

NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS

NOTICE OF DECISION AND ORDER OF THE PROFESSIONAL CONDUCT COMMITTEE

At a meeting of the Professional Conduct Committee of the New Zealand Institute of Chartered Accountants held in private in Wellington, New Zealand on 14 October 2014, in respect of Member A (name and locality withheld), the Committee found that the following matter would otherwise warrant being referred to the Disciplinary Tribunal:

In his role as a Chartered Accountant in public practice, without authority from the Estate of Client X (“the Estate”), the Member disbursed funds belonging to the Estate out of his trust account to Client X’s children, in breach of paragraph 48 of Professional Standard No. 2 – *Client Monies* and/or Rule 9 – *Due care and diligence* of the Code of Ethics (2003).

The Member admitted the particular. He said that Client X had given oral instructions during her life time to pay any IRD refunds received to her children, and that following her death, his staff member had made some attempts to obtain a copy of a will or power of attorney, without success.

During the course of its investigation, it became apparent that the Member had incorrectly completed his Practice Information Questionnaire and said that he did not have a trust account, when in fact he did. The Member said he had no explanation for how this had happened.

The Committee considered that these breaches were serious enough to warrant referral to the Disciplinary Tribunal as they included a breach of the standards regarding payment of client monies out of a trust account, and a denial of the existence of a trust account to Practice Review when this was not the case. The Committee was very concerned that, when considered with his previous complaint, the Member’s handling of the Estate’s funds and his cavalier attitude to the Practice Information Questionnaire regarding his trust account, showed a lack of awareness of professional standards and obligations.

However, it accepted that the circumstances regarding the disbursement of funds from the trust account to Client X’s children were unusual and that the Member’s staff member had made some attempts to ascertain whether there was a will, without success. The Committee also accepted the Member’s explanation that there was no intention to deceive Practice Review, only small sums had been through the trust account, and it had since been closed.

With the consent of the Member, the Committee made the following orders, which shall be entered on the Member's record:

- (1) That he be severely reprimanded;
- (2) That he pay costs of \$2,082.50 to the Institute; and

- (3) That he appoint a mentor for a two year period to provide advice on the handling of future unusual circumstances which might arise, and for the mentor to report back at the end of the two year period, or earlier if the mentor considered it necessary.

The Committee considered it was in the public interest to direct publication of its decision and the orders made in the Institute's official publication and on the Institute's website (without mention of the Member's name and locality) as a reminder to all practitioners that authority must be obtained prior to disbursing funds out of a trust account, and that on the death of a client, that authority is obtained from the executors of the estate. Previous oral instructions given during the client's lifetime will not be sufficient.

David Barker FCA
Chairman
Professional Conduct Committee