

Garibaldi Highlands, B.C.
Called to the Bar May 10, 1984

Discipline Hearing Committees: September 16, 1991: D.A. Silversides, Q.C. as a one-Bencher panel
April 22, 1992: G.D. Burnyeat, Chair, K. Antifaev, Q.C. and N. MacDonald

Summary

The member failed to respond promptly to Law Society correspondence in relation to two different complaints, and in one instance he delayed taking steps on a custody application for a client.

Failure to respond to Law Society

Facts

On November 13, 1990 the Law Society wrote to the member requesting his explanation of a client's complaint that he delayed in concluding a personal injury settlement. The Society wrote again on December 6 asking for a response to the previous letter.

The member replied on December 21 stating he had not received the November 13 letter. On December 31, 1990 the Society sent another copy of the letter to the member, and asked for an early response. The Society sent follow-up letters on January 16 and February 1, 1991. On February 11 the member telephoned to say that he would have a response to the Society by the end of the week, but he then failed to do so.

On February 28, 1991, the Standing Discipline Committee considered the member's failure to respond and called for a review of the client file relating to the original complaint. In April the Society received the client's authorization, and subsequently conducted a review of the client file.

On May 6 the Law Society wrote asking for a response to the settlement complaint by May 27. The member telephoned the Society on May 29 stating he had just received the May 6 letter. He promised to respond by the end of the week, but he failed to do so. The member was cited on July 15, 1991.

On August 28 the member wrote to the Society explaining that he had not responded because the complaint caused him great internal turmoil and stress, and his attempt to respond heightened that stress level. He provided no response on the substance of the complaint prior to his discipline hearing.

Verdict

The Discipline Hearing Committee of September 16, 1991 found that the member had professionally misconducted himself in failing to respond to the Law Society in relation to the settlement complaint.

Penalty

The Committee ordered that the member:

1. pay a fine of \$1,500 by December 31, 1991;
2. pay costs of the hearing by December 31, 1991;
3. be permitted to continue in practice only on the condition that he:
 - (a) respond in writing to the settlement complaint no later than October 21, 1991;
 - (b) undergo and complete a program of psychiatric counselling for procrastination, at his own expense, with a psychiatrist acceptable to the Law Society;
 - (c) authorize status reports on his treatment to be provided to the Law Society upon request;
and

- (d) continue in counselling until relieved of the condition by the Chairperson of the Standing Discipline Committee.

Delay on client file and failure to respond

Facts

The member, who began representing another client on a custody variation application in September, 1989, failed to return telephone calls from the client until February, 1990 and failed to take steps on the file until March, 1990.

The Law Society wrote to the member on March 29, 1990 seeking his explanation, and sent reminder letters on April 20 and May 9. The member responded on May 22, noting that the client's concerns and her complaint had been resolved.

When the Society contacted the client in June, she said the member had given her assurances he would begin proceedings on her file, although she had no confirmation of this. At the same time the Society wrote to the member for an explanation of how the client's concerns had been resolved, and sent follow-up letters on June 22 and July 23. He responded on August 15, stating he was responsible for much of the delay on the client's file, resulting from his busy practice schedule.

On April 4, 1991 the member underwent a conduct review. The conduct review subcommittee and the member exchanged further correspondence in connection with both complaints.

The member was subsequently cited on November 20, 1991.

Admissions and penalty

The member made an admission pursuant to Rule 469 that his delay on his client's custody variation application, and his failure to respond promptly to Law Society correspondence, constituted professional misconduct.

The Standing Discipline Committee and the Discipline Hearing Committee considered that the member had already been disciplined for another complaint arising in the same time period, and that his delay on both complaints was partly related the pressures of beginning his own practice. In addition, the Committee took account of the fact the member was in counselling to address his difficulties.

The Committee accepted the penalty proposed by the member, and ordered that he:

1. be reprimanded;
2. pay costs of the hearing by May 1, 1992;
3. submit to a review of his practice by the Competency Committee, and undergo any remedial program recommended by that Committee at his own cost.

J. Whittow, for the Law Society
The member, on his own behalf