



# DISCIPLINE CASE *DIGEST*

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Case 19-09

<b>Member:</b>	<b>David Wolfe Walker</b>
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	January 30, 2013
<b>Particulars of Charges:</b>	Professional Misconduct (4 Charges): <ul style="list-style-type: none"><li>▪ Breach of Rule 5.1-5 of the <i>Code</i> [failure to be courteous, civil, and act in good faith to the Court and all persons with whom the lawyer had dealings] [x3]</li><li>▪ Breach of Rule 7.2-11 of the <i>Code</i> [failure to fulfill undertaking given to the Law Society]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	January 27, 2020
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Catherine Finnbogason (Chair)</li><li>▪ Donald Knight, Q.C.</li><li>▪ Keely Richmond (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Rocky Kravetsky for the Law Society of Manitoba</li><li>▪ Michael Cook for the Member</li></ul>
<b>Dates of Decisions:</b>	Oral Decision: January 27, 2020 Written Reasons for Decision: February 7, 2020
<b>Consequences:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$1,500.00</li><li>▪ Costs of \$3,000.00</li></ul>

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## **Breach of Undertaking to the Society / Failure to Act in Good Faith**

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### **Facts**

In May of 2016, Mr. Walker gave an Undertaking to the Law Society of Manitoba. This Undertaking required him to organize himself in a manner that would allow him to promptly answer communications from clients, lawyers, and the Law Society. It required him to attend court as required, to have a system in place so that callers could leave a message when he was unavailable to take calls, to promptly answer all professional communications, to adopt a "bring forward" system that would ensure that all matters requiring action by certain dates are brought to his attention on a timely basis.

This case involved four of Mr. Walker's criminal law clients, GK, CL, HN, NDB and events that cover a period of approximately sixteen months.

GK was scheduled for a trial in Provincial Court on March 23, 2018. Neither Mr. Walker nor his client attended court as scheduled. GK retained new counsel who had asked for GK's client file. Mr. Walker did not respond. New counsel had to get the disclosure from the Crown and never did receive GK's file from Mr. Walker.

On September 15, 2018, Mr. Walker's client HN had a scheduled disposition hearing in Provincial Court. Mr. Walker had not taken steps to ensure HN's appearance and neither Mr. Walker nor HN appeared as scheduled.

Mr. Walker represented client CL who had entered a guilty plea to charges in Provincial Court. A sentencing hearing was scheduled for March 2, 2018 at 2:00 p.m. When he was on his way to court, Mr. Walker realized that his car had a flat tire. Mr. Walker did not make alternative arrangements to get to court and did not immediately advise the court or the Crown Attorney that he would be late. Instead, Mr. Walker stayed with the car while waiting for a tow and then went to the garage. He did not advise the Crown Attorney that he would be late until 2:18 p.m. and did not make his way to court until 3:40 p.m.

Mr. Walker received a disclosure package in NDB's criminal matter in trust that he would return the disclosure material to the Crown if he was discharged as NDB's lawyer. After Mr. Walker was subsequently discharged, he received three written requests from the Crown for return of the disclosure material but he did not respond and did not return the disclosure material until after a complaint had been made to the Law Society.

Contrary to Mr. Walker's Undertaking, on February 25, 2019 there was no answer on his direct office phone line and the voice mail box was full, such that there was no way to leave messages and his office general line was not answered.

### **Plea**

Mr. Walker entered a guilty plea to four charges of professional misconduct.

### **Decision and Comments**

The Panel noted that Mr. Walker was under a great deal of stress leading up to the offences and that his personal life has now stabilized. Mr. Walker has completed a number of professional development courses dealing with practice management. He has acknowledged his misconduct and takes full responsibility for it. He has no formal discipline history with the Law Society and gained no advantage to himself through his behavior. The offences occurred over a relatively short period of time. The Panel concluded that a joint submission made in this case meets the public interest test set out by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

### **Consequences**

The Panel accepted the joint submission and ordered that Mr. Walker pay a fine of \$1,500.00 and that he pay costs of \$3,000.00. Mr. Walker's Undertakings to the Law Society remain in place.