



# DISCIPLINE CASE *DIGEST*

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## **Case 94-06**

**JAMES PATRICK KELLEHER**  
Brandon, Manitoba

**Called to the Bar**  
June 24, 1982

**Particulars of Charges**  
Professional Misconduct (9 counts)

- misappropriation of trust monies
- taking fees without rendering a bill

**Date of Hearing**  
June 20, 1994

**Panel**  
Douglas D. Yard, Q.C. (Chairperson)  
Barbara Hamilton, Q.C.  
Norman Sims

**Disposition**

- disbarred
- \$6,000.00 costs

**Counsel**  
Daniel Dutchin for The Law Society of Manitoba  
Warren Barber, Q.C. for the Member

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## **Misappropriation**

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## **Facts**

Mr. Kelleher, who was called to the Bar on June 24, 1982, appeared before the Discipline Committee on June 20, 1994.

There were eight instances where Mr. Kelleher misappropriated client trust funds. In one case, he had received the sum of \$10,000.00 from his client and deposited those funds directly to his general bank account. The funds had been received from his client in anticipation of a settlement being negotiated.

In a second case, Mr. Kelleher transferred the sum of \$5,545.00 from his trust bank account to his general bank account without the authority of his client.

In a third case, after completing a real estate transaction there were surplus funds of \$2,716.59 remaining in his trust bank account. Rather than returning the funds to the client, he transferred those funds to his general bank account without the authority of his client.

In a fourth case, he reviewed a \$6,000.00 retainer from his client and deposited those funds directly to his general bank account without authority of his client.

In a fifth case, Mr. Kelleher had retained monies in the amount of \$1,718.23 with respect to a real estate transaction to pay for outstanding real property taxes. Rather than paying the outstanding taxes, he transferred the funds to his general account without the consent of his client.

In a sixth case, he received \$140.00 from a client for the purposes of disbursements. Rather than utilizing those funds for disbursements, he transferred the funds to his general bank account without the authority of his client.

In two further cases, upon completion of real estate transaction, Mr. Kelleher had funds in the amount of \$143.13 and \$199.00 remaining in his trust bank account. Rather than forwarding those sums to his clients, he transferred the funds to his general bank account without client authority.

In one final matter, he transferred monies from his trust bank account on account of fees in the amount of \$264.37 without sending a bill to his client at the time the money was withdrawn and therefore breached Rule 129(1)(c) of *The Rules of The Law Society of Manitoba*.

## **Comments of the Discipline Committee**

Mr. Kelleher admitted all nine charges before the Discipline Committee. Upon hearing representations by counsel, the Committee was satisfied that the admissions were appropriate in this case and found Mr. Kelleher guilty of professional misconduct.

## **Findings and Penalties**

The Committee found that each of the counts involved an element of dishonesty and an element of intention. The Committee was satisfied however that Mr. Kelleher did not act with malice. They found that the incidents did not occur over a lengthy period of time but, in each of the transactions, steps were taken to make the irregular appear to be regular such that there was some element of planning and deliberation.

The Committee also accepted the fact that Mr. Kelleher had been financially unsuccessful in his practice and was also unhappy in his practice.

The Committee did recognize the fact that Mr. Kelleher disclosed these misappropriations on his own and also considered the fact that full restitution had been made prior to the hearing. Mr. Kelleher also presented a number of letters of support to the Committee for consideration.

The Committee was also heartened to hear that Mr. Kelleher was in counselling in regard to this incident.

The Committee acknowledged that the offences that Mr. Kelleher committed were amongst the most serious that a professional could be charged with and also noted that it was not a single offence, but a number of offences. Each of the cases involved a breach of trust both to the client and the profession at large.

Although the Committee had a considerable degree of sympathy for Mr. Kelleher and his personal circumstance, they found that they could come to no other conclusion but that the appropriate disposition was to disbar Mr. Kelleher.

The Committee also considered the issue of costs and the fact that Mr. Kelleher had self-disclosed the misappropriations and made full restitution of monies owing to the clients. The most significant costs incurred were the costs of the custodian required to look after Mr. Kelleher's practice. As a result, the Committee imposed costs of \$6,000.00.

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