



DISCIPLINE CASE *DIGEST*

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Case 02-08

PHILLIP F. B. CRAMER
Winnipeg, Manitoba

Called to the Bar
June 29, 1989

Particulars of Charges
Professional Misconduct (5 counts)

- Failure to serve clients in a conscientious, diligent and efficient manner (x4)
- Failure to treat the Court with courtesy and respect

Date of Hearing
June 24, 2002

Panel
D. G. Frayer, Q.C., (Chair)
C. V. Kopynsky, Q.C.
R. K. Deeley, Q.C.

Disposition

- Fine \$750.00
- Costs \$1,000.00
- Practicing Certificate cancelled and new practicing certificate issued subject to conditions that the member:
 - Successfully complete examinations in the areas of family law, civil procedure, criminal procedure and wills and estates
 - Successfully complete the New Time Management Workshop and Workbook

Counsel
J. R. Gallagher for The Law Society of Manitoba
J. R. Wolson, Q.C. for the Member

Failure to Serve Clients

Facts

While acting for a client in a domestic matter involving a court order for child maintenance, Mr. Cramer did not seek a condition that the maintenance be paid through the Maintenance Enforcement Program. It was later necessary to obtain a variation order to that effect. Mr. Cramer did not follow-up with the client and did not learn until about six months later that the variation order had not been properly processed and his client was not enrolled in the program. After the parties entered into a consent agreement with respect to the former husband's pension and severance pay, Mr. Cramer failed to obtain the documentation necessary to effect the pension division and he took no active steps over a period of five months to obtain the lump sum settlement provided to his client by the agreement. He also failed to obtain a variation order that was required by the terms of the consent agreement.

In another matter, Mr. Cramer was retained as solicitor by the sole beneficiary of an estate that had a total value of about \$1,000.00. He failed to ascertain how to handle such a small estate and intended to apply for probate. After some time the client, who lived out of province, made a number of attempts to speak to Mr. Cramer by telephone and left his number for Mr. Cramer to return the calls. None of the calls were returned by Mr. Cramer.

While representing a client in a criminal appeal, Mr. Cramer was granted two adjournments by the Court of Appeal. He then appeared before the Court and advised that he was considering an application for admission of new evidence and on that basis the Court adjourned the appeal application to a fixed date and set limits on the dates by which Mr. Cramer was to file his factum and application for admission of new evidence. In breach of the terms fixed by the Court, Mr. Cramer did not file his factum or the application for admission of new evidence until the day before the Court hearing. At the hearing the Court referred to the delays and thought it inappropriate to hear the application at that time in order to give the client the opportunity to retain new counsel if he so chose.

In another matter, Mr. Cramer was retained to set aside default that had been noted against the client in a defamation action. After obtaining an agreement from opposing counsel to set aside default and to allow the filing of a statement of defence on certain conditions, Mr. Cramer failed to comply with the conditions and did not file the statement of defence. Opposing counsel wrote a number of letters to Mr. Cramer which were disregarded or went unanswered and caused delays in the proceedings. A motion by Mr. Cramer to set aside default was dismissed after he failed to file any affidavit material and admitted the delays resulted from his own inactivity. Thereafter, Mr. Cramer's professional liability insurer became involved and appointed counsel who was successful in setting aside default and obtaining 14 days to file a statement of defence. Mr. Cramer again assumed conduct of the matter and filed the statement of defence. In the following 18 months further delays were occasioned solely by Mr. Cramer's inattention and procrastination. When the trial finally

convened opposing counsel succeeded in having the counterclaim filed by Mr. Cramer struck on the basis that it was out of time and having the statement of defence struck as being duplicitous. Mr. Cramer sought and obtained an adjournment to file proper pleadings on the understanding that he would pay the costs personally and that time limits be imposed. The defendant then discharged Mr. Cramer and retained new counsel.

While acting in a domestic matter Mr. Cramer and his client met with the other spouse and opposing counsel and resolved all outstanding issues in dispute between the parties. Mr. Cramer was to prepare a draft separation agreement for review by opposing counsel. Despite numerous requests from opposing counsel, Mr. Cramer took almost five months to prepare the draft separation agreement. The draft agreement he provided was returned as it did not deal with any of the points agreed to at the settlement meeting. In spite of further requests by opposing counsel, Mr. Cramer delayed for almost two months. During the same time the parties accepted an offer to purchase regarding the marital home and Mr. Cramer prepared the transfer documents. Mr. Cramer later neglected several requests from opposing counsel for information as to where and on what terms the balance of the sale proceeds were being held and he did not provide a proper reporting letter on the transaction.

Decision and Comments

Mr. Cramer entered a plea of guilty to the five charges of professional misconduct. The Committee noted that it was concerned about the pattern of conduct which took place over a lengthy period of time; however, the Committee also noted that Mr. Cramer had no prior discipline record with the Society, had co-operated fully with the investigation and had taken significant steps to organize his practice to avert similar situations in the future.

Penalty

The Committee accepted the joint recommendation submitted by both counsel and ordered as follows:

- Fine of \$750.00;
- Costs of \$1,000.00;
- The fine and costs totalling \$1,750.00 to be paid at the rate of \$100.00 per month commencing September 1, 2002;
- Mr. Cramer's practicing certificate be cancelled and a new practicing certificate issued on the following conditions:
 - That Mr. Cramer successfully complete examinations in the areas of family law, civil procedure, criminal procedure and wills and estates, which examinations are to be based on the current Bar Admission Course materials and will be administered by the Legal Studies Department of the Society; and
 - Mr. Cramer complete the New Time Management Workshop and Workbook which will be administered by the Legal Studies Department of the Society.

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