

THE LAW SOCIETY OF BRITISH COLUMBIA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*, SBC 1998, c. 9

AND

A HEARING CONCERNING

ROY SWARTZBERG

RESPONDENT

NOTICE TO ADMIT
(Rule 4-28 of the Law Society Rules)

TO: **Roy Swartzberg**
3076 Waddington Place
Coquitlam, BC V3E 2Y9

AND TO: **His Solicitor, Henry Wood, QC**
Beach Avenue Barristers
105 - 1008 Beach Avenue
Vancouver, BC V6E 1T7

YOU ARE REQUESTED TO ADMIT, for the purposes of this hearing only, the truth of the facts and the authenticity of the documents listed below.

YOU MUST RESPOND TO THIS REQUEST in accordance with Rule 4-28 of the Law Society Rules by serving a response within 21 days that must contain one of the following in respect of each fact described in this request and each document attached to the request: an admission of the truth of the fact or the authenticity of the document attached to the request; or a statement that you do not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

IF YOU FAIL TO RESPOND TO THIS REQUEST in accordance with Rule 4-28 within 21 days as described above, you will be deemed to admit, for the purposes of this hearing only, the truth of the facts and the authenticity of the documents set out below. If you serve a response within these time limits but do not provide a response to each fact and

document listed below, you will be deemed to admit, for the purposes of this hearing only, the truth of the facts and the authenticity of the documents for which you have not provided a response.

YOU ARE REQUESTED TO ADMIT THE TRUTH OF THE FOLLOWING FACTS:

Citation and Service

1. The citation in this matter was authorized by the Discipline Committee on March 1, 2018 and was issued on March 9, 2018 (the “Citation”).
2. The Respondent admits that on March 9, 2018, he was served through his counsel with the Citation and waived the requirements of Rule 4-19 of the Rules.

Lawyer Background

3. Roy Swartzberg (the “Respondent”) was admitted as a member of the Law Society of the Northern Provinces, South Africa on April 4, 1989 and was subsequently called and admitted as a member of the Law Society of British Columbia (the “Law Society”) on November 13, 1998.
4. Between November 1998 and January 31, 2000, the Respondent practised with the law firm of Findlay Gunnell in Maple Ridge, British Columbia. Between February 2000 and July 7, 2016, the Respondent practised as a sole practitioner in Port Moody and then Coquitlam.
5. The Respondent has not practised law since July 7, 2016 and is currently a non-practising member of the Law Society.
6. The Respondent practiced primarily in the area of family law, criminal law, motor vehicle- plaintiff, civil litigation – plaintiff and wills and estates law.

Allegations 1 to 4: Misconduct related to Client DD

7. Client DD commenced family law proceedings in June 2006 through a law firm located in Port Moody seeking, amongst other things, a divorce, a division of family assets, custody of the child of the marriage, exclusive occupancy of the matrimonial home and a

restraining order against her spouse (the “Family Law Matter”).

8. Both Client DD and her daughter suffered domestic abuse at the hands of her spouse.
9. The Respondent was Client DD’s lawyer of record with respect to the Family Law Matter from May 2007 until his retainer was terminated in October 2015.
10. Between October 2007 and June 2009, the Respondent prepared for and attended examinations for discovery, prepared for and attended settlement conferences before Madam Justice McKenzie, scheduled the trial of the Family Law Matter for September 29, 2009 and entered into settlement discussions with opposing counsel.
11. The trial did not proceed on September 29, 2009.
12. Between April 15, 2010 and July 2010, the Respondent made and considered without prejudice settlement offers with respect to the Family Law Matter.
13. Between July 2010 and October 2015, the Respondent failed to take any substantial steps to advance the Family Law Matter.

Allegations 1(a) and 3: Loan to Client and Misrepresentation about Source of Funds Advanced by Respondent

14. On January 31, 2013, the Respondent provided Client DD with a bank draft in the amount of \$10,000.
15. The Respondent states that he provided Client DD with the \$10,000 as an interest free loan when she told him she was struggling financially given the delay in settling the Family Law Matter.
16. The Respondent did not advise Client DD to obtain independent legal advice prior to providing her with the funds.
17. The Respondent did not advise Client DD that he was personally advancing the \$10,000 to her.
18. In late 2013 or early 2014, the Respondent gave Client DD \$800 in cash.

19. The Respondent *does not dispute that he* told Client DD that the \$800 was money her spouse had been ordered to pay as a result of his failure to produce his financial statements in the Family Law Matter.
20. No applications or orders had been made to or by the court with respect to the production of documents and the Respondent had received no funds from or on behalf of her spouse.
21. On April 1, 2014, the Respondent and Client DD exchanged the following text messages:

Swartzberg: We can meet at 1:45 what do you say or I can come by your work and give you the envelope.

Client DD: I have a meeting at 1:30

Swartzberg: Should I meet you downstairs at 2:45. 12:45
22. On April 1, 2014, the Respondent met Client DD at her work and gave her a further \$2,000 in cash in an envelope.
23. The Respondent *does not dispute that he* told Client DD that the \$2,000 was money her spouse had been ordered to pay as a result of his continued failure to produce the documents he was required to produce in the Family Law Matter.
24. No applications or orders had been made to or by the court with respect to the production of documents and the Respondent had received no funds from or on behalf of her spouse.

Allegation 1(b): Misrepresentation about Summary Trial before Madam Justice Fleming

25. In or about August 2014, the Respondent met with Client DD for the purposes of preparing her affidavit and updated financial statement purportedly for use at a summary trial application before Madam Justice Fleming.
26. In or about August 2014, the Respondent *does not dispute that he* told Client DD he had reached a plea agreement with the crown.
27. The Respondent admits that the spouse did not have a scheduled court attendance in Chilliwack in August 2014 and admits that he had no discussions with the crown about

any plea deal.

28. On or about September 2, 2014, the Respondent informed Client DD that he had successfully arranged to serve the summary trial application materials on the spouse.
29. In or about mid-September 2014, the Respondent told Client DD that a summary trial had been held before Madam Justice Fleming in the Family Law Matter and that judgment was reserved.
30. No summary trial had been scheduled or held before Madam Justice Fleming in September 2014 or at all.

Allegations 1(c) to 1(f): Misrepresentations about November Protection Order and Falsification of Court Order

31. In or about October 2014, the Respondent was instructed by Client DD to apply to the court for a protection order against her spouse to restrain him from contacting her child.
32. The Respondent prepared and had Client DD swear an affidavit in support of her application for a protection order.
33. On October 30, 2014, the Respondent received the following text message from Client DD about the protection order and summary trial decision:

Client DD: So what's the story today?
Does [C] have a protection order?
Do I have a settlement decision?

34. In or about November 2014, the Respondent told Client DD that he had applied for and obtained a protection order from Madam Justice Fleming.
35. On November 7, 2014, the following text messages were exchanged between the Respondent and Client DD about the protection order:

Client DD: Ok Are we meeting at lunch to get a copy of [C]'s
order?
...
Or should I go down to the registry at lunch?

Swartzberg: Hi I am in court I tried you on a short break. I will try in a while again.

I can come there just after 12:30. Which number should I call?

36. On November 10, 2014, the following text messages were exchanged between the Respondent and Client DD about the protection order:

Client DD: Good morning.

When are you sending [C]'s order?

Swartzberg: Hi. Just on my way to new west. Good weather for you today.

....

Client DD: I just called you. I haven't gotten the order yet. Did you send it???

Should I call the registry?

Swartzberg: Sorry I was just on my feet in court. I will give you a call. Do you have reception?

...

Client DD: Where is the order?

Swartzberg: I will get it to you by email. I have to scan it.

Client DD: Well you said I would have it in the morning. So take a picture of it with your phone.

Swartzberg: I am still in court.

Client DD: So if [Spouse] turns up here I can call the police correct. And they will have it on file.

Swartzberg: Is he there?

37. On November 10, 2014, the Respondent sent Client DD an email attaching a draft unfiled ex parte protection order with respect to his purported appearance on November 4, 2014.

38. Also on November 10, 2014, the following text messages were exchanged between the Respondent and Client DD:

Client DD: I just got the email ???

This doesn't have the justice name and it says he
can't follow her???
It is supposed to say no go to school etc etc.
What's going on???

Swartzberg: It says area where she is
Its [sic] is broader
That way

Client DD: You sent me just a template.
I can't talk now

Swartzberg: No I did not.
It's a form of order that is followed

Client DD: Well the judge's name is blank.
They always have the name

Swartzberg: Used from divorce mate software.
They complete it when the signature comes back.
I know it's written in
And signed

39. Between November 14, 2014 and November 17, 2014, the following text messages were exchanged between the Respondent and Client DD about the whereabouts of the entered protection order:

November 14, 2014

Client DD: Did you get the order?

Swartzberg: I will email it.
Sorry driving.

November 16, 2014

Client DD: What time does the registry open?

Swartzberg: Did you not get it? I will be at the office at 7 and
resend it.

Client DD: No I never received it
Not sure what to say
This is really important for [C]'s peace of mind and
general well-being.

I see the Registry is open at 9:00. I will just head over there in the morning and take care if [sic] both. The order for [C] and my decision

Swartzberg: I will get to you early I will go to the office at 7

November 17, 2014

Client DD: I have not received an email yet

Swartzberg: I will be in the office in about 30 min.

Client DD: Do you have my decision too

Swartzberg: Sorry just driving. It looks like it's in. An email came

Client DD: I still haven't received [C]'s order or a copy of the decision
I'm guessing there is still nothing
No order for [C] and no decision for me
Unless I have both I will head to the registry tomorrow morning to get to the bottom of this.

:....

Client DD: Please just email [C]'s order and my decision today. He should have been served very easily this morning at his home he doesn't leave the house early for work unless he is off vacationing again somewhere

Swartzberg: OK

...

I will resend. Can I call?

Client DD: I'm at my desk
And no I didn't receive anything

...

Still no email

Swartzberg: Sorry on its way

Client DD: Hmmm still nothing

Swartzberg: I will bring things tomorrow

40. On or about November 17, 2014, the Respondent provided Client DD with what purported to be the first page of a protection order in the Family Law Matter bearing a New Westminster Registry stamp.

41. Also on November 17, 2014, the following text messages were exchanged between the Respondent and Client DD:

Client DD: Is that the document [Spouse] is being served with?

Swartzberg: Yes [sic]

Client DD: Wow not very professional.

...

The judge's name is handwritten

42. In November 2014, the Respondent told Client DD that he was having difficulties serving the protection order on her spouse.

43. In November 2014, the Respondent told Client DD that he had attended court to obtain an order for substituted service of the protection order on her spouse.

44. On November 25, 2014, the Respondent exchanged text messages with Client DD about his purported attendance in court in response to an application by the spouse to set aside the protection order. The Respondent concluded with:

Swartzberg: Hi went well finalize in am I will call tomorrow.

Client DD: Ok but what does that mean exactly?
Did he lose the appeal?
Or is it left hanging?

45. Between November 28, 2014 and December 1, 2014, the Respondent and Client DD exchanged the following text messages about the protection order:

November 28, 2014:

Client DD: Is [C]'s order ready?

Swartzberg: I could hear you
On my way there

...
Client DD: What do you have?

Swartzberg: I have a copy for you
Where I can meet you

November 29, 2014:

Client DD: Where is the order?
Why have you not sent it to me?
You told me you had the signed order yesterday
afternoon.
You said I had your word.
How can you do this to [C] and I?
We trusted you. I have put my life in your hands.

Swartzberg: I will call you when you can speak you have my
word.

December 1, 2014:

Client DD: I can't talk. But can you please clarify. Did [C] get
the order at all? Did he appeal and won? Or did
she never get it in the first place. Please just answer
I am just confused.

Swartzberg: Driving

Client DD: Then call

46. On or about December 1, 2014, the Respondent admitted to Client DD that he had not obtained a protection order for her child in November 2014 or at all.

Allegations 1(g) and (k): Misrepresentation about Summary Trial Decision

47. Between at least December 9, 2014 and December 16, 2014, the Respondent exchanged text messages with Client DD about the outstanding summary trial decision.
48. On or before December 18, 2014, the Respondent told Client DD that the summary trial decision (the "Summary Trial Decision") had been released and that he was meeting with opposing counsel (Ms. G) to discuss the decision.
49. The Respondent represented to Client DD that pursuant to the Summary Trial Decision:

- (a) Client DD's spouse was now required to pay \$500 per month in child support;
- (b) Client DD was required to pay her spouse \$50,000 on account of the division of family assets;
- (c) the parties' interest in a leisure park membership in Birch Bay Washington (the "Birch Bay Membership") would be transferred to their child.

50. On December 18, 2014, the Respondent and Client DD exchanged the following text messages regarding the Summary Trial Decision:

Client DD: No don't want to hear any more excuses. I don't have an email like I was told so nothing more to say. I sure hope when I contact the registry they have a record of my summary trial in progress. I'm off at 1:00 today so have lots of time to deal with this now.

Swartzberg: I have tried to help just call me.

Client DD: Plain and simple you told me yesterday the judge told you would have it this morning. You told me I would have it this morning. So the judge lies correct.

Swartzberg: No.

Client DD: The decision would be registered if it isn't along with the fact I am in a summary trial then there is a lot of trouble and it's not on my end. The time for accountability is long overdue. So you can tell me now when is the decision? I don't want to hear about anyone's trial, or in the middle of something or anything else...

Swartzberg: You will get an email at 3:10.

...

Client DD: You actually think it is appropriate to send me an email titled here with nothing? After all I have gone through ... Thanks.

...

Client DD: Oh right, well interesting I still don't have my copy of the decision you sent. And I guess you were meeting with Ms. G [opposing counsel] to go over the decision which you assured me many times was

going to happen today. And tomorrow you are supposed to be in chambers for the contempt application. In less than 2 weeks I start on my 10th year of being separated

51. Between January 5, 2015 and January 31, 2015, the Respondent and Client DD exchanged text messages about the Summary Trial Decision and his purported attendance in court to obtain another order.

January 13, 2015:

Client DD: ...Can you please send me a copy of my divorce order?

...

I want to send it to FMaintenance to start the \$500

Swartzberg: Ok

January 19, 2015:

Client DD: Oh by the way you told me Ms. G was getting [spouse] to sign the membership doc. You said Friday he was going to sign no problem You said he was signing it Friday I am going to try and call her now and ask her why that wasn't done

Swartzberg: Don't do that.

January 20, 2015:

Client DD: Are you in with the judge yet???

What is happening now??

January 22, 2015:

Client DD: What's the name of the judge?
What's the name of the judge?
I'm leaving here at 4:40 please send me a copy of my divorce order?

Swartzberg: Ok driving

Client DD: Are you dropping off the decision, money and orders?

I have a right to know the name of the judge it is not right of you to withhold that information.

January 25, 2015:

Client DD: Good morning I was home sick on Friday. What time is court Tuesday? 10:30 or 11:00 and what time should I be there?

...

What was the time Tuesday? I think 11:00?

Swartzberg: I was not at the office Friday 1130/I will call in the morning family not in town will be back tonight

January 28, 2015:

Client DD: Hi can I meet you tomorrow morning after I drop [C] off at school? To get the orders etc.

...

Swartzberg: K
Take. At 8

January 29, 2015:

Client DD: I just got home
Where is the order ????
You said you would drop it off???
I told you I needed it today
You said yesterday to my text k.
Why did you lead me on all day about getting the copy of the no contact order and my copy of the decision? I am hooped now with the school.

January 30, 2015:

Client DD: Are you bringing the documents?

January 31, 2015:

Client DD: ... If you have info just text me.

If I don't get a text with any details then that pretty much sums everything up.

Swartzberg: Driving
Doesn't

52. The Respondent admits that there was no summary trial relating to Client DD, no appearance in court on Tuesday January 27, 2015 and that there was, accordingly, no Summary Trial Decision or further orders.

Allegation 1(i): Misrepresentation about Appeal of Summary Trial Decision

53. In or about January 2015, the Respondent represented to Client DD that he had filed a Notice of Appeal of the Summary Trial Decision.
54. On or before February 6, 2015, the Respondent discussed with Client DD the appeal of the Summary Trial Decision.
55. On February 6, 2015, the Respondent received an email from Client DD forwarding another email dated February 5, 2015 following up on the apparent Summary Trial Decision. The subject line of the email is "Settlement". It reads as follows:

Could you please email me a copy of my most recent settlement decision from Madam Justice Fleming along with a copy of whatever the last settlement offer was? I would like to review both these offers prior to our meeting.

I have decided based on our discussion that I do not wish to appeal Justice Fleming's decision on my summary trial. I would like you to draw up a settlement based on her decision. I would like to settle my divorce immediately.

56. On February 10, 2015, Client DD and the Respondent exchanged the following text messages:

Client DD: Did you put the settlement package and protection orders through my mail slot?

Swartzberg: Yes
Enjoy

57. Between February 6, 2015 and February 10, 2015 the Respondent and Client DD exchanged text messages about a package of documents containing settlement

documents and a protection order he had purportedly mail slotted at Client DD's house.

58. On February 15, 2015, the Respondent received another text message from Client DD asking about the protection order as follows:

Client DD: I need to sort out this protection order issue too.
The school is on my back about it.
If easier I can go and pick it up. Where do I need to go to get a copy?
I can't wait any longer

Swartzberg: I can call now

59. The Respondent admits that there was no Summary Trial Decision or protection order and that he did not put any document through Client DD's mail slot on February 10, 2015.
60. On or about February 2015, the Respondent forwarded settlement documents to Client DD with respect to the Family Law Matter.
61. Between February 18 and February 19, 2015, the Respondent continued to exchange text messages with Client DD about the purported protection order.
62. On February 19, 2015 and February 24, 2015, the Respondent forwarded draft affidavits to Client DD in support of a purported court appearance scheduled for February 26, 2015.
63. Between February 25, 2015 and February 27, 2015 the Respondent exchanged text messages with Client DD about the purported court appearance as follows:

February 25, 2015:

Client DD: Can I attend court tomorrow?

...

Court starts at 9:30?

...

I would like to attend

Swartzberg: ok

February 26, 2015:

Client DD: What's happening what time and where is court?

February 27, 2015:

Client DD: Can you please tell them the details ie. there is a court order prohibiting [spouse] from attending the prom and ceremony?

You will have to advise them the court orders will be faxed them Monday.

64. On February 28, 2017, the Respondent sent an email to Client DD attaching a draft protection order in the family law matter “*that was used*”.
65. The Respondent admits that there was no court application for a protection order made on February 27, 2015 or at all.
66. Between March 2, 2015 and March 4, 2015, the Respondent and Client DD exchanged text messages about whether the purported protection order had been signed and entered.

Allegation 1(h) and (k): Misrepresentation about Certificate of Pending Litigation and Transfer Documents

67. In approximately March 2015, the Respondent told Client DD that he was taking steps to remove a certificate of pending litigation registered against her property.
68. In approximately March 2015, the Respondent told Client DD that the spouse had refused to sign the transfer documents for the Birch Bay Membership as required by the Summary Trial Decision.
69. The Respondent admits that he took no steps to remove the certificate of pending litigation or have the spouse sign any transfer documents.

Allegation 1(j): Misrepresentations about March Protection Order

70. In March 2015, the Respondent *does not dispute that he* told Client DD that he had another way of obtaining a protection order for her child.
71. On March 13, 2015, the Respondent emailed Client DD a copy of a draft Statutory Declaration to be signed by the child in support of the new protection order.

72. The Respondent *does not dispute that he* met with Client DD and her child at his office later that week to swear the declaration.
73. On March 20, 2015, the following text messages were exchanged between the Respondent and Client DD about the March protection order:
- Client DD: Any word on getting a copy of the signed order? I really need to see that to believe things are really moving ahead
- Swartzberg: Yes
- Client DD: Otherwise for me nothing has changed
- Swartzberg: I know I will get it to you
74. The Respondent did not file an application for a protection order in March 2015 as instructed by Client DD or at all.

Allegation 1(l) – Misrepresentations about Application to Vary Summary Trial Decision

75. Between March 31, 2015 and April 15, 2015 the Respondent exchanged text messages with Client DD about the whereabouts of the protection order and the settlement of her Family Law Matter.
76. In or about April 2015, the Respondent advised Client DD that she could bring an application to vary the Summary Trial Decision requiring her to pay \$50,000 to her spouse on the basis of financial hardship incurred by her as a result of the delay of her spouse.
77. The Respondent met with Client DD and prepared an affidavit in support of this purported application.
78. The Respondent admits that he did not apply to vary the Summary Trial Decision on the basis of financial hardship as there was no Summary Trial Decision.

Allegation 1(m) – Misrepresentation about June 2015 Court Appearance

79. In or about mid-June 2015 the Respondent *does not dispute that he* advised Client DD that he was in court for the purposes of obtaining Madam Justice Fleming’s signature on the Birch Bay Membership document so as to effect the transfer required by her order.

Allegation 2 – Quality of Service

80. A search of Supreme Court File No. [number] in the New Westminster Registry confirms that no were no applications or pleadings filed after May 19, 2009.

Allegation 4 – Misleading another Lawyer

81. On or about June 20, 2015, Client DD made a complaint to the Law Society about the conduct of the Respondent.

82. On or about October 14, 2015, Client DD terminated her retainer of the Respondent.

83. On November 16, 2015, the Respondent provided his original client files with respect to Client DD to the Law Society.

84. *The Respondent does not dispute that on August 15, 2016, the Respondent’s original client files relating to Client DD were returned to the Respondent’s locum JS.*

85. On June 20, 2017, Client DD commenced a civil action against the Respondent. On September 22, 2017, Client DD’s new counsel, DG, filed an Amended Notice of Civil Claim.

86. The Amended Notice of Civil Claim was served on the Respondent on October 5, 2017.

87. On or about October 30, 2017, the Respondent sent an email to DG informing her that he had received the Amended Notice of Claim and would be instructing counsel. The Respondent asked DG not to take any steps in the matter.

88. On November 14, 2017, the Respondent received an email from DG asking him or his counsel to provide a proposed deadline by which he would deliver his Response to the Amended Notice of Civil Claim.

89. On December 12, 2017, the Respondent sent an email to DG as follows:

Hi [DG],

I did not see it till before I emailed you. I am not sure what happened and it was in an envelope marked for my attention.

As for the situation I appreciate the indulgence.

The file has been with the law society for their review and I have asked for a copy. Initially they have had the file for over a year. I will advise once I have the copy and can give instructions.

I will update you by Friday as to where things are.

I am not sure it will be possible to respond before the end of December. I am away from just before Christmas till just after the new year.

I will keep you updated.

Thanks

Roy Swartzberg

90. On December 15, 2017, the Respondent sent an email to DG as follows:

Hi [DG],

The file is being copied for me by the Law Society. I will follow up again next week and let you know when I will be getting it.

I don't think much will get done before Jan 2nd but the file should be with me by then.

Thanks

Roy Swartzberg

91. On January 15, 2018, the Respondent sent an email to DG as follows:

Hi,

Thanks for your patience. Yes we are doing what we can to move things along. The Law Society have provided me some of the copies. The hold-up is that I had provided the main documents to them twice and they thought it was one package.

I will be following up on Wednesday. I was in touch with counsel last week. I will give you an update by Wednesday.

Thanks

Roy Swartzberg

92. On January 29, 2018, the Respondent sent an email to DG as follows:

Hi DG

Just a quick update. I tried to put some pressure on to move things ahead. I had a conversation Friday to this effect. I will keep you posted as soon as I hear.

Thanks for your patience.

Roy Swartzberg

93. On January 29, 2018, the Respondent sent another email to DG in response to her query as to whether he was still waiting for the file from the Law Society or there was other impediments:

Hi

It is only the file. There are no other impediments. I will update you later in the week.

Roy Swartzberg

94. On or about February 27, 2018, the Respondent filed a Response to the Amended Notice of Civil Claim.

Client DD Complaint

95. On or about June 20, 2015, Client DD made a complaint to the Law Society about the conduct of the Respondent.
96. Ruth Long, a lawyer employed by the Law Society in the Intake and Early Resolutions Group of the Professional Regulation Department, was initially assigned to investigate the complaint.
97. On or about December 23, 2015, the complaint investigation was transferred from Ms. Long to Jennifer Frahm, a lawyer employed by the Law Society in the Investigations, Monitoring and Enforcement Group of the Professional Regulation Department.

98. On May 11, 2016, Ms. Frahm interviewed Client DD.
99. On June 21, 2016, Ms. Frahm started an interview of the Respondent.
100. In the course of investigating the complaint, the Law Society received written responses from the Respondent. The following letters exchanged with the Respondent are admitted to prove what statements were made by the Respondent and not for the truth of those statements:
 - (a) Letter dated November 12, 2015 from the Respondent in response to letter dated October 7, 2015 from the Law Society (Long);
 - (b) Letter dated April 4, 2016 from the Respondent in response to letter dated February 12, 2016 from the Law Society (Frahm);
 - (c) Email dated January 12, 2018 from the Respondent through counsel in response to email dated January 12, 2018 and letter dated November 2, 2017 from the Law Society (Frahm).

Allegations 5 and 6: Misconduct related to Client AB

101. In or about January 2012, the Respondent was retained by Client AB in connection with Family Maintenance Enforcement Proceedings which had been commenced in the Provincial Court of British Columbia (Port Coquitlam Registry) as Action No. [number], FMEP Case No. [number] (the “FMEP Proceedings”) to enforce an order made in July 2005 by the Court of Queen’s Bench in Alberta (the “Alberta Order”) in a family law proceeding commenced in the Judicial District of Edmonton as Action No. [number] (the “Alberta Proceedings”).
102. Between January 2012 and January 2013, the Respondent represented to AM, a lawyer with the Family Maintenance and Enforcement Program, that he was applying in the Alberta Proceedings to vary the Alberta Order.
103. The Respondent *did some work towards an application but did not proceed with an*

application to apply to vary the Alberta Order between January 2012 and February 2014 or at all nor to his knowledge was an application being made by any other person to vary the Alberta Order.

104. Between January 2012 and February 2014, the Respondent requested and obtained various adjournments of the FMEP Proceedings with the matter ultimately being re-scheduled for hearing on February 17, 2014.
105. In or about January 2014, the Respondent prepared and had his client execute an affidavit in support of an application to vary the arrears and support payments in the FMEP Proceedings.
106. On February 17, 2014, the Respondent appeared on behalf of Client AB before the Honourable Judge Steinberg and consented to an interim order being made in the FMEP Proceedings.
107. On or about March 13, 2014, the Respondent prepared and had his client execute an affidavit in support of an application to vary the arrears and support payments in the Alberta Proceedings.
108. On March 25, 2014, the Respondent appeared on behalf of Client AB before the Honourable Judge Craig and consented to a final order being made in the FMEP Proceedings (the “Court Order”).
109. In or about March 2014, the Respondent told Client AB that he had filed an application to vary the Court Order in the Alberta Proceedings.
110. The Respondent did not file any application materials in the Alberta Proceedings to vary the Court Order or Alberta Order in March 2014 or at all.
111. Between May 2014 and May 2015, the Respondent exchanged text messages with Client AB about the purported application in Alberta to vary the Court Order.
112. In or about May 2015, the Respondent informed Client AB that he had obtained an order varying the Court Order from the Alberta Court of Queen’s Bench (the “Variance

Order”).

113. In or about May 2015, the Respondent informed Client AB that he was arranging for the Variance Order to be served on Client AB’s former spouse.
114. Between June 2015 and August 12, 2015, the Respondent informed Client AB that there was a problem with the Registry in entering the Variance Order.
115. In or about September 2015, the Respondent prepared and had Client AB execute an affidavit with respect to his yearly income in 2014 in accordance with the purported Variance Order.
116. On or about November 21, 2015, the Respondent was asked by Client AB to provide him with his Court file number with respect to the Alberta Proceedings so that Client AB could obtain a copy of the Variance Order and check on the status of the matter.
117. Between November 21 and November 25, 2015, the Respondent exchanged text messages with Client AB regarding the Respondent having emailed a copy of Variance Order to Client AB.
118. On November 25, 2015, the Respondent emailed Client AB the first two pages of an unentered Variance Order which was purportedly granted on May 15, 2015 by the Court of Queen’s Bench of Alberta in the Judicial District of Edmonton. The email stated as follows:

I will send the calculations by year and offset. In the morning.

119. The unentered Variance Order provided to Client AB contained the wrong court file number.
120. *The Respondent does not dispute that* on or about December 2015, the Respondent told Client AB that he had made a mistake in his calculations with respect to the Variance Order and that \$18,000 in support payments were still outstanding.

121. Between March 2015 and May 2016, the Respondent received repeated requests from Client AB to provide him with copies of the application materials, order and affidavits of service filed in the Alberta Proceedings, including the following text and email messages:

Text: May 2, 2015

Client AB: So it is now past 6 pm. You have told me multiple time frames since the 27th deadline that you will have the new order from Alberta. Today alone you have told me 3 different times you have the documents and will send it over via email. Still have not received it. This leads me to believe one of two things.. 1) you don't have the documents to send, 2) you don't take my situation as a priority, to take 5 min to send me the documents. Either way, this is putting me in a tough financial situation as you know I'm paying \$750/mo until this is over. I can't wait for this to happen any longer. As of tomorrow, I will be filing a formal complaint to the law society in hopes they will get to the bottom of this unacceptable 4 ½ year delay.

Swartzberg: Come to the office at 4 pm tomorrow. It will be sorted out.

Text: May 3, 2015

Client AB: As one more time I showed up and you're not here.
...

122. On May 9, 2016, the Respondent also received an email from Client AB. The email states:

Hi Roy,

I just wanted to recap on our conversation this afternoon, so we can both have a clear understanding of what's to be expected in the coming days...

As mentioned, you will have for me by tomorrow morning some documents supporting proceedings in Alberta have/are taking place.

Also, by next Tuesday, May 17th I will receive a final court order from Alberta finally closing this matter.

Please respond back to this email, as a confirmation that I understood our conversation this afternoon.

I will be awaiting for any documents you have. Please respond via email with documents attached.

Thank you,

[AB]

123. The Respondent did not inform Client AB that no steps had been taken in the Alberta Proceedings since 2005.
124. The Respondent did not inform Client AB that he had never applied for or obtained a Variance Order.
125. The Respondent's retainer was terminated by Client AB in June 2016.
126. On June 7, 2016, Client AB submitted a complaint to the Law Society about the Respondent's conduct.
127. Kurt Wedel, a lawyer employed by the Law Society in the Investigations, Monitoring and Enforcement Group of the Professional Regulation Department, was initially assigned to investigate the complaint.
128. *The Respondent does not dispute that* on or about April 2017, the complaint investigation was transferred from Mr. Wedel to Ms. Frahm.

Allegations 7 and 8: Misconduct related to Client CJ

129. On or about June 25, 2008, Client CJ entered into a Separation Agreement with her former spouse under which the parties agreed to joint custody and guardianship of the child of the marriage. *The Respondent was not involved in the preparation of the Separation Agreement and has no direct knowledge other than what the document says.*
130. *The Respondent does not dispute that* at the time of entering the Separation Agreement both parties resided in Maple Ridge, British Columbia.

131. In or about July 2013, the Respondent was retained by Client CJ in connection with a Notice of Family Claim filed by her former spouse in the Supreme Court of British Columbia (New Westminster Registry) for an order permitting him to relocate with the child to Alberta (the “Family Claim”).
132. In or about July 23, 2014, the Family Claim was set down for trial commencing on November 25, 2013.
133. On or about September 9, 2013, the Respondent filed a Response to Family Claim on behalf of Client CJ.
134. In November 2013, the Respondent conducted examinations for discovery of the parties.
135. On November 25, 2013 to December 3, 2013, the Respondent attended the trial of the Family Claim before Mr. Justice Jenkins.
136. On January 6, 2014, the Honourable Mr. Justice Jenkins rendered his Reasons for Judgment in which he granted an order permitting Client CJ’s former spouse to relocate to Alberta with the child.
137. On or about January 28, 2014, the Respondent filed a Notice of Appeal from the decision of the Honourable Mr. Justice Jenkins.
138. On or about February 25, 2014, the Respondent was given notice by the Deputy Registrar of the Court of Appeal of his obligations under the *Court of Appeal Act* and Rules involving custody and access issues to ensure that parties adhere to the time limits.
139. In or about August 2014, the Respondent *had a discussion with Client CJ as to the merits of the appeal and the possibility of an application to vary the order if there were a change in circumstances.*
140. The appeal was ultimately placed on the inactive list on January 28, 2015 and, as no steps were taken in the appeal, was subsequently dismissed as abandoned on July 28, 2015.
141. In or about August 2014, the Respondent prepared and had Client CJ execute an affidavit

in support of the parental alienation claim.

142. In or about August 2014, the Respondent told Client CJ that he had appeared before a judge with respect to the parental alienation claim and that he had been requested to provide further evidence.
143. Between August 2014 and November 2014, the Respondent exchanged text and email messages with Client CJ with respect to the purported parental alienation claim and supplemental information to be included as part of that claim, including:
 - (a) email dated August 11, 2014, in reply to Client CJ's inquiry as to whether the judge had received the affidavit yet and the judge's apparent request for further information;
 - (b) email dated August 27, 2014 from BJ, Client CJ's current spouse, inquiring whether the Respondent had got "*the court order today*";
 - (c) On September 19, 2014, Client CJ signed an affidavit drafted by the Respondent in support of the purported parental alienation claim.
 - (d) On September 21, 2014, in response to email from Client CJ that she realized that the "*affidavit is signed and submitted*" but that she wanted to give him additional information and that if he could get the ideal judge, she would prefer to sacrifice on the date and get that judge, the Respondent wrote: "*I will look into it tomorrow. I agreed we need the right judge. We will chat tomorrow*";
 - (e) On September 28, 2014, in response to email from Client CJ about additional items she wanted to add to her affidavit, the Respondent replied: "*We should talk in the morning early. I think this information is very important and backs up everything that you have said in the affidavit*";
 - (f) On October 8, 2014, in response to a text message from BJ stating: "*Please don't take offence, but I wanted to remind you that we must be in court on*

Friday. This means that we need the report today in whatever state it is. We can't afford to lose this judge. I am sure that I am preaching to the choir, but I can't help myself" and "So what is the word on the report?", the Respondent replied: "I got the info I am going through it and we will talk";

- (g) On October 13, 2014, the Respondent sent an email to Client CJ stating that they could incorporate a photo and information in the materials passed to the judge;
- (h) On October 30, 2014, in response to a text message from BJ stating: "*Did the email about the last call [with child] get sent to the judge? There is some good stuff in there*", the Respondent replied: "*Yes I have attached to affidavit*" to which BJ replied: "*Perfect do you know what is taking the judge so long to make a decision and set a date?*"

144. On or about November 24, 2014, the Respondent informed Client CJ that the former spouse had requested an extension of time to file affidavit material. The Respondent then exchanged the following text messages with BJ on November 24, 2014 and December 10, 2014:

November 24-25, 2014

BJ: I assume nothing yet from [former spouse]

Swartzberg: I will check tomorrow morning

BJ: Just in case [former spouse] asked for another extension, they were visiting family in Edmonton last weekend, not working on his affidavit

Swartzberg: Aha OK. Thanks I will check

December 10, 2014

BJ: I just landed in Montreal and am wondering if you have or are going to receive the affidavit today. I can't talk now.

Swartzberg: Will let you know as soon as I do if not I will try get what I can so we can be ahead for info. From what I see not much contradicts our info.

BJ: Ok, thanks

145. Between December 2014 and November 2014, the Respondent continued to exchange text and email messages with Client CJ and BJ with respect to the purported parental alienation claim and supplemental information to be included as part of that claim, including:

(a) On December 8, 2014, the Respondent received an email from Client CJ which states in part: *“This is exactly what we wrote in the affidavit 2 months ago. This must get sent to the judge this morning and insist on a court date this week. Please confirm that you have received this and are contacting the court immediately this morning.”*

(b) On December 12, 2014, the Respondent exchanged the following text message with BJ:

BJ: Hi Roy, Just checking in. Did you receive our update to the affidavit? Any more info from the court?

Swartzberg: Hi I got it and am working on it. I will know more from court later I will check in at 3 when I land if I don't hear before thanks.

(c) On December 23, 2014, the Respondent received an email from BJ forwarding further information to add to the affidavit that he and Client CJ wanted *“to get before the judge today so she sees the severity of the issue”*;

(d) On December 30, 2014, the Respondent exchanged the following text message with BJ:

BJ: Did you go to New West?
Please call when you have a minute
Any news?

Swartzberg: I will hear tomorrow they were going through what I sent after lunch

BJ: Ok, did they say that they have everything from [ex-spouse]?

Swartzberg: Yep

BJ: Did [former spouse] provide something from the teacher?

Swartzberg: They used the info we gave on report no issues

- (e) On January 25, 2015, the Respondent forwarded to Client CJ his outline of argument to be made at the hearing.
- (f) On April 18, 2015, the Respondent received a text message from BJ stating that they wished to get into court on Tuesday.
- (g) On April 22, 2015, the Respondent wrote to DM of Alyson Jones & Associates requesting a Report regarding the child.
- (h) On May 10, 2015, the Respondent received an email from Client CJ indicating she was very concerned about the timeline and “how slow things were progressing” and asking that the Respondent to secure a court date in May.
- (i) On May 18, 2015, the Respondent received an email from BJ confirming that the Respondent was going to court on May 19, 2015 and getting a hearing date for the week of May 25, 2015.
- (j) On May 20, 2015, the Respondent received a text message from BJ inquiring whether he had news on a court date to which the Respondent replied: *“I have a range I just need to get A’s return from the conference and time she said she was busy but with a date it will spur things on. I will talk in morning”*.
- (k) On May 29, 2015, the Respondent received a text message from BJ inquiring whether he had an update for them: “Court date?”

- (l) On June 10, 2015, the Respondent was instructed by text message from BJ to get a court date next week to which the Respondent replied: "I can try tomorrow"
- (m) On June 23, 2015, the Respondent received a text message from BJ inquiring whether the Thursday court date had been confirmed to which the Respondent replied: "*I know I will hear later today and will be in the office at 230*"
- (n) On June 25, 2015, the Respondent received a text message from BJ inquiring whether he had an update on a potential court date to which the Respondent replied that he would know: "*Hopefully tomorrow so I can get everything prepared*"
- (o) On July 10, 2015, the Respondent received a text message from BJ in which he stated that he assumed there still isn't a date set to which the Respondent replied "*looks like [July] 23 I will get confirmation and text*";
- (p) On July 15, 2015, in response to a text from BJ about whether he had heard whether the court date had been confirmed, the Respondent texted: "*I will get the confirmation at 9 am tomorrow and I will call you then. I just got a message to call at 9 am.*"
- (q) On July 22, 2015, the Respondent received an email from BJ entitled "*A few things for you to mention tomorrow*" containing information about recent events "*that aren't in the affidavit, but probably worth mentioning*".
- (r) On August 20, 2015, in response to a text from BJ about whether he had received a decision, the Respondent texted: "*Not yet. I spoke to Carmen and told her. The judge wants to be thorough which is good.*"
- (s) On August 26, 2015, in response to a text from BJ about whether there was an update, the Respondent texted: "*Nope. I will check again tomorrow and call you either way hopefully around lunch time.*"

- (t) On August 27, 2015, in response to a text from BJ about whether there was anything, the Respondent texted: *“I was told I will get the word tomorrow. So I will call early, At 915 or so.”*
- (u) On Friday September 11, 2015, the Respondent received a text from BJ about information he “wanted mentioned to the court this morning” to which the Respondent replied: *“I did not know that but will pass it on.”*
- (v) On Monday September 14, 2015 in response to query from BJ as to whether he had gotten the stuff in on Friday, the Respondent replied: *“Yes I will check when I’m there tomorrow”*
- (w) On September 18, 2015, in response to query from BJ about there was an update, the Respondent replied: *“I will have one tomorrow. They said to contact in am”*
- (x) On September 18, 2015, the Respondent forwarded to BJ, an article entitled *“IV. Assessing Allegations of Alienation”*.
- (y) On September 28, 2015, BJ forwarded to the Respondent an email entitled *“iPod – More info for the judge”*.
- (z) On or about September 29, 2015, the Respondent and Client CJ exchanged the following texts:

Client CJ: Hi Roy,
 Don’t know if you are going into court today, but if so
 thought the email we sent you yesterday may be of interest
 to the judge. Just let me know what you think. Thanks

Swartzberg: I read it thanks. I am here already. Let’s see if I can get it
 in.

- (aa) On September 30, 2015, the Respondent and Client CJ exchanged the following texts:

Client CJ: Hi Roy,

Can you let me know when we have gotten the latest information into the judge ...

...

Hi .. Just confirming the latest info got in to the judge. Thanks.)

Swartzberg: I just got another addition from [BJ]

Client CJ: Ok. I just know we had a deadline so just wanted to make sure.

Swartzberg: Yes

.

- (bb) On or about October 1, 2015, the Respondent forwarded a draft form of the order for the parental alienation claim.
- (cc) On or about October 4, 2015, the Respondent received an email from BJ with additional information that he could use *“in the update to the judge”*.
- (dd) On or about October 8, 2015, the Respondent forwarded a draft of his intended submissions entitled *“Update from the last submission”* to which BJ responded with his and Client CJ’s additional comments.
- (ee) On October 9, 2015, in response to a text query from BJ as to whether the submissions got *“in to the court”* and whether “JP” had any feedback, the Respondent replied *“Yes all worked out”* and *“Yep positive”*;
- (ff) On October 13, 2015 and October 15, 2015, the Respondent received text messages from Client CJ asking him to inform the court about recent lack of contact with child *“when you speak to them today”* and informing him that they had had no contact with the child for 12 days, the Respondent replied *“I am doing everything I can from here ...”*
- (gg) On October 19, 2015, BJ sent an email to the Respondent confirming that Client CJ was ok with her affidavit and concluding: *“We would also like to know what is happening with the change of circumstances, as last we were told the decision was coming out tomorrow. Thanks!”*

- (hh) On October 23, 2015, in response to a text message from Client CJ inquiring whether they are “*waiting to put out the decision until next week then?*”, the Respondent replied “*yes*”;
- (ii) On January 25, 2016 in response to a query from BJ about, amongst other things, whether there was any way of finding out what was happening about the decision for the parental alienation claim; the Respondent replied “*Hi I sent the email last week in response I will forward you a copy. I will respond on other issues. As well. Roy*”
- (jj) On April 5, 2016, in response to a text message from Client CJ inquiring whether he could “find out some information on timeline today?”, the Respondent replied “*yes*”.
146. The Respondent admits that he neither filed any materials with the court with respect to a parental alienation claim on behalf of Client CJ nor did he serve the former spouse with any materials or receive any response from the former spouse to the claim.
147. In or about October 2015, the Respondent advised Client CJ that he could also bring an application on her behalf seeking an Order that her former spouse be held in contempt of court for failing to comply with the Order of Mr. Justice Jenkins (the Contempt Proceedings”).
148. In or about October 2015, the Respondent prepared and had Client CJ execute an affidavit in support of the Contempt Proceedings.
149. On or before October 16, 2015, the Respondent informed his client that the Contempt Proceeding was scheduled to be heard on Tuesday, October 20, 2015. The Respondent and BJ then exchanged the following text messages:
- BJ: 2 questions Will [former spouse] have an opportunity to submit information to defend the contempt of a court order? Will he be present when the judge hears it in court on Tuesday?

Swartzberg: I am just at activity will talk tomorrow. Yes he can put forward info.

150. On November 5, 2015, the Respondent and BJ exchanged the following text messages about the materials the Respondent was planning on submitting to court:

BJ: Is it a combination of the affidavit we had for the change of circumstances and what we had for the contempt?

Swartzberg: Yes
Plus recent additions travel email also.

151. On November 6, 2015, the Respondent received an email from BJ with additional information about their contact with the child that they wanted to add to existing affidavit.

152. *The Respondent does not dispute that in or about November 2015, the Respondent informed Client CJ that he had attended a four day contempt hearing and was waiting for the Court decision.*

153. *The Respondent does not dispute that in or about January 2016, the Respondent told Client CJ that the judge had requested further materials and that a date would have to be set for the continuation of the contempt hearing.*

154. Between January 2016 and June 2016, the Respondent and Client CJ exchanged text and email messages about the contempt proceedings, including:

(a) On January 20, 2016, the Respondent received the following text message from BJ: “Did you find out about the contempt?” to which the Respondent replied “*I set it for 26th*”.

(b) On January 25, 2016, in response to a query from BJ about, amongst other things, whether there is a confirmed date for the Contempt Proceedings to be heard in court as the Respondent had mentioned “*that they were trying to schedule it for this week, but they probably wouldn’t have been able to get in touch with [former spouse] yet*”, the Respondent replied “*Hi I sent the email last week in response I*

will forward you a copy. I will respond on other issues. As well. Roy

- (c) On January 28, 2016, in response to a request from Client CJ to forward information to the court as a “last plea” as she was hoping the court will see she was “at a dead end”, the Respondent replied “*Will do. Roy*”
- (d) On February 3, 2016, the Respondent received an email from BJ “*just in case the contempt is heard today*”.
- (e) On February 15, 2016, the Respondent received an email from BJ in which he stated “*We just wanted to provide you with an argument to what we expect [former spouse] to say.*”
- (f) On March 3, 2016, the Respondent received an email from BJ in which he stated: “*You might want to mention this when asking about the contempt today*”.

155. On March 23, 2016, the Respondent received the following email from BJ:

Hi Roy,

I just wanted to follow up on the call we had yesterday. As I mentioned on the phone, we are both now feeling that nothing is going to happen with both the alienation claim or the contempt.

We made our first submission almost 2 years ago, and submitted the alienation specific paperwork about 7 months ago. We realize that we have submitted additional items along the way, but at this point the judge should have an opinion of the situation and be able to make a decision. Not to mention, that the situation has now deteriorated to the point that we essentially have no contact and when try contacting him we are accused of harassment.

What about the contempt? That was supposed to be something that got decided immediately and it has already been a month. Doesn't that judge have any sort of obligation to act quickly in these situations?

We appreciate all your effort in continuously following up, but it seems that someone is feeding you false information. Can you go to the source, the judge? Is it possible to have a brief meeting with either of them to find out what is happening and at the same time update them on the latest?

We don't want to be told what people feel we want to hear or what they need to tell you for you to go away, but we need the reality of the situation. At the same time, people need to understand that we have essentially no contact with [C] and this won't change until a judge moves him here.

We appreciate you trying to get to the bottom of this. Hope you are feeling better today.

Cheers

156. *The Respondent does not dispute that* in response, the Respondent informed Client CJ that he had made arrangements to speak to the judge on April 18, 2016.
157. On April 18, 2016, the Respondent received an email from BJ entitled "*Summary for 'Contempt of the Court Order' meeting with the Judge*" containing a brief summary of recent events "*for your meeting with the Judge today*".
158. On June 15, 2016, in response to a text from BJ that he was going to search the court registry himself, the Respondent texted that he was at the Court Registry in Vancouver getting the order signed by the judge.
- BJ: I am at the court now. Who do I need to see in order to get the order?
- Swartzberg: I am in Vanc [sic]
- BJ: Where is the order?
- Swartzberg: I am getting it signed and send from here
- BJ: How can I believe you?
- Swartzberg: You will get it
- BJ: This is our life. Can you send me a screen shot of the unsigned document now?
159. The Respondent admits that he did not file any application materials in the Family Claim since January 2014 and in particular that he did not file materials or attend court in connection with a parental alienation claim or a Contempt Proceeding.
160. A registry search conducted by West Coast Title Search Ltd. shows that no documents had been filed with the court in the family law litigation since January 6, 2014 with the exception of the final order which was submitted for entry on April 1, 2015.

161. In or about June 2016, Client CJ terminated her retainer with the Respondent.
162. On June 17, 2016, Client CJ submitted a complaint to the Law Society about the Respondent's conduct.
163. Mr. Wedel was initially assigned to investigate the complaint.
164. *The Respondent does not dispute that* on or about May 28, 2017, the complaint investigation was transferred from Mr. Wedel to Ms. Frahm.

Allegations 9 To 11: Misconduct Related Client ES

165. In or about 2012, the Respondent was retained by Client ES and NL with respect to a possible action against C Corp. for failing, refusing or neglecting to sell their shares in Z Corp. despite express instructions to do so.
166. In or around 2014, the Respondent represented to Client ES that he had filed a Notice of Civil Claim on behalf of Client ES against C Corp.
167. The Respondent admits that his representation to Client ES about filing a Notice of Civil Claim was false and misleading.
168. On or about March 24, 2015, the Respondent talked about settlement of the action with Client ES.
169. *The Respondent does not dispute that* on or about April 2015, the Respondent informed Client ES that they were proceeding to trial in July 2015.
170. Between December 11, 2015 and December 14, 2015, the Respondent obtained copies of Client ES's brokerage statements from Client ES.
171. On February 22, 2016, the Respondent was requested by Client ES to provide a complete synopsis of the dealing with the case since the statute of limitations are in effect.
172. On April 1, 2016, the Respondent was requested by Client ES to provide his friend ML with all information about the C Corp. case. He also asked the Respondent to "*verify that*

we have a claim filed in BC Court as you told me was filed, and that we are still in the time frame that will stand in court within the statutory limitations as you indicated to me.”

173. On or about April 4, 2016, the Respondent spoke briefly to ML and then received an email dated April 4, 2016 from ML confirming the phone call.
174. In or about late April 2016, the Respondent met with Client ES and his friend ML about Client ES's claim against C Corp.
175. In response to ML's request for the court file number, the Respondent provided Client ES with a handwritten note containing a false Court file number.
176. The Respondent admits that in doing so he was again misleading his Client ES regarding the status of his purported claim against C Corp..
177. Between May 4, 2016 and June 2016, the Respondent was requested by Client ES's new counsel DM to provide a copy of the filed Notice of Civil Claim.
178. The Respondent did not inform DM that he had not commenced a claim on behalf of Client ES against C Corp.
179. On the following occasions, the Respondent falsely represented to DM that he would provide him with a copy of the filed Notice of Civil Claim when he knew that no such claim had been commenced:
 - (a) On May 25, 2016 in response to an email from DM indicating that he had still not received the Notice of Civil Claim, the Respondent wrote: *“I asked a crown to send I will check”*.
 - (b) On May 31, 2016, the Respondent indicated that he would deliver the whole file to DM on June 2 in the afternoon, he wrote: *“I know you just want the one document but on second thought it will be better to deliver it all to you. We can then talk once you have the file”*.

180. On June 22, 2016, the Respondent was served with a Notice of Civil Claim and Notice of Application seeking the immediate delivery of his file materials regarding Client ES' claim against C Corp.
181. On or about July 19, 2016, the Respondent consented to an order being made that he produce his client file to DM.
182. On August 5, 2016, the Respondent's assistant delivered his file in connection with Client ES's claim against C Corp. to DM.
183. At the time of delivering the file to DM, the Respondent had still not informed him that he had not filed a Notice of Civil Claim on behalf of Client ES with respect to the C Corp. matter.
184. In or about June 6, 2017, Client ES commenced an action against the Respondent in negligence.
185. On or about October 6, 2017, the Respondent filed a Response to Civil Claim in which he admitted that he misled Client ES about commencing an action on his behalf against C Corp.

Allegation 12: Misconduct related to Client CL

186. In or about 2014, the Respondent was retained by Client CL to prepare her Last Will and Testament and a Power of Attorney.
187. In accordance with Client CL's instructions, the Respondent prepared a new Will in which he was named as her executor with the primary beneficiary being a charity. The Respondent was also appointed as Client CL's power of attorney.
188. At the time of signing the Will and Power of Attorney, the Respondent was gifted three rings by Client CL.
189. The rings had a combined value of approximately \$10,000.
190. The Respondent acknowledges that Client CL did not receive independent legal advice

prior to him accepting the rings.

191. On March 21, 2016, the Respondent returned the three rings to Client CL.

On June 5, 2019 the Discipline Committee considered and accepted a psychological report submitted by the Respondent together with his proposal under Rule 4-29 of the Law Society Rules. Under the proposal, the Respondent admitted professional misconduct as alleged in the Citation, agreed to cease practising law and gave an undertaking for a period of seven (7) years commencing on June 5, 2019:

- (a) not to apply for reinstatement to the Law Society of British Columbia (the “Law Society”);
- (b) not to apply for membership in any other law society (or like governing body regulating the practice of law) without first advising in writing the Law Society;
- (c) not to permit his name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society.

The Respondent also acknowledged that s. 15(3)(a) of the *Legal Profession Act* will apply to him such that he may not practise law, whether or not the act is performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed.