

TO: The Executive Director and Madeline Harden

AND TO: [REDACTED]

FROM: Michèle Ross

Chair of the Discipline Committee

RE: [REDACTED]

Administrative Penalty File No. PE20230017

Pursuant to Rule 4-60 of Law Society Rules 2015 (the “Rules”), I am satisfied that the breach alleged in the above matter has been established on a balance of probabilities and I am also satisfied that the administrative penalty should be upheld.

The Rule Breached

1. [REDACTED] (“[REDACTED]”) is alleged to have breached Rule 3-102 (Requirement to Verify Client Identity). A breach of this Rule occurs when a lawyer provides legal services in respect of a financial transaction and is therefore required to verify the client’s identity prior to completing the financial transaction but fails to do so.
2. Based on the information before me and by [REDACTED] own admission, the above elements of the rule breach have been met:
 - (a) [REDACTED] represented [REDACTED] (“[REDACTED]”), a client who was in [REDACTED] in a small claims matter in which he was seeking compensation due to a tree falling on his trailer (client file [REDACTED]). [REDACTED] had a video call with [REDACTED] on or about November 15, 2021.
 - (b) Settlement funds of \$15,000 were paid to [REDACTED] “In Trust” by way of cheque dated August 16, 2022 (the “Settlement Funds”).
 - (c) Contrary to Rule 3-102, [REDACTED] did not meet with [REDACTED] in person to verify his identity. Nor did [REDACTED] take any other steps to verify [REDACTED] identity as set out in the Law Society Rules. Further, [REDACTED] did not confirm with the referring lawyer whether he had verified [REDACTED] identity.

Facts

3. The matter was referred to [REDACTED] by another lawyer, [REDACTED].
4. [REDACTED] forwarded his full client file to [REDACTED] including documentation relating to the claim but no client identification and verification documents.
5. [REDACTED] wrongfully assumed that [REDACTED] had confirmed identification, and that [REDACTED] did not have to do so.
6. On or about November 15, 2021, [REDACTED] who was located in Vancouver had a video call with [REDACTED] who was located in Prince George. This was prior to [REDACTED] signing the retainer agreement.
7. A financial transaction took place on August 16, 2022, when settlement funds of \$15,000 were paid to [REDACTED] "In Trust" by cheque (the "Settlement Funds"), rendering this a financial transaction to which Rule 3-102 applies.
8. A second financial transaction occurred on September 16, 2022 when the Settlement Funds minus [REDACTED] fees totaling \$12,340.38 were sent to [REDACTED] by cheque with a letter from [REDACTED].

Submissions

9. [REDACTED] has filed a dispute under Rule 4-60 seeking to reduce the amount of the penalty, request an alternative method of payment, and/or request additional time to pay the fine based on financial hardship and as a result of being the victim of domestic abuse. He has made the following submissions:
 - (a) The abusive situation has resulted in a diminished capacity to work and earn income as he navigates the legal, financial, and mental health challenges that come as a result of being a victim of abuse and violence in his intimate relationship.
 - (b) He is not in a financial situation to comfortably pay the fine without incurring additional financial stress.
10. As the Chair, in order to address the Dispute Form fully, fairly and efficiently, I requested any specific information or documentation be provided to support the submissions set out in the

Dispute Form. In response to this request, [REDACTED] provided a Crime Victim Assistance Program Victim Application relating to an incident that occurred on March 6, 2024 (the “Victim Application”). The Victim Application is dated April 30, 2024.

Discussion and Determination

11. [REDACTED] admits to breaching Rule 3-102 (Requirement to Verify Client Identity).
12. [REDACTED] seeks a reduced penalty, an alternative method of payment, and/or additional time to pay the fine for the reasons he outlined in his dispute and summarized above.
13. In this review, I have the discretion under Rule 4-60(2)(b) to assess a different amount for the Administrative Penalty, however, such discretion should be exercised with care. Administrative penalties must balance fairness with the need to ensure that the penalties represent more than the cost of doing business.
14. The Victim Application confirms that [REDACTED] did not miss any work and did not lose wages as a result of the crime-related injuries he sustained on March 6, 2024.
15. I am aware of [REDACTED] submissions that the abusive situation has resulted in a diminished capacity to work and earn income. However, no evidence has been provided to substantiate that [REDACTED] has a diminished capacity to work and earn income or that he suffers any financial hardship. In the circumstances, I do not accept this as a compelling reason that supports reducing the amount of the penalty pursuant to Rule 4-60(2)(b).
16. The penalty amount was determined by the Law Society to balance and establish fairness against the need to ensure that the administrative penalties serve their purpose in protecting the public.
17. The amount of the penalty imposed is not disproportionate when weighed against the breach of Rule 3-102, the harm that the Rules are intended to prevent, and to ensure protection of the public. This is the overriding consideration when determining the amount of the administrative penalty.
18. I find that the penalty is not inappropriate or unfair in the circumstances of this matter.

19. The Law Society has made it a priority to educate lawyers in British Columbia about the rules that are intended to prevent potential money laundering and of lawyers' corresponding obligations, especially the client identification and verification rules and the cash rules.
20. The Law Society implemented Rule 3-102 as a component of a systemic effort to prevent money laundering and to prevent lawyers from being willing or unwilling participants in money laundering schemes. This is for the protection of the public.
21. The administrative penalty process is discretionary in that, pursuant to Rule 4-59, the Executive Director may choose whether or not to levy such a penalty. If, in other circumstances, a breach of these Rules was considered to be deliberate rather than inadvertent, had done actual harm or had provided a substantial benefit to the lawyer, for example, the Executive Director has the ability to take these and other factors into account and may decide to address the matter through the Law Society's discipline process, rather than through an administrative penalty. In this case, the matter was addressed through the administrative penalty process.
22. As mentioned, the overriding consideration in determining the amount of the administrative penalty is to ensure protection of the public interest. It is open to the Executive Director, in exercising discretion under the Rules, to levy the maximum amount as an administrative penalty to ensure that such penalties are not treated as merely a cost of doing business. It was open to the Executive Director to assess a penalty less than the maximum penalty, but it was not required that the Executive Director do so. I conclude that the Executive Director has not exercised discretion in an unfair manner in assessing the Administrative Penalty.
23. [REDACTED] has requested an alternate method of payment. The Law Society permits payment to be made through online banking, cheque or in person. I do not have discretion under Rule 4-60 to order an alternate method of payment.
24. The original Notice of Penalty was issued on July 29, 2024 and levied the Administrative Penalty amount of \$5,000 payable by September 4, 2024. The dispute was filed September 3, 2024 and the Victim Application was provided on October 31, 2024.
25. I direct, pursuant to Rule 4-60(2) that [REDACTED] must pay the Administrative Penalty as originally assessed at \$5,000 by January 31, 2025.

Order

Therefore, I order that:

The Administrative Penalty is confirmed and must be paid in accordance with the original notice delivered under Rule 4-59, expect that the Administrative Penalty is due by January 31, 2025.

A handwritten signature in black ink, appearing to read 'Michele Ross', with a stylized, flowing script.

DATED December 12, 2024.

Michèle Ross
Chair of the Discipline Committee