

Vancouver, B.C.

Called to the Bar: November 17, 1989

Discipline hearing panel: March 19, 1999

Richard Gibbs, Chair, Gary Somers, Q.C. and James MacIntyre, Q.C.

Jeffrey Scouten, for the Law Society

Mark Skorah, for Ms. Boles

Hearing report indexed as [1999] LSBC 14

Summary

Ms. Boles failed to promptly pay two invoices relating to a client's case and thereby breached her duty to meet financial obligations incurred in the course of practice. In a family law case, she failed to take reasonable steps to safeguard her client's interests in relation to a court order made against him and failed to provide candid and timely reports to the client on the status of his case, thereby breaching her obligation to serve him in a conscientious, diligent and efficient manner. In another family case, Ms. Boles misinformed the court that a report was in preparation when it was not. She did not make this statement with an intent to mislead, but did so overconfidently and without first taking due care to review her file. Ms. Boles failed to reply reasonably promptly to correspondence received from opposing counsel and, in two matters in which the Law Society had requested her response to a complaint, she failed to reply promptly to the Society. She admitted that her conduct constituted professional misconduct. The discipline hearing panel accepted her admission and proposed disciplinary action. It ordered that she be reprimanded in respect of misinforming the court, and be fined \$5,000 in respect of her other misconduct. Noting that the focus of the penalty should be rehabilitative in this case, the panel also ordered that Ms. Boles enter into a practice supervision agreement and undertake to cooperate with recommendations or directions of the Practice Standards Committee. She was ordered to pay costs.

Facts

Failing to meet financial obligations

On January 12 and 19, 1996 the Ministry of Attorney General sent Ms. Boles invoices for \$450 and \$350 for hearing fees. She did not pay these and, after sustaining injuries in a car accident on January 24, she missed work, which interfered to a degree with her ability to meet her client obligations.

The Ministry wrote to Ms. Boles on March 5 to request immediate payment and left telephone messages for her in April and May, 1996. The Ministry again wrote to demand payment on July 16 and copied the letter to the Law Society. Ms. Boles did not respond to the correspondence or messages. The Law Society wrote to Ms. Boles several times between August and September requesting a response. On September 30, 1996 Ms. Boles paid the Ministry invoices and confirmed to the Society that she had done so.

In another matter, while representing the plaintiff in a personal injury case, Ms. Boles retained a vocational rehabilitation consulting firm to prepare a report. The firm sent six invoices totalling \$4,349.55 between April 30 and August 30, 1996. Between July 18 and October 16, the firm sent Ms. Boles five reminders about outstanding invoices. On October 18, the firm made a complaint to the Law Society.

During this time, Ms. Boles was taking steps to assess party and party costs, including those relating to the consulting firm's accounts, but the hearing was adjourned repeatedly. She advised the consulting firm that the matter was set for October 25 and that she expected payment soon after. That hearing was further adjourned. On October 28 Ms. Boles contacted the Law Society for practice advice about the consulting firm's accounts which the opposing side was disputing. She was told it was a civil matter between her and the expert and that she could look for the expert to prove the value of the account, but otherwise she had retained the expert and had the liability. Ms. Boles thought from this conversation that she had been advised not to pay the outstanding accounts until the dispute was resolved.

On October 30, 1996 the Law Society complaints department wrote to Ms. Boles requesting her explanation of the complaint made by the consulting firm. On November 4 Ms. Boles replied that her office had a number of telephone discussions with the firm asking them to defend their account, but had not received a response. Ms. Boles wrote to the Law Society on January 7, 1997 stating that her failure to recover the consulting firm's disbursement from the opposing party "may be as a result of [the firm's] refusal to provide the information requested ..." This was an incorrect statement as the only time Ms. Boles' staff had requested information from the consulting firm was the previous day (January 6), and the firm had promptly responded.

Ms. Boles paid the consulting firm's accounts in full on February 27, 1997.

Failing to serve a client in a conscientious and diligent fashion

In December, 1995 Ms. Boles represented Mr. M in defending an action brought under the *Family Relations Act* by his former wife from whom he had been divorced for many years. His former wife sought custody of their teenage son and increased interim child maintenance.

Ms. Boles filed an affidavit for Mr. M to oppose the application. Ms. Boles took the position in discussions with opposing counsel and in her submissions to the court that the action was procedurally misconceived and ought to have been brought under the *Divorce*

Act, not the *Family Relations Act*. In court on December 13 she sought and obtained an adjournment to January 10, 1996. Opposing counsel wrote to say that, to avoid the procedural dispute, he was prepared to issue a petition under the *Divorce Act* and expected Ms. Boles' consent to use material already filed. Ms. Boles left on vacation the next day and did not return until January 4 or 5, 1996.

Ms. Boles did not contact Mr. M to advise him of the outcome of the December 13 hearing and did not return his telephone messages enquiring about the status of the matter.

Ms. Boles and opposing counsel did not communicate about the January 10, 1996 court date. On January 10 opposing counsel appeared in chambers and obtained an order in Ms. Boles' absence that Mr. M pay interim support of \$300 a month. He faxed information about the order to Ms. Boles on January 12.

After Mr. M heard from his former wife that Ms. Boles had not appeared in court, he called her on January 12. Ms. Boles told him she did not know what happened in court but would obtain the clerk's notes to find out. Between January 15 and 23 Mr. M left several messages to receive an update, but Ms. Boles did not reply. On January 30 Ms. Boles' staff sent Mr. M several documents at his request, including the January 10 court order. The staff also advised Mr. M that Ms. Boles had been in a car accident on January 24.

On January 31, Mr. M faxed Ms. Boles a letter with several questions about the court order. While Mr. M was waiting to hear back, his former wife served a garnishing order after judgment. Mr. M faxed and called Ms. Boles urgently requesting a response, but she did not respond. He complained to the Law Society on February 6.

Misinforming the court through lack of due care

In 1995 Ms. Boles represented Ms. D in a matrimonial dispute with Mr. D, primarily respecting custody of their daughter. Ms. D had three other children from a prior marriage and was involved in legal proceedings relating to that marriage as well.

Mr. D sought an order for a custody and access report under section 15 of the *Family Relations Act*. Ms. Boles advised a Supreme Court judge that there was already a section 15 report in preparation in relation to the prior matrimonial proceeding. She expressed the view that "these children are being assessed to death." In fact, the report ordered in the prior matrimonial proceeding was limited to determining where the eldest child wished to live. Although Ms. Boles believed her statement about the report was true, it was not. She did not intend to mislead the court, but she did not exercise proper care in reviewing her file.

Failing to respond promptly to the Law Society and another lawyer

While representing Ms. D in her prior matrimonial proceeding in 1995, Ms. Boles received a letter from opposing counsel stating that he understood the clients had settled

the matter between themselves. He wished confirmation of this as soon as possible. If there was no settlement, opposing counsel wished to schedule a hearing. He wrote to Ms. Boles six times between June 28 and October 25, 1995. His client complained to the Law Society in January, 1996 about Ms. Boles' failure to respond.

On this complaint and on another, Ms. Boles also failed to reply promptly to Law Society correspondence requesting her explanation.

* * *

After issuance of a citation, Ms. Boles agreed to undergo a practice review. The review took place in August, 1997 and the reviewers issued a report in October that raised several concerns relating to her fitness to practise.

Decision

Ms. Boles admitted to professional misconduct in:

- failing to pay financial obligations incurred in the course of her practice (contrary to Chapter 2, Rule 2 of the *Professional Conduct Handbook*);
- failing to safeguard a client's interests in relation to a court order against him and failing to respond to that client's repeated enquiries (contrary to her duty to serve her client in a conscientious, diligent and efficient manner under Chapter 3, Rule 3 of the *Handbook*);
- misinforming the court through lack of due care;
- failing to respond promptly to the Law Society (contrary to Chapter 13, Rule 3 of the *Handbook*);
- failing to respond promptly to opposing counsel (contrary to Chapter 11, Rule 6 of the *Handbook*).

Ms. Boles' admission was accepted pursuant to Rule 4-22 by the Discipline Committee and the discipline hearing panel.

Penalty

The hearing panel expressed concern that Ms. Boles had undergone a conduct review in 1994 for similar conduct in failing to pay the accounts of a creditor of her practice. The panel noted that her conduct in the current matter related to both discipline and competency. She was a capable advocate and, in the circumstances, it was in the best interests of the public and in her best interest that the focus of the disciplinary action be rehabilitative. The panel, however, expressed doubt that rehabilitation could be the focus if the misconduct recurred.

The panel accepted Ms. Boles' proposed disciplinary action and ordered that she:

1. be reprimanded for her conduct in misinforming the court;
2. pay a \$5,000 fine by April 1, 1999 for her other misconduct;
3. enter into a practice supervision agreement with a lawyer acceptable to the Discipline Committee and undertake to abide by the terms of that agreement until relieved of doing so by the Committee;
4. undertake to cooperate with the Practice Standards Committee in complying with any recommendations or directions it may make in the future with regard to her practice;
5. pay costs of the hearing by December 31, 1999.

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