

Lawyer L

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Vancouver, B.C.

Called to the Bar: May 15, 1992

Discipline hearing:

Dates: August 24 and November 8, 2001

Panel: Peter J. Keighley, Q.C., as a one-Bencher panel by consent

Reports issued: September 5 and November 14, 2001

Indexed as [2001] LSBC 31

Counsel:

Geoffrey B. Gomery, for the Law Society

Mr.L, on his own behalf

Summary

When he joined a new law firm in early 2000, Mr.L assumed conduct of several files, including a client matrimonial file. He failed to review this file with sufficient diligence. For that reason, he failed to note that he was restrained from releasing a written assignment of mutual funds held for his client until certain conditions had been met, in accordance with an undertaking given by the lawyer who previously handled the file. In breach of the terms of that undertaking, Mr.L released the assignment to the client. Had he properly reviewed the correspondence on the file or discussed the matter with opposing counsel (who had earlier brought to his attention another undertaking on the file), he would have been aware of his obligations. Mr.L's standard of review fell far short of that which the public and profession are entitled to expect. His conduct constituted the incompetent performance of duties undertaken in his capacity as a lawyer. The hearing panel ordered that Mr.L submit to a practice review, comply with any resulting recommendations or other requirements of the Practice Standards Committee, enter into a practice supervision agreement until relieved of that requirement by the Discipline Committee and pay costs of the discipline proceedings.

Facts

Mr.L joined a law firm in January, 2000 and assumed conduct of client files previously handled by lawyer P, who had left the firm at the end of 1999.

One of these files was a matrimonial file in which lawyer P had represented the wife (C) in divorce proceedings against C's husband (W).

Lawyer P and W's lawyer had negotiated a settlement on behalf of their respective clients. Under the settlement, C was to release her interest in the matrimonial home and receive \$9,405.63 from W and an assignment of W's interest in mutual funds.

On November 15, 1999 W's lawyer accordingly sent to lawyer P a trust cheque for \$9,405.63 and a written assignment of the mutual funds. W's lawyer specified in his covering letter to lawyer P:

These documents are forwarded to you on your undertaking to attend now to completing the Divorce and entering the order. You undertake not to pay out the funds or to release the document transferring [W's] interest in the mutual fund to [C] until the Consent Order is entered and you have faxed an entered copy up to me, and you have cleared the title of the matrimonial home from any encumbrances placed by [C] in the Land Titles Office, including removal of her certificate of pending litigation and you have provided me with proof of such discharge of her certificate of pending litigation. In the alternative, you undertake to return to me upon demand the \$9,405.63 ... along with the document transferring the mutual fund, unused by you or your client.

Before leaving the firm, lawyer P had left Mr.L a note that certain errors in the consent order needed correction and that the order should then be entered. He did not draw attention to the undertakings he had given with respect to trust funds and the assignment held on behalf of C.

In January, 2000 Mr.L contacted W's lawyer and took steps to finalize the consent order that would give effect to the settlement. On January 21 Mr.L provided to W's lawyer proof that C's charges on title had been removed in accordance with the consent order; he noted that he would now release to C the funds held for her in trust.

W's lawyer immediately faxed back a message stating:

Do NOT release the funds. Your firm is on an UNDERTAKING (see November 15, 1999 letter to Mr. P with cheque). Once you have faxed an entered copy of the order to me, you may then release the funds as the existing undertaking provides.

W's lawyer subsequently read a portion of his November 15 letter over the telephone to Mr.L. Mr.L acknowledged the undertaking respecting the release of trust funds and confirmed he would not release the funds until the undertaking had been fulfilled. He, however, allowed for release of the assignment of mutual funds to his client and, in fact, remained unaware of the part of the undertaking that restricted release of this document until it was drawn to his attention by W's lawyer on February 24, 2000. Over the period he had conduct of this matter, Mr.L failed to review the file with sufficient diligence to determine why his firm held money and an assignment for C and on what terms these could be released. Had he properly reviewed the correspondence on the file or discussed the matter with counsel, he would have been aware of his obligations.

Mr.L's standard of review fell far short of that which the public and profession are entitled to expect.

Decision

Mr.L's conduct constituted the incompetent performance of duties undertaken in his capacity as a lawyer.

Penalty

The hearing panel noted that Mr.L tended to rationalize his circumstances and deflect blame on others. He did not acknowledge his own failure in reviewing the file or his lack of awareness of his obligations. While Mr.L later expressed distaste for the undertaking respecting the assignment of debt on the basis that it did not sufficiently protect the client, he never took up this matter with opposing counsel; he was, in fact, unaware of this undertaking until after he had released the assignment to his client.

What was most disturbing was Mr.L's failure to appreciate the nature of a solicitor's undertaking even at the penalty phase of his hearing.

While an appropriate penalty should assist Mr.L in demonstrating a competent level of practice, the panel noted that he might not fully benefit from remediation until he is prepared to admit error and acknowledge criticism.

The hearing panel ordered that Mr.L:

1. enter into a practice supervision agreement satisfactory to the Discipline Committee by January 31, 2002, or such later date decided by the Committee, and until relieved of the requirement by the Committee;
2. submit to a practice review and comply with any resulting recommendations or other requirements of the Practice Standards Committee; and
3. pay costs of the discipline proceedings.