

Karl Eisbrenner

Bridesville, BC

Called to the Bar: February 12, 1993

Suspended pending hearing: November 29, 2002

Discipline hearing: September 25 and November 28 and 29, 2002 and August 26, 2003

Panel: Peter J. Keighley, QC, Chair, Gordon Turriff, QC and David A. Zacks, QC

Reports issued: January 16, 2003 (facts and verdict) and August 28, 2003 (penalty); indexed as [2003] LSBC 03

Counsel: Jessica S. Gossen, for the Law Society; Karl Eisbrenner, on his own behalf (facts and verdict hearing only)

Summary

While an associate employed by a law firm from 1996 to 1997, Mr. Eisbrenner sought and received home plumbing services from a client in lieu of that client paying to the law firm its outstanding debt for legal services. Mr. Eisbrenner also received, from two other clients of the firm, payments for legal services, which he failed to remit to the law firm as required by the terms of his employment. In 1999, while a sole practitioner, Mr. Eisbrenner acted for a number of clients in bringing a petition against a gravel mine for its allegedly illegal operations. In the course of the litigation, Mr. Eisbrenner made inappropriate comments about three judges through his correspondence, letters to a local newspaper and a complaint to the Canadian Judicial Council. He depicted the judges as incompetent, cowardly and disingenuous, and he alleged that one of them was complicit in criminal activity. All of this criticism was calculated to attract attention and publicity for his clients' cause. The panel found that, in receiving services and money directly from clients in these circumstances and in unjustly criticizing the judiciary, Mr. Eisbrenner was guilty of professional misconduct.

The panel also found that Mr. Eisbrenner was not competent to practise law by reason of psychological impairment. A few years before these incidents, he had sustained serious injuries in a motor vehicle accident, including concussion, and experienced symptoms consistent with mild traumatic brain injury. He suffered from psychosis, as manifested in paranoid delusions and obsessive behaviours. The panel noted that Mr. Eisbrenner chose to remain untreated; he declined to take anti-psychotic medications and instead self-medicated with marijuana and apparently alcohol, contrary to medical advice. His correspondence, legal drafting and demeanour all suggested a disordered, delusional and obsessive personality. At the conclusion of the facts and verdict hearing, the panel ordered that Mr. Eisbrenner be suspended from practice pending conclusion of the hearing. In considering penalty, the panel noted that Mr. Eisbrenner remained unapologetic and defiant and had not demonstrated an improvement in his condition. The panel ordered that he be disbarred and pay costs.

Facts

Wrongful conversion of payments from clients

In 1996, while employed as an associate in a law firm, Mr. Eisbrenner acted for Ms. S in a matrimonial matter. Over the course of two months, he received from her several cheques in payment of legal fees: a cheque for \$400 payable to cash and cheques for \$500 and \$200, each payable to Mr. Eisbrenner. He received these payments directly, without depositing them to the trust account of his law firm and without the firm's knowledge or consent.

While representing Ms. W in a litigation related to her purchase of property, Mr. Eisbrenner requested from the client a cheque for \$5,000, either blank or payable directly to him. He endorsed the cheque and deposited it to his personal account. At least part of this payment related to legal services rendered by Mr. Eisbrenner on behalf of his law firm and therefore ought to have been provided to the firm.

In 1997 Mr. Eisbrenner represented a corporate client of the law firm on a builders lien matter. At Mr. Eisbrenner's request, the company carried out certain plumbing work on Mr. Eisbrenner's own home in satisfaction of the company's outstanding account for legal services of \$1,121.46. Mr. Eisbrenner had no authority to forgive payment of a debt to the firm in return for personal services provided to him.

In his explanation to the Law Society, Mr. Eisbrenner noted that, at the time of his actions, he was not thinking straight and was seeking psychiatric and medical help.

Unjust criticism of the judiciary

In 1999 Mr. Eisbrenner commenced proceedings by petition in BC Supreme Court on behalf of various property owners against an allegedly unauthorized gravel mine operation on adjacent property. This litigation occupied most of Mr. Eisbrenner's time and focus. Throughout, he maintained that his clients had been denied justice largely as a result of a conspiracy on the part of various levels of government, opposing counsel and the Law Society.

Mr. Eisbrenner made inappropriate comments about three judges through certain correspondence, letters to a local newspaper and a complaint to the Canadian Judicial Council. In his communications, he depicted the judges as incompetent, cowardly and disingenuous, and he alleged that one of them was complicit in criminal activity. Mr. Eisbrenner justified his criticisms as being necessary to attract attention and publicity for his clients' cause, when in fact they brought attention only to himself.

Incompetence to practise law

The panel heard extensive evidence on Mr. Eisbrenner's medical and psychiatric condition. In 1994, prior to these incidents, Mr. Eisbrenner suffered serious injuries, including concussion, in a major motor vehicle accident. Six months after the accident, he

continued to experience difficulty with reading and comprehension, which his physician believed were symptoms of post-concussion syndrome. Other symptoms consistent with mild traumatic brain injury were noted: memory difficulties, problems reading and registering information, forgetfulness, difficulty in planning and organizing, reduced efficiency in accomplishing tasks, headaches, ringing in the ears, numbness in some fingers and difficulties with comprehension and sorting the relevant from the irrelevant. Through combined pharmacological and psychological treatment, Mr. Eisbrenner showed some improvement in 1997, including mood control and coping mechanisms, but later discontinued treatment.

In April, 2002, when required by a panel of Benchers, Mr. Eisbrenner underwent another assessment. The psychiatrist concluded that his symptoms, including paranoid delusions about a multi-layered conspiracy to ensure his failure in the litigation file, were compatible with a diagnosis of delusional disorder, which could be caused by a genetic predisposition or his head injury and could be exacerbated by his use of cannabis. Post-concussion syndrome was also confirmed, as indicated by possible cognitive dysfunction, personality change, poor judgement, impaired control of impulse and emotions, inability to write in a logical and sequential fashion and being overly inclusive and digressive in his writing.

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Citations were issued against Mr. Eisbrenner on December 12, 2001 and April 11, 2002.

Verdict

The hearing panel found that Mr. Eisbrenner's conduct in wrongfully converting to his own use funds that belonged to his law firm and his conduct in unjustly criticizing the judiciary constituted professional misconduct. At the conclusion of the hearing on facts and verdict, the panel determined that Mr. Eisbrenner was not competent to engage in the practice of law and ordered that he be suspended pending the outcome of the hearing on the basis that his continued practice would be dangerous or harmful to the public.

Penalty

Mr. Eisbrenner chose not to attend or be represented at the penalty hearing. The panel noted that voicemail and email communications from Mr. Eisbrenner to the Law Society prior to the hearing were disjointed, unfocused ramblings interspersed with rude and sometimes obscene commentary. The panel noted that it was very concerned that, whatever the cause of Mr. Eisbrenner's psychosis, which manifested itself in paranoid delusions and obsessive behaviour, he remained largely untreated as a matter of personal choice and had eschewed recommended anti-psychotic medications in favour of marijuana and alcohol, contrary to medical advice.

The panel noted that Mr. Eisbrenner had been found guilty of serious professional misconduct in circumstances that called into question his honesty, ethics and judgement and, at the very root, his appreciation of professional standards. With respect to the whole

of his misconduct, he was unrepentant. As the panel had no evidence that his psychological condition had improved and as he appeared to remain delusional and untreated, it served no useful purpose to impose a suspension with conditions. The panel ordered that Mr. Eisbrenner:

1. be disbarred; and
2. pay costs of the discipline proceedings.

Discipline Case Digest — 2003: No. 20 October (Eisbrenner)