



# DISCIPLINE CASE *DIGEST*

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Case 19-05

<b>Member:</b>	<b>Adeline Lorraine Degner</b>
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 15, 2000
<b>Particulars of Charges:</b>	Professional Misconduct (2 Charges): <ul style="list-style-type: none"><li>▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service]</li><li>▪ Breach of Rule 7.2-5 of the <i>Code</i> [duty to lawyers – failure to respond to communications]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	September 25, 2019
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Wendy A. Stewart (Chair)</li><li>▪ Gerrit M. Theule</li><li>▪ Marston Grindey (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Rocky Kravetsky for The Law Society of Manitoba</li><li>▪ Member Self Represented</li></ul>
<b>Date of Decision:</b>	Written Reasons for Decision: October 28, 2019
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$3,000.00</li><li>▪ Costs of \$3,000.00</li><li>▪ At her own expense, successful completion of a Practice and Time Management Course set by the Society</li></ul>

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## Quality of Service / Duty to Lawyers

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### Facts

Ms Degner was called to the Bar in 2000. On April 17, 2019, she was charged with two counts of professional misconduct for: i) failing to provide service that was competent, timely,

conscientious, diligent, efficient, and civil as required by Rule 3.2-1 of the *Code*; and, ii) failing to answer with reasonable promptness to communications from another lawyer as required by Rule 7.2-5 of the *Code*.

In July 2018, Ms Degner was instructed by her clients G.B. and G.D. to probate a will, however, she did not prepare an application or take steps to do so. She failed to respond to five separate voicemail messages and one email sent by G.B. between mid July 2018 and August 13, 2018. After a beneficiary under the will sought the assistance of the Law Society, and after the Law Society sent Ms Degner an email on August 31, 2018, she failed to contact that beneficiary or to respond to the Law Society. Ms Degner failed to respond to a further email from G.D. on September 10, 2018.

In another matter, while representing her client D.B. as proposed administrator of an estate, Ms Degner failed to answer with reasonable promptness to communications from another lawyer who was representing a beneficiary of the estate. Specifically, Ms Degner failed to respond with reasonable promptness to two emails and three voicemail messages sent between May 1, 2018 and September 12, 2018.

Ms Degner has a prior discipline record of similar offences. In 2017, Ms Degner pled guilty to five counts of professional misconduct and was fined \$1,500.00 and required to pay \$6,500.00 in costs. She was also required to successfully complete a Time Management Course of her own choosing, but which was acceptable to the Law Society.

### **Plea**

Ms Degner entered a guilty plea to two charges of professional misconduct.

### **Decision and Comments**

The Panel accepted Ms Degner's plea and found her guilty of the two counts of professional misconduct.

With regard to sentencing, the Panel considered both the public interest test from *Anthony-Cook v Her Majesty the Queen*, 2016 SCC 43 (which sets out the circumstances in which a judge may depart from a joint recommendation as to sentence) as well as the factors set out in *The Law Society of British Columbia v Ogilvie*, [1999] LSDD No 45, [1999] LSBC 17. In applying the *Ogilvie* factors to Ms Degner's case, the Panel noted that the nature and gravity of her offences were comparatively low in severity, however they also constituted a second offence of the same kind. Ms Degner is an experienced lawyer, however the offences occurred when she left her practice at a firm and set up a sole practice. There was minimal impact to the victims of Ms Degner's offences and given her acknowledgement of misconduct in her guilty plea, there is nothing further to be done in terms of redressing any wrong done. Ms Degner received no advantage from her misconduct, but rather lost a client. The joint recommendation includes a remedial component in the form of an education program, which Ms Degner indicates a willingness to complete. The recommended sentence will have a significant financial impact upon Ms Denger and will cost her in the range of \$7,000.00. Additionally, the recommended sentence will meet the sentencing goals of specific and

general deterrence and should ensure the public's confidence in the integrity of the profession. The Panel accepted the joint recommendation on sentencing.

### **Penalty**

The Panel ordered that Ms Degner:

- a) Pay a fine of \$3,000.00;
- b) Pay \$3,000.00 as a contribution to the Society's costs; and
- c) At her own expense, within three months of it becoming available, take and successfully complete a Practice and Time Management Course set by the Society.