



DISCIPLINE CASE *DIGEST*

Case 11-10

Member:	Robert Lewis Fisher
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 23, 1983
Particulars of Charges:	Professional Misconduct (8 Counts): <ul style="list-style-type: none">▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [Integrity-misappropriation: falsification of documents; forging signatures; misleading the court; wrongfully appropriating monies to be held pending agreement/court order; misleading client] [x6]▪ Breach of Chapter 2 of the <i>Code of Professional Conduct</i> [failing to serve client in a conscientious, diligent and efficient manner]▪ Breach of Rules 5-64(3) and 5-64(4) of the <i>Rules of the Law Society of Manitoba</i> [failing to respond to the Law Society within 14 days]
Plea:	Guilty
Date of Hearing:	January 17, 2012
Panel:	<ul style="list-style-type: none">▪ Gordon J. Hoeschen (Chair)▪ Lori Ferguson Sain▪ Marston Grindey (Public Representative)
Disposition:	<ul style="list-style-type: none">▪ Disbarment▪ Costs of \$50,000.00
Counsel:	<ul style="list-style-type: none">▪ Darcia A.C. Senft for The Law Society of Manitoba▪ Member Self Represented

Misappropriation / Breach of Integrity / Failure to Serve Client / Failure to Respond

Facts

Between October 7, 2005 and September 1, 2010, Mr. Fisher misappropriated trust funds from 23 client files in the total amount of \$174,405.16. Mr. Fisher misappropriated trust funds in various ways such as: by depositing (through the use of automated teller machines) firm trust cheques made payable to clients or estate beneficiaries to his personal accounts; by applying firm trust

cheques that were payable to purported creditors of estates to his own accounts; and by causing two firm trust cheques to be issued in the names of third parties who had no entitlement to the funds and Mr. Fisher knew this to be the case. Most if not all of the misappropriations went to Mr. Fisher's unauthorized personal benefit or, in the case of the two cheques written to third parties, to the benefit of parties not entitled to receive the benefit of the trust funds.

With respect to his representation on behalf of one estate, Mr. Fisher created a false will which differed from the original will that was probated. The false will contained bequests to two individuals in the amount of \$37,500.00 each; however, the original will provided bequests to those individuals in the amount of \$25,000.00 each. Cheques to the two individuals in the amount of \$12,500.00 each were then deposited by automatic teller machine to Mr. Fisher's personal bank account. The false will also contained bequests to two other individuals totalling \$16,500.00 which were not contained in the original will. As well, the false will did not contain a \$25,000.00 bequest to a specific charity, which bequest had been included in the original will. Mr. Fisher created a false will for the estate file to obfuscate his misappropriation of trust funds from the estate.

Mr. Fisher falsified documents on various other client files to facilitate and/or obfuscate his misappropriation of trust funds from those client files. Typically, on client files where he misappropriated trust funds, he papered the files with what appeared to be letters to clients and/or beneficiaries in order to confirm payments alleged to have been made to those individuals or to confirm payments alleged to have been made to third parties on behalf of those individuals when, in fact, such payments had not been made as was represented.

Between May 9, 2006 and October 16, 2007, Mr. Fisher forged signatures of payees on the endorsement section of 12 trust cheques relating to four client matters in order to facilitate the misappropriation of client trust funds with respect to the said client matters.

On another estate matter, Mr. Fisher prepared and filed an affidavit wherein he intentionally misled the Court of Queen's Bench about the residence of an executrix in order to avoid the bond requirement of a foreign executrix. Specifically, it was represented to the Courts that the executrix resided in the City of Winnipeg, in Manitoba when, in actual fact, the executrix resided and worked in Brooklyn, New York.

In a domestic matter, Mr. Fisher acted for the wife. The estranged husband owned property in his sole name. The property was sold in 2006 following the parties' separation. The net sale proceeds from the sale of the husband's property were provided to Mr. Fisher by the lawyer who acted on the sale on the condition that the proceeds were to be held in an interest bearing account pending an agreement or court order with respect to an equalization of family property. Prior to any agreement or order, and without the knowledge or consent of either the wife or the husband, Mr. Fisher wrongfully appropriated the net proceeds and accrued interest in the total amount of \$16,567.57 from the sale proceeds held in trust to pay accounts that had not been rendered to his client, the wife. In or about August 2009, the husband communicated to Mr. Fisher that he was prepared to allow the wife to have all of the sale proceeds (which he and the wife believed were being held in trust) and requested that Mr. Fisher provide him with the paperwork to conclude the family property matter. Despite leaving a message for Mr. Fisher and sending him an email communication, the husband did not hear back from Mr. Fisher. Following a fee dispute with Mr. Fisher, the wife reached a settlement that Mr. Fisher would provide her with \$12,000.00 (of the sale proceeds—which she believed were still being held in trust) and keep the rest as payment for his fees.

Mr. Fisher assumed conduct of a client file regarding a civil claim for damages arising from a personal injury sustained by the client while playing hockey. Opposing counsel requested that the client produce his skates for inspection and Mr. Fisher sought and obtained the client's instructions to bring the skates to an examination for discovery scheduled for March 2008. It became apparent in further correspondence from opposing counsel that she was seeking

production of the skates for examination by an expert in advance of the examinations for discovery. Mr. Fisher failed to advise the client of the request for the production of the skates and also failed to respond to opposing counsel's further requests for dates upon which the skates could be examined. Without the client's knowledge, Mr. Fisher agreed to deliver the skates to opposing counsel by January 31, 2008. On January 30, 2008, Mr. Fisher advised the client, for the first time, that he was to deliver the skates to Mr. Fisher's office for him to deliver them to opposing counsel. The client objected to delivering the skates to opposing counsel. Mr. Fisher failed to advise opposing counsel of the client's objection despite receiving her further e-mail inquiries of him. Opposing counsel filed and served a motion for the production of the skates and adjourned the examinations for discovery. The client instructed Mr. Fisher to oppose the motion and it was adjourned for a contested hearing. Without the knowledge or consent of the client and contrary to his instructions, Mr. Fisher consented to an Order requiring that the skates be produced and that the client pay costs in the amount of \$350.00 prior to the commencement of examinations for discovery (hereinafter the "Order"). Mr. Fisher reported the terms of the Order to the client; however, he did not advise the client that he had consented to the Order and that there was no contested hearing.

Mr. Fisher also failed to provide a written response to two letters sent to him by the Law Society of Manitoba which required a response within 14 days.

Plea

Mr. Fisher entered a plea of guilty with respect to all of the charges.

Decision and Comments

The Panel noted Mr. Fisher's admission to all of the charges and found that his conduct amounted to professional misconduct.

Commenting on the authorities that had been provided on sentencing, the Panel took note of the need to protect the public and the reputation of the profession.

The Panel stated that charges involving misappropriation almost invariably lead to disbarment. The Panel was unanimous in its view that disbarment was the appropriate disposition in this case in light of the Citations, the member's prior relevant previous history, and the lack of any mitigating or extenuating circumstances.

The Panel also took note of the fact that Mr. Fisher agreed with the Society's submission that disbarment was the appropriate disposition, having regard to all of the circumstances.

Penalty

The Panel ordered the Mr. Fisher be disbarred and struck from the Rolls of the Society immediately. The Panel also ordered that Mr. Fisher be required to pay costs in the amount of \$50,000.00 as a contribution to the costs incurred by the Society in investigating these matters, with payment terms to be set by the Chief Executive Officer of the Law Society.