



DISCIPLINE CASE *DIGEST*

Case 15-02

Member:	Douglas Albert Mayer
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 30, 1988
Particulars of Charges:	Professional Misconduct (3 counts): <ul style="list-style-type: none">▪ Breach of Rule 3.2-1 of the <i>Code of Professional Conduct</i> [Quality of Service]▪ Breach of Rule 5-43(1)(c) of the <i>Rules of the Law Society of Manitoba</i> [Breach of Trust Accounting Rules] [x2]
Plea:	Guilty
Date of Hearing:	June 18, 2015
Panel:	<ul style="list-style-type: none">▪ Brian A. Pauls (Chair)▪ Brock Lee, Q.C.▪ Neil Cohen (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Gavin M. Wood for the Member
Disposition:	<ul style="list-style-type: none">▪ Fine of \$3,000.00▪ Costs of \$6,000.00

Quality of Service / Breach of Trust Accounting Rules

Facts

In August 2011, Mr. Mayer was retained by a client whose foster children had been removed from her home and whose foster home license had been revoked. Although the client had requested on her own that the decision be reconsidered, she had not received a response to her request by the time that she retained Mr. Mayer.

Initially, Mr. Mayer penned several letters demanding that the authority respond to the client's reconsideration request and, in December 2011, he received a copy of a letter to his client advising that the client's appeal was dismissed with respect to the foster home license cancellation. Mr. Mayer was also advised by letter that the right to appeal the decision to remove the foster children no longer applied because foster children could not be placed in an unlicensed home.

On December 20, 2011, Mr. Mayer prepared a Notice of Appeal on behalf of the client seeking reinstatement of the foster home license as well as the return of the children. Both before and after the filing of the Notice of Appeal, two separate legal counsel for the Director of Child and Family Services communicated with Mr. Mayer by voice mail message and by email inviting Mr. Mayer to contact them in order to discuss the matter. Neither counsel received any communication from Mr. Mayer.

On March 29, 2012, Mr. Mayer wrote to the Director purportedly confirming an exchange of messages about setting up a hearing date and seeking available dates for such hearing. No such exchange of messages had taken place. On May 2, 2012, counsel for the Director wrote to Mr. Mayer advising that his client's right to appeal the license cancellation had been exercised and was now exhausted and due to the cancellation of the license, an appeal of the removal of the children was moot. Once again, counsel for the Director invited Mr. Mayer to contact him if he had a contrary view of the matter. Mr. Mayer did not respond to such letter.

Throughout the months of November and December 2011 the client had attempted to set up a meeting with Mr. Mayer. However, Mr. Mayer did not respond to four separate emails. Only after the issuance of the Director's decision regarding the foster home license was the client able to set up a meeting with Mr. Mayer for December 20, 2011, following which he prepared and served the Notice of Appeal.

Again, in January and early February 2012, the client sent 4 emails to Mr. Mayer requesting a meeting. Mr. Mayer did not respond until the evening of February 13, 2012 and a meeting was arranged for February 15, 2012. During such meeting, Mr. Mayer advised the client that he was setting up a date for a formal hearing. Having not heard subsequently from Mr. Mayer, the client sent email messages to Mr. Mayer on May 15, May 25 and June 14, 2012, asking about a hearing date. She received no response. By the time that the client contacted the Law Society at the end of July 2012, she had received no further communication from Mr. Mayer.

On two occasions throughout the course of the retainer, Mr. Mayer transferred the sum of \$1,000.00 from his trust account to his general account without preparing and sending a statement of account to his client.

Plea

Mr. Mayer entered a plea of guilty to 3 counts of professional misconduct.

Decision and Comments

The Panel noted that its primary focus in the disciplinary process is the protection of the public. With respect to mitigation, the Panel noted the efforts that Mr. Mayer had made to seek appropriate help and guidance to enable him to practice his profession honourably in the future. They accepted that the efforts to avert any recurrence of the conduct were genuine.

Penalty

The Panel accepted the joint recommendation and ordered that:

- (a) Mr. Mayer be fined \$3,000.00; and
- (b) Mr. Mayer pay the sum of \$6,000.00 as a contribution to the Society's costs.