



# DISCIPLINE CASE *DIGEST*

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Case 16-07

<b>Member:</b>	<b>Gary Samuel Stern</b>
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 25, 1987
<b>Particulars of Charges:</b>	Professional Misconduct (5 Counts): <ul style="list-style-type: none"><li>▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service] [x2]</li><li>▪ Breach of Rule 3.6-1 of the <i>Code</i> [unreasonable fees and disbursements]</li><li>▪ Breach of Rule 3.7-9 of the <i>Code</i> [manner of withdrawal]</li><li>▪ Breach of Rule 3.7-1 of the <i>Code</i> [failure to notify client of change of firm]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	February 2, 2017
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ David Gray (Chair)</li><li>▪ Lorna Turnbull</li><li>▪ Lynne McCarthy (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Danny Gunn for The Law Society of Manitoba</li><li>▪ Gavin Wood for the Member</li></ul>
<b>Date of Decision:</b>	Oral Decision: February 2, 2017
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Reprimand</li><li>▪ Costs of \$2,400.00</li></ul>

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## **Quality of Service / Unreasonable Fees and Disbursements / Manner of Withdrawal / Failure to Notify Client of Change of Firm**

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### **Facts**

In June 2014, while acting for his client SM, Mr. Stern moved his practice from one firm to another. He did not directly inform SM of his move but on June 4, 2014 he sent to her a copy of a letter sent to opposing counsel on his new firm's letterhead. SM then attempted to communicate with Mr. Stern to clarify the situation and as to the future conduct of her matter. SM sent emails to Mr. Stern on June 4, June 5, July 28 and August 26, 2014 and left phone messages for him on July 28 and August 26, 2014 without any response. On August 28, 2014 she contacted the Law

Society and the Law Society sent an email to Mr. Stern requesting that he contact SM. SM did not receive any response from Mr. Stern. She terminated his retainer in October 2014.

Mr. Stern caused his former firm to issue a statement of account to SM and on July 7, 2014, funds were transferred from trust to pay that account. The account related to services performed prior to June 1, 2014. The account was not sent to SM at the time the funds were transferred and was not sent to her even after she requested, on July 28, 2014, that Mr. Stern provide a statement of account.

In another matter, Mr. Stern was retained by WC in January 2012 pursuant to a Legal Aid Certificate in connection with a proposed appeal of a decision of the Workers Compensation Board. In June 2014, Mr. Stern changed firms. Mr. Stern did not advise WC of his move, but WC learned of the move only when he visited the office of Mr. Stern's former firm in the summer of 2014.

WC contacted Mr. Stern and arranged to meet with him on August 11, 2014. WC instructed Mr. Stern to obtain a medical report in support of his claim and provided an authorization to Mr. Stern for that purpose. Mr. Stern wrote to the doctor on August 25, 2014 and requested a fee quote, which he received on September 3, 2014. Mr. Stern did not advise WC or Legal Aid of the fee quote and took no steps to obtain the medical report. Mr. Stern took no other steps to advance WC's case after September 3, 2014. WC sent correspondence to Mr. Stern on November 10, November 13, November 17, November 20, December 5 and December 16, 2014 and on January 14, 2015 seeking information as to the status of his matter. Mr. Stern did not respond.

Mr. Stern was of the view that he had been discharged by WC, but took none of the steps required upon termination of his retainer. Mr. Stern did not report to WC or to Legal Aid, did not render a final account and did not deliver his file materials to WC.

### **Plea**

Mr. Stern entered a guilty plea to all five charges of professional misconduct.

### **Decision and Comments**

The Discipline Committee Panel noted that Mr. Stern had no prior discipline record and that he had, at his own initiative, sought out assistance from the Society's Practice Advisor and had implemented his recommendations.

### **Penalty**

The Discipline Committee Panel accepted the joint recommendation of counsel for the Society and counsel for Mr. Stern and ordered that Mr. Stern be reprimanded and that he pay \$2,400.00 as a contribution to the costs of the investigation and prosecution of the matters.