



# DISCIPLINE CASE *DIGEST*

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Case 20-03

<b>Member:</b>	<b>Douglas Albert Mayer</b>
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 30, 1988
<b>Particulars of Charges:</b>	Professional Misconduct (2 Charges): <ul style="list-style-type: none"><li>▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service]</li><li>▪ Breach of Rule 7.8-1 of the <i>Code</i> [failure to notify insurer]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	October 6, 2020
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Douglas A. Bedford (Chair)</li><li>▪ James McLandress, Q.C.</li><li>▪ Susan Boulter (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Rocky Kravetsky for the Law Society of Manitoba</li><li>▪ Gavin Wood for the Member</li></ul>
<b>Dates of Decisions:</b>	Oral Decision: October 6, 2020 Written Reasons for Decision: October 22, 2020
<b>Consequences:</b>	<ul style="list-style-type: none"><li>▪ Suspension – One (1) Month</li><li>▪ Costs of \$8,654.99</li></ul>

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**Quality of Service / Failure to Notify Insurer**

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## **Facts**

Mr. Mayer acted for SL in a Rule 20A action in which SL advanced a claim against a former business partner. A final Case Conference was held on February 27, 2016, prior to which defendant's counsel had delivered suggestions for an agreed book of documents. At the Case Conference the matter was scheduled for trial to take place in June 2017 and directions were given for steps to be taken in the interim, including that Mr. Mayer serve a request to admit facts "very shortly," the response to which would shape a statement of agreed facts to be filed by October 1, 2016 and that the parties file briefs and any relevant case law by October 1, 2016.

Mr. Mayer did not serve a request to admit facts "very shortly" as directed. In September 2016, he received a reminder from opposing counsel of the directions given at the Case Conference and a reminder of her proposal for agreed documents. Mr. Mayer also received a reminder from SL that something had to be filed in court by October 1, 2016. While he prepared a draft statement of agreed facts on September 28, 2016, Mr. Mayer did not send it to opposing counsel. He did not deliver a notice to admit. He neither filed nor prepared a brief. Defence counsel filed her brief on Monday, October 3, 2016 and delivered a copy to Mr. Mayer.

On February 7, 2017, opposing counsel served Mr. Mayer with a motion to strike SL's claim on the ground that Mr. Mayer had not complied with the Case Conference directions. Mr. Mayer did not immediately inform SL of this but SL was monitoring the Court Registry and on February 11, 14 and 20, 2017 he emailed Mr. Mayer asking for an explanation. Mr. Mayer responded only after the February 20, 2017 email but did not send SL a copy of the motion material. He expressed the opinion that "no motion will be heard." Mr. Mayer did not advise his insurer of the motion and did not advise SL to seek independent advice. He did arrange an adjournment of the motion to March 31, 2017. He did not, in the interim, take any steps to comply with the Case Conference directions. Despite the fact that his own interests were engaged, he argued the motion on March 31, 2017. The motion was allowed and SL's claim was struck. Mr. Mayer then recommended an appeal and offered to represent SL without charging fees for the appeal. He recommended that SL take independent legal advice. SL accepted the offer of representation by Mr. Mayer but did not take independent advice. In recommending independent legal advice, Mr. Mayer did not explain to his client that his own conduct was the reason for the Order. He did not report the matter to his insurer and did not give notice to the insurer until September 18, 2018, well after the appeal was perfected for hearing and after it had been rescheduled from its initial hearing date in March 2018. Mr. Mayer argued the appeal when it was heard on January 22, 2019. The appeal was dismissed with costs against SL. Written Reasons were delivered on January 25, 2019.

## **Plea**

Mr. Mayer entered a guilty plea to two (2) charges of professional misconduct.

## **Decision and Comments**

Mr. Mayer entered a guilty plea to the charges but the parties disagreed as to the appropriate consequences. The Law Society sought a suspension of one to two months. Mr. Mayer sought a fine.

The Panel observed that Mr. Mayer did not serve SL to the standard of a competent lawyer by failing to perform his functions conscientiously, diligently and in a timely manner and by withholding information and misleading SL to cover up his neglect. Mr. Mayer failed to give prompt notice to his insurer when his neglect was brought to his attention and he prejudiced his client when he finally recommended independent legal advice by not explaining the reason that such advice was appropriate.

The Panel took note of Mr. Mayer's discipline record and the history of remedial measures taken or imposed by the Law Society. Mr. Mayer had been formally cautioned once, had been disciplined and fined on three occasions including several particulars of failing to provide the required quality of service. He had been required to take remedial education in Practice and Time Management. He had twice been subject to practice reviews resulting in recommendations for improvement in his practice management, including consulting the Law Society's Practice Management Advisor. He had twice given Undertakings relating to timely responses. The Panel considered that a suspension was necessary to protect the public notwithstanding that it would impose a hardship on Mr. Mayer on the basis that it would give Mr. Mayer an opportunity - "perhaps his last" - to learn from his mistakes and to make those changes in his practice essential to meeting his obligations. The Panel considered that a one month suspension, rather than two, would be sufficient for this purpose.

## **Consequences**

The Panel accepted the joint submission and ordered that Mr. Mayer be suspended for a period of one (1) month beginning on a date to be fixed the CEO of the Law Society. Mr. Mayer was ordered to pay the costs of the investigation and prosecution totalling \$8,645.99.

**Note:** Mr. Mayer will be serving this suspension for the month of April 2021.