

North Vancouver, B.C.
Called to the Bar: June 26, 1974

Discipline hearing panel: November 23, 1994, July 10-11, 1995, February 3 and April 28, 1997 (penalty hearing was delayed to 1997 at JT's request, for health reasons)
W.T. Wilson, Q.C., Chair, B.B. Trevino, Q.C. and J.S. Shackell

J. Whittow, for the Law Society
C.R. Kennedy, for JT, and JT, on his own behalf

Benchers: January 23, 1998
H. Berge, Chair, P. Schmit, R. Gibbs, W. Everett, Q.C., D.P. Ramsay, G. Kambeitz, Q.C.,
G. Lecovin

Summary

While representing a client on a legal aid retainer, JT received from the client a payment of \$1,000 for the same legal services, contrary to former ruling G/8 of the *Professional Conduct Handbook* which was then in effect. Later JT failed to follow his client's instructions to pay money held in trust to the client's wife. JT's conduct constitutes professional misconduct.

Facts

In April, 1991, while representing Mr. B on criminal charges, JT received from the client and his wife \$1,000 for legal services, even though JT was to be paid for those services under legal aid. He did not deposit the \$1,000 to his trust account or disclose it to the Legal Services Society.

Mr. B was convicted at trial. After completion of his retainer, JT held \$1,700 in trust that belonged to Mr. B. The client had earlier advanced part of this money for trial expenses and the balance was from the Legal Services Society as reimbursement for certain trial expenses.

JT prepared and filed a notice of appeal for Mr. B and looked into whether legal aid would finance the appeal.

In October, 1991 JT and Mr. B agreed that JT should disburse the \$1,700 he held in trust to a company owned by Mrs. B. Mrs. B would then pay cash to JT for fees owed to him for his work on the appeal.

Mr. and Mrs. B, however, later decided they would pay the \$1,700 to a new lawyer they had chosen for the appeal. JT wrote cheques to Mrs. B's company and drove Mrs. B to the bank, expecting that she would cash the cheques and give the money to him, but she did not. JT told the hearing panel he was not told of this change in instructions.

JT, without seeking further instructions, cancelled the cheques and transferred the money from his trust account to his general account in payment of fees. JT told the hearing panel that he delivered a bill to the remand centre for Mr. B before transferring the funds, while Mr. B told the panel that he did not receive the bill until some time after that.

JT never indicated to the hearing panel that he understood Mr. B to have withdrawn instructions for JT to give cheques to Mrs. B or to have authorized JT to pay the funds in trust directly to himself.

JT voluntarily ceased practising in mid-1996.

Verdict

JT was guilty of professional misconduct in:

- receiving funds from his client for the same legal services that he was providing on a legal aid retainer, contrary to former ruling G/8 of the *Professional Conduct Handbook* which was then in effect;
- failing to follow the instructions of his client to pay to the client's wife money he held in trust for the client.

Penalty

The panel quoted with approval the *Tarnow* discipline decision, which stated even a single instance of an "under the counter" payment from a legal aid client is likely to constitute a fraud or dishonest deprivation.

The panel could find no excuse for JT's conduct. The panel noted, however, that JT had decided, in his words, to "disbar myself" by ceasing to practise in mid-1996, which was some indication that he understood the seriousness of his actions and regretted them. This was the only incident of JT charging a client and the Legal Services Society in the same matter and he had no previous discipline record.

The hearing panel ordered that JT:

1. be suspended from practice for three years as of April 28, 1997;
2. pay \$12,000 as costs of the discipline proceedings, to be paid at his option in annual payments of \$2,400 from 1997 through 2001, provided that the balance be paid in full if he applies for reinstatement;

3. make restitution to the client of \$1,000 and provide evidence of that payment to the Law Society.

JT applied under section 49 of the *Legal Profession Act* for a review of the decision of the discipline hearing panel.

The Benchers determined they had jurisdiction to review only penalty, but not verdict, as requested by JT. After considering his position, JT elected not to proceed with a review of penalty under section 49 and the Benchers dismissed his appeal as abandoned.

JT asked the Benchers that there be no publication of the decision on the basis that he intended to take judicial review or file a court appeal of the finding of professional misconduct.

After reserving their decision, the Benchers rejected JT's application for non-publication. They could not find an intention to appeal to be a proper ground for ordering non-publication of a discipline decision. They directed that publication not occur prior to March 31, 1998 to give JT the opportunity to apply to court for a stay of their decision pending the outcome of any proceeding he chose to bring.

JT petitioned the Supreme Court under the *Judicial Review Procedure Act* for an order setting aside the decisions of the discipline hearing panel on verdict and penalty.

On November 17, 1998, JT abandoned his petition, and the Court ordered that each party bear its own costs of the proceedings.

Discipline Case Digest — 1999: No. 1 January (JT)