



DISCIPLINE CASE *DIGEST*

Case 17-01

Member:	Jason Patrick Beyette
Jurisdiction:	Dauphin, Manitoba
Called to the Bar:	June 15, 2000
Particulars of Charge(s):	Professional Misconduct (3 Counts): <ul style="list-style-type: none">▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service]▪ Breach of Rule 3.4-1 of the <i>Code</i> [conflict of interest]▪ Breach of Rules 5.1-1 and 5.1-2(e) of the <i>Code</i> [duty to the court and duty to lawyers]
Plea:	Guilty
Date of Hearing:	April 3, 2017
Panel:	<ul style="list-style-type: none">▪ Ted Bock (Chair)▪ Catherine Finnbogason▪ Carmen Nedohin (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: April 3, 2017
Disposition:	<ul style="list-style-type: none">▪ Fine of \$2,500.00▪ Costs of \$4,000.00

Quality of Service / Conflict of Interest / Duty to Court and Lawyers

Facts

In February 2013 Mr. Beyette was contacted by LS, the long-time common-law spouse of EMO and was given instructions to prepare an enduring Power of Attorney for EMO, who was then in the hospital. EMO was experiencing deteriorating mental health and was in the hospital where she was noted to be confused. Mr. Beyette prepared a Power of Attorney and attended upon EMO in the hospital. He met with EMO only in the presence of LS. While Mr. Beyette formed an opinion of EMO, he made no specific investigations into her mental capacity, did not consult with her health care providers and made no notes or other record of his observations of EMO. EMO signed the Power of Attorney that Mr. Beyette had drafted. The effect of the Power of Attorney, if valid, was to replace a Power of Attorney executed by EMO in 2007. The new Power of Attorney

appointed a relative of LS as attorney if he could not act, replacing EMO's daughter who had previously been named as the alternate. It was also immediately released to the attorney LS whereas the earlier Power of Attorney was held by the lawyer who had drawn it on instructions that it not be released to the attorney until the lawyer was provided with medical opinion that EMO was incapable of managing her own affairs.

In June 2013, LS asked Mr. Beyette to make a change to the text of the Power of Attorney to address his concern that the February 2013 Power of Attorney, as written, might have negative tax consequences for him. Mr. Beyette prepared the replacement Power of Attorney and again attended upon EMO, who was now a resident in a personal care home. He again met with EMO only in the presence of LS and again made no investigations into her capacity and made no notes or other record of his observations of her, though he again believed that she was capable of making the Power of Attorney. Mr. Beyette did not consider how accommodating the tax concerns of LS might affect EMO and gave her no advice concerning the effect of the change to the Power of Attorney.

Immediately after LS passed in February 2014 a dispute arose between the alternate attorney under the June 2013 Power of Attorney (who was also the would be alternate attorney under the February 2013 Power of Attorney) and the children of EMO as to the handling of EMO's affairs. The children took court proceedings seeking, amongst other things, to have the June 2013 Power of Attorney declared invalid on the ground that EMO lacked the requisite mental capacity in June 2013 to make it. They sought to have the 2007 Power of Attorney declared to be in force. The Public Guardian and Trustee was served with notice and counsel for the Public Guardian and Trustee appeared on return of the application. Counsel for the children and the Public Guardian and Trustee were unaware of the February 2013 Power of Attorney. Mr. Beyette accepted a retainer from the attorney under the 2013 Power of Attorney and acted for her in settling the matter. Pursuant to the settlement, Mr. Beyette consented to an order declaring the June 2013 Power of Attorney invalid - even though he continued to believe it was valid - and declaring the 2007 Power of Attorney in effect. Mr. Beyette did not advise the court or counsel of the February 2013 Power of Attorney, which, if valid, would have revoked all earlier Powers of Attorney.

Plea

Mr. Beyette entered a guilty plea to the three charges of professional misconduct.

Decision and Comments

The Panel accepted Mr. Beyette's guilty plea.

In considering a joint recommendation as to penalty, the Panel observed that Mr. Beyette had no prior record in his 17 years of practise. Mr. Beyette acknowledged his responsibility, cooperated with the Society and expedited the process. At the hearing he apologized to EMO, her family and members of the Society. He also advised of steps taken to improve his practices in the future.

The Panel noted, however, that care must be taken in circumstances such that were present in this case. The public expects nothing less.

Penalty

The Panel accepted the joint recommendation of counsel for the Society and for Mr. Beyette and imposed a fine of \$2,500.00 and ordered Mr. Beyette to pay \$4,000.00 as a contribution to the costs of the investigation and prosecution of this matter.