

Prince George, B.C.

Called to the Bar: June 29, 1972

Discipline Hearing Panel: December 8, 1992

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

J. Whittow, for the Law Society

R. Gibbs, for the member

Summary

The member admitted that he professionally misconducted himself in taking no steps on a plaintiff litigation file from July, 1982 until late 1987, and in assuring the client throughout this time that the matter would be proceeding. He also misconducted himself when he lied to the defendants' solicitor to justify an adjournment of a hearing of the defendants' application to dismiss the same case for want of prosecution.

Facts

The member was retained by Mrs. H in June, 1981 to assume conduct of her action for recovery on four insurance policies. He filed a Notice of Intention to Proceed on July 2, 1981 and then took no further steps.

From early 1982 until January, 1988, both Mrs. H and her husband frequently telephoned the member to inquire about the progress of the case. Each time the member assured them that the matter would be proceeding.

On November 20, 1987 the defendant insurance companies filed a Notice of Motion seeking to dismiss the action for want of prosecution. Although he had telephone conversations with the plaintiff's husband in November and December, 1987, and January, 1988, the member never mentioned the dismissal application. The client was not informed of the application until February, 1988.

In a letter written December 10, 1987, the member told the defendants' solicitor a number of lies to justify adjourning the application for dismissal. He indicated that he had contacted his client, and had instructions to oppose the application, but that the client was not at that time available to swear the affidavit. These statements were untrue. The defendants' lawyer relied on this letter and consented to an adjournment.

The member turned the client file over to another lawyer, who defeated the application to dismiss and prosecuted the case for the plaintiff. As a result of these events the member left his firm and temporarily withdrew from practice.

Admissions

The member admitted the events in 1988, and a citation was issued in 1989. Due to some delays in the Law Society investigation, the hearing took place in 1992. On September 16, 1992, the member admitted to the Discipline Committee that he had professionally misconducted himself.

Penalty

The Discipline Committee and the discipline hearing panel accepted the member's admission, and the panel on December 9, 1992 accordingly ordered that he:

1. pay a fine of \$5,000 by March 31, 1993;
2. pay the costs of the discipline proceedings of \$1,000 by March 31, 1993; and
3. undergo a practice review to be conducted under the direction of the Competency Committee, at his cost, and undergo any remedial program recommended by the Competency Committee as a result of the review, at his cost, to a maximum of \$1,000.

Discipline Case Digest — 1993: No. 1 March (Harrison)