

North Vancouver, B.C.

Called to the Bar: May 14, 1976

Discipline hearing panel: March 6, 1996 and May 31, 1997

W.T. Wilson, Q.C., Chair, D.W. Gibbons, Q.C. and K. Jensen

G.A. Cuttler, for the Law Society

E.D. Crossin, for Mr. Martin

Summary

Mr. Martin wrongfully converted a total of \$1,177.30 held in trust for clients by preparing false bills for legal services or disbursements and then transferring the money from his trust account to his general account. On a number of occasions, Mr. Martin misled clients and other people by making false statements and failing to advise them about the position of legal matters entrusted to him. He also failed to reply properly to communications from clients and another lawyer. On one matter, he agreed to a court order on behalf of his client without first obtaining her instructions.

Facts

Wrongful conversion of trust money

In mid-1993, Mr. Martin wrote to five clients advising that he retained money in his trust account for them, and he sent them cheques for \$500, \$500, \$56, \$90.30 and \$31 respectively to pay this money back. In each case, the letter and cheque were returned to his office as undelivered by the post office, and he formally cancelled each cheque. He then prepared bills of \$500 each for two of the clients for legal services rendered, and bills for the other three clients for disbursements of \$119.60, \$90.30 and \$31. He subsequently transferred all these sums from his trust account to his general account. Mr. Martin did not render the legal services or incur the disbursements referred to in the bill. He falsified these bills and wrongfully converted the money.

Misleading clients

On a number of occasions, Mr. Martin misled clients and other people by failing to advise them candidly about the position of their legal matters, and he failed to reply properly to communications from them or their lawyers:

- **Client B** — In September, 1992 Mr. Martin was retained to enforce for B an interim maintenance order made in the United States. Mr. Martin set and then adjourned a hearing date in mid-1993. He told B that the hearing would definitely take place in August, 1993. He told her in August that the matter had been heard and that the judge decided to disregard the U.S. court order and had awarded B alimony. When B requested a copy of the judgment, Mr. Martin said he did not yet have copy but would send her one in two weeks. Mr. Martin knew these statements were false and that there was no basis for them. He then lied to B's son by saying he had obtained a judgment and by saying several times in late 1993 that a cheque would be sent, or had been sent, to B.
- **Client R** — In 1988 Mr. Martin began representing R to enforce the terms of a divorce order and obtain her settlement. From late 1989 through 1993 R contacted Mr. Martin frequently on the status of her file. Mr. Martin continually informed her that the settlement funds would be forthcoming. These statements were misleading. He told R's psychiatrist who called on her behalf that K's cheque was in the mail, although he knew this statement was false and there was no basis for making it.
- **Client F** — In late 1987 Mr. Martin represented F in obtaining a court order for maintenance. In June, 1988 he wrote to the Reciprocal Enforcement Program to request registration and enforcement of the order. F enquired regularly on the status of her maintenance payments and Mr. Martin provided various

explanations for the delay. In 1991 Mr. Martin told F a number of times that the cheque was in the mail. These statements were misleading.

- **Client M** — Mr. Martin served as a child advocate in an application for access by the child's father (M). In the Spring of 1992 litigation between the mother and father settled. Under the settlement Mr. Martin agreed to visit the child four times a year and give reports to counsel for the mother and father. In the two years following the agreement, Mr. Martin prepared only one report and thereby breached the agreement. M attempted to contact Mr. Martin on numerous occasions, but Mr. Martin did not reply. M did make contact on one occasion in late 1992, and Mr. Martin said that he would visit the child in January, 1993, but he did not. Mr. Martin did not respond to communications from M's lawyer or his requests for a report.
- **Client KF** — Mr. Martin was retained in June, 1992 to assist KF to obtain a variation order for child maintenance. KF instructed him to ascertain the financial situation of the child's mother. KF called Mr. Martin several times before the scheduled hearing date on July 13, but Mr. Martin did not return the calls. KF was unsuccessful on the application and Mr. Martin said he would immediately file an appeal. KF called the office numerous times over the next week, but Mr. Martin did not return the calls. When KF made contact and asked for the appeal to be filed, Mr. Martin said he would do that and call the client three days later, but he did not. His office later filed the appeal.
- **Client JM** — In September, 1993 Mr. Martin obtained a provisional order for the support of JM's child. He told JM that he would forward the documentation to Ontario for confirmation of the order. JM tried to contact Mr. Martin on numerous occasions but was told by staff that he was out of the office. He never returned JM's messages.

Failing to obtain instructions

On another file, Mr. Martin consented to a car being moved and stored pending disposition of a matrimonial proceeding, although he did not have his client's instruction to do so.

Decision

The hearing panel found, and Mr. Martin admitted, that his conduct constituted professional misconduct.

Penalty

The panel reviewed past discipline decisions and authorities in considering the appropriate penalty.

The panel also considered that Mr. Martin at the time of these events had a heavy workload and was suffering a breakdown in his marriage which resulted in a separation from his wife and six children.

In a letter put before the panel, a judge spoke highly of Mr. Martin and said that his representation of clients was highly professional and that he carried out his work in accordance with the highest standards of the bar in an area of law, family law, that is difficult and stressful for lawyers. The letter stated:

“... it is clear that Mr. Martin fully acknowledges that what he did was wrong and he is remorseful. Although I consider his conduct to be completely out of character, his willingness to admit his wrongdoing and to show remorse is what I would have expected of him.”

Having considered all these matters, the panel ordered that Mr. Martin:

1. be suspended for two months;
2. pay a \$10,000 fine, payable over 24 months commencing two months after his return to practice;
3. pay costs of the discipline proceedings, payable over 24 months commencing two months after his return to practice;
4. implement the recommendations of a 1996 practice review;
5. undergo a further practice review, at the discretion of the Competency Committee, in October, 1998 (toward which he will pay a maximum of \$2,500).

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