



# DISCIPLINE CASE *DIGEST*

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Case 13-03

<b>Member:</b>	Thomas Adam Masiowski
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 17, 2004
<b>Particulars of Charges:</b>	<b>Professional Misconduct (4 Counts):</b> <ul style="list-style-type: none"><li>▪ Breach of Rule 1.01(1) of the <i>Code</i> [integrity]</li><li>▪ Breach of Rule 5-43(1) of the <i>Rules of the Law Society of Manitoba</i> [failed to deposit funds into trust account]</li><li>▪ Breach of Rule 6.01(2) of the <i>Code</i> [failed to meet financial obligation in respect of medical report requested on behalf of client]</li><li>▪ Breach of Rule 2-78(1) of the <i>Rules of the Law Society of Manitoba</i> [failed to notify the Society of assignment in bankruptcy]</li><li>▪ Breach of Rule 5-48 of the <i>Rules of the Law Society of Manitoba</i> [failed to maintain a general operating account, a general book of original entry and supporting documents]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	July 18, 2013
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Robert Gabor, Q.C. (Chair)</li><li>▪ Grant Stefanson</li><li>▪ Suzanne Hrynyk (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ C. Kristin Dangerfield for the Law Society of Manitoba</li><li>▪ Member Self Represented</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$2,500.00</li><li>▪ Costs of \$1,500.00</li><li>▪ The member must pay his outstanding debt of \$1,500.00 to Dr. J.W. by August 15, 2013</li><li>▪ The member must contact the Practice Management Advisor of The Law Society within one month to arrange a meeting</li></ul>

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## **Breach of Accounting Rules / Failure to Meet Financial Obligations**

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### **Facts**

Mr. Masiowski requested that Dr. J.W. prepare a psychiatric report with respect to his client, K.B. Legal Aid Manitoba approved a payment for the report to a maximum of \$1,500.00. Legal Aid Manitoba subsequently issued a cheque payable to Mr. Masiowski in the amount of \$4,281.30. The cheque stub referenced itemized payments included in the cheque, including \$1,500.00 for the disbursement relating to K.B. Mr. Masiowski failed to deposit the cheque into his pooled trust account and instead negotiated the cheque and used all of the funds for his own benefit. He failed to respond to telephone and written communications from Dr. J.W. seeking payment for the medical report.

In September 2011 Mr. Masiowski made an assignment in bankruptcy. He failed to notify the Society and failed to provide required information related to his assignment in bankruptcy. He also advanced the position, following Dr. J.W.'s complaint to the Law Society, that any claim relating to the outstanding statement of account owing to Dr. J.W. had been subsumed by the subsequent assignment in bankruptcy.

Between July 1, 2010 and June 5, 2012 Mr. Masiowski failed to maintain a general operating account, a general book of original entry and supporting documents including bank statements, passbooks, cancelled cheques, cash requests, deposit slips, bank advances and similar documents and invoices.

### **Plea**

Mr. Masiowski entered a guilty plea to four counts of professional misconduct.

### **Decision and Comments**

The Panel found that Mr. Masiowski's conduct amounted to professional misconduct. In determining the appropriate penalty, the Panel took into account his acknowledgment of responsibility for the offences, his explanations for his conduct, the fact these were his first offences and the steps that he had taken to address the issues.

### **Penalty**

The Panel accepted a joint recommendation made by the Society and Mr. Masiowski and ordered that he:

- (i) Pay the amount of \$1,500.00 to Dr. J.W. to rectify the outstanding account by August 15, 2013 and that he provide a letter of apology with the payment;
- (ii) Pay a fine of \$2,500.00;
- (iii) Contact the Law Society's Practice Management Advisor within one month, and arrange to meet with him to discuss proper practice management; and
- (iv) Pay \$1,500.00 to the Society as a contribution towards the costs of the investigation, prosecution and hearing of the matter.