



# DISCIPLINE CASE *DIGEST*

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Case 18-01

<b>Member:</b>	Vincent Joseph Bueti
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 24, 1982
<b>Particulars of Charges:</b>	Professional Misconduct (2 Charges): <ul style="list-style-type: none"><li>▪ Breach of Rule 3.4-1 of the <i>Code</i> [conflict of interest]</li><li>▪ Breach of Rule 7.2-1 of the <i>Code</i> [discourtesy to opposing counsel]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	June 20, 2018
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Roberta Campbell (Chair)</li><li>▪ Lorna Turnbull</li><li>▪ Kenneth Molloy (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Rocky Kravetsky for The Law Society of Manitoba</li><li>▪ Member Self Represented</li></ul>
<b>Date of Decision:</b>	Oral Decision: June 20, 2018
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$3,500.00</li><li>▪ Costs of \$4,000.00</li></ul>

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## Conflict of Interest / Duty to Lawyers

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### Facts

#### *Conflict*

In early August 2016 Mr. Bueti was consulted by AB, an 84 year old widower with four adult children and by T, one of his children. Mr. Bueti was instructed that AB had granted Power of Attorney in 2011 to L, another of his children, but that L was refusing to provide AB with copies of the 2011 Power of Attorney or of his Will and that L was refusing to allow AB access to his cash or his credit card. AB and T considered that L was taking financial advantage of AB, particularly as to certain financial and property transactions. They were concerned about specific entries on AB's bank statements and that a Mortgage had been registered against AB's house.

At a second meeting with AB and T, about a week later, Mr. Bueti took instructions to prepare a new Power of Attorney and to revoke the 2011 Power of Attorney. T was to be the attorney under

the new 2016 Power of Attorney. Mr. Bueti met with AB separately, satisfied himself that AB had the capacity and desire to make the new Power of Attorney and proceeded to have AB execute the 2016 Power of Attorney.

Upon receiving notice of the 2016 Power of Attorney, L caused copies of medical reports to be delivered to Mr. Bueti, which reports opined that AB was mentally unfit to manage his own affairs. Mr. Bueti was not persuaded by these reports and considered, based on his own assessment, that AB was lucid and capable of providing instructions and of making the 2016 Power of Attorney.

Mr. Bueti then accepted instructions to initiate proceedings to have the 2016 Power of Attorney declared valid and the 2011 Power of Attorney declared revoked. He prepared a Notice of Application and supporting material, including his own Affidavit setting out his opinion as to AB's mental capacity. Though prepared entirely by Mr. Bueti, the documents were filed under the name of a junior associate. Mr. Bueti continued to be the primary contact person for AB and T and to control the conduct of the litigation, including the content of correspondence with L's lawyer that was transmitted in the name of the junior associate. Mr. Bueti declined to have his firm withdraw as counsel, even though he had filed his own evidence on a contentious issue in the litigation.

When an Independent Medical Assessment was later received to the effect that AB was suffering from dementia, sufficient to raise significant concerns as to his capacity to make the 2016 Power of Attorney, Mr. Bueti and his clients did not agree with the doctor's opinion and Mr. Bueti did not retain any other expert to contest it. Mr. Bueti considered that his evidence would outweigh the doctor's opinion, but continued to act as counsel in the litigation.

At a later point in the litigation, early in January 2017, AB instructed Mr. Bueti to discontinue the legal proceedings. T wished to continue the proceedings. Mr. Bueti advised T that he could not continue to act without AB's instructions jointly with hers.

Mr. Bueti did not withdraw as lawyer of record in the matter. He continued to communicate with L's counsel and with counsel for the Public Guardian and Trustee. Notwithstanding that he had accepted AB's instructions on the basis that AB considered that he retained capacity to manage his own affairs and notwithstanding the conflicting instructions from AB and T, Mr. Bueti then advocated on T's instructions that the Public Guardian and Trustee be appointed to manage AB's affairs and he swore and caused to be filed his own further Affidavit in support of that position.

### ***Discourtesy to Counsel***

Early in the court proceedings, counsel for L made a motion for an independent psychiatric examination of AB. The motion was settled on the basis that an assessment and report would be sought from a mutually acceptable geriatric psychiatrist. Mr. Bueti caused arrangements to be made for the assessment and examination and on October 26, 2016 an unsigned copy of the doctor's report was received by Mr. Bueti's firm. Despite an inquiry earlier that day from L's counsel as to the status of the examination and report, he was not informed when the unsigned report arrived. The doctor's opinion was not favourable to the position of Mr. Bueti's clients in that it raised significant concerns about AB's capacity to make the 2016 Power of Attorney.

On November 6, 2016, L's counsel again inquired as to the status of the doctor's report. Mr. Bueti caused him to be told that the "final opinion" of the doctor had not been received but did not say that an unsigned report had been in his hands since October 26, 2016. On November 8, 2016 L's counsel asked if a "preliminary opinion" had been received and on November 10, 2016, Mr. Bueti told him that an unsigned report had been received and that it contained the opinion that AB did not meet the test as to ability to execute the 2016 Power of Attorney. He did not provide a copy of the unsigned report.

A signed original of the doctor's report was received by Mr. Bueti's firm on November 16, 2016 but a copy was not immediately provided to L's counsel. A follow up inquiry from L's lawyer on November 21, 2016 was not immediately answered. A copy was provided only on November 28, 2016 after L's counsel had told Mr. Bueti's junior associate that he had learned from the doctor's office that a signed report had been sent out.

Mr. Bueti withheld immediate release of the report for strategic reasons. Notwithstanding that the assessment was by agreement to settle L's motion, he considered that because his firm had made the request of the doctor and had undertaken to pay for the assessment and report that opposing counsel had no authority to dictate when they would receive the report.

### **Plea**

Mr. Bueti entered a guilty plea to the two charges of professional misconduct.

### **Decision and Comments**

Based on his guilty plea and the admitted facts, the Panel found that Mr. Bueti acted while in a conflict of interest, both as a result of continuing to act after becoming a witness in the matter and for continuing to pursue the matter after AB instructed him to end the litigation. The Panel found also, that Mr. Bueti breached his duty to act with courtesy and good faith toward L's counsel by failing to provide the doctor's report in a timely manner.

### **Penalty**

In considering the joint recommendation of counsel for the Law Society and Mr. Bueti, the Panel accepted that the public interest test applies. The Panel noted that Mr. Bueti had no prior record after 36 years of practising law. They noted, also, his heartfelt expressions of remorse and they accepted that he now has a better understanding of his professional obligations in circumstances as such that arose in this case. They accepted the joint recommendation that Mr. Bueti be fined \$3,500.00 and that he pay \$4,000.00 as a contribution to the costs of the investigation and prosecution of the matter.