

Vancouver, B.C.

Called to the Bar: September 13, 1983

Discipline hearing panel: May 3, 1993

J.M. MacIntyre, Q.C., N. MacDonald and R. Tretiak

Counsel for the Law Society: R. McFee

The member acting on his own behalf

Summary

While acting for a client in a dispute, the member professionally misconducted himself by communicating directly with the opposing party who was represented by another lawyer.

Facts

In February, 1992 the member began acting for Ms. P who was in a dispute with a mobile-home park company, which was represented by another lawyer. The company then held an order for possession of Ms. P's mobile home; Ms. P in turn claimed money from the company for damage to her home. The member passed this matter to his articulated student to institute a residential tenancy arbitration.

The mobile-home park company and Ms. P later entered into an agreement whereby Ms. P could leave her mobile home on the rental pad for six months in order to sell it. Anticipating that the sale might not occur, the landlord instructed bailiffs to serve Ms. P with a notice of eviction on September 1, 1992, at the end of the six-month period. By mid-August Ms. P had a possible purchaser for the home, but she needed the company's approval for the sale under the terms of their agreement.

The member called the company's lawyer on Ms. P's behalf on August 17 and learned the lawyer was on vacation until August 24. The member did not inquire about who was handling the lawyer's files in his absence. The lawyer had in fact asked another lawyer who shared office space to look after his clients.

That same day the member tried to call the principal of the company directly, and he left messages at three different telephone numbers, requesting a return call. When the principal returned the call, the member read a letter he had drafted asking that the company consent to the sale of Ms. P's mobile home. He did not ask whether the company was being represented by another lawyer.

Decision

The member professionally misconducted himself by breaching Ruling D/1 (a)¹ of the *Professional Conduct Handbook* which then read:

A member shall not communicate upon or attempt to negotiate or compromise a matter directly with any party who the member knows is represented therein by a lawyer, except through or with the consent of the lawyer.

The member was aware or should have been aware that there was a continuing conflict between Ms. P and the company over the company's efforts to remove her mobile home. The member also knew or should have known that the company was represented by a lawyer on the matter. After the member ascertained that the company's lawyer was away, the only appropriate question he could ask the principal was who was the lawyer taking over representation of the company. The member did not take that step, but proceeded to communicate directly with the principal on the legal matter.

Penalty

The hearing panel recognized that the member was dealing with a difficult and unremunerative client, and that he was also under the pressure of a deadline. If this had been the first instance of misconduct by the member, a reprimand might have been a sufficient penalty. But the panel had concern from the member's

discipline record and the circumstances of this case that he had a pattern of poor judgment followed by self-justification. With attention to the well-known rule against contacting clients directly, he could have avoided this problem entirely.

The panel accordingly ordered that the member:

1. be reprimanded;
2. pay a fine of \$500 by December 31, 1993; and
3. pay costs of the discipline proceeding not to exceed \$1,500 by December 31, 1993.

¹ See Chapter 8, Rule 11 of the *Professional Conduct Handbook* as revised May 1, 1993. The Rule now reads:

A lawyer shall not approach or deal with an opposing party or with a potential witness in those proceedings who is represented by another lawyer, except through and with the consent of that party's or witness's counsel.

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