



DISCIPLINE CASE *DIGEST*

Case 20-04

Member:	Douglas Albert Mayer
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 30, 1988
Particulars of Charges:	Professional Misconduct (7 Charges): <ul style="list-style-type: none">▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service]▪ Breach of Rule 7.2-11 of the <i>Code</i> [breach of Undertaking to the Law Society]▪ Breach of Rule 7.2.4 of the <i>Code</i> [breach of the duty of civility]▪ Breach of Rule 7.1-1 of the <i>Code</i> and Rules 5-64(3), (4) & (5) of the <i>Rules</i> [failure to respond promptly and completely to the Law Society] [x2]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity]▪ Breach of Rule 5.1-5 of the <i>Code</i> [breach of duty to the Court]
Plea:	Not Guilty
Dates of Hearings:	October 19, 20 & 21, 2020 (Conduct Hearing) November 30, 2020 (Consequences Hearing)
Panel:	<ul style="list-style-type: none">▪ Roberta Campbell, Q.C. (Chair)▪ Anthony Kavanagh▪ Carmen Nedohin (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Ayli Klein for the Law Society of Manitoba▪ Gavin Wood for the Member
Dates of Decisions:	October 21, 2020 (Reasons for Decision – Conduct) November 30, 2020 (Reasons for Decision – Consequences)

Consequences:

- Guilty of 5 Charges [breaches of *Code* Rules 3.2-1, 7.2-11, 7.2-4 & 7.1-1 and Rules 5-64(3), (4) & (5) of the *Rules* [x2]]
- Not Guilty of 2 Charges [*Code* Rules 2.1-1 & 5.1-5]
- Suspension – One (1) Month
- Fine of \$5,000.00
- Costs of \$10,000.00

Quality of Service / Breach of Undertaking / Breach of the Duty of Civility / Failure to Respond to the Law Society

Facts

Mr. Mayer accepted a Legal Aid Certificate on April 28, 2019 by which he undertook to act for LH in response to a motion to vary a final order in a family matter, particularly as to child support. The matter was next scheduled for an appearance in the Provincial Court in Portage la Prairie on April 30, 2019. LH resided in a community approximately 150 km from Portage la Prairie and 250 km from Winnipeg. He was known to have recently suffered a brain injury causing memory problems. He did not have email or voice mail. His mother, SH, would assist him with communications.

Initially, Mr. Mayer arranged with opposing counsel, KD, to attend on April 30, 2019 and adjourn the matter. He indicated that he had not yet received instructions from LH. He also wrote promptly to LH enclosing a form that he required be completed. Upon adjourning the matter on April 30, 2019, KD was directed by the presiding Judge to inform Mr. Mayer that the matter had been adjourned to June 4, 2019 and that if Mr. Mayer had not received instructions by that date, he should attend Court as LH was always present when his matter was on the docket and instructions could be taken then. On May 1, 2019, KD wrote to Mr. Mayer accordingly. Mr. Mayer received, but did not respond, to that email. He did not contact LH. On May 23, 2019, Mr. Mayer received a letter from KD asking whether he had received instructions. Mr. Mayer did not respond. SH left voice mails for Mr. Mayer on May 29, 2019 and May 30, 2019 and Mr. Mayer called back but did not connect. As of June 4, 2019, Mr. Mayer had no instructions from LH. LH was in Court on June 4, 2019 but Mr. Mayer did not attend as had been directed. The matter was stood down while the Deputy Registrar phoned Mr. Mayer, but he did not answer. A voice mail message was left. Mr. Mayer did not respond. The matter was adjourned to July 2, 2019. Later on June 4, 2019, Mr. Mayer left a message with SH for LH. He also emailed KD that evening saying that he was trying to confirm his representation of LH.

A letter from the Judge was sent to Mr. Mayer and received in his email on June 5, 2019. The Judge required that Mr. Mayer provide by June 11, 2019, a written explanation for his absence from Court on June 4, 2019. Mr. Mayer did not read this letter until June 21, 2019.

In the meantime, on June 18, 2019 SH left a voice mail for Mr. Mayer and he called back on June 19, 2019. Mr. Mayer left a message saying that he had “granted” LH a meeting the next

day, June 20, 2019 at 3:30 p.m. at his office in Winnipeg, without ascertaining whether LH could attend and without ascertaining whether LH received the message.

There having been no response to the presiding Judge's letter of June 5, 2019, on June 21, 2019 Mr. Mayer received a letter from the Chief Judge requiring by June 26, 2019 explanations for his non-attendance on June 4, 2019 and his non-response to the presiding Judge's letter. Mr. Mayer responded on June 21, 2019 saying that he had not seen the June 5, 2019 letter and that he had not yet established a solicitor-client relationship with LH.

On June 24, 2019, Mr. Mayer received a letter from KD asking him to confirm whether he was acting for LH in light of his letter to her of April 28, 2019 in which he had confirmed that he had been appointed to act for LH. Mr. Mayer did not respond.

Mr. Mayer then sent a letter dated Tuesday, June 25, 2019 to LH by post saying that he would only be in Court on Tuesday, July 2, 2019 if he received from LH the forms that had been sent on April 28, 2019 and if not received before July 2, 2019, he would be closing his file.

On June 26, 2019, Mr. Mayer received a letter from the Chief Judge reminding Mr. Mayer that he had confirmed to KD on April 28, 2019 that he had been appointed by Legal Aid to act for LH. She required by June 28, 2019, a better explanation than was provided by Mr. Mayer's letter of June 21, 2019, together with confirmation that Mr. Mayer would attend Court in Portage la Prairie on July 2, 2019. Mr. Mayer responded on June 28, 2019, taking the position that he was not lawyer of record and blaming LH for his failures to attend Court. He did not attend Court on July 2, 2019. This response was inconsistent with the proper tone of a professional communications from a lawyer.

The Chief Judge complained to the Law Society on July 19, 2019 and on July 26, 2019 the Complaints Resolution Counsel wrote to Mr. Mayer requiring a response to the complaint within 14 days. Mr. Mayer did not respond within that time and the Complaints Resolution Counsel wrote to him again on August 14, 2019. Mr. Mayer sent a letter to the Law Society on August 18, 2019 in which he declined to respond to the questions put to him claiming privilege. The Complaints Resolution Counsel wrote to him on August 22, 2019 to which he responded but subject to trust conditions, which he thereafter declined to remove. He was charged with failing to respond to the Law Society and removed the trust conditions on his response only on October 17, 2019 as a condition of the adjournment of the hearing into the charge of failing to respond.

Plea

Mr. Mayer entered a not guilty plea to the seven (7) charges of professional misconduct.

Decision and Comments

The Panel found Mr. Mayer guilty of the both charges of failing to respond to the Society within the time required. They commented that a member's obligation to respond within 14 days is strict for good public policy reasons based on the need for public protection.

The Panel was not prepared to find that Mr. Mayer was being dishonest when he said that he had not seen the June 5, 2019 letter from the presiding Judge until June 21, 2019 and therefore dismissed the charge of failing to act with integrity.

They found that Mr. Mayer's conduct after April 2019 was neither diligent nor conscientious. His efforts to communicate with his client and obtain instructions were not sufficient. His failure to attend Court on June 4, 2019 without prior communication to KD or the Court fell far short of what was required. Accordingly, he was found guilty of the charge of failing to provide the required level of service to his client.

The Panel noted that Mr. Mayer had signed an Undertaking to the Law Society in May 9, 2019 and that, contrary to the Undertaking, he failed to respond in a timely fashion to professional communications between June 4, 2019 and July 5, 2019, including the June 5, 2019 letter from the presiding Judge of which he became aware on June 21, 2019.

The letter of June 28, 2019 to the Chief Judge was held to be inconsistent with the tone of professional communications, such that Mr. Mayer was guilty of the charge under Rule 7.2-1 of the *Code*. He was found not guilty of the incivility charge under Rule 5.1-5 of the *Code* as it related to the same conduct.

Consequences

The Panel imposed a fine of \$5,000.00 on the substantive charges arising from Mr. Mayer's handling of the case of LH and order that Mr. Mayer pay costs in the amount of \$10,000.00 as a contribution to the costs of the investigation and prosecution of these charges. The Panel ordered that Mr. Mayer be suspended for 30 days for his failures to respond promptly and completely to inquiries from the Society.

The Panel noted Mr. Mayer's past discipline record and commented that progressive discipline would likely lead to even more serious consequences in future.

The Panel stressed the importance of responding appropriately and in a substantive way to inquiries from the Society.

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