



CODE OF CONDUCT

LUCINALUCINA

(Complainant)

and

LUKE

(First Respondent)

and

LAKHIT LLP

(Second Respondent)

CODE OF CONDUCT DECISION 1 OF 2021 DECISION OF THE DEPUTY REGISTRAR AYESHA BIN KALBAN

Summary of the Complaint

1. On 21 January 2021, LucinaLucina (“Lucina” or the “Complainant”) sent an email setting out a formal complaint (the “Complaint”) against Luke (the “First Respondent” or “Luke” or “Luke”) and Lakhit LLP (the “Second Respondent” or “Lakhit”) (jointly, the “Respondents”).
2. The Respondents had been instructed by Lucina, its associated appeal LERYNLERYN before the DIFC Courts. It should be noted that the Complainant was asked by the Committee to ensure that it included all complaints and issues which it wished to make against the Defendants, as it had referred to potential additional issues in its Complaint. The Committee therefore understands that the complaints referred to in this decision are comprehensive.

3. The Complaint against the Respondents concerns alleged breaches of “multiple sections” of the DIFC Courts’ Order No. 4 of 2019, the Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts (the “Code”). The Complaint can be summarised into six parts:

(A) Luke and Lakhit’s failure to properly advise Lucina in and after March 2020 on its options with regard to objecting to the Part 8;

(B) Luke and Lakhit’s failure to properly advise Lucina in and after July 2020 on its options with regards to the appeal judgement, specifically with regard to applying to reopen that appeal;

(C) Luke and Lakhit’s failure to inform Lucina in August 2020 when the Court requested submissions on the suitability of the Part 8 procedure;

(D) Lakhit’s dishonesty with the Court in August 2020 by advising them he was taking instructions on submissions relating to the Part 8 procedure when he in fact was not doing so;

(E) Luke and Lakhit’s failure to properly inform the Court and LEEHI from 4 October 2020 onwards that they were no longer instructed by Lucina;

(F) Luke and Lakhit’s dishonesty with the Court and LEEHI from 4 October 2020 by continuing to make representations on Lucina’s behalf despite no longer acting for Lucina

4. Lucina is requesting that the Court permanently strike Luke off the Register of Practitioners, suspend Lakhit from the record for a period not less than one year, and fine both Luke and Lakhit to the fullest extent permitted under the Code.
5. The Respondents assert that Luke acted appropriately, reasonably and in line with the Overriding Objectives of the Rules of the DIFC Court throughout Lakhit’s retainer with Lucina.

Complaint - Procedural history

6. On 21 January 2021, Lucina made the Complaint to the Registrar in the form of a letter (the

“Initial Letter of Complaint”).

7. On 24 February 2021, Listan LLP (“Listan”), on behalf of the Respondents, responded to the Complaint by way of a letter sent to the Registrar (the “Response”). This letter included the affidavit of Luke also dated 24 February 2021.
8. On 8 March 2021, Assistant Registrar Delvin Sumo, on behalf of the DIFC Courts’ Registry, wrote to both parties proposing a list of five independent assessors, two of whom would be appointed to join the Registry in investigating and deciding upon the Complaint.
9. On 11 March 2021, the Registry received responses from both parties and on 14 March 2021, the Registry wrote to the parties with the final chosen list of assessors.
10. On 17 March 2021, David Russell QC accepted the appointment, and all documents were emailed to him for review.
11. On 18 March 2021, Henry Quinlan accepted the appointment, and all documents were emailed to him for review.
12. On 29 March 2021, a meeting was held between the assessors, David Russell QC and Henry Quinlan, and myself, Deputy Registrar Ayesha Bin Kalban (the “Committee”), to discuss the Complaint. The Committee focused on two issues in particular: whether the use of the Part 8 procedure was correct (the “Part 8 Issue”), and whether Luke and Lakhit were right to respond to emails from LEEHI and the Registry after termination of Lakhit’s retainer with Lucina (the “Termination Issue”). By the end of the first meeting, the Committee agreed that the Respondent had made a substantive response requiring further submissions from the parties on the issue on the basis that Luke had acted within his remit; and that, had Luke not responded to the emails of LEEHI and the Registry on 5 October 2020 – i.e. the day after termination of Lakhit’s retainer – this would have left Lucina “high and dry.” It was decided in the meeting that that the Registry should write to the Complainant to request that it file a response.
13. On 12 April 2021, Lucina replied to the Response filed by Listan by way of a letter sent to Assistant Registrar, Delvin Sumo (“Lucina’s Response”). Lucina’s Response included the affidavit of LUCCI the Chairman of Lucina, the parent company of Lucina, and the Legal

Associate for Lucina, both dated 12 April 2021. Both affidavits were unsworn.

14. On 14 April 2021, Listan emailed Ms Sumo requesting that the Committee allow Lakhit 28 days to respond to Lucina's Response. Listan claimed that Lucina's Response included matters and documents that had not been included in the Initial Letter of Complaint and that the Respondents needed time to consider them.
15. In response, on 14 April 2021, Lucina emailed Ms Sumo objecting to Listan's request for time to prepare a response. Lucina stated that the standard procedure in such matters is for **one** right to reply and as such, Luke and Lakhit should not be allowed to reply again. Lucina also claimed that it had not raised any new points in its response and therefore there was no need for further submissions from Luke and Lakhit.
16. On 14 April 2021, Listan emailed Ms Sumo in response to Lucina's objections. Listan argued that, as a serious accusation has been levied against its client, and as serious sanctions were being sought, it was appropriate that Luke had the final right of response and time to prepare such a response.
17. On 18 April 2021, Ms Sumo informed both parties by way of email that the Committee had directed that Listan be permitted the opportunity to respond to Lucina's Response on behalf of the Respondents. Listan was requested to file its response by 6 May 2021. Ms Sumo also requested that both parties refrain from any further email communication unless required and requested by the Committee.
18. On 5 May 2021, Listan sent a further response, on behalf of the Respondents, by way of letter, to the Registrar. This letter included a full set of the documents/pleadings for the Stay Application Hearing and the opinion of Logan on the matter at hand. (the "Respondent's Second Response").
19. On 10 May 2021, a second meeting was held with the Committee. Once again, the Committee discussed the Part 8 Issue and the Termination Issue and concluded that the Respondents had not, in their opinion, breached the Code of Conduct.

Details of Complaint

20. Lucina allege that Luke and Lakhit breached multiple sections of the DIFC Courts' Order No.

4 of 2019 throughout and even after Lakhit's retainer with Lucina. The Complaint can be summarised into six parts:

21. Firstly, Lucina claim that Luke and Lakhit breached the Code by allegedly failing to properly advise Lucina of its options when the Part 8 claim was filed in March 2020, including the option to object to the use of the Part 8 procedure.
22. In his unsworn affidavit, LUCCILEjane claims that

In correspondence between March and July 2020 [Luke1/36-38, 48-53][AM11/4-5], and indeed in later correspondence, Luke made no mention of our option to object to the Part 8 procedure despite the majority of these conversations being about Lucina's options .

Lejane LUCCI continued by saying

I recall the point of the Part 8 procedure being discussed with Luke by myself and Luan soon after the proceedings were filed in March 2020, and again briefly on the 8 July 2020 call with Luke and [Liliam]. However, my recollection is Lucina was advised that objecting to the Part 8 procedure was not an option for us. The advice was not taken any further by Luke or Lakhit and was unfortunately not elaborated on by Luke at any later stage.

23. Lucina claim that if certain potential defences and/or counterclaims had been run, this would have set out a clear substantial dispute of fact and thus would have shown that the Part 8 procedure was not appropriate.
24. In its response, Lucina points to an email that Luan sent to Luke on 15 September 2020 which claimed to show evidence that Lucina had suffered financially as a result of LERYN's default. In other words, it claimed to show evidence that could be used to support a possible defence or counterclaim. The email stated:

Please see attached spreadsheet summarising Lucina Dubai's sales pre and post LERYN default, the difference averages at \$192.935 million. We would like to submit the counterclaim for our substantially reduced

sales which resulted from the default and the need to move business to Lucina.

25. Lucina acknowledged that this “evidence” alone was not sufficient and work needed to be done, but maintains that, had it been properly informed of its option to object to the Part 8 procedure, it would have had the time to gather the appropriate evidence needed.
26. Lucina is also claiming that Luke and Lakhit’s failure to properly advise it to object to the Part 8 procedure “seriously prejudiced Lucina’s position in the proceedings” because, if LERYN had been required to pay the higher Part 7 filing fee, they may have chosen not to proceed with the claim against Lucina at all.
27. Lucina maintains the position that, had it been properly informed of its option to object to the Part 8 procedure, it would have “vehemently” opposed the use of Part 8 and would have asked the Court to transfer the matter to the Part 7 procedure.
28. Lucina accuse Luke of causing Lucina to suffer “significant prejudice and loss” for allegedly failing to properly advise Lucina of this option.
29. Secondly, Lucina claim that Luke and Lakhit breached the Code by allegedly failing to properly advise Lucina in and after July 2020 on its options with regard to the appeal judgment in specifically with regard to applying to reopen that appeal.
30. Thirdly, Lucina claim that Luke and Lakhit breached the Code by allegedly failing to inform Lucina in August 2020 when the Court requested submission on the suitability of the Part 8 procedure.
31. Fourthly, Lucina claim that Luke breached the Code by allegedly acting dishonestly with the Court in August 2020 by advising them that he was taking instructions on submissions relating to the Part 8 procedure when he allegedly was not doing so .
32. Fifthly, Lucina claim that Luke and Lakhit breached the Code by allegedly failing to properly inform the Court and LEEHI from 4 October 2020 onwards that they were no longer instructed by Lucina.
33. Lastly, Lucina claim that Luke and Lakhit breached the Code by allegedly acting dishonestly with the Court and LEEHI from 4 October 2020 by continuing to make representations on

Lucina's behalf despite no longer acting for Lucina.

Findings

34. The question for determination before us – specifically, is whether Luke and Lakhit acted in accordance with the DIFC Courts' Order No. 4 of 2019. More specifically, we have been asked to determine whether Luke and Lakhit breached paragraphs 6, 7, 9(A), 12(A), 14(A), 19, 22(A), 22(I), 22(J), and/or 22(K) of the Code both during the period in which they were instructed by Lucina and after they were no longer instructed, as alleged by Lucina. We must determine if, on the balance of probabilities, Luke and Lakhit have breached the relevant provisions of the Code of Conduct. This is pursuant to paragraph 8 of the Code of Conduct which states:

The Court, acting through the Registrar, the Chief Justice...or any nominee of the Chief Justice, may impose the following sanctions upon any Practitioner found on a balance of probabilities to have committed a breach of the Code [of Conduct]:

private admonition;

public admonition;

...

suspension from the Register of Practitioners for a period of time not exceeding 3 years; and

removal from the Register of Practitioners.

35. To be found in breach of the Code of Conduct is a serious matter. The Code imposes significant sanctions on practitioners found in breach – sanctions which could permanently damage a practitioner's career. If a practitioner is found to be in breach, these sanctions are necessary in order to ensure that a high standard of professional practice is maintained at all times. Due to the seriousness of this matter, we felt that it was important to give Luke and Lakhit as much opportunity as possible to provide proof and justification for their conduct the subject of the complaint. As such, Luke and Lakhit were allowed to submit a further response to the Complaint made against them.

36. We will now proceed with our findings.

The Part 8 Issue

37. I think it is appropriate and necessary to start by looking at the question of whether Luke and Lakhit properly advised Lucina with regards to the Part 8 procedure as this appears to be the issue from which all other complaints in this matter flow.

38. I would first like to refer to the comments of Logan in his legal opinion. Logan stated unequivocally that: *“it would not have been appropriate for Lucina to challenge the use of the Part 8 procedure by LERYN; and any such challenge would have been unlikely to succeed.”* Logan concluded by saying that:

4.1. It would not have been advisable for Lucina to have challenged the use of the Part 8 Procedure under the RDC because:

4.1.1. The defence conceived by Leading Counsel (that has subsequently been dismissed, subject to appeal) was a Henderson v. Henderson defence that the Part 8 claim sought to relitigate a counterclaim that had been dismissed.

4.1.2. The proposed defence was not only, in the opinion of Leading Counsel, unmeritorious but raised no substantial issue of fact.

4.1.3. It was clear on the authority of a leading judgment in the earlier proceedings and on the face of the RDC (and CPR) that any objection to the use of the Part 8 Procedure required the existence of a substantial issue of fact.

4.1.4. Lakhit / Luke had been seeking instructions between March and September 2020 as to whether there was any substantive defence, and Lucina had been unable to identify or evidence one in any relevant instructions.

4.2. The prospects of any challenge to the use of the Part 8 Procedure would have been poor, so that there would have been no legitimate advantage in using that procedure and there may have been some risk of an adverse award of costs."

Logan expanded upon his conclusion by stating that:

"Lucina had been unable, between March and September 2020, to identify any substantive defence or plausible counterclaim giving rise to a substantial dispute of fact that would have justified a challenge to the Part 8 Procedure. Lucina's only "defence" was one that turned on an analysis of what had been litigated in the earlier proceedings and a point of law and, as such, was well-suited to determination in the Part 8 Procedure. Moreover, given the history of these proceedings generally, there would have been no guarantee that the Court would have ordered LERYN's claim to continue by way of the Part 7 Procedure had it been of the view that Lucina had identified issues of fact [that] require resolution."

39. I would also like to refer to the comments of Liliam, who continued to represent Lucina after Luke and Lakhit were disinstructed. In an email to Luke on 14 March 2020, in which Liliam outlined four potential approaches that could be taken with regards to Lucina's defence, Liliam suggested:

"We could dispute the use of Part 8. However, we would then need to explain what our defence actually is which would give rise to a dispute of fact...we don't have a defence beyond the Henderson point..."

Commenting on all potential approaches, including the approach referenced above, Liliam said: "None of these approaches is terribly attractive." It is noteworthy that at no stage had Liliam advised Lucina on a different procedure.

40. It is clear from the comments made by Logan and Liliam that challenging the Part 8 procedure was not advisable and such a challenge would have been unlikely to succeed because there was no evidence of factual issues in dispute. It is important for us to bear this in mind because it shows that whether Luke and Lakhit advised Lucina to challenge the Part 8 procedure or not, the results would likely have been the same: the challenge would have failed and the Part 7 procedure would not have been adopted. In other words, even if Luke and Lakhit did in fact fail to advise Lucina of its option to challenge the Part 8 procedure, in all likelihood this would not have prejudiced the Complainant's case. It follows that this complaint is rather hollow.

41. Aside from claiming that CFI-00-2020 “may” have proceeded very differently had the Part 8 procedure been objected to – where Lucina suggest that LERYN may have chosen not to proceed with the claim if a Part 7 procedure was used because of its purported higher filing fee– it is important to note that the Complainant has not identified any other prejudice that it has suffered as a result of the alleged failure to object to the Part 8 procedure. Indeed, as Logan pointed out in his comments mentioned above, if anything, challenging the Part 8 procedure was likely to have an adverse effect on the client in the area of costs.

42. Notwithstanding his own reservations about challenging the Part 8 procedure, Luke made numerous requests to Lucina for evidence that might demonstrate that the Part 8 procedure was inappropriate or might support a counterclaim. Evidence of such requests is found in multiple correspondences between Luke and Lucina from March to September 2020. Excerpts from some of these emails are found below:

25 March 2020 – Luke to Lussi (“LUCCILussi”):

“Option 3 depends on being able to show we have suffered losses since the hearing and that these can be the subject of a separate counterclaim, which we can offset against the claims...I raise this as a possibility but it’s going to be difficult...We would need to move quickly in terms of substantiating any claims. We’d need to be able to produce complete substantiation of any claims. That has not been our strength.”

12 August 2020 - Luke to LUCCI:

“2. Counterclaim – it’s really very difficult indeed to see what counterclaims you can bring. I have one question for you, leaving aside

- a. The fall in share price and

- b. The trading losses identified in our claim, what claims might we have against LERYN.

It’s not apparent to me that there are any. If I am wrong what are they?”

14 August 2020 – Luke to LUCCI

“If we are to come up with a counterclaim can you help me with regard to what we are going to base it on. I can (with Liliam) try to deal with the legal framework. You need to identify the factual basis.

...can we point to any financial support given by another Lucina company to Lucina C and which arose because of the LERYN breach and Lucina C's inability to source other funding. We would need to provide real details of inter-company transactions and this is not something we could simply conjure out of the air.

...If the answer is that there is no legitimate counterclaim we will run the arguments we have already put forward.”

15 August 2020 – Luke to LUCCI:

“...We need to decide how we are going to deal with this point and I would like to do so in the early part of the week ahead not least because if we are going to put forward evidence we need to do so now...”

27 August 2020 – Luke to MN

“...we will look at whether we can pull together a counterclaim based on the need to restructure. That is not free of legal challenges but let's start with analysing it factually...If we can prove any of this we should be able to get to the bottom of this quite quickly...”

10 September 2020 - Luke to LUCCI:

“As an absolute minimum we will need to explain to the court exactly what evidence we are trying to get admitted. That needs to be in a form where we can say that we are seeking to get X Y and Z admitted. We can't say that we hope at some point to be able to put together X Y and Z. If we say that we are planning to produce something which we can't then come up with, any credibility Lucina may have will vanish. I don't even know if we can produce any credible evidence of these costs...”

43. Luke and Lakhit sought evidence from Lucina repeatedly, as evidenced above, and it was not provided. In my view, Lucina has to bear the responsibility for that. To state the obvious, a lawyer can only work with what he/she is given. A reasonable conclusion that a practitioner

might draw is that, if no evidence is given for a counterclaim, then perhaps there is not one.

44. I find it significant that Lucina claims to have had the evidence for a counterclaim, but that it simply needed more time to gather it. Lucina claims that, had it been properly advised by Luke and Lakhit, it would have had “many more months” to gather the evidence before any hearing. In my view this suggestion is a non-starter. If the Complainant has the evidence, there is nothing stopping it from gathering the evidence now. The matter has not yet been raised in court, there is no res judicata. To my knowledge, Lucina is yet to produce any evidence to demonstrate that it had a valid counterclaim and, in my view, this suggests that they did not in fact have a counterclaim at all.
45. I find that Luke and Lakhit acted appropriately, reasonably, and most importantly, in a manner consistent with the Code. Had they challenged the Part 8 procedure simply because their client had instructed them to and not because there were factual issues in dispute, this may have amounted to an improper use of the court Rules. It may be the case that Lucina wanted to assert that there were factual issues in dispute, but to proceed down this route evidence was required. Luke and Lakhit requested evidence on numerous occasions, and none was identified or evidenced by Lucina. As such, no challenge could properly have been made.

Seeking instructions

46. Lucina accuses Luke of acting dishonestly with the court by advising them that he was taking instructions on submissions relating to the Part 8 procedure when Lucina claim that he was in fact not taking instructions to do so.
47. At this point I think it is important to remember that we are not seeking to determine if Luke and Lakhit acted without any shortcoming whatsoever in their legal advice and legal process. We are seeking to determine if they breached the Code of Conduct.
48. As such, I think it is helpful to start by looking at decisions relating to allegations of dishonesty. More specifically, I will refer to Decision No. 1 of 2017 of the Registry’s Code of Conduct Decisions.
49. In Decision No. 1 of 2017, the complainant alleged, inter alia, that the respondents (a Part I registered law firm and a Part II registered practitioner) had made gross misrepresentations

to the Court in order to obtain an ex parte order, and accordingly breached the following:

Section B4 of the Code:

"Practitioners shall never knowingly or recklessly make any incorrect or misleading statement of fact or law to the Court and shall correct any material incorrect or misleading statement of fact or law at the earliest opportunity";

Paragraph E-17 (viii) of the SCC:

"A practitioner shall not engage in conduct involving dishonesty, fraud, deceit or deliberate misrepresentation"; and"

Paragraph E-17 (xii) of the SCC:

"A Practitioner shall not contrive facts which will assist his client's case or draft any originating process, pleading, affidavit, witness statement or notice or grounds of appeal containing: (a) any statements of fact or contention (as the case may be) which is not supported by his client's instructions or by other reasonably credible material..."

In determining whether Section B4 of the Code had been breached, the Investigatory Committee considered the following: (i) was an incorrect or misleading statement made to the Court by a practitioner; and (ii) was that statement made knowingly or recklessly? Whilst it was held that misrepresentations had been made to the Court, there was no evidence that the respondents had knowingly misled the Court.

The Investigatory Committee subsequently considered whether the respondents had acted recklessly. In order to do so, the Investigatory Committee had to determine whether on the balance of probabilities having carried out a subjective assessment of the respondents' state of mind (based on the evidence available): (i) the respondents had been subjectively aware that there was a real risk that the statements made to the Court were incorrect or misleading; and (ii) they disregarded or closed their mind to that risk in the sense that they were indifferent as to, or did not care, whether the statements were correct or not. Ultimately, the Investigatory Committee held that the respondent's actions did not meet the high threshold of recklessness. Accordingly, the Investigatory Committee concluded that no breach of Paragraphs E-17 (viii) and E-17 (xii) of the SCC had been committed.

50. When applying these questions to the case at hand, it becomes clear that Luke and Lakhit have not acted dishonestly or misled the court for the following reasons.
51. Firstly, there is no evidence that NC made any incorrect or misleading statements – indeed the converse seems to be the case. From March 2020 to September 2020, Luke was seeking information from his client that could support a potential counterclaim and challenge the appropriateness of the Part 8 procedure, as evidenced in the email excerpts mentioned above. Thus, his email to the Registry on 13 August 2020 in which Luke stated: “I am still awaiting instructions on this point. The Defendant’s submissions if any will be serve[d] as soon as I have instructions...” cannot be said to be dishonest nor misleading.
52. As it has been established that Luke’s statement was not incorrect or misleading, there is no need to consider whether the statement was knowingly or recklessly made.
53. One point to be made is that Luke could have been clearer and specifically stated that the collection of evidence was for the specific purpose of deciding whether the Part 8 procedure could be challenged or not – and perhaps he did specifically state this in one of the phone calls he had with Lucina, but this we do not and cannot know for certain. Notwithstanding, this would not amount to the type of evidence needed to meet the high threshold for findings of dishonesty.

Making representation after termination

54. Lucina accuse Luke and Lakhit of acting dishonestly with the court and LEEHI from 4 October 2020 by allegedly continuing to make representations on Lucina’s behalf despite no longer acting for Lucina. I would like to immediately address the fact that Lucina has not identified any motives that Luke and/or Lakhit may have had for the actions they are accused- nor have the Court or LEEHI lodged any complaint in this regard. It is therefore unclear to us why Lucina has raised this particular complaint other than to perhaps seek to denigrate Luke.
55. In my view, it is helpful and important to consider the actions taken by Luke and Lakhit after learning that they were no longer representing Lucina in the context of the situation. As such, I have included a short timeline of events that took place on 4 and 5 October 2020 to help build a picture.

Timeline of events that took place on 4 and 5 October 2020:

56. On the morning of 4 October 2020, at precisely 09.00am (before the termination letter (the “Termination Letter”) was sent to Luke and Lakhit), Luke emailed Lucina the counsel’s draft skeleton argument for its comments stating that it was “...an excellent exercise in putting our arguments as highly as they can be.” Luke added: “...we need to serve by close of business our time tomorrow.” (The skeleton arguments were due to be exchanged by 3pm on 5 October 2020). It is important to mention that at this point Luke and Lakhit were unaware that Lucina had written to the Registry on 1 and 4 October 2020 regarding their termination.
57. After receiving the email from Lucina on 4 October 2020 containing the Termination Letter, Luke and Lakhit replied to Lucina, on the same day, stating:
- “Dear Levy
- Something of a disappointment to say the least.
- There are some practical issues to address. Those are
- i. Filing the skeleton – this does need to be done tomorrow and I suggest it is done to preserve your position
- ii. Filing notice with the Court that we are no longer acting...”
58. After receiving the Termination Letter, Luke tried to contact MN and LUCCI repeatedly by way of telephone. A call eventually took place that afternoon between Luke and the Legal Associate for Lucina. According to and the Legal Associate for Lucina’s affidavit, on this call it was confirmed that Lakhit was to stop acting for Lucina.
59. On 5 October 2020 at 11.57 am, Luke emailed Lucina stating: “We need to know whether we are instructed to exchange skeletons.”
60. On 5 October 2020 at 12.03 am, the Registry emailed Luke and LEEHI asking for confirmation that they were in a position to exchange the skeleton arguments at 3 pm that day.
61. On 5 October 2020 at 14.06 pm, LEEHI emailed Luke and, referring to the Registry’s email, asked NC to confirm that he was in a position to exchange the skeleton arguments at 3 pm

that day.

62. On 5 October 2020 at 15.03 pm, Luke replied to LEEHI and stated: “We are seeking instructions urgently.”
63. On 5 October 2020 at 15.12 pm, Luke replied to the Registry stating: “We are awaiting confirmation that our clients are content for us to file the skeleton.”
64. On 5 October 2020 at 15.38 pm, Lucina replied to Luke stating, inter alia: “Taylor Wessing are not instructed to exchange skeletons and need not do so on our behalf.” From that point, Luke took no further steps.
65. In my judgment, this complaint can be dealt with swiftly. While it is correct that Luke and Lakhit were no longer retained by Lucina when they were asked if the skeleton argument for Lucina would be submitted by the deadline, it is important to bear in mind that NC received notice of Lakhit’s disinstruction a day before the deadline for submission of the skeleton argument. Lakhit’s disinstruction therefore occurred immediately before this deadline. Moreover, Lucina already had the skeleton argument for the application in its possession when Lakhit was disinstructed. It follows that, short of submitting the skeleton argument, Luke and Lakhit had completed the work for its preparation. Luke was therefore entitled to query whether Lucina would like him to submit the skeleton argument, particularly as the deadline was fast approaching for his former client, a query which had in fact been referred to Lucina in its email on 4 October 2020.
66. Further, Luke did not instigate any of the correspondences with the Registry or LEEHI in relation to the skeleton argument after Lakhit’s de-instruction – he only replied to those correspondences. Nor did he submit the skeleton argument that he possessed; apparently in accordance with Lucina’s letter, Luke and/or Lakhit did not take any action on Lucina’s behalf.
67. Lucina’s complaint appears to boil down to Luke’s saying to LEEHI that he was “seeking instructions urgently” and to the Registry that he was seeking instructions from “my client” rather than saying that he was no longer instructed, with this amounting to acting on Lucina’s behalf. However, it is unclear to the Committee whether Luke had instructions to inform the Court or LEEHI of this fact. The Committee’s view is that Luke probably considered it inappropriate to inform the Court or LEEHI of this fact until the position on filing the skeleton

argument was made clear; we also consider it likely that he took these actions because he considered it to be in the best interests of his client to do so. Certainly, Luke stood to gain nothing from adopting this approach and, in the circumstances, the Committee considers that his actions were justified. It is also not clear that Lucina did or possibly could suffer any prejudice by Luke's words in the circumstances. It is also not clear that Lucina did or possibly could suffer any prejudice by these words in the circumstances. We do not think much more can be said than that. If Luke should be permanently struck off the DIFC Courts' Register of Practitioners, Lakhit "at the very least" suspended from the Register of Practitioners for no less than one year, and both be fined by the Court "to the fullest" extent permitted under the Code" for referring to Lucina as his client mere hours after it ceased to be so and before a deadline that he had been working towards, in our view this would be disproportionate to say the least.

68. In any event, when applying the same questions that the Investigatory Committee considered in Decision No. 1 of 2017, as mentioned above, I find that Luke and Lakhit had no intention of misleading the court or LEEHI and we are convinced that Luke and Lakhit considered they were acting in the best interest of Lucina.

Decision

69. The above can be concluded to state that I have not identified any form of a breach carried out by Luke and Lakhit during the time of their representation of Lucina, for the reasons set out above.
70. The Committee would also like to highlight that the purpose of committees such as this (and of the Code of Conduct complaint process) is to hear and determine bona fide complaints that there have been breaches of the Code of Conduct. It is not the purpose of such committees to hear general complaints (whether justified or not) about the performance of legal representatives in DIFC Court cases: the Code of Conduct complaint process is not an appropriate forum in which to bring this latter category of claim. The two types of claim are distinct: for example (and the Committee makes this comment without referring to the present case), it may be the case that a legal representative's performance in proceedings may be poor or even negligent, but it does not necessarily follow that there have been any breaches of the Code. The Committee considers that the present Complaint appears to amount more to an expression of dissatisfaction with the performance of a legal representative than a Code

of Conduct complaint.”

71. In accordance with the Code of Conduct, there be no order on costs of this Complaint.

Issued by:

Ayesha Bin Kalban

Deputy Registrar

Date of Issue: 2 June 2021

Time: 2pm