



# DISCIPLINE CASE *DIGEST*

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## **Case 94-15**

**GRANT RANDOLPH CLAY**  
Winnipeg, Manitoba

**Called to the Bar**  
June 25, 1974

**Particulars of Charges**  
Professional Misconduct (2 counts)

- breach of duty to other counsel
- failure to serve clients

**Date of Hearing**  
October 5, 1993

**Panel**  
Douglas Ward (Chairperson)  
Rudolph Anderson  
Arthur Rich, Q.C.

## **Disposition**

- count 1 - acquitted
- count 2 - reprimand

**Counsel**  
D. Dutchin for the Law Society  
E.W. Olson, Q.C. for the member

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**Failure to Respond to Correspondence**

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## **Facts**

Mr. Clay, who was called to the Bar on June 25, 1974, appeared before the Discipline Committee on October 5, 1993.

Between 1988 and 1992, Mr. Clay was representing clients in a medical malpractice action. He had been charged with failing to serve his clients in that he failed to proceed with their action within a reasonable period of time and failed to keep in contact with his clients during that time.

Mr. Clay was also charged with failing to show courtesy and good faith to a fellow lawyer in that he failed to respond to correspondence received from opposing counsel.

Mr. Clay had been retained in 1988, five days prior to the expiry of the limitation period. He took instructions from his clients and drafted and filed a statement of claim. An issue then arose with respect to the availability of expert witnesses. A dispute also arose between the clients and Mr. Clay in that the clients understood that the file was to be handled on a contingency fee basis whereas Mr. Clay understood that it was to be a straight fee for services basis.

There were lengthy periods of time during which there was no contact between Mr. Clay and his client. A dispute also arose between the clients and Mr. Clay with respect to payment of accounts for medical reports obtained. In 1992 the claim was discontinued by the clients although they felt that they had been enticed by Mr. Clay to discontinue the claim. The clients, as a result, retained new counsel in 1992.

While Mr. Clay was representing the clients, counsel for the defendants continually wrote to Mr. Clay requesting responses as to what action was being taken in regard to the proceedings and Mr. Clay failed to respond to those letters.

## **Comments of the Discipline Committee**

After hearing the evidence, the Committee was not satisfied that Mr. Clay had failed to serve his clients. They found he had taken appropriate action in filing the statement of claim and had made efforts to locate expert witnesses. They were also satisfied that there had been contact with the clients over the relevant time period of the retainer, but did find that Mr. Clay could have been more diligent in communication with his clients. As a result, the Committee was not satisfied that the charge had been proven and the member was acquitted.

Mr. Clay pled guilty to the second count of failing to respond to correspondence from another member.

## **Findings and Penalties**

As a result of Mr. Clay's guilty plea to the count of failure to respond he was reprimanded.  
No costs were awarded.

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