

Danine Lorraine Geronazzo

Victoria, BC

Called to the Bar: September 8, 1998

Ceased membership: January 1, 2005

Discipline hearing: March 9-12, 2004 and January 18, 2005

Panel: David Zacks, Q.C., Chair, Joost Blom, Q.C. and Dirk Sigalet, Q.C.

Reports issued: August 12, 2004 (facts and verdict), indexed as 2004 LSBC 26, and April 4, 2005 (penalty), indexed as 2005 LSBC 12

Counsel: Gerald Cuttler and Sharna Searle, for the Law Society, and Christopher Hinkson, Q.C., for Ms. Geronazzo

Summary

Ms. Geronazzo attempted to mislead two law firms that employed her by misrepresenting to partners in those firms that she had performed specific work on client files when she had not. Ms. Geronazzo also attempted to mislead the Law Society by making misrepresentations during the Society's investigation of complaints against her brought by one of the law firms. The hearing panel found that Ms. Geronazzo's conduct amounted to professional misconduct. In determining penalty, the panel took into account that Ms. Geronazzo had gained no personal or monetary advantage from her misrepresentations and that, because of the responsible efforts of the law firms involved, none of the clients suffered. The panel also noted that Ms. Geronazzo had not renewed her membership in the Law Society for 2005. The panel ordered that she be suspended from practice until she can meet two conditions: 1) she must enter into a two-year practice supervision agreement approved by the Practice Standards Committee and thereafter be supervised by the Committee; and 2) she must certify that, for the two-year period of the practice supervision agreement, she will practise law only as an employee, associate or partner of two or more lawyers not related to her. Ms. Geronazzo was also ordered to pay costs of \$29,283.75.

Facts

Misleading her law firm as to work completed for clients

The Manitoba client

In June 1999, while an employed associate of a law firm, Ms. Geronazzo was asked to prepare a legal opinion and forward it to a client in Manitoba within two weeks. In early September, a partner (A) at the firm was preparing a report to the client and was unable to find the opinion that Ms. Geronazzo had been asked to prepare.

Ms. Geronazzo assured A she had completed the opinion and faxed it to the client in July, but she was unable to produce it and it could not be found in the firm's files or computer systems. The only computer document found was one file, labelled as a letter, which contained no text and had been created in August, 1999. Ms. Geronazzo suggested to A that a computer virus may have destroyed the document, but the only computer virus experienced by the firm had been removed four weeks before the date Ms. Geronazzo said she completed the opinion.

The law firm had no time entries from Ms. Geronazzo on this matter, no fax record of the opinion being sent to the client and no records of research done for the client at the time Ms. Geronazzo claimed she was working on the opinion.

The client advised the firm that it had not received the opinion.

The hearing panel concluded there was nothing in the firm's files to indicate Ms. Geronazzo had ever prepared the opinion, nor was there any credible explanation for the absence of the material from the firm files.

Client X

In October 1999, while an employee of the same law firm, Ms. Geronazzo advised another partner (B) that she had prepared a draft affidavit for client X and had faxed it to the client in April. She said she was having difficulty getting further information from a representative of the client. The law firm and the client reviewed their files, but were unable to find the draft affidavit; nor was it located on the firm's computer system.

The hearing panel found that Ms. Geronazzo had stated she had sent an affidavit to the client, but that she had not in fact done so.

Client Y

In November 1999, partner A was reviewing a file of client Y. The partner had asked Ms. Geronazzo to prepare submissions to the Workers' Compensation Board in April, but was unable to find a copy of the submissions or any correspondence from the WCB on the file.

A contacted the WCB and was informed that the submissions had not been received. When asked, Ms. Geronazzo told A that the submissions had been sent in September. She also told A that she had the submissions when she met with another client in November but did not have them now. In a subsequent memo, Ms. Geronazzo advised A that she suspected the other client had inadvertently picked up the submissions at a meeting. There was nothing in the law firm's files, computer systems or billing records to indicate Ms. Geronazzo had worked on the submissions or, if she did, that they had been sent to the WCB.

The panel found that the evidence overwhelmingly established that Ms. Geronazzo had not prepared the submissions and had attempted to mislead A on the matter.

Misleading the Law Society

In December 1999, the law firm in which Ms. Geronazzo worked as an associate terminated her employment.

The law firm complained to the Law Society about her conduct in these matters. When responding to the Law Society in relation to the investigation, Ms. Geronazzo attempted to mislead the Society by falsely representing that she had prepared and sent the various documents on behalf of clients when she had not.

Misleading another law firm

Ms. Geronazzo became an employed associate in another law firm in February 2000.

In November 2000, a partner (C) of the new firm asked Ms. Geronazzo to attend to the assessment of certain outstanding accounts and to obtain a certificate of judgment.

In January 2001, C asked for an update on the file. According to Ms. Geronazzo's notes in the file, she advised him of a proposed payment plan. C had no recollection of the conversation.

After additional delays, Ms. Geronazzo asked C to agree to a repayment plan with the debtor. She testified before the hearing panel that she prepared an appointment for a taxation of the matter and had it filed, but when she attended the taxation she discovered the matter had not been scheduled because the necessary fees had not been paid.

C followed up by email with Ms. Geronazzo on multiple occasions between April and July, 2001 to receive an update. When he obtained the file in July, he saw there were no documents relating to an appointment. Ms. Geronazzo at first said these documents were in her office and later said she could not find them.

The only evidence in the new law firm's file of an appointment for a taxation was a draft document that had a court registry number unrelated to any file of the firm and which was created in July 2001. The panel found that there was no evidence to substantiate Ms. Geronazzo's contention that she had prepared and filed an appointment for taxation, that she had served the clients, that she had attended the taxation or that the taxation had been adjourned.

Verdict

The hearing panel found that Ms. Geronazzo was guilty of professional misconduct in the following respects:

- attempting to mislead A, a partner in her law firm, by representing that she prepared and sent a legal opinion as requested by a client when she knew this to be untrue;
- attempting to mislead partner B in the firm by asserting that she had prepared an affidavit when she knew she had not done so;
- attempting to mislead A by representing that submissions had been sent to the WCB when she knew this to be untrue;
- attempting to mislead the Law Society in its investigation of complaints relating to these matters; and
- attempting to mislead C by representing that she had filed an appointment to tax the firm's accounts when she knew this was untrue.

On two other related issues, the hearing panel found the Law Society had not met the onus of proving Ms. Geronazzo attempted to mislead the Law Society or her law firm.

Penalty

The hearing panel noted that it had found significant misconduct on the part of Ms. Geronazzo that would result in a suspension or disbarment. In assessing penalty, the panel considered that the misrepresentations were, in relative terms, not serious in that Ms. Geronazzo gained no personal or monetary advantage and, through the responsible efforts of her employer law firms, no client suffered. Her misrepresentations, however, allowed her to gain some time and to avoid responsibility for her inaction.

The hearing panel said these considerations suggested a penalty toward the lower end of the scale, even though Ms. Geronazzo maintained she had been telling the truth and that the hearing panel was mistaken in its conclusions. The panel also noted that Ms. Geronazzo had not renewed her membership in the Law Society for 2005.

The panel ordered that Ms. Geronazzo:

1. be suspended from the practice of law until she meets the following two conditions:

(a) she must enter into a practice supervision agreement approved by the Practice Standards Committee, be under that agreement for two years and thereafter be supervised by the Committee; and

(b) she must certify that, for the two-year period of the practice supervision agreement, she will practise law only as an employee, associate or partner of two or more lawyers not related to her by blood or marriage (and not including an office-sharing arrangement);

2. pay \$29,283.75 as costs of the discipline proceedings.