



# DISCIPLINE CASE *DIGEST*

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## **Case 00-01**

### **SAMUEL NORMAN ROSENBAUM**

Winnipeg, Manitoba

### **Called to the Bar**

June 24, 1982

### **Particulars of Charges**

Incompetence

- Failure to act with competence and to provide a quality of service equal to that which is generally expected by a competent solicitor

### **Date of Hearing**

June 1, 2000

### **Panel**

R. A. Dewar, Q.C. (Chair)

C. E. Gorlick, Q.C.

J. H. Combs

### **Disposition**

- Member required to successfully complete an examination administered by the Society on the subject of Wills and Estates;
- The Society to accept an undertaking from the member that he will accept no further Wills and Estates matters until he successfully completes the said examination and he will have his current estate files reviewed by another member of his firm; and
- Costs of \$3,000.00

### **Counsel**

J. R. Gallagher for The Law Society of Manitoba

Member Unrepresented

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## Incompetence

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### Facts

In December, 1991, Mr. Rosenbaum was retained by the personal representatives in an estate. The estate assets were valued at less than \$45,000.00 and consisted of two bank accounts and one small insurance policy.

The matter was complicated by the fact that the will of the testatrix was a holograph will and there were three holograph codicils. This necessitated an application to the Queen's Bench under Section 23 of *The Wills Act* to have the will and codicils declared as the last will and testament of the deceased before a request for probate could be made. A further complicating factor was that the residue of the estate was to be divided into 19 equal shares, with one of those shares to be divided among three persons.

Mr. Rosenbaum failed to discharge the duty that he owed to his clients and failed to provide a quality of service equal to that which is generally expected by a competent solicitor in a like situation. In particular, Mr. Rosenbaum made the following significant errors:

- a. A number of the residuary beneficiaries were minors and Mr. Rosenbaum initially failed to serve the Public Trustee with a copy of the application brought under Section 23 of *The Wills Act*, as required by the Queen's Bench Rules;
- b. Mr. Rosenbaum transferred funds from his pooled trust account for fees and disbursements for the Section 23 Wills Act application before he received a signed order from the court that the fees and disbursements could be paid from estate funds;
- c. The court ordered that the costs of the application were to be assessed. Mr. Rosenbaum failed to record this in the order and he also failed to submit the costs for assessment;
- d. In valuing the estate, Mr. Rosenbaum included personal possessions which had been disposed of by the deceased prior to her death and he overstated the value of the two bank accounts. This resulted in additional probate fees and an increase in Mr. Rosenbaum's fees which were based on the Queen's Bench Rules tariff;
- e. Mr. Rosenbaum transferred funds from his pooled trust account for fees and disbursements for legal services related to the estate prior to the deadline for filing claims against the estate and without any statement of account being sent to the personal representatives;
- f. The fees charged by Mr. Rosenbaum exceeded the fees allowable under the Queen's Bench Rules tariff. Mr. Rosenbaum failed to serve Form 74AA on 11 of the 27 beneficiaries and did not receive authorization to take fees in excess of the tariff;
- g. In distributing the estate, Mr. Rosenbaum failed to pay a \$3,000.00 bequest to one beneficiary and erred in the amounts he paid to a number of other beneficiaries;
- h. Mr. Rosenbaum opened trust bank accounts for the infant beneficiaries and named himself as the trustee over the accounts. Thereafter, he received written instructions

to transfer the accounts into the names of the personal representatives and he took 17 months to complete the transfer;

- i. Mr. Rosenbaum sent releases to only 20 of the 27 beneficiaries and of the nine executed releases which were returned to him, most contained defects. He failed to have the errors corrected before he distributed the estate;
- j. Prior to making a final distribution of the estate, Mr. Rosenbaum failed to obtain a clearance certificate from Revenue Canada confirming that no income taxes were owed by the estate;
- k. After being requested to provide the personal representatives with information as to receipts and disbursements, Mr. Rosenbaum delayed for almost eight months and then provided information that contained material errors or omissions;
- l. As of September, 1996 when the personal representatives retained new counsel, Mr. Rosenbaum had not completed the legal services related to the administration of the estate.

### **Decision and Comments**

The Committee accepted a guilty plea and on the basis of the admission and the information provided, found that Mr. Rosenbaum was incompetent with respect to his handling of this client matter.

### **Penalty**

The Committee imposed the following penalty:

- Mr. Rosenbaum be required to successfully complete an examination administered by the Society on the subject of Wills and Estates;
- The Society accept an undertaking from Mr. Rosenbaum that he will not accept any further Wills and Estate matters until he has successfully completed the said examination and that he will have his current estate files reviewed by another member of his firm;
- Costs of \$3,000.00 be paid commencing April 1, 2001 at the rate of \$150.00 per month, by way of a series of post-dated cheques. If a cheque is dishonoured, the entire balance outstanding as of the date of default will become due and owing and will be payable within thirty days.

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