



DISCIPLINE CASE *DIGEST*

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Case 99-01

EVA DRAGUN
Winnipeg, Manitoba

Called to the Bar
June 20, 1991

Particulars of Charges
Professional Misconduct (9 counts)

- failing to treat opposing counsel with courtesy and integrity (1 count)
- failing to treat the court with candour and good faith (2 counts)
- failing to treat opposing counsel and the court with candour, good faith and integrity (1 count)
- failing to serve client in a conscientious, diligent and efficient manner (5 counts)

Date of Hearing
May 17, 1999

Panel
D.G. Ward, Q.C. (Chair)
A.A. Rich, Q.C.
J.W. Hedley

Disposition

- Fine of \$5,000.00
- Costs of \$10,000.00
- Member ordered to practice under supervision of another member for a period of 18 months
- Member ordered to attend three Continuing Legal Education Programs dealing with domestic law and/or civil procedure in the next 18 months.

Counsel
R.B. McNicol, Q.C. for The Law Society of Manitoba
R. Kravetsky for the Member

Failure to Serve Clients

Facts

Ms. Dragun was acting for the husband in a contested domestic proceeding and was attempting to arrange a mutually convenient date for examinations for discovery to occur. Opposing counsel was not able to attend the examinations on the date proposed by Ms. Dragun and accordingly Ms. Dragun scheduled a contested motion before the Master in which she sought an order compelling the attendance of opposing counsel's client on the date on which Ms. Dragun proposed to hold the examination. Opposing counsel received notice of that application and was to participate by teleconference.

The afternoon prior to the hearing Ms. Dragun sent a fax to opposing counsel indicating that her motion had been cancelled. Opposing counsel phoned the Court in order to confirm that Ms. Dragun had cancelled her motion and was advised that while the motion before the Master had been cancelled, Ms. Dragun had scheduled a motion to proceed *ex parte* before a Justice of the Court of Queen's Bench Family Division, at precisely the same time as the motion which she had cancelled. Ms. Dragun had not given notice to opposing counsel of the *ex parte* application, which sought essentially the same relief as the motion which had been cancelled.

Ms. Dragun filed an affidavit of her client in support of the motion which was scheduled to proceed *ex parte* and that affidavit did not disclose the existence of the motion before the Master or the fact that it had been cancelled. Further, the affidavit contained two false statements concerning opposing counsel.

In another matter, Ms. Dragun acted for the wife in domestic litigation involving disputed issues of maintenance, support and a marital property accounting. At a pre-trial conference, Ms. Dragun's client consented to the sale of the family home on the understanding that the proceeds thereof would be dealt with in the marital property accounting. Accordingly, a consent order to that effect was pronounced.

Several months later, Ms. Dragun appeared before the Master and, on that occasion, told the Master that her client had not consented to the order for the sale of the family home.

Subsequently, the matter proceeded to a contested marital property accounting before the Master. Ms. Dragun had her client sign a Notice of Intent to Act in Person for the purposes of the contested accounting only. She did not withdraw entirely as counsel but left her client to represent herself at a contested accounting where the client's husband was represented by counsel.

Finally, in the same matter, opposing counsel made an application for costs to be ordered

against both Ms. Dragun and her client for the unnecessary delays that were alleged to have been caused by them. At that hearing, Ms. Dragun told the court that she had been fired by her client, when this was not the case.

In another matter, Ms. Dragun was acting for the wife in a contested domestic proceeding. She accepted the client's instructions to make an application for interim relief and then did not make that application.

In the same proceeding, Ms. Dragun was ordered by the court to prepare and file her client's affidavit in connection with a matter. Ms. Dragun failed to do so and failed to advise the client of the date the matter would be heard. Ms. Dragun did not attend court on the scheduled date and as a result an order was made by the court that Ms. Dragun's client personally pay costs of \$250.00. Ms. Dragun did not tell her client of her failure to attend court or of the order that had been made against the client.

Ms. Dragun eventually prepared and filed an affidavit for her client that was replete with inaccuracies and discrepancies.

Decision and Comments

Ms. Dragun entered a plea of guilty to the charges. On the basis of the information provided, the Committee found Ms. Dragun guilty of professional misconduct.

The Committee accepted the joint recommendation of counsel as being a fair, reasonable and appropriate disposition which served to protect the public interest.

Penalty

In respect of all counts admitted by Ms. Dragun, the Committee ordered that Ms. Dragun:

1. pay a fine of \$5,000.00;
2. pay costs of \$10,000.00;
3. pay the fine and costs at the rate of \$500.00 per month commencing June 1, 1999 until paid in full;
4. complete three Continuing Legal Education Programs related to domestic law and/or civil procedure within the next 18 months; and
5. practice under the supervision of a senior practitioner for a period of 18 months, with the supervisor to:
 - a. review all new files opened by Ms. Dragun on a monthly basis;
 - b. require Ms. Dragun to report to him as to the status and progress of each of her open files on a monthly basis;
 - c. immediately report to The Law Society of Manitoba any potential misconduct on the part of Ms. Dragun; and
 - d. provide quarterly written reports to The Law Society of Manitoba concerning his review and supervision of Ms. Dragun's practice.

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