



DISCIPLINE CASE *DIGEST*

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Case 98-12

SAMUEL NORMAN ROSENBAUM
Winnipeg, Manitoba

Called to the Bar
June 24, 1982

Particulars of Charges
Professional Misconduct (4 counts)

- failure to deposit funds to a pooled trust account (x2)
- failure to maintain a client trust ledger
- failure to meet financial obligations incurred or assumed in the course of practice

Date of Hearing
March 24, 1999

Panel
Douglas N. Abra, Q.C., (Chair)
Vivian E. Rachlis
Victor P. Bellay

Disposition

- Fine of \$1,500.00
- Costs of \$1,874.22

Counsel
Joe R. Gallagher for The Law Society of Manitoba
Roy A. Yerex for the Member

Failure to Meet Financial Obligations

Facts

In 1994, Mr. Rosenbaum was retained by a client on a Legal Aid certificate regarding a child custody matter. Sometime later, a clinical psychologist was retained by Mr. Rosenbaum and opposing counsel to conduct an assessment and prepare a report on the results of the assessment.

Legal Aid Manitoba approved payment to a maximum of \$2,100.00 as Mr. Rosenbaum's client's share of the assessment. Subsequent to receipt of the report, Legal Aid Manitoba approved a further payment of \$600.00 to allow the psychologist to testify at the trial in the matter.

The psychologist sent Mr. Rosenbaum an invoice in the amount of \$2,100.00 regarding the assessment. Mr. Rosenbaum forwarded the account to Legal Aid Manitoba and a cheque payable to Mr. Rosenbaum was promptly issued. On February 21, 1997, Mr. Rosenbaum deposited the cheque to his general bank account.

A second invoice in the amount of \$600.00 was sent by the psychologist to Mr. Rosenbaum regarding the court attendance. This account was also forwarded by Mr. Rosenbaum to Legal Aid Manitoba and a cheque was issued to Mr. Rosenbaum. The cheque was deposited by Mr. Rosenbaum to his general bank account on June 10, 1997.

At the time Mr. Rosenbaum deposited the \$2,100.00 and the \$600.00 cheques, he had not yet paid the psychologist's accounts. In the circumstances, the monies were trust funds and should have been deposited to Mr. Rosenbaum's pooled trust account. Mr. Rosenbaum also failed to record in a trust ledger card in the name of his client receipt of the monies totalling \$2,700.00.

In September 1997, following a number of reminders and telephone calls from the psychologist, Mr. Rosenbaum made three payments totalling \$1,950.00 on the account. Finally, on December 29, 1997, more than ten months after receiving the \$2,100.00 cheque and over six months after receiving the \$600.00 cheque, Mr. Rosenbaum paid the outstanding balance of \$750.00 on the psychologist's account.

Decision and Comments

Mr. Rosenbaum entered a plea of guilty to the charges. On the basis of the information provided, the Committee found Mr. Rosenbaum guilty of professional misconduct. The Committee noted that a lawyer who retains a professional is personally responsible for payment of that professional's account. It was further noted by the Committee that Mr. Rosenbaum was obliged to pay the accounts of the psychologist immediately upon their receipt regardless of whether he was in receipt of the funds. In this case, however, the Committee found as an aggravating factor that Mr. Rosenbaum was in receipt of the funds and neglected for a significant period of time to pay the account.

Penalty

The Committee accepted the joint recommendation of both counsel and imposed a fine of \$1,500.00 as a penalty. It was further ordered by the Committee that Mr. Rosenbaum pay costs in the amount of \$1,874.22. The total amount of \$3,374.22 was ordered to be paid at the rate of \$150.00 per month commencing May 1, 1999.

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