



# DISCIPLINE CASE *DIGEST*

Case 09-12

<b>Member:</b>	<b>Michele Capozzi</b>
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 28, 1984
<b>Particulars of Charges:</b>	Professional Misconduct (6 counts) <ul style="list-style-type: none"><li>▪ Breach of Rule 5-43(1)(a) [failing to deposit trust money into pooled trust account as soon as practicable after receipt] (x2)</li><li>▪ Breach of Rule 5-52 [appropriating money on account of fees, without the express or implied authority of client] (x2)</li><li>▪ Breach of Rule 5-43(1)(c) [withdrawal of money from pooled trust account for the recovery of fees or disbursements without any statement of account being prepared and sent to the client at the time the monies were withdrawn]</li><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [integrity – attempting to mislead the Court of Queen's Bench]</li><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [integrity – breach of Undertaking given to the Court of Queen's Bench]</li></ul>
<b>Date of Hearing:</b>	August 6, 2009
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Gary R. Gilmour (Chair)</li><li>▪ Lori Ferguson Sain</li><li>▪ William G. Burns</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia A.C. Senft for The Law Society of Manitoba</li><li>▪ Rocky Kravetsky for the Member</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Reprimand</li><li>▪ Practising Certificate cancelled and new Certificate issued subject to conditions:<ul style="list-style-type: none"><li>(a) Practice under Supervision for 1 year in relation to handling of trust account (co-signatory and other conditions);</li><li>(b) Compliance with any treatment prescribed by his health practitioners and treating physicians in relation to his health issues;</li><li>(c) Continuation of monitoring by health practitioners and treating physicians and provision of regular reports to the Society;</li><li>(d) Meet once per year with the Society's Practice</li></ul></li></ul>

Management Advisor (or some other lawyer approved by the Society) for the purpose of conducting a review in the nature of a practice audit and comply with any recommendations that may flow from such an audit;

- All conditions (with the exception of those relating to the supervision of the trust account) are to remain in effect for 2 years, unless Mr. Capozzi ceases to be a sole practitioner, in which case he may apply to the Society to have the conditions varied or removed;
- Costs of \$1,500.00

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## Breach of Accounting Rules

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### Facts

Mr. Capozzi was retained by his client SG in relation to her father's estate. S.G.'s father died intestate in September 1995 and was a ward of the Public Trustee for a period of time prior to his death. In April 2006, Mr. Capozzi's client provided him with a retainer in the amount of \$500.00. Mr. Capozzi failed to deposit the \$500.00 retainer to his pooled trust account as soon as practicable after receiving it. He appropriated the said sum of \$500.00 for or on account of fees, without the express or implied authority of his client.

In another matter, Mr. Capozzi was retained by his client C.H. to act as solicitor for the Estate of W.S. (the "Estate"), who had been a ward of the Public Trustee and who had died intestate. Letters of Administration were granted on October 26, 2005. On eight occasions between November 19, 2005 and June 28, 2006, both dates inclusive, Mr. Capozzi appropriated money under his control in the total amount of \$3,300.00 for or on account of fees and disbursements without the express or implied authority of his client. Mr. Capozzi did not issue any statements of account for such fees and disbursements to his client at the time the monies were withdrawn. The fees and disbursements were ultimately approved on the passing of accounts.

Mr. Capozzi was retained by his client L.A., who had named Mr. Capozzi as the executor of his Estate. L.A. died on May 24, 2006. Thereafter, Mr. Capozzi became both executor and solicitor of the said Estate. While acting for the Estate and in accordance with his obligations, Mr. Capozzi proceeded to gather the Estate assets, including liquid assets that ought to have been deposited into his pooled trust account. By December, 2006, Mr. Capozzi had failed to deposit any of the trust funds belonging to the Estate into his pooled trust account. On June 7, 2006, Mr. Capozzi filed an Application for Probate in respect of the said Estate. The Application for Probate evidenced immovable property of \$210,000.00 and movable property of \$10,000.00. In support of the Application, Mr. Capozzi filed an Affidavit sworn on June 6, 2006 with the Court wherein he stated: "...that the allegations set forth in the request for probate and in the inventory and valuation are true to the best of my knowledge and belief." In conjunction with the Application for Probate, Mr. Capozzi filed a letter with the Court wherein he advised that in his opinion, the inventory of assets was incomplete. He further stated that he had listed the assets which he had found, to date, but that the testator was secretive regarding his finances and he expected to discover more assets. Mr. Capozzi further advised the Court that he was applying for probate in order to gain access to a safety deposit box in which there would likely be financial records and some critical documents. At the time when Mr. Capozzi filed the Affidavit and the letter, he was aware of some cottage property belonging to the Estate yet he failed to disclose its existence and further failed to place known values on some liquid assets.

In the same matter, Mr. Capozzi filed in Court an Application for Probate with an Inventory of Estate Assets. Along with the Application, Mr. Capozzi filed a letter to the Court dated June 5, 2006, wherein he undertook to immediately access a safety deposit box and to then immediately file an Amended Inventory of Estate Assets. Probate was granted on June 23, 2006. Following a spot audit of his trust accounting records by the Law Society, in December, 2006, it was noted that Mr. Capozzi had not complied with his undertaking to the Court in that he had not filed an Amended Inventory of Estate Assets. Mr. Capozzi failed to file an Amended Inventory of Estate Assets until May, 2007.

### **Plea**

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

### **Decision and Comments**

The Discipline Committee found Mr. Capozzi 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. Capozzi and ordered that he be reprimanded for his conduct. The Panel also ordered that Mr. Capozzi's Practising Certificate be cancelled and that a new Certificate be issued subject to the following conditions:

1. Mr. Capozzi must practice under supervision by a member approved by the Society for a period of one year (co-signatory on trust account and other conditions);
2. For a period of two years, Mr. Capozzi must:
  - (a) Comply with any treatment prescribed by his health practitioners and treating physicians in relation to his health issues;
  - (b) Continue to be monitored regularly by health practitioners and treating physicians and authorize the provision of regular reports to the Society;
  - (c) Meet once per year with the Society's Practice Management Advisor (or some other lawyer approved by the Society) for the purpose of conducting a review in the nature of a practice audit and comply with any recommendations that may flow from such an audit; and
3. All conditions (with the exception of those relating to the supervision of the trust account) are to remain in effect for 2 years, unless Mr. Capozzi ceases to be a sole practitioner, in which case he may apply to the Society to have the conditions varied or removed.

The Panel also ordered that Mr. Capozzi pay costs to the Society in the amount of \$1,500.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter.