



DISCIPLINE CASE *DIGEST*

Case 16-06

Member:	Bonnie Lynne Gembey
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 15, 2000
Particulars of Charges:	Professional Misconduct (4 Counts): <ul style="list-style-type: none">▪ Breach of Rule 5-64(4) of the <i>Rules</i> and Rule 7.1-1 of the <i>Code</i> [failure to respond to the Law Society]▪ Breach of Rule 3.2-1 of the <i>Code</i> [failure to provide courteous, thorough and prompt service]▪ Breach of Rule 3.7-9 of the <i>Code</i> [failure to comply with duties on termination of retainer]▪ Breach of Rule 3.5-1 of the <i>Code</i> [failure to take care of client property]
Plea:	Guilty
Date of Hearing:	December 5, 2016
Panel:	<ul style="list-style-type: none">▪ Anita Southall (Chair)▪ Donald Douglas▪ Neil Cohen (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Member Self Represented
Date of Decision:	Oral Decision: December 5, 2016
Disposition:	<ul style="list-style-type: none">▪ Fine of \$1,000.00▪ Within one year Ms Gembey is to successfully complete, at her own expense, a time management course approved by the Society, which course is to be in addition to the Continuing Professional Development activities she is otherwise required to complete▪ Costs of \$2,500.00

Failure to Respond to the Law Society / Failure to Serve

Facts

On November 15, 2013, Ms Gembey took an Application for Legal Aid from her client and received from the client \$25.00 cash to be forwarded with the Application to Legal Aid in payment

of the Application Fee. Legal Aid did not receive the Application or the \$25.00 payment. Ms Gembey did not give the client a receipt for the \$25.00 and did not have a receipt or other record establishing that the \$25.00 was paid over to Legal Aid. No Legal Aid Certificate was issued. Ms Gembey did not account to her client for the \$25.00.

In the same matter, the client was seeking a divorce and corollary relief. Ms Gembey took initial instructions in November 2013 and thereafter took no steps to pursue the case, except that on two occasions, she had the client sign court documents. Ms Gembey did not file the documents in court or otherwise make use of them. By the time the client terminated the retainer in September 2015, no documents had been filed in court and no other steps had been taken to pursue the relief sought.

The client terminated Ms Gembey's retainer in September 2015 and retained other counsel. Despite six requests from new counsel between November 5, 2015 and January 28, 2016, Ms Gembey failed to deliver the client's file documents to new counsel. The client complained to the Law Society on March 8, 2016, but the client did not obtain the file until it was provided to the Law Society on May 31, 2016.

On July 28, 2016, during the course of the Law Society's investigation of the client's complaint, Complaints Resolution Counsel delivered to Ms Gembey a letter containing follow-up inquiries, which letter required a response within 14 days. Ms Gembey did not respond within 14 days as required and only responded on August 24, 2016, after being ordered by the Complaints Investigation Committee to respond by that date.

Plea

Ms Gembey entered a guilty plea to all four charges of professional misconduct.

Decision and Comments

The Discipline Committee Panel accepted Ms Gembey's guilty plea and considered an agreed statement of facts. They accepted a joint recommendation as to disposition. The Panel emphasized the importance of the cooperation of members in the investigation of complaints and of compliance with governance obligations of the Law Society. The Panel noted that Ms Gembey had recently entered guilty pleas to two charges of failing to respond to the Law Society arising from the same investigation and that the disposition of those charges included conditions on Ms Gembey's practising certificate that were expected to ensure prompt responses to the Law Society in the future.

In accepting the joint recommendation, the Panel found that the stringent test for departing from such a submission had not been met. In this regard, the Panel took into account Ms Gembey's particular circumstances, including her financial situation and the fact that she was in the process of re-starting her practice.

Penalty

The Discipline Committee Panel accepted the joint recommendation of the member and counsel for the Law Society and ordered that Ms Gembey:

1. pay a fine of \$1,000.00;
2. pay costs of \$2,500.00 to the Law Society as a contribution to the costs of the investigation and prosecution of the matter; and that,
3. within one year Ms Gembey successfully complete, at her own expense, a time management course approved by the Law Society, which course is to be in addition to and not included in the Continuing Professional Development activities Ms Gembey is otherwise required to complete.