



# DISCIPLINE CASE *DIGEST*

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Case 15-04

<b>Member:</b>	Avaline Janine Widmer Thrush
<b>Jurisdiction:</b>	Morden, Manitoba
<b>Called to the Bar:</b>	June 19, 1997
<b>Particulars of Charges:</b>	Professional Misconduct (5 Counts): <ul style="list-style-type: none"><li>▪ Breach of Rule 2.1-1 of the <i>Code of Professional Conduct</i> [integrity] [x2]</li><li>▪ Breach of Rule 3.2-1 of the <i>Code of Professional Conduct</i> [quality of service]</li><li>▪ Breach of Rule 3.4-34 of the <i>Code of Professional Conduct</i> [conflict of interest]</li><li>▪ Breach of Rule 7.2-1 of the <i>Code of Professional Conduct</i> [duty to lawyers]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	June 4, 2015
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Douglas Bedford (Chair)</li><li>▪ Brian Pauls</li><li>▪ Jim Wolfe (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia A.C. Senft for The Law Society of Manitoba</li><li>▪ Faron Trippier for the Member</li></ul>
<b>Date of Decision:</b>	Oral Decision: June 4, 2015 Written Reasons: August 7, 2015
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$3,000.00</li><li>▪ Costs of \$5,500.00</li></ul>

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## INTEGRITY / QUALITY OF SERVICE / CONFLICT OF INTEREST / DUTY TO LAWYERS

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### Facts

On three separate occasions and while acting for three separate clients with respect to family law matters, Ms Widmer Thrush adjourned proceedings before the Court of Queen's Bench without the consent of opposing counsel.

With respect to one of those matters, Ms Widmer Thrush also failed to respond to communications from opposing counsel, scheduled hearings before the Court without opposing counsel's consent,

did not cooperate with opposing counsel on the taking out of orders, encouraged her client to complain about opposing counsel to the Society and herself made unsupported allegations of misconduct and disparaging remarks about opposing counsel to the Society.

In May 2011, Ms Widmer Thrush made an offer of employment to a student who was seeking to article with a law firm. The offer was accepted. Ms Widmer Thrush applied to the Society in June 2011 to be approved as a Principal and her application was denied on June 8, 2011. She submitted another application to be approved as a Principal one month after her initial application had been denied and in filing it, she advised the Society that her circumstances had “changed” in that there was now a student who wished to article at her firm. This was untrue as this was not a change from the relevant circumstances that existed at the time she filed her initial application. She further advised the Society that not having a student interested in articling with her was a factor in why she did not appeal the Society’s decision to deny the initial application. This advice was not accurate since she already had discussions with the student about articling at her firm when the initial application was filed.

Ms Widmer Thrush also did not disclose to the student the fact that her application to be approved as a Principal had been denied until August 2011, when the student was supposed to start the articling position.

While representing a client in a family law matter, Ms Widmer Thrush lent money to that client for the purpose of assisting the client to purchase assets from the Trustee in Bankruptcy of the client’s estranged spouse. Ms Widmer Thrush failed to recommend that the client obtain independent legal advice with respect to the loan. The funds in question were sent directly to the Trustee in Bankruptcy without the knowledge of the client and were subsequently billed to the client as a disbursement. Ms Widmer Thrush failed to communicate with this client in a timely fashion, took steps in representing the client which were not of benefit to the client and resulted in significant legal fees and disbursements, gave questionable advice to the client as to the wisdom of accepting a proposed settlement and as to the likely outcome of the case if it proceeded to be litigated, and failed to inform the client on two occasions that legal costs had been awarded against the client by the court. Ms Widmer Thrush paid the costs without the client’s knowledge and then subsequently billed the costs to the client as disbursements.

### **Plea**

Ms. Widmer Thrush entered a plea of guilty to 5 charges of professional misconduct. The Society agreed to stay one charge and indicated it would not proceed with another charge that had been framed in the alternative.

### **Decision and Comments**

The Panel noted that the Agreed Statement of Facts presented to the Panel was very brief. The Panel considered her admission that the witnesses available to the Society would, if called, testify in accordance with the facts contained in the Citation and her admission that the conduct described constituted professional misconduct. Although it was not explicit, the Panel was persuaded that Ms Widmer Thrush was agreeing that she had committed the acts described. They noted that Ms. Widmer Thrush entered a plea of guilty to the charges in question and further noted that the only rational conclusion that they could draw was that she was admitting that she had committed the acts in question.

The Panel observed that the penalty was on the “low end” of an acceptable range in light of the number of infractions to which she was pleading guilty. However, they commented upon the importance of Discipline Committees accepting plea bargains negotiated by experienced counsel unless they had “good and cogent reasons” for rejecting the joint submission.

The Panel further observed that the member herself was “experienced counsel”. Adjourning matters before the Court without consent, making inaccurate statements to the Society and lending funds to a client without the client’s consent and independent legal advice were clearly not actions that members of the Society and the public expect of experienced counsel. Aside from some references to the stresses of her practice, the Panel indicated it did not know why Ms Widmer Thrush did the things she did. However, based upon her counsel’s assurances that she had taken steps to address the factors that led to the charges, the Panel set out its expectation that, in the future, Ms Widmer Thrush will meet the standards expected of experienced counsel.

### **Penalty**

The Panel accepted the joint recommendation and made an order that:

- (i) Ms Widmer Thrush be fined the sum of \$3,000.00; and
- (ii) Ms Widmer Thrush pay to the Society the sum of \$5,500.00 as a contribution toward the costs associated with the investigation, prosecution, and hearing of the matter.