



DISCIPLINE CASE *DIGEST*

Case 14-05

Member:	Grant Randolph Clay
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 25, 1974
Particulars of Charges:	Professional Misconduct (4 Counts): <ul style="list-style-type: none">▪ Breach of Chapter 2 of the <i>Code of Professional Conduct</i> [quality of service] [x3]▪ Breach of Chapter 9 of the <i>Code of Professional Conduct</i> [duty to court]
Plea:	Guilty
Date of Hearing:	September 10, 2014
Panel:	<ul style="list-style-type: none">▪ Jacob Janzen (Chair)▪ Karen Webb▪ Marston Grindey (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Gavin Wood for the Member
Disposition:	<ul style="list-style-type: none">▪ Practicing certificate cancelled and reissued subject to condition that for 18 months Mr. Clay may not practise criminal law except under the supervision of a lawyer approved by the Law Society▪ Supervisor will provide a written undertaking in form and content acceptable to the Law Society▪ Within 6 months of the disposition of this matter, Mr. Clay shall obtain and review the CPLED Criminal Law materials▪ In the next 2 years (2015 and 2016) Mr. Clay will complete 15 hours of CPD, of which 6 hours shall be in the area of Criminal Law, approved in advance by the Law Society▪ Within 3 months Mr. Clay shall complete a time management program offered by the Law Society▪ Costs of \$15,000.00

Quality of Service / Duty to Court

Facts

Mr. Clay entered an admission before the panel of the Discipline Committee to four charges of professional misconduct based on his conduct with four clients. The parties submitted a Statement of Agreed Facts, a book of agreed documents, and made a joint submission as to disposition.

The first charge concerned his conduct while representing a client in April 2006 on a criminal law matter. While representing this client, Mr. Clay missed deadlines to submit applications and briefs set by the Court, did not respond to letters from opposing counsel, and attempted to challenge the admissibility of evidence in court notwithstanding that he had not filed written material.

The second charge concerned his conduct while representing a second client in April 2010 on a criminal law matter. Mr. Clay missed numerous deadlines to submit a factum in accordance with the timelines set by the court and did not respond to multiple letters from the Crown requesting information and updates on the file. Mr. Clay eventually filed his factum but the appeal was dismissed.

The third charge concerned his conduct while representing a third client in August 2009 on a criminal law matter. Mr. Clay failed to comply with numerous deadlines as follows: he did not respond to an offer from the Crown by the set deadline; he did not respond to two emails by the case management Judge requesting additional information; he did not provide the Crown with an expert opinion by the set deadline; he did not comply with numerous deadlines to enter his client's plea and file his brief; and he did not comply with a deadline set by the Judge to provide a case list to the Crown.

The final charge concerned his conduct while representing a fourth client in September 2009 on a Provincial Court matter. Mr. Clay filed a motion seeking leave to the Court of Appeal but did not file his written material by the date set by the Court on a number of occasions after seeking adjournments.

Plea

Mr. Clay entered a plea of guilty to four counts of Professional Misconduct.

Decision and Comments

The Panel of the Discipline Committee unanimously accepted the joint recommendation submitted by counsel for the Society and for Mr. Clay. The Panel endorsed the remedial approach taken by counsel in this case. They commented that this case illustrates that even good lawyers can get into serious trouble and that time management difficulties can have negative impacts on one's colleagues, clients, and the courts.

Penalty

The Panel accepted the joint recommendation made by the parties with respect to penalty and ordered:

- (a) His 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 (which includes the defence

and prosecution of all federal and provincial offences) except under the supervision of a lawyer approved by the Society;

- (b) The terms of the supervision shall be that the supervisor provide a written undertaking in form and content acceptable to the Society in which he or she will undertake to supervise Mr. Clay's criminal law practice and will:
 - (i) Meet with Mr. Clay monthly to review his criminal law files;
 - (ii) Report every 3 months to the Society;
 - (iii) Report immediately any potential claims and any concerns relating to competence, conduct or non-compliance with the conditions of his practice;
 - (iv) Ensure that Mr. Clay informs all of his criminal law clients that he is under supervision by a lawyer from outside of his firm and the supervisor will have access to their private information;
 - (v) Not withdraw from this undertaking except on 30 days written notice to Mr. Clay and the Society;
- (c) Mr. Clay shall within 6 months of this disposition obtain and review the most recent Bar Admission Course or CPLED Criminal Law materials;
- (d) During each of the next 2 years (2015 and 2016) Mr. Clay will complete a total of 15 hours of Continuing Professional Development, that is to say the otherwise mandatory 12 hours plus 3 additional hours, of which 6 hours shall be in the area of Criminal Law, the Criminal Law CPD activities to be approved in advance by the Society;
- (e) Mr. Clay shall within 3 months complete a time management program set by the Society which requires a member to listen to a CD and complete some assignments and a workbook within a prescribed period of time; and
- (f) Mr. Clay shall pay \$15,000.00 as a contribution to the Society's costs.