



DISCIPLINE CASE *DIGEST*

Case 15-12

Member:	Alastair Winston Clarke
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	October 7, 2013
Particulars of Charges:	Professional Misconduct (4 Counts): <ul style="list-style-type: none">▪ Breach of Rules 5-43(1) and (2) of the <i>Rules of the Law Society of Manitoba</i> [breach of trust accounting rules]▪ Breach of Rules 5-42(1) and (7) of the <i>Rules of the Law Society of Manitoba</i> [failure to maintain up-to-date trust records]▪ Breach of Rule 5-42(2) of the <i>Rules of the Law Society of Manitoba</i> [failure to produce monthly reconciliation of trust bank accounts]▪ Breach of Rule 2.1-1 of the <i>Code of Professional Conduct</i> [integrity-misleading the Society]
Plea:	Guilty
Date of Hearing:	January 21, 2016
Panel:	<ul style="list-style-type: none">▪ Richard I. Good (Chair)▪ Jennifer Goldenberg▪ Suzanne Hrynyk (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Steve Vincent for the Member
Date of Decision:	Oral Decision: January 21, 2016 Written Reasons: January 22, 2016
Disposition:	<ul style="list-style-type: none">▪ Reprimand▪ Costs of \$6,000.00▪ Conditions that the member continue in counselling for a period of 2 years or such lesser time as his counsellor may recommend, that he take the online trust accounting course that is currently being developed by the Society, that he meet once within each of the next 2 years with the Practice Management Advisor or another lawyer approved by the Society for the purpose of a review of his practice and that he comply with the recommendations, if any arising from such review.

Misleading the Society / Breach of Trust Accounting Rules

Facts

In 2014, while he was associated with a law firm, Mr. Clarke set out to establish a separate independent law practice. Between October 2014 and January 2015 he accepted retainers from six clients but did not open a pooled trust account and did not deposit the clients' funds into a pooled trust account. During that period of time he generated 10 transactions involving trust funds but did not maintain a book of original entry nor a client trust ledger and did enter and post records of these transactions. He did not produce a monthly reconciliation of trust balances for the months of October 2014 through January 2015.

In January 2015 Mr. Clarke came to a parting of the ways with the law firm. A dispute arose as to the mechanics of his departure and Mr. Clarke contacted the Society for advice. In the course of inquiries by the Society into the circumstances, the facts concerning Mr. Clarke's acceptance of retainers and handling of trust monies outside of the law firm, came under investigation. On January 26, 2015 in response to an inquiry from the Society as to a particular receipt of client trust funds Mr. Clarke told the Society that, although he had received a retainer cheque from the client, he had not deposited the cheque and had later returned it at the client's request. He solicited from the client and provided to the Society a statement from the client to similar effect. These statements were not true. In fact, Mr. Clarke had deposited the retainer cheque into his business account soon after it was received. The client had not requested that the cheque be returned and he had not returned the cheque to the client. In a letter to the Society dated March 23, 2015 Mr. Clarke voluntarily disclosed that the information he had previously provided to the Society concerning the particular cheque was not true. Medical evidence indicated that Mr. Clarke was experiencing a mental health crisis at the time that he provided the false information to the Society.

On March 9, 2015 Mr. Clarke gave an Undertaking to the Society as to financial and accounting matters and to practice under supervision. His supervisor reported that he had fully complied with his undertaking and an audit under the Society's early monitoring system for new firms showed that he was now practising in compliance with the relevant Rules.

Plea

Guilty

Decision and Comments

Based on the agreed facts and Mr. Clarke's admission the Panel found that he was guilty professional misconduct. They accepted the joint recommendation of counsel for the Society and for Mr. Clarke as to penalty. The Panel observed that a reprimand is not to be taken lightly and is a significant deterrent to the member and to other members of the profession from engaging in similar conduct in the future.

Penalty

Mr. Clarke was ordered reprimanded and ordered to pay costs to the Society in the amount of \$6,000.00. His practising certificate was ordered to be made subject to the following conditions:

- i. He must continue to receive counseling for a period of 2 years or for so long as is recommended by his counselor, whichever is less, and shall comply with any treatment recommended by his counselor;
- ii. He shall authorize and direct his counselor to provide to the Society a written report confirming that he continues to receive counseling, if that is the case, and has complied and is complying with any recommended treatment:
 1. immediately following the end of July 2016;
 2. immediately following the end of July 2017; andto immediately provide to the Society a written report if it appears that he is not complying with recommendations regarding counseling or treatment or if he is no longer receiving counseling;
- iii. He shall, within 6 months of it becoming available, take the online trust accounting course that is currently under development by the Society;
- iv. He shall, once within each of the next 2 years, meet with the Society's Practice Management Advisor or some other lawyer approved by the Society for the purpose of a review of his practice; and
- v. He shall comply with the recommendations, if any, arising from each such review.