

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

GRANT RANDOLPH CLAY

-and-

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

REASONS FOR DECISION

Mr. Rocky Kravetsky, Counsel for The Law Society of Manitoba

Mr. Gavin Wood, Counsel for Grant Randolph Clay

PANEL: Jacob P. Janzen, Chair

 Karen Webb

 Marston Grindey

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HEARING DATE: September 10, 2014

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REASONS FOR DECISION

Introduction

On September 10, 2014, Grant Randolph Clay entered an admission before this panel of the Discipline Committee to four counts of professional misconduct. The parties filed an agreed statement of facts, a book of agreed documents, and made a joint submission as to disposition.

The panel accepted the joint submission. In accordance with the terms of the joint submission, the panel on September 10, 2014 made an order (in summary) that:

- (a) Mr. Clay's practicing certificate be cancelled and a new one issued subject to the condition that for a period of 18 months he will not practice criminal law except under the supervision of a lawyer approved by the Society;
- (b) The terms of the supervision shall include that the supervisor will meet with the member monthly to review his criminal law files and ensure that the member informs all his criminal law clients that he is under supervision;
- (c) Mr. Clay shall within six months of disposition obtain and review the most recent Bar Admission Course or CPLED Criminal Law materials;
- (d) During each of the next two years, Mr. Clay will complete a total of 15 hours of Continuing Professional Development, of which six hours are to be in the area of criminal law;
- (e) Mr. Clay shall within three months complete a time management program set by the Society;
- (f) Mr. Clay shall pay \$15,000.00 as a contribution to the Society's costs (an amount which the panel gave him time to pay).

The panel advised that it would subsequently provide brief written reasons.

Facts

The panel received and entered as exhibits a Statement of Agreed Facts, and a Book of Agreed Documents. In the course of counsels' submissions, the panel also received information not contained in these exhibits. This further information was not contentious or in dispute.

Mr. Clay was called to the Manitoba Bar in June, 1974, and has been a member of the Society since. He has been a sole practitioner since 1995. His practice, as described by his counsel, is "extremely wide-ranging... a classical old style general service practice". Approximately one-third of his practice's billings is (perhaps more accurately, was) in the area of criminal law.

His discipline history consists of a guilty plea in October 1993 to one count of professional misconduct for breach of duty to other counsel for which he was reprimanded, and of a guilty plea in April 1997 to one count of professional misconduct for failure to serve his client in a conscientious manner, for which

he was also reprimanded. Counsel for the Society stated that this history was too old to have much bearing on the present disposition.

The citation before this panel alleged four counts of professional misconduct. All four counts concerned conduct occurring primarily in 2010, all four counts concerned conduct occurring in the context of Mr. Clay's criminal law practice, and all four counts concerned failures to meet deadlines and commitments, deadlines and commitments which for the most part were court imposed. While no one but judges and crown attorneys were directly affected, the effect of these failures was a repeated waste of court time and resources and a repeated waste of opposing counsels' time and resources.

Several crown attorneys together in one letter complained to the Society. The Society conducted an audit of Mr. Clay's practice. That audit disclosed broader file management concerns about Mr. Clay's practice. In December 2012 the Society prohibited Mr. Clay from the practice of criminal law and it prohibited him from opening any new files with the exception of real estate matters, until a serious file backlog had been cleaned up. The backlog was cleaned up by July 2013 and the practice restriction was lifted except that the criminal law practice prohibition remained. Mr. Clay's counsel stated that Mr. Clay estimated a loss of approximately \$200,000.00 in gross billings as a consequence of these practice restrictions.

Submissions

Counsel for the Society characterized the jointly recommended disposition as remedial, not punitive. A remedial disposition was appropriate, he submitted, because it fell within a reasonable range for this type of case, Mr. Clay's conduct occurred within a relatively confined period of time (mostly 2010) and was confined to his criminal law practice, Mr. Clay had already suffered substantial financial consequences for his conduct, his 40 years of practice had largely been unblemished, and Mr. Clay has now shown insight into what, fundamentally, got him into trouble – time management difficulties.

Mr. Clay's counsel described him as a person who was "incredibly giving to his clients and to his practice". The panel learned that Mr. Clay had not had a vacation since 2008. It was not uncommon for him to sleep at the office. The year 2010 had been especially demanding because one particular file became all-consuming and took up all his available time (a file in which, we note, Mr. Clay's client was ultimately acquitted). Counsel advised that Mr. Clay's personal relationships have suffered, and that his health too had been affected.

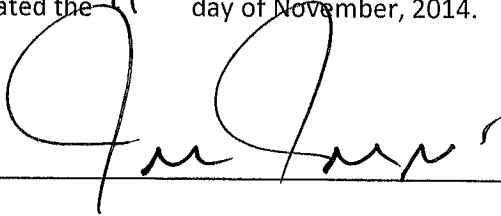
Mr. Clay himself spoke briefly. He said that he recognized that he needed support systems. He said that this matter had been a tough, embarrassing learning experience for him. He said that he had never purposefully been discourteous to colleagues or purposefully avoided his obligations.

Decision

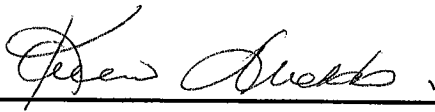
The law is that a joint recommendation as to disposition made by experienced, capable counsel is to be followed unless the hearing panel has clear and cogent reasons for departing from the joint recommendation. We are satisfied that in this case there are no such clear and cogent reasons. The panel accepts and adopts the joint recommendation.

In particular, this panel endorses the remedial approach that has been taken by counsel in this case. What this case illustrates is that even good lawyers can get themselves into serious trouble. Time management difficulties can have negative impacts not only on one's colleagues, the courts, and on one's clients. They can also have ill effects on the personal well-being of the lawyer. The information, for example, that Mr. Clay had not had a vacation since 2008 was telling. An important part of time management is making room for personal time. The panel is hopeful that the order made herein will provide genuine assistance to Mr. Clay not only in the management of his time in his practice but also in the management of his time away from it.

Dated the ^{11th} day of November, 2014.



Jacob P. Janzen (Chair)



Karen Webb



Marston Grindey