



# DISCIPLINE CASE *DIGEST*

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## Case 06-06

**AARON ADRION DOUGLAS HOFFER**  
Winnipeg, Manitoba

**Called to the Bar**  
July 21, 1966

**Particulars of Charges**  
Professional Misconduct (5 counts)

- Breach of Chapter 2 of the Code of Professional Conduct (failing to serve client in a conscientious, diligent and efficient manner) [x2]
- Breach of Chapter 16 of the Code of Professional Conduct (failing to respond to communications from another lawyer)
- Breach of Rule 5-43(1)(a) of the Rules of The Law Society of Manitoba (on ten client matters, receiving funds as retainers for legal services to be performed and failing to deposit those funds into a pooled trust account)
- Breach of Rule 5-52 of the Rules of The Law Society of Manitoba (on ten client matters, appropriating funds held on account of fees without the express or implied authority of clients)

**Date of Hearing**  
July 25, 2006

**Panel**  
James W. Hedley (Chair)  
Donald R. Knight, Q.C.  
William G. Haight

## Disposition

- Permitted to resign from the practice of law, pursuant to Section 72(1)(g) of the *Legal Profession Act*;
- Costs of \$5,000.00;
- Member prohibited from applying for reinstatement for a period of 5 years
- In the event of a reinstatement application, member is to provide a psychiatric assessment as to his fitness to practise law

**Counsel**

C. Kristin Dangerfield for The Law Society of Manitoba  
Jeffrey Gindin for the Member

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**Failure to Serve Client / Breach of Trust Accounting Rules**

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**Facts**

Mr. Hoffer was retained by a client in May 2002 to pursue a civil action for damages arising out of an assault. Between July and August, 2002, Mr. Hoffer made some initial contact with the authorities to obtain the name and address of the alleged assailant and to discuss whether the Crown would be proceeding with the case. He then took no further steps until July 10, 2003 when he filed a Statement of Claim. Mr. Hoffer provided his client with a copy of the Statement of Claim advising that it would be served on the alleged assailant. Between July 2003 and March 23, 2004, the client left several telephone messages for Mr. Hoffer. The phone calls were not returned, as a result of which the client made an appointment to meet with Mr. Hoffer. At the meeting, Mr. Hoffer advised that he had not served the Statement of Claim on the defendant, that the time for doing so had expired and that it would be necessary to issue a new Statement of Claim. Mr. Hoffer requested that his client inquire of the police as to the status of the criminal charges. The client did so and determined that the Crown had not proceeded with the charges and that, in fact, the charges had been withdrawn in October 2002. The evidence was that the client would not have proceeded with the matter, had he been aware that the criminal charges against the alleged assailant had been withdrawn in 2002.

In another matter, Mr. Hoffer was retained by a client in July 2001 to pursue an insurance claim for losses resulting from a fire that destroyed a building under construction and owned by the client. Mr. Hoffer filed a Statement of Claim in August, 2001 alleging that the broker and the insurance agent had failed to place replacement cost insurance coverage on the property, however, he did not name as a defendant the insurer with whom property insurance was in fact placed on an actual cash value basis. Between July, 2001 and July 2002, Mr. Hoffer failed to advise his client as to the status of the matter. He also failed to respond to letters from the insurance adjuster seeking information as to the actual cash value of the property. In July 2002, the client attended at Mr. Hoffer's office to request his file. He determined at that time that Mr. Hoffer had failed to issue a claim against the insurer and that the limitation period for doing so had expired.

In respect of the same matter, counsel for the broker and the insurance agent wrote to Mr. Hoffer on four occasions advising of his client's position and inviting a Notice of Discontinuance or response. Mr. Hoffer failed to respond to the correspondence.

On ten separate client matters, Mr. Hoffer failed to comply with Rule 5-43(1)(a) of the Rules of The Law Society of Manitoba in that while acting for his clients, he received funds totalling \$9,500.00 as retainers for legal services to be performed and he failed to deposit or cause to be deposited the said funds in a pooled trust account as soon as practicable after receipt thereof. Mr. Hoffer was also in breach of Rule 5-52 of the Rules of The Law Society of Manitoba in that while acting for those clients, he appropriated the aforementioned funds held on account of fees, without the express or implied authority of his clients.

### **Plea**

Mr. Hoffer entered a plea of guilty to the charges.

### **Decisions and Comments**

The panel found Mr. Hoffer guilty of professional misconduct based on his admission to the charges.

### **Penalty**

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

- a. Mr. Hoffer be permitted to resign from the practice of law, pursuant to Section 72(1)(g) of the *Legal Profession Act*;
- b. Mr. Hoffer pay costs to the Society in the amount of \$5,000.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter; and
- c. Mr. Hoffer be prohibited from applying for reinstatement for a period of 5 years.

The Committee also ordered that in the event Mr. Hoffer makes an application for reinstatement, he will be required to provide a psychiatric assessment demonstrating his fitness to return to the practice of law.

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