



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

23 November 2011

STATUS: Immediate

THE LAW SOCIETY OF THE CAPE OF GOOD HOPE V H NEL

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal (SCA) today dismissed with costs an appeal against a judgment of the Eastern Cape High Court which had set aside the finding by a disciplinary committee of the appellant Law Society that the respondent, a practising attorney and one of the appellant's members, had contravened rule 14.3.14 of the appellant's rules.

The high court also set aside the sanction imposed on the respondent, namely a fine. The respondent had been charged that he was guilty of unprofessional or dishonourable or unworthy conduct by advising one Mr. Swanepoel (who was not his client at the time) upon his request for advice that 'it could never be said that it would be harmful in a bail application if a policeman could stand up in court and confirm that he obtained co-operation from the accused right at the outset'.

At the time Swanepoel had been arrested by the police in a murder investigation. The Law Society averred in the charge that the furnishing of the abovementioned advice had, alternatively had the potential, to cause Swanepoel to act in ignorance of his right to remain silent to his prejudice or potential prejudice.

The SCA held that the question was not whether the advice given was inadequate or incomplete, but whether any shortcoming in the advice can be categorized as unprofessional or dishonourable or unworthy conduct. The SCA found further that the charge is not substantiated by the common cause facts and the contextual

background, as the high court correctly found. The SCA pointed out that the high court had erred in its reasoning in two important respects. First, the high court erred in finding that disciplinary proceedings under the Attorneys' Act 53 of 1979 are civil proceedings, since they are in fact *sui generis*. It erred further in applying the so-called rule in *Hollington v Hewthorn* as to the admissibility of evidence, because that rule found no application in the present matter, the high court having misconstrued the disciplinary committee's finding in that regard. The appeal was therefore dismissed with costs.

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