

Admission to Discipline Committee

AGREED STATEMENT OF FACTS

Rico Rey Hipolito

Called to Bar: May 14, 1993

Suspended from practice: October 28, 2008

Ceased membership: January 1, 2010

Admission accepted: April 12, 2012

Counsel: Alison Kirby for the Law Society and Jean Whittow, QC on behalf of Mr. Rey Hipolito

Member Background

1. Rico Rey Hipolito (the “Respondent”) was admitted to the bar of the Province of British Columbia on May 14, 1993.
2. From his call to 1995, the Respondent worked in two small office settings with other lawyers. From 1995, the Respondent practised law as a sole practitioner in Greater Vancouver. His practice was primarily in the area of immigration law.

Citation

3. The citation in this matter was authorized by the Discipline Committee on May 7, 2009. The citation was issued June 29, 2009. The schedule to the citation was amended pursuant to Rule 4-31(2)(a) on October 30, 2009.
4. The Respondent admits that on or about June 29, 2009 he was served through his counsel with the citation and he waives the requirements of Rule 4-15 of the Law Society Rules.

Background Facts

5. The Respondent completed and submitted Trust Report forms for the periods ended November 30, 2006 and November 30, 2007 in which he stated that he did not maintain any trust bank accounts to receive, disburse or hold trust funds.
6. On or about August 20, 2008, Felicia Ciolfitto, Manager – Trust Assurance Program, wrote to the Respondent to inform him that a compliance audit of his practice was scheduled for October 20, 2008.
7. On or about October 20, 2008, the Respondent telephoned the Law Society and left three voice mail messages for Brenda Hersh, who was appointed to carry out the compliance audit, asking for an extension on the basis of his health. Ms. Hersh by email and fax responded that she would attend on October 21, 2008.
8. On October 21, 2008, Ms. Hersh attended at the Respondent’s office at 304-928 Howe Street, Vancouver at approximately 1:00 p.m. to carry out the compliance audit. The Respondent did not attend.

9. On October 21, 2008, Ms. Ciolfitto wrote to the Respondent and advised him that he was required to produce and permit the copying of his records by October 28, 2008, failing which he would be suspended pursuant to Rule 3-79.1. This letter was personally delivered to the Respondent on October 22, 2008 by Larry Dirk, an investigator employed by the Law Society.

10. On or about October 28, 2008, the Respondent was suspended pursuant to Rule 3-79.1. The Law Society advised the Respondent of this suspension by letter dated October 28, 2008 from Ms. Ciolfitto. This letter was personally delivered to the Respondent on October 28, 2008 by Mr. Dirk.

11. Following the Respondent's suspension, he arranged for another member to manage his practice.

12. On or about March 5, 2009, the Law Society was appointed custodian of the practice of the Respondent, pursuant to the order of the Honourable Mr. Justice Groves made in In the Matter of Rico Rey Hipolito, British Columbia Supreme Court, Vancouver Registry No. S091688.

Allegations #1 to 4 – Conduct Related to Clients BF and MS

13. On or about September 20, 2004, the Respondent was retained by BF to assist with an application to Citizenship and Immigration Canada ("CIC") to sponsor her mother MS (her "Mother") for permanent residence (the "Mother's Sponsorship Application") and to apply to extend the visitor's visa of her Mother. The retainer agreement stated:

2. My flat fee for service is: \$2,700 CAD. You are responsible for paying all government fees.

3. This serves as a RECEIPT, confirming that you have paid all monies owing to RHC [Rey Hipolito and Company] on September 20, 2004 and there is nothing else due and owing.

The Respondent further wrote in the retainer agreement that approximately 12 to 18 months of time would be required to complete the services.

14. On or about September 20, 2004, BF paid to the Respondent the full amount of \$2,700. The Respondent believed that he was entitled to treat the funds as his own. He acknowledges that, as he had not performed the services for which he was retained and had not provided a bill to BF, he was not entitled to do so. The Respondent admits allegation #2 of the amended schedule to the citation and that his conduct constitutes professional misconduct.

15. On or about September 21, 2004, BF paid to CIC the sum of \$1,525 in respect of the filing fee for the Mother's Sponsorship Application and a further \$75 in respect of the application fee for an extension of the visitor's visa for her Mother. BF paid these funds to CIC in anticipation of the Respondent filing the two applications and provided proof of payment to the Respondent.

16. BF and her Mother provided to the Respondent all the necessary information and documentation for the applications. The Respondent did not file either application in 2004 or at any time thereafter.

17. In or about December 2004 and on occasion thereafter, the Respondent verbally told BF that he had filed the Mother's Sponsorship Application with CIC.

18. The Respondent incorrectly believed that the application had been filed by an associate. He admits that he is responsible for the failure to file BF's application. He admits that in advising BF that the application was filed when it was not, he misled BF.

19. The Respondent admits that he did not advise BF of his failure to file both the Mother's Sponsorship Application and the application to extend her Mother's visitor visa. In or about August 2007, BF found out

the Mother's Sponsorship Application had not been filed when she made her own inquiries of the Canadian Embassy in Vienna regarding the status of that application.

20. On or about August 16, 2007, after finding out that the Respondent had not filed the Mother's Sponsorship Application, BF sent an email to the Respondent to obtain information regarding this matter. On or about September 4, 2007, BF sent a further email to the Respondent. The Respondent did not reply to BF's emails in a timely way, or at all.

21. The Respondent admits that he failed to serve BF and her Mother in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation. In particular, the Respondent:

- a) failed to do the work in hand by failing to submit either application;
- b) failed to answer within a reasonable time a communication from BF that required a reply; and
- c) failed to disclose to BF that he had failed to file either application, even when asked by BF.

The Respondent admits allegation #3 of the amended schedule to the citation and that his conduct constitutes professional misconduct.

Allegation #5 – Conduct Related to Client YM

22. On or about March 21, 2006, the Respondent was retained by YM to assist with a Federal Court application (the "Application") to judicially review the dismissal by CIC of YM's application for permanent residence under the "Skilled Worker Category". The Respondent charged a flat fee of \$6,000 for legal fees. On or about March 21, 2006, YM paid the sum of \$6,000 to the Respondent.

23. On or about March 23, 2006, the Respondent filed the YM Application in the Federal Court on behalf of YM.

24. On or about March 27, 2006, the Respondent sent to YM a "receipt for services", confirming payment of the fee of \$6,000 and the services provided by the Respondent.

25. On or about April 26, 2006, the Respondent advised YM that the Federal Court had dismissed the Application by denying leave to apply for judicial review.

26. Following the dismissal of the Application, the Respondent spoke by telephone with YM as well as with another immigration lawyer whom YM had retained, and agreed to refund the fees of \$6,000. On or about September 7, 2006, the Respondent advised YM by email that he was willing to reimburse the \$6,000 paid by YM in fees.

27. On or about January 19, 2007, YM, by email to the Respondent, requested that the Respondent send the repayment of funds of \$6,000 to his bank account. On or about January 28, 2007, YM by email requested that the Respondent delay sending the \$6,000 as he was then travelling.

28. On or about March 3, 2008, YM made a complaint to the Law Society (the "Complaint") regarding the Respondent .

29. The Respondent admits that he agreed to refund to YM the sum of \$6,000, paid to him in March 2006, but failed or refused to do so. The Respondent did not and does not have the means to make the repayment. The Respondent had not repaid any portion of this money as of the date of execution of this Agreed Statement of Facts. The Respondent admits allegation #5 of the amended schedule to the citation and that his conduct constitutes professional misconduct.

Allegations #6 to #11 – Conduct Related to Client CE

30. On or about January 18, 2008, the Respondent was retained by CE to prepare and file an application to sponsor HF, her husband (the “Husband”), for permanent residence (the “Application”). On January 18, 2008, the Respondent met with CE at his office for approximately one hour. During the meeting he told CE that he would charge her a flat fee of \$2,500 in respect of the Application and asked her to pay that amount. The Respondent told CE that she would be responsible to pay any application fees to CIC. He further told her that if she decided not to retain him, he would charge \$200 for the meeting.

31. On or about January 18, 2008, CE paid to the Respondent by cheque the sum of \$2,500 in respect of the Application. At the time the Respondent received this cheque, he had not issued any bill to CE, nor did he provide a receipt to CE, as required by Rule 3-63(3) of the Law Society Rules.

32. On January 18, 2008, the Respondent deposited this cheque in the amount of \$2,500 to his account number [number] at the Bank, and then used those funds for his personal purposes.

33. As of January 18, 2008, the Respondent had not substantially performed the legal services for CE. The Respondent intended his arrangement with his client to be a flat fee which entitled him to treat the funds as his own upon receipt. He acknowledges that, as he had not performed the services for which he was retained and had not provided a bill to CE, he was not entitled to treat the funds as his own. He admits that his conduct constitutes professional misconduct.

34. In or about April 2008, CE travelled to Morocco where she married her Husband, and arranged for him to sign blank copies of the necessary application forms, on the understanding that the forms would be completed with the assistance of the Respondent. In or about July 2008, CE delivered to the Respondent’s office the signed (but blank) application forms, the required supporting documentation and draft documents which she had completed. She understood that the Respondent would arrange to complete the signed application forms and submit them to CIC.

35. On or about July 28, 2008, CE emailed the Respondent and asked him whether any progress had been made on the Application, to which the Respondent replied “we will be submitting on Thursday” [sic].

36. In or about August 2008, CE received an email from TH, who told her that he was helping the Respondent with the Application. He asked CE to fill out the application forms again in a “PDF” format and send them back to him, which CE did.

37. On or about September 12, 2008, CE met with TH, at his request, to review the applications. Some changes were made. TH told CE that she would have to pay the filing fees charged by CIC, and requested she provide a cheque to pay those fees in the amount of \$1,040, made payable to the Respondent. On September 12, 2008, CE gave to TH a cheque made payable to the Respondent in the amount of \$1,040, which she paid in trust for the express purpose that the funds be used to pay CIC filing fees in respect of the Application. Shortly after receipt, TH gave this cheque to the Respondent along with the application forms.

38. On September 29, 2008, CE sent an email to the Respondent asking him whether TH had passed along the application forms and cheque. On September 29, 2008, the Respondent sent an email in reply, in which he wrote: “Yes thank you all is done submitting tomorrow”.

39. On October 10, 2008, CE sent an email to the Respondent in which she wrote: “I noticed the cheque for the application fees has not been cashed yet so I just wanted to make there was no problem with HF’s application. Has it been sent to Mississauga yet?” [sic]. On October 10, 2008, the Respondent replied: “Yes

it has so we will wait about 5 to 6 weeks". The Respondent believed that the application had been filed. However, he acknowledges that he is responsible for the failure to file. Further, he acknowledges that by advising that the application had been filed, CE was misled as to its status. The Respondent admits allegation #9 in the amended schedule to citation, and that his conduct constitutes professional misconduct.

40. On or about October 14, 2008, the Respondent negotiated this cheque in the amount of \$1,040 at the Bank and then used those funds for his personal purposes. The Respondent did not at that time, or at any time after, use these funds of \$1,040 for the purpose CE had paid them, which was for the filing fees payable to CIC in respect of the Application. The Respondent admits that he misappropriated the funds of \$1,040 paid by CE as alleged in allegation # 7 of the amended schedule to the citation and that his conduct constitutes professional misconduct.

41. On or about April 10, 2009, the Respondent wrote to the Law Society to provide a response to a complaint by CE, in which he wrote:

[CE] paid me another cheque in the amount of \$1,040 for the Canadian government processing fees. This is not my normal practice. I normally asked my clients to pay the government fees directly by credit card or at a bank because I did not want to hold money in trust, and thus, necessitate a trust account. In that time I was very depressed and desperate for money. I misappropriated the funds, hoping to pay for the processing fees for [CE] through additional money I was expecting to get. I should have, as I normally did, insisted that [CE] pay the government processing fees by credit card herself so that she would need to only give me a receipt proving that she had already paid the Canadian government fees.

42. The Respondent did not submit the Application to CIC in October 2008, nor at any time thereafter. The Respondent admits that in the period between January 2008 and October 2008, in the course of representing CE, he failed to serve her in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, in that:

- a) he failed to do the work in hand in a prompt manner so that its value to his client was not diminished or lost, in that he failed to submit the Application to CIC;
- b) he failed to keep the client reasonably informed as to the status of the matter; and
- c) having informed the client by email in or about September 29, 2008 that the Application would be submitted to CIC the next day, the Respondent allowed that date to pass without follow-up information or explanation,

and that his conduct in this regard was contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*. The Respondent admits allegation #10 in the amended schedule to the citation, and that his conduct constitutes professional misconduct.

43. On January 25, 2009, CE emailed the Respondent regarding the status of the Application and wrote:

I have not heard from you and was getting a bit anxious. According to Immigration Canada's website, the first stage of the application process in Mississauga should only take 24 days (in 2008). Since it has been almost 4 months I am concerned that they did not receive HF's application. I am also concerned because many of our papers are due to expire in February. So could you please send me the file # so I can check on-line or follow up with Immigration Canada via telephone.

On January 26, 2009, the Respondent sent an email in reply, in which he wrote:

Sorry I was preoccupied. My brother died all of a sudden. We are following up with express post and Canada immigration. I will inform you when we get a reply.

44. On January 26, 2009 when he wrote this reply, the Respondent was suspended from the practice of law pursuant to Rule 3-79.1. In the reply, he identified himself as "Rico. P. Rey Hipolito, Barrister and Solicitor". Further, he failed to disclose to CE that he was suspended from the practice of law, and he did not refer her to the lawyer who had assumed conduct of his practice. The Respondent admits allegation #11 in the amended schedule to the citation, and that his conduct constitutes professional misconduct.

45. On or about February 4, 2009, the Respondent purchased a bank draft from the Bank made payable to CE in the amount of \$1,040. The Respondent gave this bank draft to the lawyer who had assumed conduct of his practice and asked the bank draft be given to CE.

46. On or about February 10, 2009, CE made a complaint to the Law Society.

Allegation #12 – Conduct Related Client LH

47. On or about March 13, 2009, LH spoke with the Respondent by telephone seeking immigration legal services in respect of the rejection by CIC of her application for permanent residence on humanitarian and compassionate grounds. LH was referred to the Respondent by a friend who was a client of the Respondent. During this telephone conversation, the Respondent told LH that she had three avenues of relief, and that the best avenue was to find a company to "fast track" her through a work permit. The Respondent further told LH that he would charge her \$2,000, of which \$1,000 was to be paid initially. LH and the Respondent agreed she will pay the sum of \$1,000 by "interact" electronic transfer.

48. On or about March 19, 2009, the Respondent telephoned LH and asked her to contact him using his cell phone only. During that telephone call, LH asked for the Respondent's email address to effect the electronic transfer of funds, and he provided it to her.

49. On March 19, 2009, LH electronically transferred the sum of \$1,000 to the Respondent and the funds were deposited to his account at the Bank on March 22, 2009, after the Respondent correctly answered the security question. The Respondent had difficulty answering the security question and he and LH exchanged emails regarding the transfer.

50. On March 19, 2009, the Respondent sent an email to LH in which he set out the documentation required for an employer-sponsored work permit.

51. On March 26, 2009, LH sent an email to the Respondent asking him to contact her lawyer retained in a family law matter, to which the Respondent replied on March 26, 2009 advising that TH would help with that matter.

52. On or about April 7, 2009, the Respondent telephoned LH and told her that the company for which she was working was not able to provide enough hours of work to support a work permit. He then told LH that she should send to him as soon as possible copies of all her previous applications to and correspondence with CIC so that a new application to CIC on the basis of humanitarian and compassionate grounds could be made. The Respondent told LH that she would have a better chance of success if that application were made through Buffalo, N.Y., rather than in Vegreville, Que.

53. On or about April 9, 2009, LH again spoke by telephone with the Respondent about the status of her case.

54. On or about April 14, 2009, LH checked the status of the Respondent on the "Lawyer Look-Up" function

of the Law Society's website, where she saw that a custodian had been appointed over his practice. LH then contacted the custodian for information and assistance.

55. On or about April 15, 2009, Shelley Ion, a staff lawyer in the Professional Conduct Department, spoke with the Respondent by telephone regarding this matter, as well as other matters. Ms. Ion asked him if he recalled LH, to which the Respondent confirmed that he did. She asked the Respondent if he was actively practicing and had accepted a retainer of \$1,000 from LH, to which the Respondent replied affirmatively. He confirmed that he knew that he was not supposed to practice but that he had acted from "desperation".

56. The Respondent admits that by giving legal advice to LH in her immigration matter in March and April of 2009 and accepting a retainer of \$1,000 from her on March 22, 2009, he practised law when he was suspended and not lawfully entitled to do so. The Respondent admits allegation #12 of the amended schedule to the citation and that his conduct constitutes professional misconduct.

Attachments

57. It is agreed in respect of each of the documents attached to this Agreed Statement of Fact as Attachment 9, 12 through 19, 26 through 34 and 48 through 50, that it:

- a) is a true copy of the original document,
- b) was written or created on the date on the face of the document,
- c) where by the content or nature of the document it was intended to be sent or delivered, that it was sent or delivered on the date it bears on its face and was subsequently received by the intended recipient,
- d) where on its face the document purports to have been written or created under the instructions of the person who signed it or where on its face the document's creation was authorized by the person who signed it, that it was so written, created or authorized,
- e) where the document purports on its face to have been received on a particular date or time, that it was so received, and
- f) is admitted into evidence to prove that the statements were made and not for the proof of the truth of the matters recorded in it.

58. With respect to Attachment 8, the Respondent admits that it is a true copy of the original document, that it was written or created by him on the date on the face of the document but says that the document was not sent to the named recipient.

As a result of these admissions the Respondent undertakes as follows:

1. The Respondent undertakes not to apply for reinstatement to the Law Society of British Columbia for a period of eight years, commencing June 4, 2009 and ending June 3, 2017;
2. During that period, he has further undertaken not to apply for membership in any other law society (or like governing body that regulates the practice of law in any jurisdiction) without first advising the Law Society; and
3. Not to permit his name to appear on the letterhead of any lawyer or law firm or otherwise work in any capacity whatsoever for any other lawyer or law firm in British Columbia without the prior written consent of the Law Society.