

West Vancouver, B.C.

Called to the Bar: November 17, 1989

Ceased membership: December 31, 1992

Discipline hearing panel: May 11, 12, 19, 20, 21 and 31, June 1 and 28, September 16 and 17, 1993 and February 23, 1994

C.O.D. Branson, Q.C., Chair, R.E.C. Apps and P.D. Warner

H.C. Wood, for the Law Society

J. Cram, for the member

Summary

The member's mishandling of trust funds on several client files between 1991 and 1992 amounted to misappropriation and constituted professional misconduct. Though she did not act dishonestly or fraudulently, the member demonstrated an unacceptable degree of inattention, even wilful neglect, of her trust obligations. The member also breached Law Society accounting rules by failing to maintain the required books, records and accounts. She failed to record all funds received and disbursed on client files, maintain a general ledger or a cash synoptic for trust transactions, adequately account for bank deposits to her general and trust accounts or keep adequate records of the source of deposits. Despite repeated communications from the Law Society, the member did not file a Form 47 accountant's report that was due May 31, 1992 until February 14, 1993.

Facts

The member did not maintain the books, records and accounts required by Law Society Rules 842 and 843. She failed to record all funds received and disbursed on several client files, failed to maintain a general ledger or a cash synoptic for trust transactions, failed to adequately account for all bank deposits to both her general and trust accounts or to keep adequate records of the source of deposits.

Between 1991 and 1992, the member's mishandling of trust funds amounted to misappropriation on several client files:

Client A — On October 17, 1991 a \$1,000 retainer from client A was deposited in error to the member's general account, rather than to her trust account, by her daughter. By January 24, 1992 the member was alerted to the mis-deposit. The member failed to correct the mis-deposit until June, 1992 when she prepared a bill for the client, though the client said he never received the bill. The member's conduct, whether deliberate or grossly careless, is sufficient to amount to misappropriation.

Client B — On September 30, 1991 the member deposited a \$2,000 retainer from client B into trust, but the deposit was recorded as a \$1,000 trust credit. The other \$1,000 was credited to the account of another client in error.

There were two sets of billings for this file, each being a different version of the retainer amount and each purporting to show payment in full from trust. The first set of billings totalled \$1,000: a bill of \$500 on January 1, 1992 and a bill of \$500 on February 28, 1992. The second set of billings totalled \$2,000: a bill of \$1,500 on December 28, 1991 and a bill of \$500 on February 28, 1992. The panel concluded that the member did not, in fact, send any bills to the client, though she did speak to him about withdrawing \$500 in February, 1992.

The member's conduct on this file revealed a serious disregard and inattention to her accounting and trust obligations, and her withdrawal of trust funds prior to rendering an account is a misappropriation of the client's funds.

Client C — On July 31, 1991 the member deposited a \$1,500 retainer from client C to her general account instead of her trust account, and she provided no explanation for the mis-deposit. On October 2, 1991 the member sent the client an interim account for \$3,579.22 “less monies paid on account, \$1,500, balance due \$2,079.22.” The member's pattern of disregard and inattention to her handling of client trust monies, and her prolonged and often repeated negligence in maintaining accounting records, involves a sufficient mental element of wrong-doing to constitute misappropriation on this file.

The discipline hearing panel stated that the taking of a client's money by a lawyer and placing it into the lawyer's own account must be a conscious, considered and memorable action by the lawyer. Though she did not act dishonestly or fraudulently, the member demonstrated an unacceptable degree of inattention, even wilful neglect, of her trust obligations.

The Law Society began looking into the member's trust accounting problems after the member failed to file her Form 47 accountant's report due May 31, 1992, despite many reminders from the Society. As an explanation of her delay, the member said that she had been unable to get her books back from accountants who were setting up a system for her, that she faced difficulties in starting up her own practice and that her time was consumed by work on a difficult custody trial. The member told the hearing panel that, though she could devote little time to doing her bookkeeping and financial accounting during that period, she had enough records, memory and notation to make an accurate picture of her financial affairs.

The Law Society's director of law office management and accounting (LOMAS) set up a meeting with the member on September 18, 1992 to discuss her accounting records. The member failed to attend the meeting and called afterward to say she would not be attending. The meeting was reset for September 23, 1992. The member was changing offices and had most of her files and records in boxes. She told the LOMAS director during their meeting that she had delayed recording her accounting entries but had not breached the spirit of the Law Society Rules. The LOMAS director itemized the records he wished to review for their next meeting two days later. The member cancelled that meeting, citing a family emergency.

Concerned by the member's comments that she feared getting into debt, that the custody case had driven her to the edge of bankruptcy and that she kept notionally separate trust accounts, the LOMAS director recommended an audit of her accounts. The member provided her books and records to the accountant for review. The audit revealed a number of accounting deficiencies, and the accountant said he could not determine the completeness or accuracy of recording of transactions, nor could he conclude there had been a proper separation of trust and non-trust transactions.

The member had been unable to produce deposit slips or a general ledger; she met with the accountant on four occasions in late October and early November to further review her records, but then did not show up for meetings on November 12 and November 16, 1992.

On December 9, 1992 the Discipline Committee considered the audit report and the member's failure to respond to queries, and directed that a citation be issued.

Decision

The member's conduct constitutes professional misconduct and breach of the Law Society Rules.

Penalty

The panel ordered that the member:

1. pay a fine of \$1,750, half within one year of the verdict and the other half within one year after that;
2. pay \$6,000 as costs of the discipline proceedings, half within one year of the verdict and the other half within one year after that.

The panel stated that — given the member's unique personal circumstances and the length of time she had been out of practice — a fine, rather than a suspension, was an appropriate penalty.

The member, who had ceased membership at the end of 1992, had still to undergo a credentials hearing before reinstatement. The panel said that, upon reinstatement, the member would have to complete a remedial studies program in law office accounting procedures to the satisfaction of the Competency Committee. Until that was done, she would be required to practise as a partner or associate of another lawyer acceptable to the Competency Committee. Furthermore, she would be required to provide her books for audit or inspection by the Law Society at least once every three months for two years after resuming practice.

The panel ordered that the member not be eligible to serve as principal to an articulated student for at least three years after her return to practice, unless relieved of this condition by the Secretary.

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