



DISCIPLINE CASE *DIGEST*

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Case 01-02

GERALD ERNEST DOAK
Winnipeg, Manitoba

Called to the Bar
June 30, 1988

Particulars of Charges
Professional Misconduct (14 charges)

- breach of trust accounting rules (x4)
- failure to serve client in a conscientious, diligent and efficient manner (x3)
- failure to respond to 14 day letter (x2)
- failure to comply with trust condition
- failure to discharge duties with integrity
- failure to cooperate with insurer
- failure to meet financial obligations incurred in the course of practice
- failure to treat opposing counsel with courtesy

Date of Hearing
July 10, 2001

Panel
J.W. Hedley, (Chair)
C.E. Gorlick, Q.C.
D.F. Plett, Q.C.

Disposition

- 6 mo. suspension
- Costs of \$5,000.00

Counsel

J.R. Gallagher for The Law Society of Manitoba
F.E. Bortoluzzi for the Member

Breach of Accounting Rules

Facts

Mr. Doak received trust monies totalling \$13,913.88 from or on behalf of six different clients and the funds were deposited to his general account rather than his pooled trust account. When the matter was brought to his attention by an auditor from the Law Society the error was rectified and no losses were suffered by the clients.

While acting for the mortgagors and mortgagee in a real estate matter, Mr. Doak accepted a trust condition imposed by the mortgagee that he retain \$7,500.00 in trust pending completion and inspection of a garage on the property. He failed to retain sufficient funds to meet the trust condition. Mr. Doak then issued a \$7,500.00 trust cheque at a time when the clients had only \$6,355.91 to their credit in the pooled trust account. In the same matter, Mr. Doak recorded a deposit of \$1,144.09 to his pooled trust account, but did not make the deposit until over three months later with the result that he did not maintain sufficient balances on deposit in his trust account to meet his obligations with respect to trust monies during that time.

For an eleven month period, Mr. Doak failed to keep and maintain an up-to-date calculation of the control account balance for his pooled trust account. He also failed to maintain up-to-date for each month during the same period a client trust list showing the balance for each client and establishing that the total for each client agreed with the control account balances each month. In addition, Mr. Doak failed to maintain monthly bank reconciliations for each of the same months showing the details of any differences between monthly bank statements and the control account balances.

Mr. Doak was retained by a financial institution to prepare a residential mortgage. Mortgage funds were forwarded on condition that Mr. Doak provide a certified copy of the fire insurance to the financial institution. Over the next twenty-one months, the financial institution wrote four letters to Mr. Doak and called his office on ten occasions seeking a certified copy of the fire insurance, but Mr. Doak failed to respond to any of the letters or telephone calls and failed to provide the certified copy of the fire insurance.

A client retained Mr. Doak with respect to a wrongful dismissal claim and on four occasions for periods ranging from three months to seven months, he failed to keep his client reasonably informed as to the status and progress in the matter. Mr. Doak misled his client by advising her that he had filed a statement of claim on her behalf, when in fact no such claim had been filed.

In another matter, Mr. Doak was retained by a client regarding a personal injury claim. Following examination for discovery of Mr. Doak's client, opposing counsel wrote eight letters to Mr. Doak over a period of almost three years regarding delay and answers to

undertakings. None of the letters were responded to and opposing counsel brought a motion which resulted in the action being dismissed for delay. Mr. Doak failed to appear at the motion hearing and after being notified of the dismissal of the action, did not notify his client that her claim had been dismissed. Mr. Doak filed an appeal against the dismissal. A total of six letters were sent by opposing counsel requesting information or advice from Mr. Doak as to whether his client was proceeding with the appeal. Mr. Doak failed to respond to any of the letters. On a motion brought by opposing counsel, the appeal was dismissed for delay and abuse of process with costs against Mr. Doak's client. Mr. Doak did not attend the hearing and had not made any contact with his client prior to the hearing. The client had become aware of the hearing and retained new counsel who attended on her behalf.

After receiving a letter from the Law Society regarding spot audit concerns, Mr. Doak failed to respond to the substance of four of the inquiries within 14 days of receipt of the letter. He also failed to file a response to another letter received from the Law Society regarding a complaint. In another matter, Mr. Doak advised his insurer of a potential professional liability claim. Thereafter, the insurer sent five letters to Mr. Doak requesting information on the potential claim, however, he failed to respond to any of the letters.

Following an examination for discovery conducted by Mr. Doak and receipt by him of transcripts of the examination, the court reporter rendered an account for attendance at the examination and preparation of the transcripts. Over the next 17 months, demands were made by the court reporter for payment of the account, but it was never paid by Mr. Doak.

Decision and Comments

Mr. Doak entered a plea of guilty to the 14 charges and the Committee found him guilty of professional misconduct. There was a joint recommendation that a nine month suspension and an order of costs were appropriate in the circumstances. While the Committee recognized that this was not Mr. Doak's first experience before the Discipline Committee, the members did not agree that a nine month suspension was warranted.

Penalty

The Committee ordered that Mr. Doak be suspended for a period of six months and that upon his return to practice, he practice under supervision for a period of one year with a supervisor approved by the Society and with reports from the supervisor at 6 and 12 month intervals during the period of supervision. The Committee also ordered that Mr. Doak pay costs of \$5,000.00 to the Society as a contribution to the costs of the investigation and hearing of the matter.

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