



DISCIPLINE CASE *DIGEST*

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Case 06-08

EWALD BERGEN
Winnipeg, Manitoba

Called to the Bar
June 30, 1988

Particulars of Charges
Professional Misconduct (2 counts)

- Breach of Rule (c) of Chapter 6 of the Code of Professional Conduct (conflict of interest)
- Breach of Rule 5-47(2)(a) of the Rules of The Law Society of Manitoba (failure to file Annual Trust Account Report [Form D])

Date of Hearing
September 14, 2006

Panel
Heather S. Leonoff, Q.C. (Chair)
James W. Hedley
Joel A. Weinstein, Q.C.

Disposition

- Reprimand
- Costs of \$5,000.00

Counsel
Darcia A.C. Senft for The Law Society of Manitoba
Member Unrepresented

Conflict of Interest / Failure to File Form D

Facts

Mr. Bergen was retained by his client with respect to a family law matter. In November 2004, the client received a Requirement to Pay from Canada Customs and Revenue Agency ("CCRA"). The Requirement to Pay indicated that Mr. Bergen owed monies to CCRA in respect of taxes and required the client, among other things, to pay to the Receiver General in respect of this amount, monies which the client otherwise would be within one year liable to pay to Mr. Bergen, as and when the monies became payable. Shortly after becoming aware of his client's receipt of the Requirement to Pay, Mr. Bergen wrote a reporting letter to the client and enclosed a Statement of Account. In his letter, he requested monies from the client by way of a retainer.

The client expressed concern to Mr. Bergen regarding her liability to pay monies to CCRA that might otherwise be payable to him. Mr. Bergen advised the client that the Requirement to Pay was not a legal document and that she need not comply with it. As Mr. Bergen and his client were unable to come to an agreement regarding his client's responsibility to pay monies to CCRA, Mr. Bergen sent an email to the client wherein he suggested that she retain another lawyer in whom the client could have confidence in the legal advice being given.

Mr. Bergen's Annual Trust Account Report (Form D) for his trust year ending June 30, 2005 was to be filed on or before October 31, 2005 pursuant to Rule 5-47(2)(a) of the Rules of The Law Society of Manitoba. Despite the fact that Mr. Bergen was granted an extension to November 30, 2005, he did not file his Form D by the new deadline and the matter was referred to the Society's Discipline Department for investigation. Mr. Bergen did not file his Form D with the Law Society until March, 2006.

Plea

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

Decisions and Comments

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

Penalty

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

- a. Mr. Bergen be reprimanded for his conduct; and
- b. Mr. Bergen 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.

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