

No. 03/25

David Michael Ashton

Victoria, BC

Called to the Bar: May 10, 1984

Suspended pending hearing: January 24, 2003

Discipline hearing: May 30 and July 4, 2003

Panel: G. Ronald Toews, QC, Chair, Dr. Maellor Vallance and Gerald J. Kambeitz, QC

Reports issued: June 2 and November 4, 2003; indexed as [2003] LSBC 23

Counsel: Todd R. Follett, for the Law Society and Michael M. Ranspot, for Mr. Ashton

Summary

Mr. Ashton failed to serve a client in a conscientious, diligent and efficient manner in that he did not do the work at hand promptly, did not keep the client reasonably informed about her file and did not respond to communications from her that required a reply. After the client complained to the Law Society, Mr. Ashton failed to respond to Law Society communications about the complaint. He also failed to respond to Law Society communications respecting reported exceptions on his 2001 Form 47 accountant's report. As a condition of practice pending his discipline hearing, Mr. Ashton had come under a practice supervision agreement in November, 2002, but then failed to comply with certain terms of that agreement. The hearing panel found that Mr. Ashton's conduct constituted professional misconduct and ordered that he be reprimanded and pay costs of \$11,240.94. The panel also ordered that, upon his return to practice, Mr. Ashton continue to be permitted to practise only as a partner or employee of a lawyer acceptable to the Law Society and that his practice also be supervised by another lawyer, under a practice supervision agreement approved by the Society.

Facts

In November, 2000 Mr. Ashton began acting for Ms. G on an uncontested divorce. He did not complete the divorce until July, 2002. Some of the delay was caused by difficulty in serving documents on Ms. G's spouse, but Mr. Ashton himself delayed the matter at least a year by failing to do promptly the work at hand.

Mr. Ashton moved his office in mid- 2001. Ms. G attempted to contact him by telephone and email, but he did not reply to her communications until after she made a complaint to the Law Society in March, 2002 and after the Society had asked for an explanation of his conduct.

In the course of reviewing Ms. G's complaint, the Law Society wrote to Mr. Ashton on June 6, June 24 and July 4, 2002, but he did not respond to these communications until July 29 when he authorized that a praecipe be sent to the Society.

In June, 2002 Mr. Ashton filed his Form 47 accountant's report for the period ending January 31, 2001. Law Society staff wrote to Mr. Ashton on June 24, July 16 and August 7, requesting his written response to certain exceptions in the report. Mr. Ashton did not respond.

The Discipline Committee authorized a citation against Mr. Ashton on October 3, 2002. On October 29, 2002 Mr. Ashton appeared before three Benchers to determine if he should be suspended or have conditions placed on his practice pending disposition of the citation. The three Benchers ordered that Mr. Ashton be permitted to practise past November 8, 2002 only if supervised by another lawyer under a practice supervision agreement acceptable to the Law Society.

Mr. Ashton entered into a practice supervision agreement acceptable to the Society on November 8. Mr. Ashton breached the supervision agreement by failing to provide the required details of his list of open files and by failing to meet with his supervisor every two weeks as required.

In early January, 2003 the lawyer supervising Mr. Ashton's practice advised the Law Society that he intended to resign as practice supervisor because of Mr. Ashton's lack of cooperation. He accordingly notified Mr. Ashton that he would resign as his supervisor in 30 days.

On January 24, 2003 Mr. Ashton was suspended by three Benchers pending the outcome of the discipline hearing.

Verdict

The hearing panel found, and Mr. Ashton admitted, that he was guilty of professional misconduct in:

- failing to serve a client in a conscientious, diligent and efficient manner by not doing the work at hand for her promptly, not keeping her reasonably informed of the progress of her file and not responding to her communications on matters that required a reply;
- failing to respond promptly to Law Society communications respecting a complaint against him;
- failing to respond promptly to Law Society communications respecting reported exceptions on his 2001 Form 47 accountant's report; and
- breaching certain terms of a practice supervision agreement.

Penalty

The hearing panel noted that the facts of this case disclosed a serious and consistent pattern by Mr. Ashton of failing to observe his professional duties to a client and to the Law Society. These failings were attributable to procrastination.

The panel noted that, since a discipline hearing in 1990, Mr. Ashton had been under a practice condition requiring that he practise only as a partner or employee of another lawyer. He had not been relieved of that condition other than for brief periods to make alternate arrangements.

The panel noted that Mr. Ashton and his family faced difficult financial circumstances. The panel also considered medical evidence, including an opinion that Mr. Ashton had personality patterns that were self-defeating and had given rise to problems professionally.

Law Society counsel, taking into account the impact of Mr. Ashton's interim suspension, did not seek imposition of a suspension or a fine.

The panel found it appropriate that Mr. Ashton remain under the condition to practise as a partner or employee of another lawyer and that this condition be clarified to ensure that any such supervisor not reside out of the province.

The panel ordered that Mr. Ashton:

1. be reprimanded;
2. pay \$11,240.94 as costs of the hearing, payable in monthly instalments of \$350, commencing March 1, 2004;
3. prior to returning to practice, enter into a practice supervision agreement that is acceptable to the Law Society with a supervising lawyer who is acceptable to the Law Society; and
4. practise only as a partner or employee of another lawyer who is in full-time practice in BC and is acceptable to the Law Society.