



DISCIPLINE CASE *DIGEST*

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Case 97-14

RALPH LAWRENCE GUTKIN
Winnipeg, Manitoba

Called to the Bar
June 28, 1979

Particulars of Charges
Professional Misconduct (142 counts)

- failing to serve clients
- misleading clients
- misappropriating clients' trust funds
- withdrawing money from trust for recovery of fees without sending bills to the clients
- failing to honour a financial commitment

Date of Hearing
September 3, 1997
Written Decision – September 9, 1997

Panel
Douglas Abra, Q.C.
Norman Simms, Q.C.
Renate Krause

Disposition

- Disbarment
- Costs of \$30,000.00

Counsel
Garth Smorang, Q.C. and John Reimer-Epp for the Law Society
Member not represented

Misappropriation

Facts

Mr. Gutkin appeared before the Discipline Committee on September 3, 1997. He entered a plea of guilty to 142 counts of professional misconduct.

The counts related to Mr. Gutkin's conduct over a period from 1984 to 1994, with significant majority of counts arising over the last four of these years. The professional misconduct affected 57 of Mr. Gutkin's clients as follows:

1. **Failing to take any or appropriate action on behalf of clients (13 counts).** – Mr. Gutkin retained to perform certain services on behalf of these clients and, in most cases, failed to perform any services at all. In many cases, he went on to misrepresent the status of the matter to the clients to conceal his inaction.
2. **Misleading Clients, the Law Society Discipline Committee (now the Complaints Investigation Committee), and/or members of the public (23 counts).** – Where he failed to take appropriate action on behalf of his clients as noted above, Mr. Gutkin often represented to his clients that the legal services he had been retained to perform (including Court proceedings) had been successfully completed when in fact the services had not even been commenced. For example, Mr. Gutkin:
 1. advised clients that an application for adoption had been successfully brought when in fact no application had been made;
 2. advised clients that a litigation matter had been settled and that he was making collection efforts when, in fact, the claim had been dismissed for want of prosecution;
 3. advised a client that a divorce petition had been filed, served, and proceeded to Court when, in fact, he had taken no action at all;
 4. advised clients that their trust funds were invested and had earned specific sums of interest when, in fact, they had been misappropriated by him to another client's benefit;
 5. advised a client and the Manitoba Family Services Income Security Division that her monthly mortgage payments were lower than they actually were;
 6. advised the Discipline Committee that certain discussions were underway with opposing counsel on a client's matter when, in fact, no such discussion had taken place.
3. **Misappropriating trust money for personal use (19 counts).** – The Committee observed that Mr. Gutkin provided no rationale for these misappropriations except that he needed the money to meet certain obligations and to maintain his lifestyle. The personal misappropriations included car loan and credit card payments.
4. **Transferring trust money between trust accounts belonging to different clients**

- without authorization (20 counts).** – Mr. Gutkin often “kited” monies between trust accounts in order to conceal the fact that a client’s trust money had earlier been misappropriated for his own use or on behalf of another client.
5. **Making payments to third parties on behalf of one client from the account of another client without authorization (34 counts).** – Mr. Gutkin often made payments to third parties in order to conceal an earlier misrepresentation to a client. For example, he made monthly payments from a number of different trust accounts to a bank which held the mortgage of a client to whom he had under-represented the amount of the monthly payments. In several cases where he had used a client’s funds for an unauthorized purpose, he paid settlement monies to opposing counsel from the trust account of another client.
 6. **Withdrawing money from trust to pay his fees and disbursements without sending a statement of account to the client (32 counts).**
 7. **Failing to pay 14 statements of account totalling \$3,663.82 for court reporting services (1 count).**

Decision and Comments

At the hearing, the Law Society took the position that Mr. Gutkin should be disbarred. Mr. Gutkin requested a disposition other than disbarment on the grounds that he had been interim suspended for a period of three years that he had been rehabilitated, and that disbarment would serve no purpose then than to punish him. He presented the report of his psychologist in support of his submissions.

The committee rejected Mr. Gutkin’s position that he had been rehabilitated. Based on his submission, the Committee was not satisfied that he realized the seriousness of his actions or took responsibility for them. The Committee found that, although his psychologist’s report provided some explanation for Mr. Gutkin’s lies to his clients (in that he did not want to be perceived as unable to handle his practice), no reasonable explanation was provided sufficient to mitigate the seriousness of the fact that Mr. Gutkin misappropriated money from his clients.

The Committee considered the charges against Mr. Gutkin to be very serious, as integrity and honesty are the very essence of practicing law. The Committee emphasized that whenever a lawyer is not honest, the reputation of the entire profession is severely eroded. Furthermore, the public has a right to expect honesty from lawyers and a right to be protected from dishonest lawyers.

The Committee observed that misappropriation of trust funds by a lawyer generally merits disbarment, except in very exceptional circumstances. There was no such exceptional circumstance in this case which would lead the Committee to impose a lesser penalty on Mr. Gutkin.

The Committee also commented that the Law Society does not disbar lawyers to punish them, but rather to protect the public and the integrity and reputation of the profession, as

well as to deter other lawyers from committing similar acts of misconducts.

Penalty

The Committee directed that Mr. Gutkin be disbarred. Costs in the total amount of \$30,000.00 were agreed as between the Law Society and Mr. Gutkin.

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