

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

DAVID Y. CHEN

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT

1. On June 2, 2022, the Chair of the Discipline Committee accepted a proposal submitted by David Y. Chen (the “Lawyer”) under Rule 3-7.1 of the Law Society Rules (“Rules”).
2. Under the proposal, the Lawyer admitted that he committed the following misconduct:
 - (a) On June 25, 2018, in relation to a family law matter involving his client X, he made a representation to opposing counsel that was false or misleading, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia*.
 - (b) On July 3, 2018, in relation to a family law matter involving his client X, he drafted and commissioned an affidavit that contained representations that were false or misleading, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia*.
 - (c) Between August 2019 and January 2020, in relation to his client Y, he accepted \$8,000 in retainer funds in cash from his client, and he refunded to his client \$1,868.47 by cheque instead of in cash, contrary to Rule 3-59(5) of the Law Society Rules.
3. The Lawyer further admitted that the conduct set out in sub-paragraphs 2(i) and 2(ii) above constitute professional misconduct, and that the conduct set out in sub-paragraph 2(iii) above constitutes a breach of the Act or rules.

4. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of two (2) weeks, from July 1, 2022 to July 15, 2022. In addition, by December 31, 2022, he will attend a meeting with a Bencher to discuss his misconduct.
5. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated May 25, 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.
6. This consent agreement will now form part of the Lawyer's professional conduct record.
7. 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.
8. The admitted facts were set out in an Agreed Statement of Facts dated May 25, 2022. The facts have been anonymized and summarized below.

I. Summary of Facts

Member Background

9. The Lawyer was called to the bar and admitted as a member of the Law Society of British Columbia on December 1, 2014. He currently practises primarily in the areas of civil litigation and family law.
10. Since his call to the bar, the Lawyer has practised law at two small firms in Vancouver, British Columbia. At the time of the misconduct, the Lawyer was a four-year call, and had been practising as a sole practitioner in the two years leading up to the misconduct.

Background Facts

Representations to Opposing Counsel

11. On or about April 28, 2018, the Lawyer was retained by X in relation to a family law matter.

12. On May 14, 2018, the opposing party, Z, filed a Notice of Family Claim (“NOFC”) in the Supreme Court of British Columbia. Z also sought and obtained an order from a Justice of the Supreme Court (the “Order”) on a without notice basis. The Order included, *inter alia*, a freezing order and a sole occupancy order.
13. On May 15, 2018, the Lawyer attended at the New Westminster Law Courts and reviewed the court file. As a result, he became aware of the NOFC and the Order that day. Shortly thereafter, the Lawyer informed his client of what he had found.
14. On June 18, 2018, opposing counsel for Z filed a notice of application (“June 18 Application”) seeking interim orders, returnable July 4, 2018. Opposing counsel served the NOFC, the Order, and the June 18 Application materials on X that day.
15. The Lawyer’s involvement as X’s family lawyer up to this point included: providing initial legal advice to X, attending at the courthouse on multiple occasions, obtaining photocopies of court records, informing X of the commenced proceedings and the Order, discussing a response to the NOFC with X, drafting an application to set aside the Order, and conducting legal research.
16. On June 25, 2018, the Lawyer wrote to opposing counsel (“June 25 Letter”) to advise that he had been retained as counsel by X. In his letter, the Lawyer also claimed that X had deposited \$20,000 into his trust account as living expenses for Z and the children, that he was waiting for the funds to clear the bank, and that he anticipated they would be available by June 29, 2018, if not earlier.
17. However, no such deposit had been made or was pending clearance. As such, when the Lawyer made the statements in his June 25 Letter to opposing counsel, he knew they were false or misleading.
18. The Lawyer has explained that he made the statements in order to encourage an interim arrangement. However, he now recognizes that this was wrong, and that he must always be truthful and scrupulously adhere to his duty to act honourably and with integrity.

Affidavit

19. On July 2, 2018, the Lawyer drafted an affidavit for X in support of a possible adjournment application. The next day, X swore to the contents of the affidavit before the Lawyer (the “Affidavit”).

20. The Affidavit included statements that:

- (a) had an earlier application been granted, X would probably not have been aware of the NOFC or the Order;
- (b) X retained the Lawyer as soon as he could once he was served with the NOFC, the Order, and the June 18 Application materials; and
- (c) X was very reluctant to agree to certain proposed terms because Z had created a situation where X would have to either accede to Z’s demands, or be forced to defend an application in circumstances where there was an insufficient amount of time to do so.

21. These statements were false because:

- (a) X knew about the NOFC and the Order on or about May 15, 2018, because the Lawyer had found them in the court file and had advised X of them;
- (b) X had retained the Lawyer as counsel in April 2018, months before being served in June 2018 with the NOFC, the Order, and the June 18 Application materials; and
- (c) X had known for some time about Z’s application and had sufficient time to prepare for the application.

22. The Affidavit was never filed with the court, as the parties were able to work out an interim arrangement themselves.

23. The Lawyer admits that when he drafted the Affidavit, he included the false statements to make it appear that X had only obtained the benefit of counsel following service of the

NOFC on June 20, 2018, as opposed to having known of it since May 15, 2018, thus leaving X at a significant disadvantage.

24. The Lawyer recognizes that his conduct was wrong, and that he must never draft affidavits that contain false or misleading statements.

Cash Rule

25. In August 2018, the Lawyer was retained by Y in a civil litigation matter.
26. The Lawyer received two cash retainer payments from Y amounting to \$8,000, and when the file came to an end, he provided a refund of \$1,868.47 by way of trust cheque instead of in cash, contrary to the Rules.
27. The Lawyer explained that when he wrote the refund cheque to his client, he would have reviewed the account ledger and issued the refund based on the funds remaining. However, the firm's client account ledgers did not include information about the form of funds received. The Lawyer further explained that he did not know he had received funds in cash because his office systems did not include that he review the client trust ledger, which references the form of funds received, before issuing a trust cheque.
28. The Lawyer now understands that before he issues a trust cheque, he must always review the relevant client trust ledger to ascertain, amongst other things, the form in which funds have been received. He also understands that if he has received more than \$7,500 in cash from a client, any refund to the client must be made in cash.

Mitigating Factors

29. At the time of the misconduct, as a four-year call, the Lawyer was a junior lawyer. He has admitted his misconduct and has cooperated with the Law Society's investigative processes. He is remorseful, and has advised the Law Society that he has not conducted himself similarly on other occasions and that he will not repeat such conduct in the future. As noted, he does not have a prior professional conduct record.