judge dismissed the plaintiff's case with prejudice and described the conduct as "the most outrageous example of evasion and obfuscation that I have seen in years" and "a deliberate frustration of defendant's attempt to secure discovery." The decision of the trial judge was upheld by the Appeals Court.

An infamous example of discovery abuse occurred in Paramount Communications, Inc. v. QVC Network, Inc. (637 A 2d 43 (Del 1994), in which Joe Jamail, a notable Texan lawyer, was subjected to the disciplinary function of the court for his behaviour which included directing his witness not to

answer certain questions and using rude and vulgar language. Mr. Jamail's deposition included the following exchange:

> Mr. Johnston [Delaware counsel for QVC]) Okay. Do you have an idea why Mr Oresman was calling that material to your attention?
> Mr. Jamail: Don't answer that. How would he know what was going on in Mr Oresman's mind? Don't answer it. Go on to your next question.
> Mr. Johnston: No, Joe - -
> Mr. Jamail: He's not going to answer that. Certify it. I'm going to shut it down if you don't go to your next question.
> Mr. Johnston: No. Joe, Joe - -
> Mr. Jamail: Don't "Joe" me, asshole. You can ask some questions, but get off that. I'm tired of you. You could gag a maggot off a meat wagon. Now, we've helped you every way we can.
> Mr. Johnston: Let's just take it easy.
> Mr. Jamail: No, we're not going to take it easy. Get done with this.
> Mr. Johnston: We will go on to the next question.
> Mr. Jamail: Do it now.
> Mr. Johnston: We will go on to the next question. We're not trying to excite anyone.
> Mr. Jamail: Come on. Quit talking. Ask the question. Nobody wants to socialize with you.
> Mr. Johnston: I'm not trying to socialize. Well go on to another question. We're continuing with the deposition.
> Mr. Jamail: You don't run this deposition, you understand?
> Carstarphen: Neither do you, Joe.
> Mr. Jamail: You watch and see. You watch and see who does, big boy. And don't be telling other lawyers to shut up. That isn't your goddamned job, fat boy.
> Carstarphen: Well, that's not your job, Mr. Hairpiece.
> Witness: As I said before, you have an incipient - -
> Mr. Jamail: What do you want to do about it asshole?
> Carstarphen: You're not going to bully this guy.
> Mr. Jamail: Oh, you big tub of shit, sit down.
> Carstarphen: I don't care how many of you come up against me.
> Mr. Jamail: Oh, you big fat tub of shit, sit down. Sit down, you fat tub of shit.

The Delaware Supreme Court raised Jamail's conduct sua sponte as part of the courts "exclusionary supervisory responsibility to regulate and enforce appropriate conduct of lawyers appearing in Delaware proceedings." The Court said of Jamail's conduct:

> Staunch advocacy on behalf of a client is proper and fully consistent with the finest effectuation of skill and professionalism. Indeed, it is a mark of professionalism, not weakness, for a lawyer zealously and firmly to protect and pursue a client's legitimate interests by a professional, courteous, and civil attitude toward all persons involved in the litigation process. A lawyer who engages in

> the type of behaviour exemplified by Mr. Jamail on the record of the Liedtke deposition is not properly representing his client, and the client's cause of action is not advanced by a lawyer who engages in unprofessional conduct of this nature."

Unfortunately the court was unable to sanction Jamail because he was neither a member of the Delaware Bar nor admitted pro hac vice. The Court did however invite Jamail to voluntarily appear before it to explain his conduct and show cause as to why his conduct should not be considered as a bar to any future appearance by him in a Delaware Court. Jamail refused to appear and instead responded in the press stating, "I'd rather has [sic] a nose on my ass than go to Delaware for any reason."

In Carroll v The Jacques Admiralty Law Firm (926 F Supp 1282 (ED Tex 1996) aff'd 110 f 3d 290 (5th Cir 1997), a lawyer who threatened and cursed at the plaintiff's lawyer was sanctioned in the amount of $7,000. The case involved an action by a former client against the lawyer alleging negligent misrepresentation. The lawyer appeared as a party. The sanction of $7,000 was calculated by the court under the following formula:

> "[This figure] was calculated by assessing fines of $500 for each of the four times Jacques referred to Plaintiff's counsel as either an "idiot" or an "ass"; $1,000 for Jacques suggestion during the deposition that Plaintiff's counsel "ought to be punched in the g— dam nose"; $1,000 for each of the three times Jacques called Plaintiff's counsel a "slimy son-of-a-bitch"; and $1,000 for Jacques parting words to Plaintiff's counsel.

The sanction was upheld by the Court of Appeal and commented of the sanction imposed by the lower court:

> "Third, the court did not abuse its discretion in considering Jacque's conduct as constituting bad faith. "We find entirely appropriate the court's expectations of a heightened standard of conduct by a litigant who is also an attorney." This court "adheres to the well established doctrine that '[a]n attorney, after being admitted to practice, becomes an officer of the court, exercising a privilege or franchise." "As officers of the court, attorneys owe a duty to the court that far exceeds that of law citizens." It is not acceptable for a party – particularly a party who is also an attorney – "to attempt to use the judicial system...to harass an opponent in order to gain an unfair advantage in litigation."

In Grievance Administrator v Sanford L. Lakin (96-166-GA Michigan 1997), a lawyer was reprimanded for striking opposing counsel on two occasions during a deposition.

In the Matter of McClure (212 NY AD 2d 288, 630 NYS 2d 45), a lawyer was suspended from practice for misbehaviour during a deposition that included throwing a soft drink at opposing counsel and grabbing him around the neck, restraining him in his chair. The Supreme Court of Indiana held that the conduct reflected adversely on the lawyers' fitness and was prejudicial to the administration of justice.

In re Golden 496 SE 2d 619 (SC 1998) the court reprimanded a lawyer for leaning across a table and pointing to opposing party screaming at her, "You are a mean-spirited, vicious witch and I don't like your face and I don't like your voice, and what I want, what I want is to be locked in a room with you naked with a very sharp knife...What we need for her is a big bag to put her in without the mouth cut out. " The court held that the lawyer's behaviour was prejudicial to the administration of justice and agreed with the hearing panel that the lawyer's conduct "exemplifies the worst stereotype of an arrogant, rude and overbearing attorney. It goes beyond tactical aggressiveness to a level of gratuitous insult, intimidation, and degradation of the witness. It is behaviour that brings the legal profession into disrepute." According to the court it did not matter that the conduct took place during a deposition and not in a courtroom. In addition to the above conduct, the lawyer was also disciplined for belittling and insulting a witness who he knew had a history of emotional and physical problems. The lawyer justified his conduct in the latter matter on the basis that he needed to destroy the witness's credibility.

In re First City Bancorporation of Texas, Inc. (282 F 3d 864 (5th Cir 2002), a lawyer was sanctioned for repeatedly insulting opposing counsel and a witness during a bankruptcy proceeding. The lawyer referred to opposing counsel as a "puppet" and a "weak pussyfooting deadhead" who "had been dead mentally for ten years." The lawyer referred to other lawyers as "inept", as "clinks" as "a bunch of starving slobs" and as "underling who graduated from a 29th tier law school." The lawyer called the witness a "hayseed" and a "washed-up has been." The lawyer defended himself against the sanctions by arguing that his characterizations were accurate and blamed the bankruptcy court and opposing counsel for his behaviour. The bankruptcy court fined the lawyer $25,000 which was upheld by the appeals court.