

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

ALINA V. NIKOLAEVA

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT SUMMARY

1. On August 31, 2022, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Alina V. Nikolaeva (the “Lawyer”) under Rule 3-7.1 of the Law Society Rules (“Rules”).
2. Under the proposal, the Lawyer admitted that she committed the following misconduct, and that it constitutes professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*:
 - i. Between 2014 and 2019, in relation to file #9200-002, she used or permitted the use of her firm’s trust account to receive and disburse \$466,537.00 USD, and she failed to do the following in relation to the funds:
 - (a) provide substantial legal services; and
 - (b) make reasonable inquiries about the circumstances of the related transactions, including the source of funds, and the reason for the funds to go through the trust account.
 - ii. In October 2014, in relation to file #9200-002, she failed to sufficiently identify and verify the identity of her client, contrary to Rules 3-93, 3-95, and 3-97 of the Rules then in force.

3. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of two (2) weeks, commencing on September 26, 2022.
4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated August 22, 2022, and a letter to the Chair of the Discipline Committee. The Chair also considered that the Lawyer did not have a prior professional conduct record.
5. This consent agreement will now form part of the Lawyer's professional conduct record.
6. Pursuant to Rule 3-7.1(5) of the Rules, and subject to Rule 3-7.2 of the Rules, the Law Society is bound by an effective consent agreement, and no further action may be taken on the complaint that gave rise to the agreement.
7. The admitted facts set out in the Agreed Statement of Facts have been summarized below.

I. Summary of Facts

Member Background

8. The Lawyer was called and admitted as a member of the Law Society of British Columbia on September 3, 2002. She practises in the areas of corporate, commercial, and tax law.
9. Since her call to the bar, the Lawyer has practised law as in-house counsel, and as an associate or associate counsel at two small law firms in Vancouver, British Columbia. She has been at her current firm since September 1, 2014.
10. The Lawyer has no prior disciplinary history in British Columbia or any other jurisdiction.

Background Facts

11. On October 14, 2014, the Lawyer's client X emailed her to advise that his father wanted to send his granddaughters funds as gifts, and asked if the Lawyer could open a file in relation to the transactions.

12. The Lawyer had known X for many years. She met X in approximately 2003, when she was in-house counsel for a public company. Between 2005 and 2014, X was a client of a small law firm where the lawyer was employed as an associate. During this time period, the Lawyer acted for X, and in the course of doing so, identified and verified the identity of X.
13. On October 14, 2014, the Lawyer emailed X to clarify what was to be done. She asked where X's father was located, and if the Lawyer was to establish a trust for the granddaughters or if she was just to receive funds into her trust account and distribute them.
14. The Lawyer opened file #9200-002.
15. On October 15, 2014, the Lawyer sent a general retainer agreement to X, addressed to his father, Y. The retainer agreement set out that client identification was required. Later that day, the Lawyer received the signed retainer agreement back. The next day, the Lawyer received an email from X, attaching a copy of Y's passport and providing a residential address for Y in Russia. The email also noted that a US dollar wire transfer would be sent to the Lawyer from a third party's trust account.
16. The third party was a lawyer who was a practising member of the Florida bar, in good standing, with an office in Orlando, Florida (the "US Lawyer"). The Lawyer had previous contact with the US Lawyer on other occasions, when she had acted for X in the past. The Lawyer knew that the US Lawyer was both X's and Y's lawyer in the United States.
17. In relation to Y, the Lawyer obtained all of the client identification information required by Rule 3-93 of the Rules then in force, except for Y's home telephone number.
18. Although Y resided in Russia and the matter was a non-face-to-face financial transaction, the Lawyer did not obtain client verification information as required by Rules 3-95 and 3-97 of the Rules then in force.
19. On October 15, 2014, the Lawyer received \$149,982.50 USD in trust, by way of wire transfer from the US Lawyer's trust account.

20. On October 17, 2014, the Lawyer received instructions from X about how the funds were to be disbursed to the two granddaughters.
21. On or about October 17, 2014, the Lawyer drafted a memo to file, setting out the reasons for the \$149,982.50 USD deposit to trust. The memo noted that the Lawyer had known X for many years; that she knew him as a “reputable and law abiding businessman”; that she had never met Y; and explained her understanding of why the funds were to be given as a gift.
22. On October 17, 2014, the Lawyer issued trust cheques to the two granddaughters.
23. On December 30, 2014, the Lawyer received a second wire transfer of \$59,982.50 USD. On January 7, 2015, the bank advised that the funds had come from the US Lawyer’s trust account.
24. On January 7, 2015, the Lawyer received instructions from X to prepare two cheques made out to the granddaughters and to send them to X. The Lawyer issued the cheques the next day.
25. On February 24, 2016, the Lawyer issued a refund cheque to X, including \$317.37 USD from funds held in trust in relation to file #9200-002.
26. On December 6, 2016, the Lawyer received a \$65,000 USD cashier’s cheque purchased by the US Lawyer and deposited it to her trust account. The Lawyer’s ledger noted that the deposit was a “tuition fees advance from [Y]”. The next day, she issued two trust cheques to the granddaughters.
27. On September 5, 2019, X emailed the Lawyer, advising that Y wanted to give him some money as a gift, and asked the Lawyer to open a file for him personally. He advised that he would be bringing the funds to her office, and explained what they were for.
28. On September 17, 2019, the Lawyer received two cashier’s cheques totaling \$191,572 USD that had been purchased by the US Lawyer, and deposited them to her trust account.

29. On September 23, 2019, the Lawyer emailed X about preparing a gift deed. Two days later, X provided a signed copy of the gift deed to the Lawyer.
30. On or about September 25, 2019, the Lawyer wrote a memo to file, setting out the reasons for the \$191,572 USD trust deposit.
31. On September 26, 2019, the Lawyer received a letter from X, setting out instructions about how to pay out the funds in trust.
32. On September 30, 2019, the Lawyer drafted a loan agreement supported by a promissory note between X as lender and a company owned by one of the daughters as borrower, in the amount of \$10,000.
33. On October 1, 2019, the Lawyer distributed the funds according to X's instructions.
34. On October 2, 2019, the Lawyer paid her invoice for legal fees out of the funds remaining in trust, and sent the invoice and the balance of the funds to X.
35. There is no indication that the matter involved fraud or other illegal conduct, and no clients were harmed.

Mitigating Factors

36. In response to the investigation, the Lawyer re-evaluated and changed her office procedures related to client identification and verification to ensure that she is in full compliance with the Rules.
37. The Lawyer is remorseful, and has acknowledged and apologized for her misconduct. She has assured the Law Society that she will not commit similar misconduct in the future.
38. The Lawyer has reviewed the Rules on client identification, client verification, and trust accounting; watched the Law Society's Anti-Money Laundering Measures webinar; and studied the Law Society's Trust Accounting Handbook.
39. As noted above, the Lawyer does not have a prior professional conduct record.

40. In approving the consent agreement proposal, the Chair of the Discipline Committee also considered that the proposed suspension was consistent with the outcome in prior, similar matters.