THE LAW SOCIETY OF BRITISH COLUMBIA

ORDER (RULE 4-60)

TO: The Executive Director and Jessica E. Abells

AND TO: [redacted]

FROM: Barbara Stanley, KC
Chair of the Discipline Committee

RE: [redacted]**: Administrative Penalty File No. PE20220013**

Pursuant to Rule 4-60 of Law Society Rules 2015 (the "Rules"), I am satisfied that the breach alleged in the above matter has been established on a balance of probabilities and I am also satisfied that the penalty originally assessed should be upheld.

The Rule Breached

1. [redacted] is alleged to have breached Rule 3-102 and 3-104 (Client Identification and Verification) as follows:

   (a) [redacted] represented [redacted] ("[redacted]"), [redacted] ("[redacted]") and two other clients collectively, in response to the [redacted] ("[redacted]") derailments and oil spills that occurred on the clients' properties;

   (b) [redacted] did not meet [redacted] and [redacted] in person to verify their identities and review their identifying documents. Instead, [redacted] obtained electronic copies of [redacted]'s Saskatchewan Driver's Licence and [redacted]'s BC Driver's Licence. [redacted] did not enter into an agency agreement with an agent to verify the clients' identities for a non-face-to-face transaction, contrary to Rules 3-102 and 3-104.

Facts

2. Based on the information before me and by [redacted]'s own admission, the above elements of the rule breach have been met:

   (a) A financial transaction took place on July 16, 2020 and August 11, 2020 when [redacted]'s firm received the settlement funds from [redacted] and deposited them into the firm's trust account, rendering this a financial transaction to which Rule 3-102 applies. The funds were then distributed to the clients;

   (b) This was a non-face-to-face financial transaction and [redacted] did not meet with her clients in person and their Driver's Licences were sent to her electronically; and

   (c) As a result of the non-face-to face financial transaction, [redacted] was required to retain an agent and enter into an agency agreement with that agent who would comply with the client identification and verification Rule 3-104, in order to comply with the Rule.

Submission

3. [redacted] has filed a dispute under Rule 4-60 for a review of the administrative penalty. She submits that no monetary penalty is warranted or, in the alternative, she seeks a reduction in the amount of the penalty on the basis of financial hardship. [redacted] has made the following points in her submissions, which can be summarized as follows:

   (a) she was a sole practitioner running a busy litigation and regulatory practice while also establishing a new law firm;

   (b) in mid-2020 at the time of the breach, [redacted] was managing the various pressures caused by the Covid-19 pandemic in addition to the regular demands of a law practice which included collecting a sizable debt from a client;

   (c) that she relied too heavily on her paralegal at the time to confirm identity;

(d) the proposed penalty is significant to a firm the size of her firm and relative to her income, as the $5,000.00 penalty is five percent of her dividend income for 2020;

(e) the file only resulted in $8,900.00 in total for the work done, including taxes and disbursements;

(f) [redacted]'s law firm does not typically engage in financial transactions and typically only uses the trust account for retainers, therefore there is little risk that her law firm would engage in financial transactions that inadvertently participate in fraudulent financial transactions, relative to other law firms, which routinely participate in financial transactions;

(g) the settlement funds came from a trusted source, [redacted] through their legal counsel;

(h) no monetary penalty is needed to act as a deterrent, as identifying this breach through the trust audit has been more than sufficient to motivate [redacted] to take corrective action;

(i) The Law Society should adjust the penalty to account for its impact on [redacted] and her law firm, as in this case the penalty will have a disproportionate impact. In addition, [redacted] submits that administrative penalties treat all breaches in the same way regardless of contextual factors and this results in small firms being disproportionately penalized. [redacted] submits that fairness dictates that the Law Society consider context in determining the appropriate penalty to a given firm and degree of culpability. In doing so, it would still allow the Law Society to fulfil its mandate; and

(j) The administrative penalty regime was not in effect at the time of the rule breach, making the penalty retroactive.

Discussion and Determination

4. [redacted] submits her breach of the Rules does not warrant a monetary fine, and I do not accept that submission as the facts of the breach have been established by the Law Society and admitted by [redacted].

5. In the alternative, [redacted] seeks a reduced penalty for the reasons she outlines in her dispute and summarized above.

6. For example, [redacted] submits that she made an honest mistake, there was no real risk of harm, that there was no benefit obtained by her or her firm from the breach, and that it was her first breach of this Rule or breach of any Rules. In addition, [redacted] has made submissions regarding her financial circumstances and the financial impact of the fine on her and her firm. I have given all of her submissions due consideration and I do not doubt them.

7. In this review, I do have the discretion to assess a different amount for the Administrative Penalty, however, such discretion should be exercised with care. I find that the penalty is not inappropriate or unfair in the circumstances of this matter.

8. Administrative penalties and the penalty amount determined by the Law Society must balance fairness against the need to ensure that administrative penalties serve their purpose in protecting the public and represent more than a cost of doing business.

9. The amount of the penalty imposed is not disproportionate when weighed against the breach of Rules 3-102 and 3-104, the harm that the anti-money laundering rules are intended to prevent, and to ensure protection of the public. This is the overriding consideration when determining the amount of an administrative penalty.

10. Furthermore, the Law Society has made it a priority to educate lawyers in British Columbia about the rules that are intended to prevent potential money laundering and of lawyers' corresponding obligations, especially the client identification and verification rules and the cash rules.

11. Canadian lawyers are exempt from other money laundering prevention programs and as a result, the Law Society's safeguards and lawyers' compliance with and adherence to these rules have additional significance.

12. The Law Society implemented both Rule 3-102 and Rule 3-104 as components of a systemic effort to prevent money laundering and to prevent lawyers from being willing or unwilling participants in money laundering schemes. This is for the protection of the public and to maintain the integrity of lawyers' use of their trust accounts.

13. While I do not doubt that [redacted]'s breach of the Rules was unintentional, lawyers are expected to know and understand the Rules and so it does not make it any less of a breach for the purposes of determining whether a breach has occurred. The circumstances surrounding the breach are taken into account when determining the appropriate course of action. [redacted] has identified several mitigating circumstances that are proper considerations for the Executive Director and for the Chair of the Discipline Committee to consider in deciding to levy an administrative penalty and in deciding the amount of the penalty.

14. The administrative penalty process is discretionary in that, pursuant to Rule 4-59, the Executive Director may choose whether or not to levy such a penalty. If, in other circumstances, a breach of these Rules was considered to be deliberate rather than inadvertent, had done actual harm or had provided a substantial benefit to the lawyer, for example, the Executive Director has the ability to take these and other factors into account and may decide to address the matter through the Law Society's discipline process, rather than through an administrative penalty. In this case, the matter was addressed through the administrative penalty process.

15. As mentioned, the overriding consideration in determining the amount of the administrative penalty is to ensure protection of the public interest. It is open to the Executive Director, in exercising discretion under the Rules, to levy the maximum amount as an administrative penalty to ensure that such penalties are not treated as merely a cost of doing business. It was open to the Executive Director to assess a penalty less than the maximum penalty in light of mitigating circumstances raised by [redacted] but it was

not required that the Executive Director do so. I conclude that the Executive Director has not exercised discretion in an unfair manner in assessing the Administrative Penalty.

16. In response to [redacted]'s submission that the administrative penalty rules should not be applied retrospectively, the determination in [redacted] has confirmed that Rule 4-59 can have retrospective application and I apply the principals set out in [redacted], paragraph 77, that Rules 4-59 is permitted to have retrospective application as a provision intended for protection of the public. *PE20220001

17. The original Notice of Penalty was issued on March 13, 2023 and levied the Administrative Penalty of $5,000.00 payable by April 12, 2023. The dispute was filed April 11, 2023.

18. I direct, pursuant to Rule 4-60(2)(c) that [redacted] must pay the Administrative Penalty as originally assessed at $5,000.00 by July 22, 2023.

Order

Therefore, I order that:

The Administrative Penalty is confirmed and must be paid in accordance with the original notice delivered under Rule 4-59, except that the Administrative Penalty is due by July 22, 2023.

Dated: June 22, 2023

Barbara Stanley, KC
Chair of the Discipline Committee