



# DISCIPLINE CASE *DIGEST*

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Case 98-08 (AMENDED)

<b>Member:</b>	<b>Member A</b>
<b>Jurisdiction:</b>	Manitoba
<b>Called to the Bar:</b>	June 23, 1983
<b>Particulars of Charges:</b>	Professional Misconduct (7 counts) <ul style="list-style-type: none"><li>▪ Charging excessive legal fees</li><li>▪ Charging fees in excess of the fees allowable under Queen's Bench Rule 74.14(4) without consent (2 counts)</li><li>▪ Assisting administrators to receive excessive fees on an Estate</li><li>▪ Failure to provide Queen's Bench Form 74AA to beneficiary</li><li>▪ Failure to serve client</li><li>▪ Failure to show courtesy and good faith towards fellow lawyers</li></ul>
<b>Date of Hearing:</b>	October 15, 1998
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ D. G. Ward, Q.C. (Chair)</li><li>▪ D.R. Knight, Q.C.</li><li>▪ A. Osborne</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Joe R. Gallagher for The Law Society of Manitoba</li><li>▪ E.W. Olson, Q.C. for the Member</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$1,750.00</li><li>▪ Costs of \$2,500.00</li></ul>

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## Excessive Fees

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### Facts

In May of 1991, Member A was retained to act as lawyer on N's estate. N had been the executor and sole beneficiary of the estate of J and this estate had not been fully administered as of the date of N's death. Other counsel had been assisting in the administration of J's estate and at the time N died, the unadministered assets of J's estate totalled \$15,806.40 in savings bonds. Another \$277,764.32 in assets were in the process of being transferred into N's name, however, as of the date of N's death the transfers had not yet taken place.

Member A filed an application for probate of N's estate and a grant of probate was issued to the co-executors. In addition, Member A filed a request for administration with will annexed of the unadministered assets of the estate of J. Letters of administration were issued naming the co-executors of N's estate as the administrators of J's estate. In the inventory and valuation of the property of J, Member A listed the unadministered assets as having a value of \$293,570.72 when in fact the only assets left to administer were the \$15,806.40 in savings bonds.

The administrators received executor's fees totalling \$69,242.40 on J's estate. Member A later brought a motion seeking an order dispensing with the auditing and passing of accounts of J's estate. The order was granted by the court.

A charity was the residuary beneficiary of N's estate and therefore upon N's death the charity became a beneficiary of J's estate. Member A did not serve the charity with a copy of Queen's Bench Form 74 AA. Member A received a fee of \$26,565.00 on J's estate without the consent of the beneficiary. Based upon the unadministered assets of J's estate being \$15,806.40, Member A's allowable fee would have been \$416.13. Even if the unadministered assets of J's estate were considered to be \$293,570.72, Member A's allowable fee would only have been \$4,035.70.

Between the date of N's death in May, 1991 and April, 1994, Member A delayed in notifying the charity that it was the residuary beneficiary of N's estate. As a result, the charity was not served with the notice of motion and did not have an opportunity to object to the order dispensing with the auditing and passing of accounts of J's estate. In addition, further and unnecessary costs were incurred by N's estate for payment of income taxes and then the application for a refund, as these taxes were not payable by the charity.

The assets of N's estate were listed in the request for probate as totalling \$1,029,515.85. The fee charged by Member A on the estate of N was \$11,480.00. This fee was not consented to by the charity as the residuary beneficiary. The allowable lawyer's fee was \$4,100.00 on the first \$300,000.00 with the fee on the balance being determined by the time spent, the complexity of the matter, the results achieved and the value of the estate. The matter was not complex, did not require an inordinate amount of time to conclude and the results obtained were not extraordinary.

After being advised by Member A of its status as residuary beneficiary, the charity retained counsel and for approximately one year counsel attempted to obtain details from Member A about the expenses paid out of the two estates. In particular, counsel requested information as to the amount of the executor's fees charged on the estate of J and information on the itemized time records concerning the executors and legal fees on the two estates. Member A was less than co-operative and his conduct towards other counsel was not characterized by courtesy and good faith.

### **Decision and Comments**

Member A entered a plea of guilty to the charges and the Committee found him guilty of professional misconduct.

### **Penalty**

The Committee accepted the joint recommendation of both counsel as to penalty. The Committee imposed a fine of \$1,750.00 and also ordered that Member A pay costs in the amount of \$2,500.00, with both to be paid within 30 days.

### **Pardon**

Member was granted a pardon on July 13, 2010. See Discipline Case Digest #10-07.