

Failing to Prosecute Action

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Vancouver, B.C.

Called to the bar: October 1, 1955

In 1976 the member was retained by Mr. F and others to sue companies which had supplied allegedly faulty parts or recommended allegedly unsuitable parts for Mr. F's fishing boat.

The member issued a Writ of Summons in June, 1977 which he served on the defendant company in June, 1978. The member took no further action on the file until July, 1980 when his clients pressed for resolution of their claim. He at that time filed a Notice of Intention to Proceed and reported to this clients that he wished to arrange for discovery and trial dates.

The member did little more on the file although he knew that his clients believed the litigation was in progress and negotiations for settlement were underway. In fact there was no negotiations for settlement.

In January, 1986 Mr. F prepared to turn over conduct of the file to a new lawyer. He later agreed to allow the member to retain the file and to attempt a resolution by May 15. The member drafted a Statement of Claim which he submitted to his client on May 15. he did not file or serve the document.

In August, 1986 Mr. F and his family retained lawyer B. On September 12 B forwarded to the member Mr. F's written authorization to transfer the litigation file. A follow-up letter was sent on September 19.

The member subsequently contacted Mr. F directly, offering to pay him \$500 each month to a total of \$10,000.00 in advance of a recovery if Mr. F agreed to leave the file with him.

On October 8, 1986, B wrote to the member demanding transfer of the file within 10 days. The member asked for the written authorization of each plaintiff to the action. B delivered the authorizations, and the member released the file.

B's efforts in the litigation were cut short by the defendant's successful application to dismiss the action for want of prosecution. Mr. F and his family commenced an action against the member for professional negligence and obtained judgment for \$133,338.14 following a Supreme Court Rule 18A application. The member launched an appeal but the parties reached a settlement of \$124,000 including costs.

The Discipline Committee authorized a citation against the member on December 8, 1986. The member admitted that his conduct in:

- (a) failing to prosecute an action on behalf of his clients;
- (b) misleading his clients as to the progress of their action;
- (c) contacting one of his clients directly when he knew the client had retained new counsel; and
- (d) delaying the transfer of this file to the clients' new lawyer

constituted professional misconduct.

During the time of these incidents from 1980 until 1986, the member was suffering from extreme emotional stress in relation to a criminal investigation and prosecution against him. The member was acquitted of the criminal charges following a six-week trial.

As a condition of allowing the member to plead guilty pursuant to Chapter 7, Article 2.12 of the former Rules, the member agreed that he would allow his practice to be inspected at his expense by a lawyer chosen by the Law Society once every two weeks for two months and thereafter once every month, or at the discretion of the inspecting lawyer, once every two months until such time as relieved of this condition by the Discipline Committee. The member further agreed to pay the cost of the investigation in the amount of \$2,500 within one year.

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