



DISCIPLINE CASE *DIGEST*

Case 14-04

Member:	Frank Albert Gustav Johnson
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 28, 1972
Particulars of Charges:	Professional Misconduct (5 Counts): <ul style="list-style-type: none">▪ Breach of Rule 5-43(1)(a) <i>Rules of The Law Society of Manitoba</i> [breach of trust accounting rule (failure to deposit funds into trust account)]▪ Breach of Rule 5-52 <i>Rules of The Law Society of Manitoba</i> [unauthorized appropriation of client money]▪ Breach of Rule 2.1-1 of the <i>Code of Professional Conduct</i> [integrity (failure to discharge duty to profession and clients)][x 3]
Plea:	Guilty
Date of Hearing:	October 31, 2014
Panel:	<ul style="list-style-type: none">▪ Douglas Bedford (Chair)▪ Mark Toews▪ Jim Wolfe (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ C. Kristin Dangerfield for The Law Society of Manitoba▪ Steve Vincent for the Member
Disposition:	<ul style="list-style-type: none">▪ One month suspension▪ Costs of \$10,000.00

Breach of Trust Accounting Rules / Integrity

Facts

Mr. Johnson was retained by a client with respect to a domestic matter. On January 13, 2010 he received the sum of \$1,500.00 in cash as a retainer for services rendered from the client and failed to deposit it into his pooled trust account. On March 19, 2010 and June 23, 2010 Mr. Johnson cashed cheques received from his client in the amount of \$500.00 each and failed to deposit the proceeds into his pooled trust account. Mr. Johnson prepared, but did not deliver to his client, three statements of account for services rendered dated January 13, March 19, and June 23, 2010, the dates of which corresponded to his receipt of client funds. Therefore between January 13, 2010 and June 23, 2010, Mr. Johnson appropriated to his own use the sum of \$2,500.00 on account of fees without having delivered a statement of account (or statements of account) to his client for services rendered.

In response to a complaint from his client, Mr. Johnson misled the Society when he provided copies of correspondence and a statement of account which he advised had been prepared and sent to his client in 2010. In fact, he had fabricated the correspondence and statement of account in 2013 after having received the client's complaint to the Society. In communications with the Society in response to his client's complaint about his conduct, Mr. Johnson made disparaging comments about his client's character in an effort to conceal his own conduct in the matter.

While acting for other clients with respect to a civil proceeding, Mr. Johnson retained the services of A, an inactive lawyer who had undertaken not to practise law. In response to letters from the Law Society, Mr. Johnson misled the Law Society when he said that A had provided only very preliminary draft documentation but nothing that would resemble a complete or file ready document. In fact, that was not the case as a draft affidavit prepared by A was filed in the Court of Queen's Bench without further revision by Mr. Johnson. Mr. Johnson advised the Law Society that he and A had agreed to reduce A's statement of account to reflect the limited research work that A was hired to do, when that was not the case.

Plea

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

Decision and Comments

The Panel of the Discipline Committee found Mr. Johnson guilty of the charges based on his admissions and made a finding that he was guilty of professional misconduct.

Penalty

The Panel accepted the joint recommendation made by Counsel for the Society and Counsel for Mr. Johnson in respect of an appropriate penalty. The Panel made an order that Mr. Johnson be:

- (a) suspended for a period of one month commencing on December 1, 2014 and concluding on December 31, 2014;
- (b) relieved of the conditions of practice imposed by the Complaints Investigation Committee effective January 1, 2015;
- (c) required to pay to the Society the sum of \$10,000.00 as a contribution toward the costs associated with the investigation, prosecution and hearing of these matters, payable by quarterly instalments of \$1,249.98 commencing on March 1, 2015 through to and including December 1, 2016.