



DISCIPLINE CASE *DIGEST*

Case 13-04

Member:	Dave Robert Thomas Boyechko
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 28, 1990
Particulars of Charges:	Professional Misconduct (1 Count): <ul style="list-style-type: none">▪ Breach of Chapters 1, 6 and 19 of the <i>Code of Professional Conduct</i> [integrity, conflict of interest and avoiding questionable conduct] [x1]
Plea:	Guilty
Date of Hearing:	September 25, 2013
Panel:	<ul style="list-style-type: none">▪ Jennifer Cooper, Q.C. (Chair)▪ Paul Jensen▪ Neil Cohen (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Darcia A.C. Senft for The Law Society of Manitoba▪ Steve Vincent for the Member
Disposition:	<ul style="list-style-type: none">▪ Suspension for a period of one month commencing December 1, 2013▪ Costs of \$5,000.00

Integrity/Conflict of Interest/Avoiding Questionable Conduct

Facts

In May 2008, Mr. Boyechko was retained by a female client to act for her on a domestic matter. During the period of time that Mr. Boyechko acted for the client he: called his client often to see how she was doing; lent her a cell phone; invited her, her son and her friend to play on his baseball team; stopped by her residence on several occasions, calling first; gave or lent her a dress; gave her a tee shirt; and, called her on her birthday.

On the domestic matter, a hearing was set for July 18, 2008 and Mr. Boyechko discussed with the client that any affidavit of the husband should be replied to prior to the July 18, 2008 hearing. Mr. Boyechko advised the client that he was required to perform a wedding ceremony at a family wedding in Brandon, Manitoba on the weekend of July 12 - 13, 2008. Mr. Boyechko suggested that the client travel with him to Brandon on Friday, July 11, 2008 and accompany him to his family wedding in the event that the husband served an affidavit on the Friday before the family wedding.

The husband served a total of 7 affidavits on Mr. Boyechko on Friday, July 11, 2008. Mr. Boyechko advised the client of the service of the 7 affidavits and it was agreed that she would travel with Mr. Boyechko to Brandon. Mr. Boyechko believed the trip would give them an opportunity to review the husband's affidavits and consider the client's response to the affidavits so that upon his return to Winnipeg, he could go into the office and prepare the client's responding affidavit. While en route to Brandon, Mr. Boyechko reviewed affidavit materials relating to the pending contested motion and discussed their contents with the client.

They arrived in Brandon on Friday, July 11, 2008. Upon arrival at the hotel where Mr. Boyechko had reserved his own accommodations, he advised his client that she could stay with him in his room. While in Brandon, the client accompanied Mr. Boyechko to a pre-wedding rehearsal which took place the same night as their arrival in Brandon. Mr. Boyechko and the client shared the hotel room on Friday night. The next day, the family wedding took place and the client accompanied Mr. Boyechko to his family wedding. On, Saturday, July 12, 2008, the day of the wedding, Mr. Boyechko again advised the client that she could stay with him in his room. Following the family wedding, Mr. Boyechko and the client returned to Mr. Boyechko's hotel room. Mr. Boyechko had brought some tequila with him from Winnipeg and he and the client consumed alcohol together in the hotel room. Mr. Boyechko and the client shared the hotel room again on Saturday night. On each night that Mr. Boyechko spent with his client in the hotel room, the hotel had other rooms available.

On return to Winnipeg on Sunday, July 13, 2008, Mr. Boyechko attended at his office and drafted the client's affidavit based on their discussions in Brandon. The affidavit was prepared and sworn on Monday, July 14, 2008, and was filed in time for the hearing on July 18, 2008.

Plea

Mr. Boyechko entered a plea of guilty to the charges.

Decision and Comments

The panel noted the case alleged professional misconduct based upon an inappropriate personal relationship with no allegation or finding of sexual contact or sexual harassment. The panel recognized that lawyers often have personal relationships with their clients but commented that a personal relationship requires careful balancing because it is often necessary to put aside personal feelings in order to be able to provide sound, objective and professional advice. The mere existence of a personal relationship with a client does not amount to professional misconduct. The personal relationship must be inappropriate in some way and what is inappropriate will depend on the individual circumstances of a particular case.

In addition to the facts outlined, a compounding factor in this case was the vulnerability of the client. She had separated from a husband who was violent and who had a drug addiction. She suffered from anxiety for which she took medication and also had extreme difficulty sleeping for which she also took medication. In addition, the client saw a psychologist on a regular basis.

The Discipline Committee made a finding that the conduct of Mr. Boyechko as set out in the Citation and in the Statement of Agreed Facts constituted professional misconduct.

Penalty

The panel noted that the member had already enrolled in the "Professional Boundaries Program". The panel accepted the joint recommendation made by Counsel for the Society and counsel for Mr. Boyechko, in respect of an appropriate penalty, although they found that the penalty was at the high end of the range of reasonable penalties.

The panel made an order that:

- (a) Mr. Boyechko be suspended from the practice of law for a period of one month commencing December 1, 2013; and
- (b) Mr. Boyechko pay costs to the Society in the amount of \$5,000.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of this matter.