

To: Craig Ferris, QC [REDACTED]
Cc: Michael Lucas [REDACTED]; Lance Cooke [REDACTED]; Jeanette McPhee [REDACTED]
From: Deborah Armour, QC [O=THE LAW SOCIETY OF BC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DARMOUR]
Sent: Fri 5/11/2018 5:34:20 AM (UTC)
Subject: Re: Code of Conduct Rule 3.2-7 Commentary

Thanks Craig. We will take up the challenge... To provide you with some variety if not greater protection for the public.

> On May 10, 2018, at 9:52 PM, Craig Ferris <[REDACTED]> wrote:

>
> Don't recall where this came from. However historically I am not sure many would have assumed lawyers could not use trust accounts for client business where legal services were not required. For example to hold good faith money so a client can negotiate a deal or other legitimate business uses. I understand that this is now the view. I am not sure much is gained from a historical analysis of where this commentary came from, if we want it changed Profcom should send a memo to Ethics asking as such. It would be a relief to discuss something other than changes to the model code

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> C.
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> Craig A.B. Ferris, Q.C. | Partner
> D [REDACTED] | M [REDACTED]
> E. [REDACTED] <mailto:[REDACTED]>
> LAWSON LUNDELL LLP
> Vancouver | Calgary | Yellowknife

> Sent from my iPad

> On May 10, 2018, at 5:27 PM, "[REDACTED] <mailto:[REDACTED]>" <[REDACTED] <mailto:[REDACTED]>> wrote:

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> All,
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> You are included in this email because you are Chair of the AML Working Group, Chair of Ethics Committee, Director of Policy and Planning and/or Policy support to the Ethics Committee.

>
> I was reviewing the commentary to Code rule 3.2-7 and became concerned about commentary [3.1]. I reproduce the rule and all commentary below.

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> Commentary [3.1] says that a lawyer should ask questions when faced with a client who wants to use the lawyer's trust account without requiring legal services. That suggests that it might be ok depending on the answers the lawyer receives. Our view in Professional Regulation is that it is never ok to allow a trust account to be used without providing legal services. The commentary should say that the lawyer should refuse to act for someone who wants to use a trust account without legal services. It is wrong per se.

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> Let me know if there is some basis for a contrary view. This is a live and very significant issue right now.

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> I would be interested in knowing how this commentary found its way into the Code. It is not in the Model Code.

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> Dishonesty, fraud by client
> 3.2-7 A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.
> [amended 04/2013]
> Commentary

> [1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

> [2] A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

> [3] Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.

> [3.1] The lawyer should also make inquiries of a client who:

> (a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter, or

> (b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

> [3.2] The lawyer should make a record of the results of these inquiries.

> [4] A bona fide test case is not necessarily precluded by this rule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case. In all situations, the lawyer should ensure that the client appreciates the

consequences of bringing a test case.

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