

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

TYLER DAVID WARREN

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

REASONS FOR DECISION

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Hearing Date: October 3, 2022

Panel: Douglas Bedford – Chair
Karlee Blatz
Neil Cohen (Public Representative)

Counsel: Ms. Ayli Klein for the Law Society of Manitoba
Mr. Warren represented himself

REASONS FOR DECISION

Introduction

1. This matter was heard in the offices of The Law Society of Manitoba (the “Society”), 200 – 260 St. Mary Avenue, Winnipeg, Manitoba commencing at 1:30 p.m. The hearing was a “virtual” hearing, the panel members and parties attending from remote locations.
2. The facts are not in dispute in this matter. The parties filed an Agreed Statement of Facts in which the member, Mr. Warren, admitted that the allegations set out in the Citation dated April 11, 2022 were true and amounted to professional misconduct. The panel found that Mr. Warren had committed professional misconduct as a consequence of the facts summarized below.

3. Mr. Warren received a request in March 2020 from Mr. N, a resident of Ghana in Africa, to obtain a divorce for him. Mr. N. had previously lived in Manitoba. Mr. Warren learned that Mr. N's estranged wife was living in Quebec. She initially led him to believe that she had plans to return to live in Manitoba. Mr. Warren proceeded to file a Petition showing the estranged wife as the Petitioner, though she was not his client. The Petition stated that the respondent, Mr. N, was "unrepresented". This was false. Mr. Warren sent a copy of the Petition to Mr. N. in Ghana with a request that he sign it. He did so. Mr. Warren subsequently signed the Petition indicating he had witnessed Mr. N's signature. This was untrue. Mr. Warren also completed an affidavit of service in which he swore he had served the Petition on Mr. N. This was false. Mr. Warren asked the estranged wife in her capacity as the Petitioner to sign an Affidavit of Petitioner's Evidence. She did so and returned it to him. He then signed the Affidavit as witness, attesting that it had been sworn in Winnipeg before him. This was untrue. In the event, when the Petition came before a Judge, the Court asked for additional financial disclosure from Mr. N. which Mr. Warren was unable to secure. Mr. N. then complained to the Society and the Petition has not proceeded.

4. On May 20, 2015 Mr. Warren signed an Undertaking to the Society in which he agreed not to maintain a trust account, not to use his general bank account for the deposit of trust funds and not to take receipt of trust funds. When Mr. N. retained Mr. Warren in March 2020, Mr. Warren asked him for a retainer and received an initial payment of \$550.00 which was deposited into Mr. Warren's personal account and a second payment of \$250.00 which was deposited into Mr. Warren's general bank account pertaining to his practice of law. At the same time, Mr. Warren failed to comply with the Society's Rule 5-118 (1)(a), the "know your client Rule," in that he did not record in his file Mr. N's (or his estranged spouse's) full names, home addresses, telephone numbers, occupations and addresses of their employers.

5. The parties were unable to agree on a suitable disposition. The Society sought a suspension of 30 days and a contribution to costs of \$4,000.00. Mr. Warren submitted that in light of the fact that he had no previous record and, in his view, his transgressions were less serious than those described in the cases submitted to the panel by the Society, a reprimand or fine and a contribution to costs would be appropriate. The Panel concluded that a fine of \$5,000.00 and a contribution to costs of \$4,000.00 was appropriate and so ordered.

The Member's Record

6. Mr. Warren was called to the bar in Manitoba in 2005. He was also called to the bar in the Province of Ontario in 2002. In 2018 he surrendered his license to practice in Ontario. Since 2005 he has practiced continuously in Manitoba save and except for a two-year period from 2008 to 2010 when he was practicing in Ontario. He has worked as a sole practitioner since 2006.

7. Mr. Warren, as noted earlier, has no discipline history.

Analysis

8. The Society submitted that Mr. Warren's breaches were serious in that they reflected a significant lack of integrity. Indeed, swearing a false affidavit and then filing it in Court with the intent that it will be relied upon by the Court is perjury. Moreover, the Society observed that Mr. Warren's several instances of making false statements amounted to a pattern of misconduct that reflected a total disregard for his obligations to the Court, his client and the legal profession. While conceding that the prejudice to Mr. N. and his estranged spouse was minimal, the Society suggested that a significant penalty in the form of a 30-day suspension was warranted. It cited several cases wherein suspensions were ordered by panels of this Committee, frequently in cases where a client's funds had been misappropriated or the provisions governing trust accounts had been violated.

9. Mr. Warren confessed to considerable embarrassment regarding his actions. He said that his motive in filing the false affidavit of service had been to save Mr. N. the additional expense of arranging for personal service on him in Ghana of the Petition. In effect, he suggested that he was trying to expedite the matter. He acknowledged that he did not, in the spring of 2020, have a "proper respect for the rules", notwithstanding that by that year he had been practicing law for over 15 years and says that he "loves" being a lawyer. He said he had not thought his breaches were "serious" given his desire to save Mr. N. money in what he understood was an uncontested proceeding.

10. In response to the Society's submission, Mr. Warren emphasized that he had no previous disciplinary record. He said that he had throughout the Society's investigation cooperated with it and that, in comparison with the conduct of lawyers who had been suspended, his misconduct was not as serious. He acknowledged that there was prejudice to Mr. N in that the latter had wanted a divorce in the spring of 2020 and, two and a half years later, appears not to have it due to Mr. Warren's mishandling of his case.

11. The submissions of the parties were focused on two recent decisions of this Committee. In *Law Society of Manitoba v. Badmus* 2021 MBL 5, Ms. Badmus altered pages of a document to be filed in the Land Titles office without having the signature pages re-executed and, further, she submitted documents with affidavits of execution that indicated they had been signed in person which was untrue. Ms. Badmus initially provided false and misleading information to the Society when it investigated the matter. Ms. Badmus had practiced for 11 years and had no previous discipline history. When the matter came on for hearing, the Society sought a short suspension and costs. The panel determined that a reprimand and costs of \$2,000.00 were appropriate. The panel cited Ms. Badmus' remorse, the stress in her personal life when the misconduct occurred, several character reference letters submitted on her behalf and the fact that she was barred for some four months from filing documents in the Land Titles Office, thus effectively restricting her practice.

12. In *Law Society of Manitoba v. Restall, Jr.* 2022 MBLs 2, Mr. Restall filed a Request for Probate of a 2005 will which he had prepared and pursuant to which he was named as executor. He filed the Request notwithstanding that it had come to his attention that the testatrix had subsequently executed a new will in 2006. Mr. Restall stated falsely in the declaration filed with the Court as part of the Request that his client's last will was the one signed in 2005 and in the supporting affidavit Mr. Restall swore that the details set out in the Request were true to the best of his knowledge. This was false. Moreover, he failed to recommend that the beneficiaries named in the 2006 will seek independent legal advice, notwithstanding that he stood to benefit personally in proceeding with the Probate of the 2005 will. Mr. Restall had one previous instance of professional misconduct, 32 years earlier. The Society and Mr. Restall jointly recommended to the panel that he be fined \$7,000.00 and pay costs of \$5,000.00. In so ordering, the panel observed that filing a false affidavit in Court is the "antithesis" of integrity given that it "deliberately misled the Court." The panel noted that important factors supporting the joint recommendation were Mr. Restall's remorse, the fact of the guilty plea, his long and successful career, the improbability of him reoffending and the absence of an adverse impact on the client's estate and beneficiaries in light of the steps taken by him eventually to facilitate the matter being brought properly before the Court.

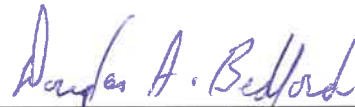
13. In the facts before us, we think it important that Mr. Warren's career to date has been unblemished. Further, unlike Ms. Badmus, he was from the outset forthright with the Society when it investigated this matter. Like both Ms. Badmus and Mr. Restall, he has expressed his embarrassment and regret for what he did and has pled guilty. And, we acknowledge that the prejudice to his client Mr. N. was modest. However, as was observed by the panel in the *Restall* decision, filing a false affidavit in Court is the "antithesis" of integrity as the purpose of doing so is to mislead the Court. And, as the Society submitted, Mr. Warren's misconduct was not confined to a single lapse. There were four falsehoods made with respect to documents filed in Court as well as a blatant breach of the 2015 undertaking given to the Society. Accordingly, we believe that something more significant than a reprimand is required. When asked, Mr. Warren had no submission with respect to the amount of a fine. Fines of \$10,000.00 are at the higher range ordered in recent years by panels of this Committee. We believe that a fine of \$5,000.00 reflects both the gravity of Mr. Warren's conduct while also taking into account the several mitigating factors cited above.

Conclusion


14. For the foregoing reasons Mr. Warren is fined \$5,000.00 and he is ordered to pay a contribution in the amount of \$4,000.00 to the costs of the investigation and prosecution

of this matter, the timing of which payments is to be as the Chief Executive Officer of the Society determines.

These written reasons signed the 9th day of December, 2022.



Douglas A. Bedford, Chairperson



Karlee Blatz, Panel Member



Neil Cohen, Panel Member