



DISCIPLINE CASE *DIGEST*

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Case 98-05

ROBERT LEWIS FISHER
Winnipeg, Manitoba

Called to the Bar
June 23, 1983

Particulars of Charges
Professional Misconduct

- Failure to deposit retainer funds to trust, contrary to Rule 129(1)(a) (5 counts)
- Misappropriation of firm monies (1 count)

Date of Hearing
September 9, 1998

Panel
John H. Combs, (Chair)
Janet L. Jeffrey
Sandra D. Phillips

Disposition

- 3months suspension
- Costs of \$5,000.00

Counsel
J.R. Gallagher for The Law Society of Manitoba
W. K. Emslie for the Member

Misappropriation

Facts

Mr. Fisher appeared before the Discipline Committee on September 9, 1998 and entered a guilty plea to the charges.

On five occasions Mr. Fisher received sums ranging from \$400.00 to \$1,000.00 from clients as retainers for legal services to be performed or on account of fees and disbursements. The monies totalled \$3,350.00. Mr. Fisher completed the legal services on behalf of each of the five clients but he failed to deposit the monies into the trust bank account of the firm where he practised. The funds were misappropriated by Mr. Fisher from the law firm and were used to meet his personal financial obligations.

Decision and Comments

The Committee accepted Mr. Fisher's admission to the counts and found him guilty of professional misconduct. The Committee determined that there was a breach of the fiduciary duty that Mr. Fisher owed to his clients and to his firm. The Committee noted that Mr. Fisher had admitted his culpability and had co-operated with the law firm and the Law Society in the investigation including self reporting a number of the incidents which were not at first known. It was also noted that Mr. Fisher had repaid all the monies and had voluntarily withdrawn from the practice of law pending disposition of the matter.

Penalty

The Committee accepted the joint recommendation of both counsel and ordered that Mr. Fisher be suspended for a period of 3 months.

In the event that Mr. Fisher applies to resume the practice of law following his period of suspension, the Committee ordered that he practise under the supervision of a member approved by the Law Society for a period of eighteen months with the following conditions:

- a. that reports from the supervisor be submitted to the Law Society at six month intervals and that those reports include confirmation that there have been no problems with Mr. Fisher's handling of firm or client funds;
- b. at six month intervals, the supervisor shall submit to all clients of Mr. Fisher a written statement setting out the balance of any trust funds to the credit of the client in the firm trust account;
- c. that Mr. Fisher not have any signing authority on any trust accounts or handle any trust funds; and
- d. any other conditions that the Admissions and Education Committee might impose upon Mr. Fisher's application for resumption of practice.

The Committee also ordered that Mr. Fisher pay costs in the amount of \$5,000.00 which are to be paid at the rate of \$100.00 per month commencing three months after Mr. Fisher resumes practice or commencing October 1, 1999 if he does not resume practice by that

date. In the event that there is default on a payment the entire balance then outstanding would become due and payable within 30 days.

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