



DISCIPLINE CASE *DIGEST*

[Discipline Case Digest Index](#) ❖ [Law Society Home Page](#)

Case 99-10

RICHARD ANTHONY WARD
Winnipeg, Manitoba

Called to the Bar
June 25, 1976

Particulars of Charges
Professional Misconduct (15 counts)

- Failure to serve client in a conscientious, diligent and efficient manner (x 2)
- Failure to discharge with integrity duties owed to client (x 2)
- Breach of the rules respecting accounts (x 2)
- Misleading the Complaints Investigation Committee (x 2)
- Failure to meet financial obligations incurred or assumed in the course of practice
- Failure to respond to 14-day letter (x 2)
- Failure in responsibility to profession
- Failure to comply with Rule 155.1 regarding withdrawal from practice

Date of Hearing
February 23, 2000

Panel
H. Buchwald, Q.C. Chair
B.G. Lee, Q.C.
C.G. Wright

Disposition

- Indefinite suspension;
- Fine of \$5,000.00;
- Costs of \$10,000.00;
- Mr. Ward to provide a written undertaking to the Society:
 - i. to permanently withdraw from the practice of law effective February 23, 2000;
 - ii. to never apply to resume the practice of law;

- iii. not to apply for membership in any other Law Society or equivalent body without first advising the Society; and
 - iv. acknowledging that any breach of the written undertaking will result in the entire proceedings of this Discipline Committee inquiry, including the Reasons for Decision of the Committee, being provided to the Admissions and Education Committee or any other committee of the Society that considers the matter.
- Fine and costs totalling \$15,000.00 to be paid within one year.

Counsel

J.R. Gallagher for The Law Society of Manitoba
Member, unrepresented

Ungovernability

Facts

Mr. Ward was retained by a bank to prepare and register a mortgage on a residential property. The mortgage funds were advanced to Mr. Ward in trust on condition that the final report and documentation would be provided to the bank within a reasonable time. Mr. Ward failed to provide the bank with the final report and supporting documents within a reasonable time or at all.

After a complaint was received from the bank concerning the mortgage matter, the Society wrote to Mr. Ward requesting a response within fourteen days. Mr. Ward failed to provide any response to the letter from the Society.

Mr. Ward was retained by a client with respect to domestic proceedings. The client had been served with a Notice of Motion and Affidavit returnable September 2, 1997. Mr. Ward had not acted for the client in any prior court proceedings relating to the matter. He wrote to opposing counsel on August 28, 1997 requesting that the matter be adjourned for two weeks which was agreed to and arranged by opposing counsel.

By letter dated September 4, 1997, opposing counsel requested that Mr. Ward file his client's materials prior to the September 16, 1997 hearing date. Mr. Ward did not file any materials on behalf of his client and he failed to appear at the September 16, 1997 hearing. Opposing counsel put the matter over for a week and telephoned Mr. Ward's secretary advising of the adjournment. Mr. Ward failed to appear at the next scheduled court appearance and opposing counsel set the matter down for a hearing on November 12, 1997. Opposing counsel sent two letters to Mr. Ward and left a message on his telephone answering machine concerning the scheduled court hearing, however, Mr. Ward did not respond to the letters or the telephone message and did not attend the November 12, 1997

hearing.

The presiding judge was concerned that the client might not be aware of the proceedings and adjourned the matter and gave opposing counsel permission to write directly to Mr. Ward's client to advise of the next hearing date. The client was contacted and advised that she had not received notice from Mr. Ward of any of the hearing dates.

In response to a letter sent to Mr. Ward at the direction of the Complaints Investigation Committee of the Society, Mr. Ward advised that his office had not been in receipt of any correspondence from opposing counsel with respect to any alternate court dates. In fact, opposing counsel had forwarded three letters to Mr. Ward's office, including one by facsimile and had telephoned his office on two occasions and left messages regarding the matter.

In December 1994, Mr. Ward was retained by clients with respect to a subdivision of property. A fee of \$10,000.00 plus disbursements and GST was agreed to, with the clients providing a \$1,000.00 retainer. Without notice to the clients, Mr. Ward filed a caveat against their property in September 1996 claiming an equitable charge on the subject premises as security for payment of legal fees and disbursements. Prior to filing the caveat, Mr. Ward had not sent or provided the clients with any statements of account and the legal services he had been retained to provide had not been completed. The clients had not, at the time of retaining Mr. Ward or thereafter, given him any charge or interest in the subject property.

After receiving notice from the Land Titles Office of the caveat filed against their property, the clients retained new counsel who wrote to Mr. Ward but received no response. The clients' new counsel took steps and was successful in having the caveat discharged, albeit at cost to the clients.

In or about November 1995, Mr. Ward was retained by clients regarding the purchase of a residential property. By way of a fax message, Mr. Ward ordered a survey and gave no indication that anyone other than his office would be responsible for the cost of the survey. Despite receipt of the original invoice and two overdue account notices, Mr. Ward failed to pay the \$438.00 account for the survey.

In response to a letter received from the Society concerning the matter, Mr. Ward advised that the survey had not been requested by his office, but rather had been ordered by his client. This was inconsistent with the information contained in the fax message sent to the surveyors by Mr. Ward's office.

Client T retained Mr. Ward concerning a foreclosure by a credit union of T's property. T had arranged with another party, N, that N would redeem the mortgage and take title to the property, financing the transaction through a mortgage. Mr. Ward drafted the mortgage, a declaration as to possession and an order to pay which documents were executed by N in the presence of N's lawyer.

The order to pay authorized Mr. Ward to take his fees and disbursements out of the mortgage funds. Following receipt of the mortgage funds Mr. Ward transferred the sum of \$1,431.56 from his trust account for recovery of his fees and disbursements. At the time of making the trust transfer, Mr. Ward had not sent or provided his Client T or N with a statement of account concerning the fees and disbursements.

In or about June of 1994, Mr. Ward was retained by a client regarding divorce proceedings. The retainer agreement provided for a fee of \$6,000.00 plus disbursements and GST. If additional services were required, they would be billed at an hourly rate but not to exceed \$2,000.00 plus GST. The total fee therefore was not to exceed \$8,000.00 plus disbursements and GST. The matter proceeded until August 1997 at which time Mr. Ward advised the client that he would be leaving the practice of law and that she would have to obtain new counsel. Shortly thereafter, Mr. Ward sent the client a final statement of account for \$8,000.00 plus disbursements and GST. After crediting the client with \$5,000.00 paid earlier, the balance outstanding was \$4,032.07. Although the matter was not yet completed, Mr. Ward had billed the client for the total allowable fees.

The client wrote to Mr. Ward and suggested that, as the matter was only 50 to 60% completed, he should accept the \$5,000.00 paid earlier as full payment. Mr. Ward did not respond to the client's letter, however, on September 20, 1997, he filed a caveat in the Land Titles Offices on a condominium property owned jointly by his client and her estranged spouse. Mr. Ward indicated that he had an interest in the land by virtue of an equitable charge on the premises as security for payment of legal fees and disbursements. The client had not given Mr. Ward any interest or charge on the land in question. New counsel for the client wrote to Mr. Ward on two occasions requesting that he take immediate steps to remove the caveat. Mr. Ward failed to respond to either of the letters and also failed to reply to any of five telephone messages that new counsel for the client left for Mr. Ward. It became necessary for new counsel to have the Land Titles Office serve a thirty-day notice on Mr. Ward concerning the caveat. The notice was not responded to by Mr. Ward and the caveat was discharged at cost to the client.

In December 1995, Mr. Ward was retained by a client concerning a real property matter. The client provided a cheque in the amount of \$600.00 to Mr. Ward as a retainer for legal services to be performed. Mr. Ward did not deposit the trust cheque into his pooled trust account, but rather, endorsed same and presented the cheque at the bank for cash, contrary to the Rules Respecting Accounts. Legal services of \$600.00 or more were eventually provided by Mr. Ward in the matter.

On May 12, 1997, Mr. Ward received a further cheque in the amount of \$1,200.00 from the same client as a retainer for legal services to be performed in another matter. Mr. Ward did not deposit the funds into his pooled trust account as required by the Rules Respecting Accounts. On June 18, 1997, while serving a sixty-day suspension from practice, Mr. Ward cashed the \$1,200.00 cheque he had received earlier from his client, without the authority of the client and prior to providing any legal services in the matter.

In September 1997, the Society became aware that Mr. Ward was intending to withdraw

from practice. The Society wrote to Mr. Ward advising him of the requirement under Rule 155.1 to advise the Society in writing with respect to the disposition of all open and closed files, wills, titles, and other important documents and records, including trust accounts and trust monies relating to his practice. A total of four letters were sent by the Society to Mr. Ward concerning his intended withdrawal from practice. Although he provided responses to the letters, Mr. Ward did not comply with the requirements of Rule 155.1.

In another matter, the Society sent a total of four letters to Mr. Ward, at the direction of the Complaints Investigation Committee, requesting that he provide an original client file and trust ledger card. Mr. Ward did not forward the client file or trust ledger card as requested.

In October 1999, the Society had a letter served personally by process server on Mr. Ward concerning a client complaint. Mr. Ward failed to provide a response to the letter within fourteen days of receipt of the letter.

Decision and Comments

Mr. Ward entered a guilty plea to the fifteen charges and the Committee found that his conduct constituted professional misconduct.

Penalty

The Committee accepted the joint recommendation that was presented and imposed the following penalty on Mr. Ward:

- Indefinite suspension;
- fine of \$5,000.00;
- Costs of \$10,000.00;
- Mr. Ward to provide a written undertaking to the Society:
 - i. to permanently withdraw from the practice of law effective February 23, 2000;
 - ii. to never apply to resume the practice of law;
 - iii. not to apply for membership in any other Law Society or equivalent body without first advising the Society; and
 - iv. acknowledging that any breach of the written undertaking will result in the entire proceedings of this Discipline Committee inquiry, including the Reasons for Decision of the Committee, being provided to the Admissions and Education Committee or any other committee of the Society that considers the matter.
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