



DISCIPLINE CASE *DIGEST*

Case 07-12

Member:	Terrence Richard McDowell
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	September 15, 1967
Particulars of Charges:	Professional Misconduct (2 counts) <ul style="list-style-type: none">▪ Breach of c. 2 of the <i>Code</i> (failure to serve client in a conscientious, diligent & efficient manner)▪ Breach of c. 1 of the <i>Code</i> (breach of duty of integrity by misleading client, opposing counsel, English counsel and the English Court)
Date of Hearing:	July 12, 2007
Panel:	<ul style="list-style-type: none">▪ John E. Neufeld, Q.C. (Chair)▪ Lawrence McInnes, Q.C.▪ Christopher W. Martin
Disposition:	<ul style="list-style-type: none">▪ Permitted to immediately resign from the practice of law pursuant to Sections 17(3)(b)(iii) and 17(4) of <i>The Legal Profession Act</i>, failing which he shall be disbarred and struck from the Rolls of The Law Society of Manitoba▪ Costs of \$15,103.97
Counsel:	<ul style="list-style-type: none">▪ Darcia A.C. Senft for The Law Society of Manitoba▪ Gavin M. Wood for the Member

Failure to Serve Client / Breach of Integrity

Facts

Mr. McDowell was retained by a client to represent him in his separation and divorce. The matters at issue were spousal support and the division of assets. While acting as counsel for his client, over the course of approximately seven years, Mr. McDowell failed to advance his client's case in any material way notwithstanding his knowledge of his client's deteriorating health. Mr. McDowell's failure to advance his client's case resulted in the exposure of his client to unnecessary and lengthy proceedings both in Canada and in England, garnishment of his client's assets, the continuation of payment of spousal support over a lengthy period of time, and the exposure of his client to unnecessary legal fees in England. On an ongoing basis, Mr. McDowell represented to his client that he was attending to his matter when this was incorrect.

Mr. McDowell repeatedly indicated to his client that he would take certain steps in relation to his client's legal matter by a certain period of time and then did not abide by the timing that he had indicated to his client. Although his client provided him with financial disclosure, Mr. McDowell failed to provide such disclosure or sufficient disclosure to opposing counsel on a timely basis - resulting in cost Orders being made against his client that Mr. McDowell paid personally without informing his client. Mr. McDowell also misled both his client and opposing counsel as to his progress in preparing or providing the said disclosure and consented to an Order without receiving instructions from the client.

Mr. McDowell also withheld information from his client or misled his client about the status of his legal matter in order to cover up neglect or mistakes on his part. Mr. McDowell repeatedly explained his delay in attending to his client's file either by indicating to his client that opposing counsel was delaying the process or by failing to correct such an impression on the part of his client. At the same time, he indicated to opposing counsel that he was waiting for additional information from his client.

Mr. McDowell repeatedly represented to his client that he was proceeding with a motion in court to vary the amount of support and for petition and sale of the marital home, that court attendances had occurred, that the court had requested particular submissions, and that he was awaiting a decision from the court, when none of these proceedings, attendances or requests had taken place. He also cancelled settlement meetings with opposing counsel.

At one point, Mr. McDowell's client retained English counsel to provide representation regarding maintenance enforcement proceedings in England. Mr. McDowell repeatedly advised English counsel that he was in the process of having a court order amended when, in fact, he had taken no steps to do so.

Over a subsequent two year period, Mr. McDowell filed three motions seeking suspension of enforcement, variation of a previous order by deleting or reducing spousal support, deletion or reduction of arrears, and financial disclosure. With respect to each such motion, Mr. McDowell repeatedly adjourned the matter and failed to do anything material to advance his client's position resulting in each motion being struck off the court list.

Over a subsequent 10 month period, Mr. McDowell provided seven letters to his client misrepresenting the status of his client's legal proceedings in circumstances where he knew or ought to have known that such letters would be provided to the English court.

During the course of his retainer, Mr. McDowell also received two offers of settlement from opposing counsel and failed to convey the offers to his client and to seek his instructions.

Plea

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

Decision and Comments

The panel determined that the acts or omissions charged and admitted to by Mr. McDowell were proved to the satisfaction of the panel and found Mr. McDowell guilty of professional misconduct. As a result of admissions made by Mr. McDowell, the only issue before the panel was whether or not it was appropriate to permit Mr. McDowell to resign in accordance with s. 17(3) of *The Legal Profession Act*. If not, it was effectively agreed that the sole appropriate penalty would be disbarment.

The panel considered some medical evidence that was submitted along with reference letters which provided some evidence that the actions of Mr. McDowell in this particular file were an aberration. The panel found that the seriously neglectful and deceitful conduct of Mr. McDowell

clearly indicated a strong prima facie case in which disbarment would be the only disposition within the range of appropriate disposition. The panel then considered whether it was proper in the unique circumstances of this case to exercise its discretion in favour of permitting Mr. McDowell to resign or not. The facts that were submitted to the panel including the medical report, led the panel to conclude that Mr. McDowell's illness was the likely cause of his aberrant behaviour. They noted the absence of any other rationale for Mr. McDowell's conduct, noting for example that there was no assertion that the conduct was motivated by greed, personal gain or any other explanation suggesting that Mr. McDowell obtained some advantage by his conduct. His medical condition alone explained why Mr. McDowell deviated so significantly from the required standard. The panel further noted that Mr. McDowell offered a plea, admitted the offences, was genuinely remorseful, would be severely adversely affected financially by not practising law, and that he would suffer the humiliation of ending his professional career under such disturbing circumstances.

Penalty

The panel determined that it would be appropriate for it to exercise its discretion and permit Mr. McDowell to resign, failing which he would be struck from the Rolls and disbarred. In addition, the panel ordered that Mr. McDowell pay \$15,103.97 towards the costs associated with the investigation, prosecution and hearing of the matter.