

Vancouver, B.C.

Called to the Bar: June 13, 1986

Discipline hearing:

Dates: March 23 and 27, 2000

Panel: D. Peter Ramsay, Q.C., as a one-Bencher panel by consent

Reports: July 4 and November 28, 2000

Discipline hearing report indexed as [2000] LSBC 02

Counsel:

James A. Doyle, for the Law Society

Christopher E. Hinkson, Q.C., for Ms. Dunnaway

Summary

While representing the respondent in a divorce proceeding, Ms. Dunnaway unreasonably delayed the entry of a court order respecting custody, guardianship and access. She also failed to pay out funds to the petitioner's lawyer after the court ordered that she do so, in breach of her undertaking. In both matters Ms. Dunnaway's conduct constituted professional misconduct. The panel ordered that she be suspended for one week and pay costs.

Facts

Failure to enter an order

In 1996 Ms. Dunnaway began representing Mr. B, the respondent in a divorce proceeding involving issues of custody, guardianship, access, division of property and child and spousal maintenance. Lawyer W represented the petitioner, Mrs. B.

The matter went to trial on January 9, 1997. The judge granted the divorce and decided the issues of custody, guardianship and access. Claims for property division and spousal maintenance were adjourned generally. Lawyer W prepared the draft order and sent it to Ms. Dunnaway, asking that she insert wording for that part of the court order respecting access.

Ms. Dunnaway sent back a revised order on March 26. Lawyer W reviewed and further revised the order for clarification, not to change the substance of what was drafted. He sent this revised draft to Ms. Dunnaway on April 9.

A Rule 18A application respecting property division and maintenance was set for

September 5, 1997. At that hearing, the judge asked Ms. Dunnaway about entry of the January 9, 1997 order. Ms. Dunnaway advised the court that she would attend to the entry of that order, but she did not do so. Lawyer W subsequently set an appointment to settle the order (and some other orders) for October 22. On that same day, Ms. Dunnaway approved the form of order that lawyer W had earlier sent to her on April 9.

Ms. Dunnaway delayed in finalizing and entering the order because her client wished to add to the order and would not consent to its terms. Ms. Dunnaway allowed the client's comments to interfere with her duty to have orders approved and entered with reasonable promptitude. It was her responsibility to have the order entered or, if she had legitimate concerns about the form of order, to raise them with lawyer W and take the matter back to court. She alerted neither lawyer W nor the court to any problems and she owed each a duty to be more forthright.

Breach of undertaking

On October 2, 1997 the court gave judgment on the determination and division of family assets and on child and spousal maintenance. The court ordered, among other things, that the sum of \$13,869.23 being held by Ms. Dunnaway in her trust account be paid out for the benefit of Mrs. B. This money was being held by Ms. Dunnaway in trust on her undertaking to "hold such proceeds in trust pending agreement or further court order."

Lawyer W sent Ms. Dunnaway a draft order on October 8 and the lawyers exchanged correspondence respecting certain terms in the order (not the term requiring the payment out of trust). On October 23 lawyer W wrote to Ms. Dunnaway to request that she pay out the money, but Ms. Dunnaway refused. Lawyer W told Ms. Dunnaway that the court order was effective from the date of pronouncement, and Ms. Dunnaway stated that she would require an entered order to release the money and refused to release the money. The order was entered on December 10 and received back by Ms. Dunnaway on December 11. Ms. Dunnaway paid out the \$13,869.23 that day.

As Ms. Dunnaway was an experienced lawyer, the panel did not believe her explanation that, at the time of these events, she thought an order became effective only after being entered.

Decision

Ms. Dunnaway's conduct in unreasonably delaying the entry of a court order constituted professional misconduct. Her breach of undertaking, contrary to Chapter 11, Rule 7(b) of the *Professional Conduct Handbook*, also constituted professional misconduct.

Penalty

The panel noted that Ms. Dunnaway failed to pay out funds in accordance with a court order and thereby deliberately breached an undertaking, which is one of the cornerstones of practice as a lawyer.

She also failed to enter an order promptly, delaying over eight months, and she delayed a further six weeks after advising the court she would attend to entering the order. Prior to this incident, Ms. Dunnaway had been cautioned in two conduct reviews about the requirement to enter orders promptly. Her behavior must be seen as more reprehensible than a simple failure to enter an order promptly and is nearly as serious as the breach of undertaking.

The panel also took note of letters from judges, lawyers, professionals, employees and friends on Ms. Dunnaway's behalf. Those references attested to her technical skills, her compassion, her professional behaviour and the responsibility she had shown to her family, friends, peers and community, as well as the fact that this instance of misconduct was not characteristic in their view.

The panel noted that a reprimand was not sufficient in the circumstances. A very substantial fine would create an undue financial hardship on Ms. Dunnaway and her family, without providing the necessary degree of deterrence to her or others.

There were arguments from both the member and the Law Society on the issue of costs. In the special circumstances of this case, the amount of the costs was substantially reduced.

The panel ordered that Ms. Dunnaway:

1. be suspended for one week prior to March 31, 2001 on a date to be agreed on by counsel (*counsel later agreed that the one-week suspension would begin on December 22, 2000*);
2. pay \$1,100 towards costs of the discipline proceedings by January 31, 2001.

Discipline Case Digest — 2001: No. 03 January (Dunnaway)