

Penticton, BC

Called to the Bar: May 17, 1955

Discipline hearing: July 4, 2001 (facts and verdict); November 1, 2002 (penalty)

Panel: Richard S. Margetts, QC, as a one-Bencher panel by consent

Report issued: March 25, 2003; indexed as [2002] LSBC 14

Counsel: Kim Campbell, for the Law Society; Dana Prince, for FL

Summary

FL failed to ensure that a client received independent legal advice prior to executing a codicil that named FL as beneficiary of one half of the client's residual estate. The client instructed FL to draft the codicil in this fashion as he wished to give FL the discretion to choose the ultimate charitable disposition of the funds. After his client's death, FL received \$300,000 from the estate. He later paid \$250,000 of the funds as a gift to a school as a trust to fund capital projects in the client's memory and paid \$50,000 to settle a claim against the estate. The hearing panel found that FL acted as a lawyer in preparing and overseeing execution of the codicil for the client. His conduct in failing to ensure the client received independent legal advice in these circumstances was contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook* and constituted professional misconduct. While FL acted in accordance with his client's wishes and did not benefit directly from the estate residue, he did derive an indirect benefit since his charitable gift resulted in a substantial income tax benefit and since he was able to use the funds for a period of time on his personal line of credit. The hearing panel took into account that FL had an otherwise unblemished conduct record and that he readily acknowledged the impropriety of his conduct. The panel ordered that he pay a \$10,000 fine and costs of \$2,500.

Facts

FL acted as a lawyer for HL and later for his son, AL.

In 1969 HL executed a will, appointing FL as executor. HL made trust provisions in his will to ensure that AL, who had special needs, would receive proper care. In his will, HL instructed FL, as executor, to hold the balance of the estate residue in trust, to be distributed as AL would later direct in his own will.

After the death of his father, AL instructed FL to draft a codicil to his will. At AL's request, FL suggested some charities that AL might consider when directing disposition of the estate residue. AL asked FL to "sort it out." When FL said he needed specific instructions, AL said that, because FL was like his own father, he would leave money to

FL to determine its ultimate disposition. On AL's instructions, FL drafted and allowed his client to execute a codicil providing, among other things, that FL would receive half of the client's residual estate.

After AL died, FL received \$300,000 in accordance with the codicil. He later paid \$250,000 of these funds as a gift in AL's name to a school to establish a trust for capital projects dedicated to AL's memory. FL paid the remaining \$50,000 to settle a claim against the estate brought by one of AL's relatives. While he derived no direct personal benefit from the estate funds, FL received a substantial income tax benefit as a result of making his gift to the school and he also had interim use of the estate funds, which he paid on his personal line of credit.

Decision

The hearing panel found that FL clearly acted as a lawyer for AL and that, in failing to ensure that his client received independent legal advice in these circumstances, his conduct was contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook* and constituted professional misconduct.

Penalty

The hearing panel noted that FL appeared to have acted in accordance with his client's wishes and did not benefit directly from the share of the estate residue he received, which distinguished these circumstances from several other discipline decisions. FL did, however, derive an indirect financial benefit, and his actions also created difficulties for one of AL's relatives who took steps to bring a claim against the estate.

The hearing panel took into account a number of mitigating factors, including the fact that FL had an otherwise unblemished conduct record and that he readily acknowledged the impropriety of his conduct.

While concluding that a suspension was not appropriate in the circumstances, the panel noted that FL's conduct was a serious contravention of the rules. Whenever a lawyer is to obtain a benefit, direct or indirect, the lawyer's conduct must be beyond reproach and incapable of question. The panel accordingly ordered that FL pay:

1. a \$10,000 fine; and
2. \$2,500 as costs of the discipline proceedings.