

Threatening to report another lawyer, failing to respond to Law Society

JOHN ALLAN DAVIES

Salt Spring Island, B.C.

Called to the Bar: December 10, 1993

Complaint from opposing counsel

Mr. Davies wrote two separate letters on July 15, 1996 to opposing counsel in a family law matter.

In his first letter, Mr. Davies wrote:

Unless I receive by 4:00 p m. Friday, July 19, 1996, a satisfactory explanation from you of this lapse in communications, I am instructed by [my client] to file a complaint of misconduct to the Law Society of British Columbia.

In his second letter, Mr. Davies wrote:

Unless I receive by 4:00 p m. Friday, July 19, 1996, a satisfactory explanation from you of the circumstances of urgency that mandated this otherwise apparently willful and deliberate misuse of court process, I am instructed by [my client] to file a complaint of misconduct to the Law Society of British Columbia.

The lawyer receiving these letters took issue with the characterization of his conduct, and referred the letters to the Law Society.

On August 9, 1996 a Law Society staff lawyer wrote to Mr. Davies requesting his explanation of the letters he wrote to opposing counsel. The Law Society sent reminder letters to Mr. Davies on September 9 and 26 and called his office on October 7. Mr. Davies said he had a busy court appearance schedule but would reply the next day.

On October 8 Mr. Davies wrote to the Law Society but did not provide a substantive response. The Law Society staff lawyer wrote again on October 18, referring Mr. Davies to Chapter 11, Rule 15 of the *Professional Conduct Handbook* which states that “a lawyer shall not threaten to report another lawyer’s past illegal or unprofessional conduct to the Law Society.”

The Law Society sent reminder letters on November 13, December 2 and December 17, 1996. On April 3, 1997 Mr. Davies provided a response to the Law Society and acknowledged that he had breached the *Handbook*.

Complaint by represented party to a transaction

In another matter, a Law Society staff lawyer wrote to Mr. Davies on November 19, 1996 to seek his explanation of a complaint. The complaint was made by a party not represented by Mr. Davies.

Mr. Davies copied the Law Society with a letter he had written to the complainant’s lawyer on November 14, but he did not respond to the Society’s request for an explanation. The Society sent reminder letters on December 20, 1996 and January 9, 1997.

On April 3, 1997 Mr. Davies explained to the Society his involvement in the matter that was at issue in the complaint. On July 21, 1997 a Law Society staff lawyer concluded there was no professional misconduct on the part of Mr. Davies and accordingly advised the complainant.

Cancelling a practice review

On September 5, 1996 the Law Society Competency Committee ordered that Mr. Davies undergo a practice review. A staff lawyer in the Competency Department wrote to Mr. Davies on September 11 to notify him of the Committee’s decision, explain the practice review process and request that that he identify dates he would be available in October or November, 1996.

Mr. Davies did not provide dates until the Law Society Secretary followed up with him on December 9, 1996. Mr. Davies then agreed to schedule the review for February 7, 1997. Two days before the review, Mr. Davies wrote to say he was unable to participate and, as a result, the review was cancelled.

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On February 6, 1997 the Discipline Committee ordered a hearing to determine whether to suspend Mr. Davies or place conditions on his practice pending disposition of a citation against him. On March 24, 1997 the Committee adjourned the hearing generally on Mr. Davies' undertakings to respond to the two outstanding complaints, noted above, by April 4 and to undergo a practice review on or before May 6, 1997.

Mr. Davies did respond to the complaints on April 3 and he underwent a practice review on May 6, 1997.

On February 5, 1998, Mr. Davies admitted to the Discipline Committee that he was guilty of professional misconduct in:

- sending letters to a lawyer in which he threatened to report that lawyer's alleged misconduct to the Law Society, contrary to Chapter 11, Rule 15 of the *Professional Conduct Handbook*;
- failing to reply promptly to correspondence from the Law Society respecting two complaints; and
- failing to allow a scheduled practice review to proceed.

Mr. Davies also agreed to pay \$3,200 toward costs of the discipline proceedings, within 18 months.

The Discipline Committee accepted Mr. Davies admission of a discipline violation under Law Society Rule 468, rescinded the citation outstanding against him and directed that the admission be endorsed on his professional conduct record.

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