

No. 2

O. 58, r. 18(1)



SUPREME COURT

Record No:

48/2019

Respondent's Notice

Part I

The information contained in this part will be published. It is the respondent's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court.

1. **Title of the Proceedings:** *[As in the Court of first instance]*

Marion Kane

-v-

Diane Hallahan

2. **Name of Respondent:** **Diane Hallahan**

3. **Application to extend time:** Yes No

If an application is being made to extend time for the filing of this Notice, please set out concisely the grounds upon which it is contended time should be extended.

The Respondent received the Appellant's Application for Leave to Appeal in or about

the 27th March 2019 by way of registered post . The document arrived at the Respondent's Office as a single document and did not contain a cover letter. The Application for Leave to Appeal failed to attach the relevant and prescribed Appendix which ought to set out *inter alia* the (i) grounds for appeal and (ii) the orders sought.

By way of letter dated 26 April 2019 the Respondent called upon the Appellant to furnish to her a full copy of the Application for Leave to Appeal to include the relevant Appendix. By way of e-mail dated 26 April 2019 the Respondent wrote to the Supreme Court Office to inquire as to whether a full Form 1 including the required Appendix was received by the Supreme Court. By way of reply dated 29 April 2019 the Supreme Court Office confirmed that the Appellant has in fact completed an Appendix that sets out her grounds for appeal.

On the 10 May 2019, the Respondent received by unregistered post an Application for Leave to Appeal .It is the Respondent's position that the Appellant has failed to effect proper service of the Application upon the Respondent and is therefore not required to make an application for an extension of time for the submission of this Notice.

The within application for an extension of time for the filing of this Notice is therefore made without prejudice to the contention that the Appellant has failed to effect full service upon the Respondent and has therefore failed to comply with Practice Direction SC 16 and Order 58 of the Rules of the Superior Courts.

The Respondent wrote to the Appellant on the 25th April 2019 seeking her consent to the late filing of this Respondent's Notice. No response has been received as of the date of filing.

The Appellant has pursued the Respondent in her case of alleged misconduct since the 28th April 2016 (being the date of the Appellants initial complaint t the Law Society of Ireland). The Respondent has since that date become the subject to constant, unsubstantiated and frivolous appeals through both the High Court and the Court of Appeal. As a result of same the Respondent has suffered considerable levels of stress both emotional and financial, it is in those circumstances that upon receipt of the Application for Leave to Appeal the Respondent failed to act immediately.

4. Do you oppose the applicant's application to extend time:

Yes No

If an application by the applicant to extend time is being opposed please set out concisely the grounds on which it is being opposed.

1. The Applicant herein states that she initially submitted her Application for Leave on or about the 27th February 2019. The Respondent is a stranger to this Application and is a further stranger to the contents of the purported Application. The Applicant has failed to set out any bona fide reasoning for her delay in initiating this appeal.
2. The Applicant herein seeks to appeal the determination of the Solicitors Disciplinary Tribunal, which was communicated to the Applicant by letter dated the 2nd February 2017. The Applicant appealed that decision to the President of the High Court on the 18th May 2017, the appeal was dismissed in its entirety. Thereafter, the Applicant appealed the decision of the President of the High Court to the Court of Appeal by way of Notice of Appeal dated the 11th July 2017. It is submitted that the Appellant has constantly had the requisite ability and assistance available to her to prosecute her claim and the appeals therein.
3. The Appellant has failed within her Application for Leave to establish that she has met the criteria set out through the jurisprudence of the Superior Courts insofar as there is no arguable ground of appeal in existence. The Appellant herein seeks to introduce further grievances surrounding her alleged difficulties in obtaining legal assistance in prosecuting her appeal before the Court of Appeal. While the Respondent is a stranger to these grievances, the issue is not a matter for this appeal nor this Respondent.

5. Do you oppose the applicant's application for leave to appeal:

Yes No

6. Matter of general public importance:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance.

This section should contain no more than 500 words and the word count should appear at the end of the text.

1. The Application for Leave is devoid of any merit and raises no matter of general public importance.
2. It has been submitted and upheld before both the High Court and the Court of Appeal on behalf of the Respondent that the Appellant is not entitled to a re-hearing of her complaint. As appears from section 6 of the Appellants Application for Leave, the Appellant now seeks to submit she was unable to obtain legal representation and as such she was disadvantaged throughout the court proceedings and unable to refer to documentation to support her appeal. The Appellants disability and alleged right of access to the courts is a separate and distinct issue from the validity of the High Court and Court of Appeal decision. The lack of legal counsel is not, it is submitted, in and of itself evidence of lack of justice or prejudice nor has her lack of representation evidence of any misconduct on the part of the Respondent.
3. The Respondent was initially engaged in January 2016 by the Appellant to represent the Appellant in an application before Cork District Court for the purpose of seeking access to the Appellants grandchild. The agreement between the two parties was that (i) the Respondent would provide legal advice to the Appellant, (ii) that the Appellant would apply to the Family Law Court Office to obtain the earliest possible hearing date on the matter and (iii) that the Appellant would write to TUSLA on behalf of the Respondent. The fee for this work was agreed at €500 inclusive of vat . The Appellant brings this claim as she is manifestly unsatisfied with the outcome of the District Court hearing and the Respondent laboured under the impression that the agreement between the parties was that an emergency order would be obtained regarding the welfare of her granddaughter. Her complaint is not one which concerns a matter of public importance but rather a further attempt to ventilate her unmeritorious complaints which have now been vexed in the same manner on three occasions.
4. Save for the parts of her claim which were frivolous and vexatious, the balance of the Appellants claim now appears to be an unremarkable yet completely unsustainable claim of solicitors negligence. The Appellant accepts herself that the only matter before the Court of Appeal (and the High Court) was an appeal upon the finding of no misconduct.
5. The Appellants claim concerns the finding of the Disciplinary Tribunal which found that she had failed to raise a prima facie case of misconduct as against the Respondent. This procedure, which operates in the Tribunal, permits the Tribunal to filter complaints which have no basis or merit. Section 7(2) of the Solicitors (Amendment) Act 1960 provides the Tribunal with that power. The Appellant does not seek to challenge the validity of the decision under that section. It is not alleged that the law was applied incorrectly nor is it claimed that there exists any inconsistency within the jurisprudence relating to same.

7. Interests of Justice:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. It cannot be maintained that it is necessary in the interests of justice that there be a further appeal to this Court. An appeal to the High Court from the Disciplinary Tribunal provides the appropriate remedy for any error made by the Tribunal. Similarly, an appeal from the High Court to the Court of Appeal provides the appropriate remedy for any error made by the High Court. The Appellant has had the benefit of both the President of the High Court and the Court of Appeal having being able to put her case both at trial and on appeal, the interests of justice do not require a further fourth opportunity for the Appellant.
2. The Appellant has failed to establish that the constitutional threshold for pursuing a further appeal against the order of the Court of Appeal dismissing her appeal has been met.
3. The Appellant claims that she now suffers a breach of her human rights due to the fact that she was a litigant in person at the hearing before the Court of Appeal. The Appellant also states that she is “now” unable to receive legal representation. The Appellant’s grievance with the Legal Aid Board is not a matter for this court, and consequently does not amount to the appeal being one that should be heard in the interest of justice.

Word count - 224

8. Exceptional Circumstances Article 34.5.4.:

Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that there are exceptional circumstances justifying such an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. The within application for leave relates to an appeal from the decision of the Court of Appeal and therefore is not an appeal which arises under Article 34.5.4 of the Constitution.

Word count - 32

9. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please set out in the Appendix attached hereto the Respondent's grounds of opposition to the Grounds of Appeal set out in the Appellant's Notice of Appeal.

10. Cross Application for Leave:

If it is intended to make a cross application for leave to appeal please set out here precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance or the interests of justice justifying a cross appeal to the Supreme Court.

If it is sought to make a cross application for leave to appeal direct from a decision of the High Court, please also set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 500 words and the word count should appear at the end of the text.

Not applicable.

Word count -2

11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal

Please set out in the Appendix attached hereto any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court and / or the grounds of cross appeal that would be relied upon if leave to appeal were to be granted.

12. Priority Hearing: Yes No

If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.

This section should contain no more than 100 words and the word count should appear at the end of the text.

n/a
Word count:

13. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union, please identify the matter, and set out the question or questions which it is alleged it is necessary to refer.

This section should contain no more than 100 words and the word count should appear at the end of the text.

n/a
Word count:

Part II

The information contained in this part will not be published.

14. Respondent's Representatives:

If not provided in the application for leave to appeal please identify the solicitor and counsel for the respondent, with contact details for the solicitor dealing with the matter including an email address for the solicitor and lead counsel or in the case of a respondent in person please provide contact details including telephone and email.

15. Legal Aid:

In the case of an application by the DPP from an order in a criminal trial please confirm that a Legal Aid (Supreme Court) certificate has been granted by the Court below and please provide a copy of same.

Signed:



(Solicitor for) the Respondent

Date:



To be served on:



(Solicitor for) the Applicant / Other Respondent(s)

Please file your completed Notice in:

**The Office of the Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin 7**

Appendix
Grounds of Opposition (and Cross Appeal)

1. Title of the Proceedings: *[As in the Court of first instance]*

Marion Kane

-v-

Diane Hallahan

2. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please list concisely in numbered paragraphs, the Respondent's ground(s) of opposition to the grounds of appeal set out in the Appellant's Notice of Appeal.

1. The Respondent has not had sight of the Appellants grounds for appeal as a consequence of the Appellants failure to serve the Respondent with same. The Respondent herein opposes an appeal if leave to appeal is granted on the following grounds, however the Respondent wishes to reserve her right to directly respond to the Appellants grounds to appeal should leave be granted by this Honourable Court.
2. The Respondent submits that the decision in respect of which this appeal is sought does not involve a matter of general public importance. The Appellants disability and alleged right of access to the courts is a separate and distinct issue from the validity of the High Court and Court of Appeal decision. The lack of legal counsel is not, it is submitted, in and of itself evidence of lack of justice or prejudice nor has her lack of representation evidence of any misconduct on the part of the Respondent.
3. It cannot be maintained that it is necessary in the interests of justice that there be a further appeal to this Court. The Appellant's grievance with the Legal Aid Board is not a matter for this court, and consequently does not amount to the appeal being one that should be heard in the interest of justice.
4. The Appellant has failed to disclose or identify any legal error on any issue engaged in the case in the application of law or any principle of law, nor any legal error. Nowhere is it particularised or stated the Court of Appeal misapplied any rule of law in relation to the Solicitors Act 1954-2011.
5. The application for leave to appeal is misconceived, given that there exists

well-established legal principles in relation to the finding of misconduct against a solicitor. The decision of the High Court and the Court of Appeal stood on its own facts and on the law applicable to those facts, which was comprehensively addressed by both Courts.

6. The within application is in fact nothing short of an abuse of process. Within her Complaint Form submitted to the Law Society of Ireland on the 28th day of April 2016, the Appellant is asked “(w)hat do you hope to achieve by making this complaint” to which the Appellant answered “Refund or money paid €500 cash”. The Appellant therefore does not seek for a finding of misconduct to be made against the Respondent.
7. That the learned Judges of the Court of Appeal were correct in law in declining relief on the basis of the facts before the Court.
8. That the Court of Appeal properly and correctly addressed the issue of misconduct.
9. That the Court of Appeal properly and correctly adjudicated on the issue of misconduct alone.
10. That the Court of Appeal was correct in determining that the Appellant put no evidence or submission before the Court that the Respondent had brought the profession of solicitor into disrepute.
11. That the Appellant was not deprived of the right to a fair trial.
12. The Appellant is not entitled to expand on her claim and grievances by way of the appeals procedure. The decision of the Court of Appeal (Peart J.) acknowledges that the Appellants complaints were listened to at length despite the Appellant not having submitted much of her submissions on the initial Complaint Form submitted to the Law Society of Ireland.
13. That the Court of Appeal was correct in making an Order for the Respondents costs as against the Appellant (which said cost order has not as of this date been enforced).

3. Additional grounds on which the decision should be affirmed:

Please set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court.

1. The conduct of the Appellant herein amounts to an abuse of process and has

had the benefit of the adjudication of the Solicitors Disciplinary Tribunal, the President of the High Court and the Court of the Appeal, all of which have concluded the Appellant has failed to raise any argument which illustrates misconduct on the Respondents part. The Respondent herein is entitled to finality to the contrived allegations made against her.

4. Cross Appeal

Please set out in numbered paragraphs the Grounds of Cross Appeal relied upon if leave to cross appeal were to be granted.

5. Order(s) sought

Please set out in numbered paragraphs the order(s) sought if the Cross Appeal were to be successful.

Not applicable.