

Courtenay, B.C.

Called to the Bar: September 14, 1972

Discipline hearing panel: December 9, 1997

W.T. Wilson, Q.C., Chair, R.W. Gourlay, Q.C. and P.J. Keighley

M. Baird, for the Law Society

J. Wood, Q.C., for the member

Summary

Mr. Morris altered an affidavit sworn by his client and filed it in a Supreme Court registry, without advising the client or having the client either acknowledge the alteration or swear an amended affidavit.

Facts

Mr. Morris was retained Ms. B, the alternate executor named in a will, to make application for a grant of letters probate. The first executor had predeceased the testator.

Mr. Morris prepared an affidavit of executor, which was one of the required documents in the probate application, and Ms. B swore the affidavit. The third paragraph of the affidavit read: "I am the sole executor named in the will."

The probate application was rejected by the Supreme Court registry because the registrar required the affidavit to state that Ms. B was the *alternate* executor named in the will, and that the first executor had predeceased the testator.

Mr. Morris prepared a new first page for the affidavit in which the third paragraph read: "The executor, Ms. T, predeceased Mr. T [*the testator*]. I am the sole alternate executor named in the will."

He changed nothing else in the affidavit.

Mr. Morris removed the original first page, substituted the amended first page and resubmitted the application to the registry. He did not advise Ms. B of the alteration and did not have her initial the change or swear the affidavit again.

The registrar noticed that the second page on the amended affidavit was from the material previously submitted by Mr. Morris. He telephoned Mr. Morris to ask him if he should not have Ms. B initial the change to the affidavit. Mr. Morris agreed, and he immediately retrieved the affidavit from the registry.

Mr. Morris acknowledged that, while he disagreed with the registrar's decision to require an amended affidavit in these circumstances and while he was frustrated at this and other registry matters, his conduct was entirely inappropriate.

Admission

Mr. Morris admitted that his conduct in altering and filing his client's affidavit without advising the client and without having her either acknowledge the alteration or swear an amended affidavit, constituted professional misconduct.

Penalty

The Discipline Committee and the discipline hearing panel accepted Mr. Morris' admission pursuant to Law Society Rule 469, and the panel ordered that he:

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

The panel decided to allow Mr. Morris to pay the fine and costs in equal annual instalments over a five-year period.

Discipline Case Digest — 1998: No. 9 April (Morris)