



# DISCIPLINE CASE *DIGEST*

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Case 12-10

<b>Member:</b>	Carl Franklin Burch
<b>Jurisdiction:</b>	Brandon, Manitoba
<b>Called to the Bar:</b>	June 26, 1986
<b>Particulars of Charges:</b>	Professional Misconduct (3 Counts): <ul style="list-style-type: none"><li>▪ Breach of Chapters 1 and 6 of the <i>Code of Professional Conduct</i> [integrity and conflict of interest] [x2]</li><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [integrity] [x1]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	December 13, 2012
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Ellen Leibl, Q.C. (Chair)</li><li>▪ Richard Buchwald</li><li>▪ Neil Cohen (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia A.C. Senft for The Law Society of Manitoba</li><li>▪ Member Self Represented</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Suspension for a period of one month commencing January 26, 2013</li><li>▪ The member's practicing certificate be cancelled and a new certificate issued subject to the following conditions:<ul style="list-style-type: none"><li>(i) Within three months from the date of the hearing and at his own cost the member is to attend, participate and complete an initial psychiatric assessment as directed by the Society's Professional Boundaries program to determine if counseling through that program and/or other therapy is required to address the member's conduct; and</li><li>(ii) Within one year from the date of the hearing and at his own cost the member is to attend, participate and successfully complete any counseling and therapeutic treatment as directed following the assessment.</li></ul></li><li>▪ Costs of \$2,500.00</li></ul>

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**Integrity / Conflict of Interest**

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## **Facts**

In June 2007, Mr. Burch was retained by a client to handle a dispute with the vendors of a recently purchased mobile home. A file was opened, a retainer was paid and the dispute quickly settled.

The client had been divorced from her former husband for a number of years. They had joint custody of their two sons. She already had counsel acting on her behalf on the domestic matter. She asked Mr. Burch to meet with her children for the purpose of determining and documenting the boys' wishes about where they wanted to live - with their father, or with their mother who had recently moved to another city in Manitoba. The intent was to have affidavits prepared for a hearing regarding the variation of an order in the domestic matter. Mr. Burch agreed to meet with the children, as requested, and in late June 2007, Mr. Burch interviewed the children.

Mr. Burch prepared an affidavit for his own execution wherein he described his interviews with the children. He also prepared affidavits for each of the children and arranged to have them executed at the end of June 2007 for the purpose of providing the sworn affidavits to the mother's counsel in the domestic matter.

In late August 2007, Mr. Burch became engaged in an intimate and sexual relationship with the mother. Several months later, the mother determined she wanted to retain new counsel to act on her behalf in relation to her domestic matter. In the middle of January 2008, she retained new counsel on the domestic matter. Following discussion with the mother, Mr. Burch agreed to "represent the children again" and by letter dated January 18, 2008, he sent a letter to counsel for the mother's ex-spouse inquiring as to why support payments were not being sent for the children.

In February 2008, while purporting to represent the children in respect of their parents' divorce proceedings, Mr. Burch was interviewed by a psychologist who was conducting various interviews in order to prepare a psychological assessment and report setting out recommendations for the Court with respect to whether or not it would be in the best interests of the children to move with their mother to city where she resided. Mr. Burch advised the psychologist that he had no background information on the case other than that the parents were sharing the parenting equally, that the children wanted to move to the city where their mother resided and that they wanted Mr. Burch to help them move. While acting for the children as outlined, Mr. Burch was engaged in an intimate and sexual relationship with the mother of the children. Mr. Burch did not disclose to the psychologist that he was engaged in this relationship with the children's mother.

In or about late March 2008, Mr. Burch was ultimately retained by the mother in respect of her domestic matter. In March, April and May, 2008, while acting for his client in her divorce proceedings, Mr. Burch was engaged in an intimate and sexual relationship with his client.

## **Plea**

Mr. Burch entered a guilty plea.

## **Decision and Comments**

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

## **Penalty**

The panel accepted a joint recommendation made by the Society and Mr. Burch and ordered that:

- (i) Mr. Burch be suspended from the practice of law for a period of one month commencing January 26, 2013;
- (ii) Mr. Burch's practicing certificate be cancelled and a new certificate issued subject to the following conditions:
  - (a) Within three months from the date of the hearing and at his own cost the member is to attend, participate and complete an initial psychiatric assessment as directed by the Society's Professional Boundaries program to determine if counseling through that program and/or other therapy is required to address the member's conduct; and
  - (b) Within one year from the date of the hearing and at his own cost the member is to attend, participate and successfully complete any counselling and therapeutic treatment as directed following the assessment.
- (iii) Mr. Burch pay \$2,500.00 to the Society as a contribution towards the costs of the investigation, prosecution and hearing of the matter.