



# DISCIPLINE CASE *DIGEST*

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Case 17-08

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| <b>Member:</b>                | Daniel Paul Orlikow  |
| <b>Jurisdiction:</b>          | Winnipeg, Manitoba   |
| <b>Called to the Bar:</b>     | June 30, 1988  |
| <b>Particulars of Charge:</b> | Professional Misconduct (1 Charge): <ul style="list-style-type: none"><li>▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service]</li></ul> |
| <b>Plea:</b>                  | Guilty   |
| <b>Date of Hearing:</b>       | February 21, 2018  |
| <b>Panel:</b>                 | <ul style="list-style-type: none"><li>▪ Richard I. Good (Chair)</li><li>▪ Patricia Fraser</li><li>▪ Lorne Gibson (Public Representative)</li></ul> |
| <b>Counsel:</b>               | <ul style="list-style-type: none"><li>▪ Rocky Kravetsky for The Law Society of Manitoba</li><li>▪ Allan Fineblit, Q.C. for the Member</li></ul>    |
| <b>Date of Decision:</b>      | Written Reasons for Decision: February 21, 2018  |
| <b>Disposition:</b>           | <ul style="list-style-type: none"><li>▪ Reprimand</li><li>▪ Costs of \$2,500.00</li></ul>  |

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## Quality of Service

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### Facts

Approximately two weeks before a trial was scheduled to begin in a family law matter, Mr. Orlikow agreed to assume conduct of the matter from another lawyer with whom he shared office space. Mr. Orlikow agreed not to charge for his services.

Mr. Orlikow then proceeded to engage settlement discussions. In a telephone discussion on September 14, 2016, he discussed settlement terms with his client. When his client called him later that same day seeking clarification as to what had been discussed as to the terms of settlement, Mr. Orlikow raised his voice and spoke aggressively and rudely to his client.

Mr. Orlikow considered that he had instructions to settle the case and proceeded to deliver a letter to opposing counsel containing an offer to settle on specific terms. Opposing counsel responded with a draft consent Final Order setting out terms of settlement containing additional

detail and some differences from the terms set out in Mr. Orlikow's letter. Mr. Orlikow endorsed his consent on the draft Final Order and returned it to opposing counsel.

Mr. Orlikow did not confirm in writing the instructions from his client and, in particular, did not provide his client with a copy of his settlement offer letter before sending it, or of the draft Final Order before signing and returning it. Mr. Orlikow's client did not understand the specific terms that had been agreed and at first, resisted complying with the settlement.

### **Plea**

Mr. Orlikow entered a guilty plea to the one charge of professional misconduct.

### **Decision and Comments**

The Panel noted that the referring lawyer had told Mr. Orlikow that the client had had difficulty accepting legal advice. This highlighted the necessity to ensure that the client understood the settlement proposal and that instructions be obtained in writing. The failure to do so in the circumstances, was particularly troubling. The Panel commented, also, that civility and a calm demeanour are especially important in circumstances fraught with emotion.

### **Penalty**

In considering the joint recommendation of counsel for the Society and for the Member, the Panel accepted that the public interest test applies. The Panel accepted the joint recommendation and ordered that Mr. Orlikow be reprimanded and that he pay the sum of \$2,500.00 to the Law Society towards costs associated with the investigation and prosecution of this matter.