

DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

October 2016

Leda Kwichak
Commissioned: January 1981

Hearing Date: August 25, 2016
Panel: Kate Manvell (chair), Linda Manning, Ken Sherk, Patricia Wright, Rhoda Witherly
For the Society of Notaries Public: Marny Morin
For the Member: In Person

Background

1. This was a review by the directors pursuant to sections 34 and 35 of the *Notaries Act* of the report of the inquiry to determine whether the member is guilty of any of the conduct described in s. 28(1) as professional misconduct or a breach of a provision of the *Act* or a regulation or rule made under it or of a bylaw of the society, or conduct that in the opinion of the directors is contrary to the best interests of the public or the profession or tends to harm the standing of the notarial profession.
2. The inquiry into this matter was conducted July 19, 2016. The member attended at that time and the member and the Society made submissions to the panel. The inquiry panel report date July 29, 2016 was reviewed by the Directors.
3. Counsel was present to assist the panel members at the hearing and the directors on review and in writing this report.

The Notice of Inquiry

4. The Notice of Inquiry received by the member alleged the following:

Re: Estate of A.M.P., Deceased

That you are in breach of Rule 8.02 in that you failed to respond to requests for information from The Society of Notaries Public of British Columbia (the “Society”) regarding a complaint filed by D.D. on behalf of beneficiary A.M.H., formerly A.M.N. (“Ms. H”).

That you are in breach of Rule 2.17 in that you failed to inform the Society that an action had been commenced by Ms. H. against you as executor and trustee of the Estate of A.M.P., deceased, Action No. 17990 in the New Westminster Registry (the “Action”), on April 17, 2016.

That you are in breach of Rule 2.16 in that you failed to inform the Society that default judgment was issued in the Action on June 7, 2016 ordering you to pay damages - to be assessed - and the plaintiff’s costs - to be assessed.

And that this conduct is contrary to the best interests of the public, harms the standing of the notarial profession and is professional misconduct.

Facts and Admissions

5. This matter involves the Estate of A.M.P., deceased. A.M.P. died leaving a will naming the member as executor. The member was granted probate in the Estate.
6. In 2000, Ms. H sued the member, as personal representative of the Estate of A.M.P., and the beneficiaries. By Court Order dated January 16, 2001, the member, as executor, was ordered to transfer title of the deceased's condominium to M.N. The Court Order then stated that M.N. disclaimed any entitlement to the residue of the Estate and the member was ordered to divide the residue into equal shares for the deceased's grandchildren, Ms. H and C.J.N. ("Mr. N"), both minors at the time, and to invest such shares in a deferred annuity until the grandchildren turned 25 years old.
7. As a result of the Court Order, the sum of \$11,850 for each of Ms. H and Mr. N, was paid to the member on August 27, 2002, to be invested in accordance with the Order.
8. Ms. H turned 25 years old in 2012.
9. A complaint was made to the Society by lawyer D.D. in April of 2016. In his complaint, D.D. said he represented Ms. H who had been trying to obtain an accounting and her bequest since she turned 25. In his complaint, D.D. stated that Ms. H had contacted the member more than 23 times and had not received a substantive answer to her questions, an accounting of the investment, or the balance of her inheritance. D.D. said he had written to the member demanding an accounting and the funds by April 12, 2016. The member did not respond to him.
10. The complaint was sent to the member for a response on April 26, 2016. The member did not respond.
11. A reminder was sent to the member on May 12, 2016. The member did not respond.
12. D.D. contacted the Society in May and advised that he had not heard from the member and had proceeded with a Notice of Civil Claim. The Notice of Civil Claim was filed on April 27, 2016.
13. A reminder was sent to the member on June 1, 2016 asking for a response to the complaint and advising her that the Society was aware of the Notice of Civil Claim and asked if she had been served and if she had reported it to her insurer. The member did not respond.
14. On or about June 7, 2016, D.D. obtained default judgment against the member in the Action commenced by Ms. H in April. The member did not report the default judgment against her.
15. The member did not notify the Society of the default judgment.
16. A three-member panel of the Discipline Committee of the Society met on June 20, 2016. After reviewing the complaint, that panel ordered the suspension of the member, pending an inquiry pursuant to Section 27(4) of the *Notaries Act*.
17. In the member's submissions at the inquiry, the member provided the panel with a package of documents evidencing that the member had invested the funds on behalf of the grandchildren in accordance with the Court Order and that the investments had matured.

18. Although both of the grandchildren have attained the age of 25, the funds have not been completely distributed to them. A partial distribution of \$8,000 was made to Mr. N in 2015 and no funds have been distributed to Ms. H. As noted above, Ms. H. turned 25 years old in 2012.

19. The member has received a fee for her work as executor of the Estate.

20. The member and the Society agree with the material facts.

Decision

20. Given the admissions made by the member and that the member and the Society accept the findings of the inquiry panel, the directors accept the inquiry report and find that the member has breached the *Act* and Rules as described in the Notice of Inquiry and that her actions constitute professional misconduct.

21. The Board agrees with the comments of the inquiry panel regarding the gravity of the offences and that the member's behavior was completely unacceptable. There is no excuse for the member's inordinate delay in distributing the funds to the grandchildren and providing them with an accounting. Furthermore, there is no excuse for the member's failure to notify her insurer regarding the Notice of Civil Claim and her failure to respond to the complaint made by D.D. and the Society's inquiries.

Penalty

22. After deciding the issue of liability, the Board received a joint submission on penalty from the member and the Society.

23. The member has been suspended since June 22, 2016 pursuant to section 27(4) of the *Notaries Act*.

24. The member has now finalized payment of the beneficiary funds as required in the estate at issue and has received a notice of discontinuance in the Action.

25. The member and the Society agreed on a proposed penalty, taking three matters into consideration:

- a. That by the date of the hearing to review the inquiry report the member had been suspended two months;
 - b. The seriousness of the matter; and
 - c. Protection of the public.
2. In view of the admissions and agreed facts, the directors have assessed the following penalty in this matter:
- a. The member undertake not to permit herself to be appointed as executor or administrator in the estate of a deceased person as long as she is a member of the Society. This undertaking excludes four estates that the member currently has ongoing, which are specifically referenced in the joint submission on penalty. The member has indicated that all four of those estates are in the final stages of wind up and all estate funds related to the four estates are in estate accounts and are not in the member's trust accounts;

- b. The member be reinstated;
- c. The member pay a contribution to costs of these proceedings in the amount of \$1,500.00.

The Member was reinstated on August 25, 2016.