



DISCIPLINE CASE *DIGEST*

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Case 95-23

MEMBER E
Manitoba

Particulars of Charges

Professional Misconduct (4 counts)

- failure to serve a client (x2)
- misleading clients
- conflict of interest between lawyer and client

Date of Hearing

May 3, 1995

Panel

Doreen Kelly (Chairperson)
Heather Leonoff, Q.C.
Gary Gilmour

Disposition

- acquittal on 3 counts
- withdrawal of 4th count

Counsel

Daniel Dutchin for the Law Society
Alexander Cudney and Charles Blanaru for the Member

Failure to Serve Client

Facts

Member E appeared before the Discipline Committee on May 3, 1995.

Member E was charged with failing to serve Client A in a conscientious, diligent and efficient manner in that he did not notify A that a maintenance variation hearing was scheduled in Ontario, failed to arrange for counsel to appear as his agent at that hearing and later advised A that the order for maintenance had been varied without advising A of the commencement date for payments.

Member E was also charged with misleading A by improperly alleging that counsel representing A's spouse had arranged for the matter to be heard in Ontario without Member E's knowledge and consent.

A third count alleged that Member E failed to represent Client B in a conscientious, diligent and efficient manner in that he did not respond to B's telephone calls or keep B informed of the status of her matter.

A fourth count alleged that Member E had Client C sign a caveat claiming an interest in the property of C's spouse, then caused the caveat to be filed after the bankruptcy and subsequent death of C so that it appeared that the caveat was being filed to secure the payment of fees charged to C.

Comments of the Discipline Committee

As to the matters involving Client A, the Committee found that Member E had telephoned counsel representing A's spouse who agreed to adjourn the hearing, but no specified date was arranged. When Member E finally received a letter advising of the new hearing date, the date was past and therefore Member E could not have arranged for an agent to appear on his behalf.

The Committee also determined that there was a conflict in evidence as to when A was advised of the commencement date of the maintenance payments by Member E so that the standard of proof had not been met. The Committee was concerned, however, that Member E had not confirmed the hearing date with counsel and it would have been preferable for Member E to provide a complete report to A setting out all of the terms of the order.

With respect to Client B, Member E and his secretary testified that they had spoken to B on a number of occasions and kept B informed of the status of the proceedings. The Committee accepted the evidence of the secretary and determined that the charge was not proven.

The count involving Client C was adjourned by the Committee for further review by counsel.

Findings and Penalties

The Committee acquitted Member E on three counts. Further information was provided to the Complaints Investigation Committee about the count involving C and the charge was

withdrawn.

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