



DISCIPLINE CASE *DIGEST*

Case 18-05

Member:	Jonathan Andrew Richert
Jurisdiction:	Brandon, Manitoba
Called to the Bar:	December 13, 2005
Particulars of Charges:	Professional Misconduct (3 Charges): <ul style="list-style-type: none">▪ Breach of Rule 7.1-1 of the <i>Code</i> and Rules 5-64(3), (4), and (5) of the <i>Rules</i> [failure to respond promptly and completely to the Law Society]
Plea:	Guilty
Date of Hearing:	January 8, 2019
Panel:	<ul style="list-style-type: none">▪ Dean Scaletta (Chair)▪ Karen Webb▪ Lynne McCarthy (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Member Self Represented
Date of Decision:	Written Decision: March 14, 2019
Disposition:	<ul style="list-style-type: none">▪ Cancellation of current practicing certificate and issuance of a new practicing certificate with conditions▪ Fine of \$1,500.00 (paid as per schedule set out in Reasons for Decision)▪ Costs of \$4,500.00 (paid as per schedule set out in the Reasons for Decision)

Failure to Respond to the Law Society

Facts

Mr. Richert was charged with three counts of professional misconduct for failing to respond promptly or within the prescribed time to communications from the Law Society. The communications relate to three complaints against him: the M Complaint, the D Complaint, and the K Complaint.

M Complaint

Ms M filed a complaint to the Law Society that Mr. Richert had failed to transfer a file to a lawyer retained in his stead. After receiving the complaint on June 25, 2018, the Law Society attempted to contact Mr. Richert to see if the matter could be informally resolved. Mr. Richert did not respond to these attempts. As a result, he was sent a formal 14 day letter on July 11, 2018. No response was received. The Law Society sent a follow-up letter to Mr. Richert on July 26, 2018 and required a response by August 10, 2018. Mr. Richert sought and received an extension to respond to August 15, 2018 and then to August 20, 2018. He responded on August 22, 2018. Around this same date, it appears Mr. Richert provided the requested file to the successor lawyer. The Law Society had a follow-up question for Mr. Richert, which was provided to him on August 22, 2018 and required a response by September 5, 2018. Mr. Richert provided a "short answer" on September 6, 2018 and requested an extension to provide a "more complete response." Mr. Richert was granted an extension to September 17, 2018. The Law Society did not receive a substantive response until December 14, 2018, despite multiple verbal and written requests and two additional extensions (the last requiring a response by November 21, 2018).

D Complaint

Ms D, a lawyer, had been retained by the executor of an estate and requested that Mr. Richert transfer to her the estate file. She filed a complaint with the Law Society on August 15, 2018 after not receiving the file despite several follow-up requests. The Law Society made two unsuccessful attempts to contact Mr. Richert on August 30, 2018. On September 5, 2018, the Law Society faxed Mr. Richert a copy of the D Complaint with cover letter requiring a response by September 19, 2018. He acknowledged its receipt on September 6, 2018 but did not otherwise respond to the substance of the complaint. The Law Society left Mr. Richert an unanswered voicemail on September 24, 2018 and then faxed another letter on September 26, 2018, which required a response by October 10, 2018. Mr. Richert provided two email responses on October 1 and 4, 2018, but neither addressed the D Complaint. Mr. Richert received two additional extensions to respond to the D Complaint, the last being to November 21, 2018. A substantive response was received on December 14, 2018. That same day, Ms D confirmed receipt of the estate file and the related trust ledger and trust funds.

K Complaint

The Law Society received a complaint from Ms K, a client of Mr. Richert, on July 9, 2018. The Law Society sent Mr. Richert copies of the K Complaint on July 18, 2018 via fax, email, and Canada Post expedited parcel service, along with a cover letter requiring a response within 14 days. The fax did not go through. The Canada Post tracking tool indicated that the package had been delivered to Mr. Richert's office on July 23, 2018. Mr. Richert contacted the Law Society on August 13, 2018 and advised that he had not seen any of the communications until July 30, 2018. Mr. Richert requested an extension which was provided to August 20, 2018. Mr. Richert provided a substantive response to the K Complaint on August 22, 2018. He explained that he had been ill the prior two days.

On October 23, 2018, the Law Society requested via letter the K file for the purpose of the investigation, to be provided within 14 days. An extension was granted to November 21, 2018. Mr. Richert did not provide the file by this deadline. Mr. Richert appeared before the Law Society's Complaints Investigation Committee on December 12, 2018 and gave an Undertaking to provide the K file to the Law Society by December 21, 2018. He complied with this Undertaking.

Plea

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

Decision and Comments

The Panel was made aware that Mr. Richert had previously pled guilty on September 6, 2018 to a similar charge of professional misconduct, for which he received a reprimand. The Panel emphasized that Law Societies must effectively govern and regulate their members in the public interest so as to justify the continued faith of the government and public in the profession's ability to self-regulate. Membership in the Law Society carries with it an obligation to maintain the integrity of the profession by complying with the Rules of the Law Society. In order to effectively self-regulate in the public interest, legal professionals must have the capacity to "rein in" rogue members.

Penalty

The Panel directed that:

- a. The practicing certificate currently held by Mr. Richert be cancelled, and that a new practicing certificate be issued to him subject to the following conditions:
 - i) Mr. Richert will provide to the Society an email address at which he will receive communications from the Society;
 - ii) Mr. Richert will open all folders in that email account at least once per business day;
 - iii) Mr. Richert will acknowledge receipt in writing of each communication from the Society within 24 hours of its receipt;
 - iv) Mr. Richert will at all times have a practicing member of the Society, acceptable to the Society, in place who has agreed and signed an Undertaking to:
 - i. Receive copies of communications to Mr. Richert from the Society;
 - ii. If required, confirm to the Society that they have received confirmation from Mr. Richert of his receipt of any communications;
 - iii. Report to the Society if Mr. Richert fails to provide the confirmation described in the paragraph immediately above;
 - iv. Use their best efforts to ensure that Mr. Richert responds fully, completely, and on a timely basis to each communication from the Society;
 - v. If required, report to the Society as to the measures taken to ensure Mr. Richert has responded fully, completely, and on a timely basis to a particular communication from the Society;
 - vi. Report to the Society if Mr. Richert fails to cooperate in making a full, complete, and timely response to a communication from the Society;
 - vii. Not withdraw from the Undertaking except with at least thirty days written notice to Mr. Richert and the Society, or upon being relieved of the Undertaking by the Society.
 - v) The above conditions will remain in force for a period of not less than two years from the date of this decision, after which Mr. Richert may apply to be relieved of the conditions;
- b. a fine of \$1,500.00 (to be paid on a schedule as set out in the Reasons for Decision); and,
- c. costs of \$4,500.00 (to be paid on a schedule as set out in the Reasons for Decision).