



DISCIPLINE CASE *DIGEST*

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Case 96-22

JOHN CHARLES BROWN
Winnipeg, Manitoba

Called to the Bar
September 23, 1963

Particulars of Charges
Professional Misconduct

- failure to file written answer to 14 day letters under Rule 41 and 156
- failure to pay penalties in the amount of \$2,540.00 owing to the Law Society contrary to Rule 133(7)
- failure to serve client (x2)

Date of Hearing
November 13, 1996

Panel
Norm A. Cuddy (Chair)
Douglas Yard, Q.C.
Donna J. Miller, Q.C.

Disposition

- Fine of \$1,000.00
- Costs of \$750.00

Counsel
Ted Bock for the Law Society
Member unrepresented

Failure to Serve Client / Respond to Law Society

Facts

Mr. Brown failed to file an Annual Trust Account Report (Form D) on or before May 31, 1995 as required by Rule 133. Pursuant to Rule 156 and by letter dated October 5, 1995 the Law Society requested that Mr. Brown provide an explanation as to his failure to file his Form D as required, within 14 days of his receipt of that letter. Mr. Brown then filed his Form D on October 6, 1995 without offering any explanation for his late filing. Penalties for late filing of the Form D in the sum of \$2,540.00 were assessed against Mr. Brown and a demand for payment was made on Mr. Brown on October 6, 1995. Mr. Brown failed to pay the penalties assessed, again without explanation. The Law Society then made several requests of Mr. Brown for an explanation as to his failure to pay the penalties, which went unanswered. The Law Society finally issued a 14 day letter dated December 21, 1995 pursuant to Rule 41, requesting an explanation as to Mr. Brown's failure to pay. This letter also went unanswered.

The Committee also heard charges concerning Mr. Brown's failure to serve his client P. P had retained Mr. Brown with respect to P's divorce from his wife. Mr. Brown received a pension benefit spousal agreement from P on or about December 5, 1994, a second pension benefit spousal agreement on or about April 26, 1995 and a petition for divorce on or about April 28, 1995. All three documents were to have been forwarded by Mr. Brown to opposite counsel for execution by P's wife. As of July 7, 1995, when P terminated his retainer of Mr. Brown, none of those documents had been forwarded to opposite counsel as required. Moreover, Mr. Brown failed to answer 13 phone messages received from P between May 10, 1995, and July 6, 1995.

Decision and Comments

The Committee found Mr. Brown guilty of professional misconduct based on his admission to the charges.

The Committee took note of Mr. Brown's submissions that his failure to pay the penalties assessed against him, and his failure to respond to the Law Society's request for an explanation as to his failure to pay those penalties, was due to impecuniosity and embarrassment. The Committee concluded, however, that those circumstances did not afford Mr. Brown any excuse for his actions. The Committee observed that in the case at hand Mr. Brown was the author of his own misfortune. His failure to properly serve his client, and his failure to communicate and correspond with the Law Society as he had been requested to do, and as he was required by the Rules to do, had put his client and the Law Society to considerable cost and inconvenience.

Penalty

The Committee accepted the undertaking given by Mr. Brown in the course of the hearing to pay his outstanding penalties in the sum of \$2,540.00 forthwith.

The Committee imposed a fine of \$1,000.00 and costs of \$750.00 payable on or before March 31, 1997.

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