



DISCIPLINE CASE *DIGEST*

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Case 00-04

JOSEPH JULES ALAIN HOGUE
Winnipeg, Manitoba

Called to the Bar
June 28, 1972

Particulars of Charges
Professional Misconduct

- Retained in a trust bank account funds which belonged entirely to the member or were received on account of fees for which a billing had been delivered, contrary to Rule 129(1)(k)(i) and/or (ii) of the *Rules of The Law Society of Manitoba*

Date of Hearing
October 11, 2000

Panel
D. G. Douglas (Chair)
D. R. Knight, Q.C.
B. A. Pauls

Disposition

- Fine of \$1,500.00
- Costs of \$5,000.00

Counsel
J. R. Gallagher for The Law Society of Manitoba
D. G. Hill for the Member

Breach of Rules Respecting Accounts

Facts

On nine personal injury matters settled between September, 1993 and June, 1994, Mr. Hogue received the settlement funds and immediately deposited them into his pooled trust account. Reporting letters were provided to the clients together with a statement of account for Mr. Hogue's fees, disbursements and applicable G.S.T. and a cheque was sent to each client representing the settlement proceeds less his fees. In each case, Mr. Hogue obtained a signed Order to Pay authorizing payment of his account from funds held in trust to the credit of the client.

Mr. Hogue did not transfer the funds from his pooled trust account to pay his statements of account. In each case he transferred the amount of his fees, disbursements and G.S.T. from his pooled trust account into an interest bearing specific trust investment account in the name of the client. On or about February 2, 1995, Mr. Hogue transferred the principal and accrued interest from each of the nine specific trust investment accounts to his pooled trust account and then transferred the principal amount from trust to pay his earlier statement of account. The total principal amount in the nine cases was \$108,790.67, which was equal to the fees, disbursements and G.S.T. owed by the nine clients. The accrued interest on the specific trust investment accounts was retained in Mr. Hogue's pooled trust account until on or about May 26, 1998, when he sent each of the clients a cheque for the interest.

With respect to eighteen litigation matters settled between July 7, 1995 and June 6, 1997, Mr. Hogue received the settlement funds and immediately deposited them into his pooled trust account. In each case Mr. Hogue reported to the client that the matter was concluded and rendered an account for his fees, disbursements and G.S.T. and provided a cheque to the client representing the settlement proceeds less his fees. In almost all cases, Mr. Hogue also obtained a signed Order to Pay authorizing payment of his account from funds held in trust to the credit of the client.

Mr. Hogue did not transfer the funds from his pooled trust account to pay his fees, disbursements and G.S.T. as required by the trust accounting rules and in accordance with the signed Orders to Pay and the statements of account. He retained \$569,334.19 in his pooled trust account, which sum represented the total amount of his fees, disbursements and G.S.T. in the eighteen matters. In May 1998, during a routine audit of Mr. Hogue's trust accounts and records by an auditor-inspector of the Society, the requirements of trust accounting rule 129(1)(k)(i) and (ii) were brought to Mr. Hogue's attention. He immediately transferred the funds from his pooled trust account to pay his statements of account in the eighteen matters.

Decision and Comments

The Committee accepted an admission to the charge and on the basis of the information provided, found Mr. Hogue guilty of professional misconduct.

Penalty

The Committee accepted the joint recommendation made by both counsel and imposed a fine of \$1,500.00 and an order of costs of \$5,000.00. The fine and costs totalling \$6,500.00 were ordered to be paid within 60 days of the date of the hearing.

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