



# DISCIPLINE CASE *DIGEST*

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Case 11-01

<b>Member:</b>	Douglas Albert Mayer
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 30, 1988
<b>Particulars of Charges:</b>	Professional Misconduct (3 Counts): <ul style="list-style-type: none"><li>▪ Breach of Chapters 2 and 16 of the <i>Code of Professional Conduct</i> [quality of service]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	September 28, 2011
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Donald R. Knight, Q.C. (Chair)</li><li>▪ Lindy Choy</li><li>▪ Keely Richmond (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ C. Kristin Dangerfield for The Law Society of Manitoba</li><li>▪ Unrepresented</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$1,500.00</li><li>▪ The member is required to:<ul style="list-style-type: none"><li>(a) take and successfully complete at his own expense, the Remedial Practice Management course offered by the Education and Competence Department of the Society; and</li><li>(b) contact and cooperate with the Society's Practice Advisor, Barney Christianson, Q.C., and follow any recommendations that he may make.</li></ul></li><li>▪ Costs of \$1,500.00</li></ul>

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## Quality of Service

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### Facts

In April 2007 Mr. Mayer obtained by consent an adjournment of a motion for spousal support on the condition that his client would make an immediate interim, without prejudice, spousal support payment. Opposing counsel provided to Mr. Mayer an Order for signing. Mr. Mayer neither signed nor returned the Order, nor did he communicate any concerns with respect to the wording of the Order. Opposing counsel therefore set an appointment with the presiding motions court judge to settle the terms of the Order, and it was signed as originally drafted. At no time prior to attending before the motions court judge did Mr. Mayer raise any concerns with respect to the

wording of the Order. Costs were ordered against Mr. Mayer's client in the amount of \$350.00 with respect to the appearance. In seven separate letters sent to Mr. Mayer between July and October 2007, opposing counsel requested payment of the costs. Mr. Mayer did not respond to any of the requests, and on October 22, 2007 the client attended at the opposing counsel's office and paid the costs directly. All substantive matters were substantially completed by January 2008, however, Mr. Mayer did not provide any form of final report to his client.

During the course of another domestic retainer, Mr. Mayer failed to keep the client reasonably informed about the status of her matter, he failed to respond to numerous communications from his client which required a reply and he failed to advance the client's matter. He was retained in August 2007 and an initial Case Conference did not take place until March 2009. The client then instructed Mr. Mayer to accept a proposal previously made by the Respondent, to draft the appropriate agreement and to cancel the Case Conference which was scheduled to continue in June 2009. Mr. Mayer did not respond to those instructions or to emails from the client in April 2009. Two days before the Case Conference, he called to remind the client, although she had assumed it had been cancelled, and had not scheduled time off work. Mr. Mayer attended the Case Conference without the client. He was to advise as to the outcome, however, he did not contact the client, or respond to a subsequent email and telephone call from the client. After no further contact from Mr. Mayer, the client attended at Mr. Mayer's office in September 2009 to obtain her file so that she could retain new counsel.

In August 2007, Mr. Mayer was retained to commence family division proceedings. The client urged him to address pressing issues including access to his children. Between September 30, 2007 and November 2007, Mr. Mayer failed to respond to six emails from his client. Five emails sent in November and December also went unanswered. When the client sent Mr. Mayer an email communication in June 2008 requesting an appointment to meet with Mr. Mayer several days later, Mr. Mayer failed to respond to the email in a timely way, and was not in his office when his client attended. Opposing counsel sought from Mr. Mayer the client's position with respect to funding for an assessment. Although Mr. Mayer had instructions from his client, he did not respond to two follow up letters from opposing counsel, and as a result, an assessor was retained unilaterally by opposing counsel. The assessor advised that the assessment would be put on hold unless both parties would consent to an Order permitting access to Child and Family Services information. Opposing counsel followed up with Mr. Mayer in two letters, however, Mr. Mayer did not provide the client's position on the matter for another month. When opposing counsel provided a draft Order, Mr. Mayer failed to provide a response. Opposing counsel forwarded the final Order to Mr. Mayer for his signature, however, he failed to bring the Order to the attention of his client until approximately one month later.

### **Plea**

Mr. Mayer entered a guilty plea to 3 counts of Professional Misconduct for failing to serve his client in a conscientious, diligent and efficient manner contrary to Chapter 2 of the *Code of Professional Conduct*.

### **Decision and Comments**

The panel concluded that Mr. Mayer had failed to service his clients in a conscientious, diligent and efficient manner, contrary to Chapter 2 of the *Code of Professional Conduct* and found him guilty of 3 counts of professional misconduct.

### **Penalty**

The panel considered a joint recommendation from Mr. Mayer and counsel for the Law Society and ordered that:

- (a) Mr. Mayer be fined the sum of \$1,500.00;

- (b) Mr. Mayer be required to take at his own expense and successfully complete the Remedial Practice Management course offered by the Education and Competence Department of the Society;
- (c) Mr. Mayer contact and cooperate with the Society's Practice Advisor, Barney Christianson, Q.C., and follow any recommendations that he may make; and
- (d) Mr. Mayer be required to pay to the Society the amount of \$1,500.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of this matter.