THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

ADELINE LORRAINE DEGNER

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Date of Hearing:	August 11, 2020
Panel:	Sacha Paul (Chair) Irene Hamilton, Q.C. Sandra Oakley (Public Representative)
Appearances:	Rocky Kravetsky, Counsel for the Law Society of Manitoba Adeline Lorraine Degner, Self Represented

REASONS FOR DECISION

Introduction

This case is about the importance of members responding promptly and completely to correspondence from the Law Society.

Adeline Lorraine Degner ("Degner") is a member of the Law Society of Manitoba ("LSM"). She was admitted as a member on June 15, 2000. In a Citation dated July 20, 2020 (the "Citation"), the LSM charged Degner with one count of professional misconduct in that Degner failed to respond promptly and completely to correspondence from the LSM.

On August 11, 2020, a Discipline Hearing Panel (the "Panel") heard this case. Degner plead guilty to the one count in the Citation. The LSM and Degner then made a joint submission on penalty.

Simply put, the LSM and Degner made a joint recommendation that Degner receive a 30 day suspension, but such penalty would be suspended provided Degner execute and comply with an undertaking. Degner executed an undertaking on August 11, 2020.
The undertaking is 14 paragraphs long and will not be outlined in any greater detail than necessary. In essence, the undertaking reflects the member's wish to wind up her practice. In her undertaking, Degner undertakes to cease the practise of law and withdraw from active practise no later than September 15, 2020. Further, she undertook to provide on August 12, 2020, a complete response to the May 21, 2020 letter from the LSM (of which more is said below). In addition, Degner undertook not to resume practising status with the LSM or with any other law society until

Degner establishes to the satisfaction of the Chief Executive Officer of the LSM that Degner is capable of responding to professional communications.

Finally, the LSM and Degner jointly recommended that Degner pay the LSM costs in the amount of $2,600.

At the August 11, 2020 hearing, the Panel decided to accept the joint recommendation with written reasons to follow.

These are those written reasons.

Facts

Two affidavits were entered as exhibits: an August 7, 2020 Affidavit of Noelia Bernardo ("Bernardo") and an August 10, 2020 Affidavit of Susan Billinkoff ("Billinkoff"). Bernardo is the Director of Complaints Resolution with the LSM. Billinkoff is Legal Counsel to the Complaints Resolution Department of the LSM.

On June 18, 2019, one of Degner's clients contacted the LSM respecting concerns that he had not heard from Degner since April 2019. At this point, the LSM was able to informally address this communication issue.

On August 22, 2019, the client again contacted the LSM noting that he had lost contact with Degner since the end of June 2019 and that Degner had not responded to communications from the client in July and August of 2019. The client did not want to make a formal complaint.

Roughly seven months later on March 5, 2020, the client contacted the LSM saying that he had not heard from Degner since October 2019. The LSM also received requests for assistance in contacting Degner from two other people.

On March 5, 2020, Bernardo called Degner. Degner did not answer. Bernardo left a message. Degner did not respond to the message.

On March 13, 2020, Bernardo left another message for Degner and sent her an email the same day. Degner did not respond to the message or email from the LSM.

On March 20, 2020, the client's new lawyer contacted the LSM indicating that the new lawyer was having difficulty reaching Degner. At this point, an administrative assistant for the LSM attempted to reach Degner by leaving a voice message and sending an email, but the email was undeliverable and no response was received to the voice message.

On March 24, 2020, the LSM attempted to call Degner's cell phone and fax her number but the calls failed to connect.

The LSM then contacted a lawyer who was listed on Degner's annual member return as someone who she would prefer to take custody of her practice in the event of unexpected death or disability. This lawyer advised the LSM on March 24, 2020, that he had left messages for Degner to call him;

emailed her at her new employer; emailed contacts at the new employer asking Degner to call him; and spoke to Degner's father. No response was received by this lawyer to his inquiries.

Ultimately, the client filed a complaint on April 24, 2020. Before sending the complaint to Degner, Bernardo called Degner's father to inquire as to Degner's well-being. The father said he would pass on the fact that Bernardo had called to Degner.

The LSM then arranged for another person from the LSM to contact Degner on April 29, 2020. In the past, Degner had responded to this other person from the LSM. The hope was that if this other LSM employee contacted Degner, then Degner would respond.

Degner did respond on April 29/30, 2020 indicating that she would respond by May 4, 2020 to Bernardo but did not do so. This is when the matter was transferred to Billinkoff.

On May 5, 2020, Billinkoff sent Degner a letter, which enclosed a copy of the client's complaint and requiring a response. Billinkoff also required confirmation that she transferred the relevant file and trust funds to the client's new lawyer and required a response by May 8, 2020, in light of the nature of the concerns raised and Degner's earlier failures to respond. As part of the May 5, 2020 letter, Degner was advised that a failure to respond could result in a charge of professional misconduct under Rule 5-66(e)(i) of The Law Society of Manitoba Rules.

On May 8, 2020, Degner did respond and advised that the file and trust funds were being delivered to the client's new lawyer.

On May 21, 2020, Billinkoff wrote a letter to Degner asking further questions relevant to the client's complaint and requiring a response within 14 days.

Degner did not respond to the May 21, 2020 letter from Billinkoff.

On June 10, 2020, Billinkoff wrote another letter to Degner requiring a response to the substance of the May 21st letter with 14 days of June 10th and reminding the member of the possibility of being charged under Rule 5-66(e)(i). The deadline then to respond was June 24, 2020.

The June 10th letter was sent both by email as well as couriered to Degner's home office. Degner did not respond to the May 21st or the June 10th letters.

Decision

Though this is a joint recommendation, it is important to understand the facts because they illustrate the significant efforts the LSM took in an attempt to get Degner to respond. These efforts began on an informal basis through Bernardo and continued, after a formal complaint was filed, on a more formal basis through Billinkoff. The LSM afforded many opportunities to Degner to respond and to avoid the need for a formal complaint, but Degner did not respond and thus disciplinary proceedings were necessary.

In the broader context, Degner's failure to respond to the LSM is troubling. On two previous occasions, Degner pled guilty to, in essence, failing to respond promptly to clients or opposing counsel: see *The Law Society of Manitoba v. Degner,* 2017 MBLS 7 and *The Law Society of*

Manitoba v. Degner, 2019 MBLS 12 ("Degner No. 2"). In the case at hand, Degner's failure to respond has now moved from failing to respond to clients, opposing counsel to the regulator, the LSM.

The Panel accepts that there are very limited grounds to depart from a joint recommendation. The principles on joint recommendations are cited in Degner No. 2 at para 9-10:

> The Supreme Court of Canada case of *Anthony-Cook v. Her Majesty the Queen*, 2016 SCC 43, deals with circumstances in which a judge (or a tribunal such as this one) can depart from a joint recommendation as to sentence. Writing for the court, Moldaver J. writes that the applicable test is the public interest test, explaining that "under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest".
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> In *Anthony-Cook*, Moldaver J. quoted the case of *R v. Druken*, 2006 NLCA 67, 2006 NLCA 67 (CanLII), 261 Nfld. & P.E.I.R. 271, which provided that to be contrary to the public interest means that the joint submission is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system" and then added, colourfully, "Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold – and for good reason."

In the case at hand, the Panel decided to accept the joint recommendation.

The Panel considered the submissions of the parties and considered the case of *Law Society of British Columbia v. Ogilvie* (1999) LSDD No. 45. This case was relied upon in Degner No. 2. The applicable factors, as summarized in Degner No. 2 at para 12, are as follows:

> Counsel for the Society also referred us to the factors outlined in *The Law Society of British Columbia v. Ogilvie* [1999] L.S.D.D. No. 45, [1999] LSBC 17, Discipline case Digest 99/25, in which a Discipline panel of the Law Society of British Columbia set out a number of factors to be considered at disciplinary hearings:
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> (a) The nature and gravity of the conduct proven;
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> (b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior disciplines;

(d) the impact upon the victim;

(e) the advantage gained or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent had acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact on the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession;

and

(m) the range of penalties imposed in similar cases.

The Ogilvie decision has been followed in Manitoba in the case of *The Law Society of Manitoba v. Nadeau*, 2013 MBLS 4.

Also of relevance are the comments of the Discipline Panel in *The Law Society of Manitoba v. Wang* 2015 MBLS 12 at para 45:

> Lawyers must realize however that there are real consequences to lawyers filing to respond to reasonable and lawful inquiries of the Law Society. It is not just the lawyer's own clients who might be adversely affected. The Law Society is charged with the responsibility of governing the legal profession on behalf of the public, and to do so it is absolutely necessary for members to cooperate with the Law Society in its investigation of complaints. If members fail to cooperate, the public suffers harm, or at the very lease is put at risk of harm. Added to that, *other members* of the Society are obligated to pay the costs of the Society's investigations that become more costly as a result of the member's failure to cooperate with investigations. It is not sufficient to assert that they guilty lawyer's clients have not suffered harm. This is not like a criminal investigation where an accused or suspect is not required

> to co-operate and has the right to remain silent. Members of self-regulated professions are not entitled to such a privilege.

And further at para 50, the Panel in *Wang* wrote:

> In *Law Society of Upper Canada v. Ghobrial* (2014) OHLSHP 5 the Ontario tribunal stated as follows at para. 5:
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> > The obligation to respond to communications from the Law Society is not a mere technical or bureaucratic requirement, it is an ethical duty as a member of a regulated profession. Being a legal professional is about more than having legal knowledge and skills. Lawyers and paralegals, who provide and charge for services that, by law, others cannot provide, commit to the public and their clients that they will act within the framework established by statute, by-laws and rules. That includes co-operating with investigations into complaints, so that members of the public have confidence that when they raise concerns about a lawyer or paralegal, those concerns can be investigated and appropriate action taken, if necessary. (emphasis added)"

In the case at hand, the Panel notes that this is now the third time since 2017 that Degner has had to come before the LSM for, in essence, a failure to promptly respond. One would have hoped that a member facing two previous guilty pleas and discipline for failing to respond to clients and opposing counsel would respond to the regulator when required to do so but alas, this was not the case.

In light of this pattern, a suspension is warranted so that a member may understand the seriousness of failing to respond promptly.

Under Section 72 of the *Legal Professions Act*, C.C.S.M. c. L107 the Panel has broad authority to impose sanction including making any other order as appropriate. This includes ordering a suspended sentence as jointly recommended.

In this case, as jointly recommended, the Panel orders a 30 day suspension but the order is suspended provided that Degner execute the undertaking and comply with that undertaking. Finally, as jointly recommended, we award costs in the amount of $2,600 payable by Degner to the LSM.

DATED this 25th day of September, 2020.

Sacha Paul (Chair)

Irene Hamilton, Q.C.

Sandra Oakley