IN THE MATTER OF PART 2 OF THE
***LEGAL PROFESSION ACT*, RSA 2000, c. L-8**

AND

IN THE MATTER OF A SECTION 32 RESIGNATION APPLICATION
REGARDING TOBY SCHULTZ
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Resignation Committee

Buddy Melnyk – Chair (Bencher)
Deanna Steblyk – Committee Member (Bencher)
Elizabeth Hak – Committee Member (Lay Bencher)

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)
Toby Schultz – Self-Represented

Hearing Date

April 9, 2019

Hearing Location

LSA office, at 500, 919 - 11 Avenue SW, Calgary, Alberta

RESIGNATION COMMITTEE REPORT

Overview

1. Toby Schultz was admitted to the Law Society of Alberta on July 18, 2006. Mr. Schultz was a sole practitioner during his career until December 19, 2016. Mr. Schultz's employment as a lawyer consisted mainly of civil litigation, corporate/commercial, and some real estate conveyancing and wills and estates work.

2. Mr. Schultz applied for resignation from the LSA, pursuant to section 32 of the *Legal Profession Act*, R.S.A. 2000, c.L-8 (the *Act*). Because Mr. Schultz's conduct is the subject of citations issued pursuant to the *Act*, this Resignation Committee (Committee) was constituted to hear this application.

3. Mr. Schultz has been an inactive member of the LSA since December 19, 2016. Mr. Schultz is currently suspended from the LSA as of June 30, 2017 for non-payment of his ALIA deductible. Mr. Schultz does not have a disciplinary record with the LSA.

4. After reviewing all of the evidence and exhibits, and hearing the arguments of the LSA and Mr. Schultz, the Committee allowed the application pursuant to section 32 of the *Act* with oral reasons, and advised that a written decision would follow. This is that written decision.

Preliminary Matters

5. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into Mr. Schultz's resignation application proceeded.

Citations

6. Mr. Schultz faced the following citations:

CO20161145

(1) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to take steps to follow the Litigation Plan filed on March 22, 2013 and that such conduct is deserving of sanction.

(2) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to file a Form 37 on his client's behalf and that such conduct is deserving of sanction.

(3) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to prepare and file the required documents and evidence to move his client's action forward and that such conduct is deserving of sanction.

(4) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to attend court on his client's behalf and that such conduct is deserving of sanction.

(5) It is alleged that Toby D. Schultz failed to take steps to preserve his client's claim after it was dismissed and that such conduct is deserving of sanction.

(6) It is alleged that Toby D. Schultz failed to withdraw as counsel of record for G.T. upon realizing he was not competent to continue to handle G.T.'s litigation matter and that such conduct is deserving of sanction.

CO20162233

(7) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client, A.F.S., when he failed to file an Affidavit of Records on her behalf and that such conduct is deserving of sanction.

(8) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client, A.F.S., when he failed to attend court on her behalf and that such conduct is deserving of sanction.

(9) It is alleged that Toby D. Schultz failed to respond to communications from another lawyer and that such conduct is deserving of sanction.

(10) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client, A.F.S., when he failed to communicate with her and keep her updated on the status of her matter and that such conduct is deserving of sanction.

CO20170038

(11) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to follow up on the application to set aside the Default Judgment granted against her and that such conduct is deserving of sanction.

(12) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to address a Writ of Enforcement granted against her and such conduct is deserving of sanction.

CO20163072

(13) It is alleged that Toby D. Schultz breached Rule 119.21(4) of the Rules of the Law Society of Alberta when he failed to provide Statements of Account to his clients prior to disbursing Trust funds, and that such conduct is deserving of sanction.

(14) It is alleged that Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he improperly billed clients and that such conduct is deserving of sanction.

(15) It is alleged that Toby D. Schultz breached Rule 119.19(1) of the Rules of the Law Society of Alberta when he failed to deposit Trust funds into his Trust Account on or before the next banking day and that such conduct is deserving of sanction.

(16) It is alleged that Toby D. Schultz breached Rule 119.21(2)(3)(a)(ii) of the Rules of the Law Society of Alberta when he transferred Trust funds between client ledgers without obtaining his client's authorization and that such conduct is deserving of sanction.

(17) It is alleged Toby D. Schultz failed to fulfill an Undertaking and that such conduct is deserving of sanction.

Statement of Facts and Admission of Guilt

7. On April 2, 2019 Mr. Schultz signed a Statement of Admitted Facts and Admissions of Guilt, which was Exhibit 7D in this hearing. A redacted version has been appended to this decision. Counsel for the LSA did not object to this Statement and the Committee treated same as being an Agreed Statement of Facts.

The Evidence

8. The evidence as set out in the Statement of Admitted Facts and Admissions of Guilt can be summarized as follows:

CO20161145

Mr. Schultz was hired to act for a Plaintiff in respect of two motor vehicle accidents. A Standard Litigation Plan was consented to by Mr. Schultz, but he failed to serve the expert reports within the timelines under that Plan. In addition, Mr. Schultz failed to file Form 37 to have the matter set down for trial and did not complete a Record of Pleadings. The opposing party brought applications to dismiss both actions due to the long delay and those applications were emailed to Mr. Schultz. Mr. Schultz states he was not aware of the emailed applications since they had been marked as "read" in his inbox. As a result, Mr. Schultz did not attend at court to speak to the applications. An Order dismissing the actions was granted, which was to be effective in 30 days to allow Mr. Schultz time to make an application to show cause why the actions should be allowed to continue. Mr. Schultz did not pursue any application to set aside or appeal the Order, or show cause why the actions should be allowed to proceed.

CO20162233

Mr. Schultz was retained by a corporation to defend an action. Mr. Schultz failed to serve an Affidavit of Records in accordance with the Rules of Court. The opposing counsel sent several communications to Mr. Schultz regarding the Affidavit of Records, but Mr. Schultz failed to respond to any of these communications. The opposing party brought

an application to compel the production of the Affidavit of Records and this application was emailed to Mr. Schultz. Mr. Schultz states he was not aware of the emailed application since it had been marked as “read” in his inbox, and as a result, Mr. Schultz did not attend at court to speak to the application. An Order was granted which directed that an Affidavit of Records be filed and served, failing which the client’s Statement of Defence and Counterclaim would be struck. Again, Mr. Schultz states he did not see the email copy of the Order since it had been marked as “read” in his inbox. Consequently, Mr. Schultz's client was noted in default. Mr. Schultz also failed to communicate with the client for a period of approximately eleven months.

CO20170038

Mr. Schultz was retained to set aside a default judgment against the client arising from an action for breach of contract involving a failed real estate deal. Mr. Schultz filed the necessary application to set aside the Default Judgment (and the consequential Writ of Enforcement). The parties agreed to adjourn this application to a Special Chambers Application, to conduct cross-examination on the client’s affidavit and to extend the deadline for the Financial Statement of Debtor Form. Mr. Schultz took no further steps to schedule a Special Chambers Application to deal with setting aside the Default Judgment.

CO20163072

In December 2016, when Mr. Schultz became an inactive member, he advised the LSA that his accounting records were not current. The resulting investigation by the LSA revealed that Mr. Schultz failed to provide statements of account to his clients prior to disbursing trust funds, he double-billed clients, he deposited funds to his general account from clients for work not yet done, and he transferred funds between client ledger trust accounts without client consent. Finally, Mr. Schultz failed in his undertaking to hold back $5,000.00 following the closing of a real estate matter.

The Submissions of the Parties

9. Counsel for the LSA advised that the LSA was consenting to this application. LSA counsel further advised that Mr. Schultz had signed the appropriate undertakings with the LSA, such that Mr. Schultz agreed to pay costs prior to any later application for reinstatement.

10. Mr. Schultz made application to have paragraphs 61, 171 and 172 of his Statement of Admitted Facts and Admissions of Guilt redacted and not made public. Counsel for the LSA did not oppose this application.

Analysis

11. LSA counsel supported Mr. Schultz's application for resignation, agreeing that Mr. Schultz's resignation pursuant to section 32 of the *Act* served the public interest. As such, the Committee considered this application to be a joint submission and therefore deserving of deference, unless it was demonstrably unfit or unreasonable, or contrary to the public interest.

12. The fundamental issue to be determined by this Committee is whether it is in the best interests of the public and in the interests of the profession to permit the lawyer to resign prior to the resolution of the outstanding conduct matters. In considering whether or not to grant the resignation application this Committee has considered the following factors:
    (a) The nature of the lawyer's alleged conduct, which was competency-based, and did not involve a breach of trust or a dishonest motive;
    (b) The lack of a prior discipline record;
    (c) Mr. Schultz's positive involvement in the discipline process; and
    (d) The personal problems experienced by Mr. Schultz during the periods of time when the conduct occurred.

Decision

13. Considering the evidence from the hearing and the Statement of Admitted Facts and Admissions of Guilt, the Committee determined that it was in the best interests of the public to accept Mr. Schultz's application to resign pursuant to section 32, effective April 9, 2019.

14. The Committee accepted the undertakings made by Mr. Schultz.

15. The Committee has reviewed the costs of hearing this application, as prepared by the LSA. The Committee has determined that Mr. Schultz must pay these costs prior to any later application for reinstatement.

16. Pursuant to subsection 32(2) of the *Act*, Mr. Schultz's name will be struck off the roll. The roll shall reflect that Mr. Schultz's application under section 32 of the *Act* was allowed on April 9, 2019.

Concluding Matters

17. The exhibits and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee. However, identifying information in relation to persons other than Mr. Schultz will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Furthermore, paragraphs 61, 171 and 172 of the Statement of Admitted Facts and Admissions of Guilt shall be redacted and not made publicly available.

18. A Notice to the Profession will be issued.

19. A Notice to the Attorney General is not required.

Dated at Calgary, Alberta, April 11, 2019.

_____

Buddy Melnyk - Chair

_____

Deanna Steblyk

_____

Elizabeth Hak

Schedule 1

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A RESIGNATION APPLICATION BY
TOBY D. SCHULTZ
A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING FILE HE20170298

STATEMENT OF ADMITTED FACTS AND ADMISSIONS OF GUILT

BACKGROUND

1. I was admitted as a member of the Law Society of Alberta (the "**LSA**") on July 18, 2006.

2. Between 2009 and 2012, I began operating an independent practice associated with Your Lawyer LLP and on January 1, 2013, I opened my own firm, Willow Park Law Office, in Calgary. My practice consisted primarily of civil litigation and corporate/commercial work. I also performed some real estate conveyancing and wills & estates work.

3. On December 19, 2016, I became an inactive member of the LSA.

4. On June 30, 2017, I was suspended for non-payment of the ALIA deductible.

APPLICATION FOR RESIGNATION

5. I am applying to resign as a member of the LSA.

6. My application arises out of five complaints, four of which have resulted in 17 formal citations, and one of which is under investigation and has yet to be referred to the Conduct Committee.

7. I am making this application to resign to avoid a lengthy hearing, to prevent inconvenience to witnesses and panel members, and to bring these long-standing complaints to a conclusion.

FACTS AND ADMISSIONS

8. I admit as facts the statements contained in this Statement of Admitted Facts.

9. Where I make specific admissions to the conduct described herein, I am also admitting that the described conduct is "conduct deserving of sanction" as defined in section 49 of the *Legal Profession Act* (the "***Act***").

NO DURESS AND INDEPENDENT LEGAL ADVICE

10. I have had the opportunity to consult with legal counsel and confirm that I have signed this statement voluntarily and without any compulsion or duress.

COMPLAINT #1: G.T. (CO20161145)

Background

11. On May 3, 2016, the LSA received a Lawyer Complaint Form from G.T., a former client of mine, alleging poor client service.

12. The LSA conducted a review of the allegation, which resulted in a referral to the Conduct Committee.

13. On July 6, 2016, the Conduct Committee directed that the following six citations be dealt with by a Hearing Committee:

    1. It is alleged Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to take steps to follow the Litigation Plan filed on March 22, 2013 and that such conduct is deserving of sanction;

    2. It is alleged Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when failed to file a Form 37 on his client's behalf and that such conduct is deserving of sanction;

    3. It is alleged Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to prepare and file the required documents and evidence to move his client's action forward and that such conduct is deserving of sanction;

    4. It is alleged Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to this client when he failed to attend Court on his client's behalf and that such conduct is deserving of sanction.

    5. It is alleged Toby D. Schultz failed to take steps to preserve his client's claim after it was dismissed and that such conduct is deserving of sanction; and

    6. It is alleged Toby D. Schultz failed to withdraw as counsel of record for G.T. upon realizing he was not competent to continue to handle G.T.'s litigation matter and that such conduct is deserving of sanction.

Facts

14. I was retained by G.T. in November 2009 after the withdrawal of his first lawyer. At first, this was a limited retainer during which I agreed to provide him with litigation support in two lawsuits in which he was the Plaintiff.

15. The lawsuits arose out of two motor vehicle accidents, one in December 2003 (Statement of Claim filed on September 13, 2005) (the "**D&J Action**") and the second in October 2004 (Statement of Claim filed on October 24, 2006) (the "**[D] Action**") (collectively, the "**Actions**").

16. By the time I had been retained, the D&J Action was four years old and the [D] Action was three years old. Pleadings were closed, Affidavits of Records had been exchanged, the initial Questioning of G.T. had occurred, and the parties had participated in a Judicial Dispute Resolution ("**JDR**") without success.

17. Although I had never represented the Plaintiff in the Court of Queen's Bench, I became G.T.'s counsel of record when he asked me to attend a Pre-Trial Conference with him on December […], 2009. A few months later, on February […], 2010, I attended a Questioning on Undertakings of G.T., which resulted in additional undertakings.

18. Over the next 2½ years, I did little to move the Actions forward at the request of G.T. while G.T. took steps to gather responses to undertakings and to marshal expert evidence. We occasionally discussed strategy.

19. On August 22, 2012, G.T. and I attended a mediation that did not result in a settlement. G.T. then instructed me to start preparing for trial.

20. Seven months later, on March 22, 2013, I consented to the filing of a Standard Litigation Plan prepared by opposing counsel, which gave me five months (i.e. until August 22, 2013) to serve the Plaintiff's primary care expert reports on the Defendants.

21. I did not comply with the deadline of August 22, 2013. Because of the length of time that G.T. have gone without a medical diagnosis, I was having trouble identifying witnesses, obtaining loss valuations, and obtaining medical evidence. As was typical throughout the retainer, I allowed G.T. to do much of the work himself (which was his preference), which included preparing expert reports even though it eventually became clear to me that those reports were flawed.

22. Seven months later, on March 26, 2014, opposing counsel emailed me a draft order to consolidate the Actions as well as a draft Form 37, also known as a "Request to Schedule a Trial Date", for my consideration and comments. I consented to the Consolidation Order which was filed on June 11, 2014. I did not return the Form 37 as I had identified I had insufficient information from the client to do so.

23. On June 15, 2014, I was served with the expert reports of the defendants in the D&J Action.

24. In a letter dated September 5, 2014, counsel for the D&J Defendants took the position that G.T. had defaulted on the Litigation Plan and requested that I provide him with a

proposed Form 37 within one week. He further advised me that he intended to bring an application for sanctions and to strike the D&J Action in two months if nothing was done.

25. I did not provide copies of my client's expert reports, nor did I provide a copy of the Form 37.

26. On October 28, 2014, the Defendants filed an application to set a trial date, which resulted in an Order filed on November 5, 2014, which provided as follows:

> 1. The Plaintiff be compelled to complete and return the outstanding Form 37 on or before November 21, 2014.
>
> 2. Should the Plaintiff fail to complete and return the outstanding Form 37 on or before November 21, 2014, the Defendants shall have leave to apply for an Order to compel the Plaintiff to show cause why the Statement of Claim shall not be struck.
>
> 3. The parties shall exchange their respective experts' reports in Form 25 on or before December 31, 2014.
>
> 4. Costs of this Application payable forthwith in an amount of $750.00.

27. On November 21, 2014, I emailed an update to opposing counsel and provided them with three expert reports and a nearly complete Form 37.

28. Between November 24, 2014, and December 23, 2014, I exchanged several emails with opposing counsel, including:

a. On December 11, 2014, when counsel for the D&J Defendants asked me about the Form 37 and outstanding costs award of $750.00. He also noted the following in his email:

> You had also mentioned that you were considering new counsel for trial. Please provide an update in this regard, as your client may face new costs consequences for any application for possible adjournments, which will be vehemently opposed, provided you client is even able to secure new counsel at this very late stage.

b. On December 15, 2014, I emailed a draft version of the Form 37 and requested that opposing counsel provide me with the names of their expert and lay witnesses. By December 23, 2015, opposing counsel had provided me with the missing information, although they did not provide me with the names of their lay witnesses.

29. On January 13, 2015, the Defendants filed an application to hold G.T. in civil contempt for his failure to pay the outstanding costs of $750.00 (the "**Contempt Application**"), which I eventually paid personally.

30. On January 22, 2015, I circulated a draft version of the Form 37 to opposing counsel.

31. On January 29, 2015, opposing counsel advised me that they were in the process of executing the Form 37 and that they would adjourn the Contempt Application *sine die*.

32. On March 10, 2015, having not received the executed Form 37, I emailed opposing counsel requesting that they provide me with an executed copy. They provided it to me shortly thereafter but I did not file it immediately.

33. On March 31, 2015, and again April 22, 2015, opposing counsel followed up by email asking for an update on the Form 37.

34. On April 27, 2015, I filed the Form 37. That day, the Court Clerk advised me that I also needed to file a Record of Pleadings, a document with which I was unfamiliar, never having prepared one.

35. On May 21, 2015, both opposing counsel asked for an update on obtaining a trial date.

36. On May 22, 2015, I emailed opposing counsel to let them know that I was having a problem with assembling the Record of Pleadings and asked them to provide me with filed materials which G.T. had no record of having received.

37. In that email, I advised opposing counsel that we had been working on an extremely lengthy Notice to Admit that they would be receiving in due course. In fact, I had asked G.T. to draft the Notice to Admit, the result of which was unusable.

38. On June 1, 2015, I emailed opposing counsel to advise them that I intended to attend the Courthouse to locate and copy the missing documents. I stated that I would have the Record of Pleadings filed by June 3, 2015.

39. After receiving additional emails from opposing counsel in June and July of 2015, I attempted to file the Record of Pleadings, but it was rejected.

40. On July 15, 2015, I emailed opposing counsel as follows:

> I apologize for failing to update you further. This is a little embarrassing – I have never filed a Record of Pleadings before I can't seem to get it right. I have a voicemail from Judy the trial coordinator and I expect to work it out with her. Subject to me having to order further documents from the Courthouse I do expect to have this sorted out in a matter of days.

41. In August 2015, I enlisted my student-at-law to research how to correctly draft a Record of Pleadings.

42. Between July 15, 2015, and August 5, 2015, I exchanged a series of voicemails with the trial coordinator who told me that even though the Form 37 had been filed, the Actions would not be set down for trial until opposing counsel had provided all witness names and a realistic trial time had been determined given the number of proposed witnesses.

43. On August 5, 2015, I emailed opposing counsel explaining the issue and asking how they proposed dealing with the trial coordinator. I received a response the next day from

counsel for the [D] Defendants and no response from counsel for the J&D [sic] Defendants.

44. On November 30, 2015, I filed the Record of Pleadings, after seeking and receiving help from my Court runner.

45. On December 4, 2015, opposing counsel emailed me separate Applications to dismiss the Actions for long delay and failure to set the matter down for trial, returnable on December […], 2015.

46. Although the materials were sent to my email address, I did not see them because they had been marked as "read" in my inbox. Consequently, I did not attend Court on December […], 2015.

47. On December […], 2015, after hearing from opposing counsel, the Court dismissed the claims for long delay. However, the Court stayed the dismissals for 30 days to provide me with an opportunity to appear and show cause as to why the Actions should be allowed to continue.

48. Later that day, counsel for the [D] Defendants emailed me with a summary of what had happened and stated the following:

> The Orders received were that both actions were dismissed effective 30 days from now subject to you making an application to show cause why they should not be dismissed before the 30 days.
> …
> If it is your intention to challenge the dismissals I would suggest we agree on a date in January prior to the 30 days as soon as possible. We will need your application materials well in advance as a cross-examination on your affidavit may be required.

49. I replied shortly thereafter:

> I expect to appeal the Orders. Please arrange for PROPER service of the Orders at your earliest convenience. I would also appreciate receiving a copy of your application.

50. The materials were delivered to my office by courier later that day.

51. A few hours later, G.T. learned from his former lawyer, who happened to be in the Courtroom that day, that his Actions had been dismissed and that he had 30 days to show cause. G.T. forwarded that email to me, and I responded as follows:

> Will call later about this. It's not as bad as it sounds. They didn't serve me properly with their application.

52. The Dismissal Order in the [D] Action was filed on December 23, 2015, and served on me the next day, December 24, 2015.

53. The Dismissal Order in the D&J Action was filed on December 23, 2015 and served on me on December 29, 2016.

54. The 30-day deadline by which I was to file an application on behalf of G.T. was, at the latest, January 29, 2016.

55. I did not file anything to show cause and the Actions were automatically dismissed on January 30, 2016, pursuant to the terms of the Dismissal Orders.

56. I did not follow up on the dismissal of G.T.'s action because I was depressed and dealing with a serious family situation. I was also overworked with other matters, including a previously-scheduled Supreme Court of Canada matter in which I was counsel and a high-pressure receivership action involving a hotel in Canmore that I represented.

57. Regarding this Supreme Court of Canada matter,

    a. On January 7, 2016, I filed my client's factum; and

    b. On January […], 2016, I appeared before the Supreme Court of Canada for oral arguments

58. On January 20, 2016, I spoke with G.T. over the telephone and advised him that I had the matter under control, by which he understood that I was taking steps to preserve his Actions.

59. Although I had not filed an application during the 30-day period, I thought that I could make an application directly to the Justice that had granted the dismissal Order as I felt that the materials that were filed did not support the oral representations made by counsel in my absence. Because of this, I needed to order transcripts which were likely to take more than the 30 days. I was also of the view that this approach was the proper approach based on the Alberta Rules of Court.

60. In any event, my family situation became even worse over the next several months and I did not attend to this matter. I never took steps to rectify the situation, nor did I report this matter to ALIA until June 23, 2016, after G.T. filed this complaint.

61. [paragraph redacted]

62. Repair counsel retained by ALIA filed Notices of Appeal in both matters on July 29, 2016. This was contrary to the approach that I had recommended, which was to bring an application before the Justice that granted the dismissal Order.

63. I worked with repair counsel by swearing an Affidavit in support of an application to the Court of Appeal to extend the time to appeal the Order to Dismiss. G.T. also filed an affidavit.

64. The Application to extend the time to appeal the Dismissal Orders was heard in the Court of Appeal on August […], 2016 and dismissed in a written decision dated October […], 2016.

65. On July 25, 2016, the D&J Defendants were awarded costs in the amount of $9,636.00.

66. On January 23, 2017, the [D] Defendants were awarded costs in the amount of $14,879.00.

Admissions of Guilt

Citation 1: Failure to Comply with Litigation Plan

67. I admit that I failed to provide competent, timely, and diligent service to G.T. by:

    a. Failing to impress upon G.T. the importance of complying with the Standard Case Litigation Plan filed on March 22, 2013, in which the five-month deadline contemplated the filing of his expert reports; and

    b. Failing to seek extensions or following up for the filing of the expert reports,

    all of which is contrary to Rule 3.2-1 of the *Code of Conduct* (the "***Code***").

Citation 2: Failure to File Form 37

68. I admit that I failed to provide competent, timely, conscientious, and diligent service to G.T. when failed to file a Form 37 in a timely manner, particulars of which are:

    a. Failing to complete and return a draft Form 37 that had been provided to me by opposing counsel on March 26, 2014;

    b. Failing to return a completed Form 37 as requested in opposing counsel's letter of September 5, 2014, which prompted an application and Court Order dated November […], 2014 directing me to produce it by November 21, 2014, a deadline with which I did not comply; and

    c. Failing to take procedural steps after having filed a Form 37 to deal with opposing counsel's reluctance to name their lay witnesses, which was causing me problems with the Trial Coordinator;

    all of which is contrary to Rule 3.2-1 of the *Code*.

Citation 3: Timely Record of Pleadings

69. I admit that I failed to provide timely service to G.T. when it took me seven months to file a Record of Pleadings, contrary to Rule 3.2-1 of the *Code*.

Citation 4: Failure to Attend Court

70. I admit that I failed to provide competent and diligent service to G.T. by failing to implement a system that would have allowed me to be alerted the Defendants' applications to strike, which were provided to me by email on December 4, 2015, and which resulted in my failure to attend Court on December 14, 2015, which is contrary to Rule 3.2-1 of the *Code*.

Citation 5: Failure to Take Steps to Preserve Claim

71. I admit that I failed to provide competent, timely, conscientious, and diligent service to G.T. by failing to take steps to preserve his claim after it was provisionally dismissed on December 14, 2015, particulars of which are:

    a. Failing to file an application to show cause within the 30-day period permitted by the Orders to Dismiss, despite advising G.T. that I had the matter under control; and

    b. Failing to take any steps whatsoever in the five months after the dismissals until I reported the matter to ALIA on June 23, 2016, which is several weeks after G.T. had complained to the LSA,

    all of which is contrary to Rule 3.2-1 of the *Code*.

Citation 6: Failure to Withdraw as Counsel of Record

72. I admit that I failed to provide competent and diligent service to G.T. by not taking steps to withdraw as counsel of record upon realizing that I was not competent to continue to handle his litigation matter and which I had contemplated as early as December 31, 2014, contrary to Rule 3.7-5(c) of the *Code*.

COMPLAINT #2: M.W. FOR AFS (CO20162233)

Background

73. On September 12, 2016, the LSA received a complaint from **M.W.**, a principal of a company known as **AFS**, a former client of mine, alleging poor client service.

74. The LSA conducted a review of the allegation, which resulted in a referral to the Conduct Committee.

75. On October 25, 2017, the Conduct Committee directed that the following four citations be dealt with by a Hearing Committee:

7. It is alleged Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client, M.W., when he failed to file an Affidavit of Records on her behalf and that such conduct is deserving of sanction;

8. It is alleged Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client, M.W., when he failed to attend Court on her behalf and that such conduct is deserving of sanction;

9. It is alleged Toby D. Schultz failed to respond to communications from another lawyer and that such conduct is deserving of sanction; and

10. It is alleged Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client, M.W., when he failed to communicate with her and keep her updated on the status of her matter and that such conduct is deserving of sanction.

Amendment to Citations

76. On February 12, 2019, the Vice-Chair of Conduct permitted an amendment that recognized that my client was AFS and not M.W. personally. The citations were amended accordingly.

Facts

77. On June 22, 2015, I was contacted by G.T., a director of AFS, asking if I could defend the corporation in a lawsuit that had been filed on June 4, 2015. I agreed and received a $1,500.00 retainer on June 24, 2015.

78. On June 24, 2015, I wrote to opposing counsel and requested an extension to June 30, 2015, to file a Statement of Defence, which courtesy was granted a few days later.

79. On June 29, 2015, I filed a Statement of Defence and Counterclaim on behalf of AFS and served it on opposing counsel shortly thereafter. On July 21, 2015, the Plaintiffs filed and served a Defence to the Counterclaim.

80. On August 24, 2015, opposing counsel served me with the Plaintiffs' Affidavit of Records. On September 11, 2015, I emailed M.W., the President of AFS, to provide her with a copy of the Plaintiffs' Affidavit of Records.

81. Pursuant to the Rules of Court in effect at the time, AFS had two months from the date of service of the Plaintiffs' Affidavit of Records to serve its own Affidavit of Records. This meant that AFS had until October 26, 2015, to serve its Affidavit of Records on the Plaintiffs.

82. On September 15, 2015, I started to prepare the Affidavit of Records and emailed M.W. to let her know about the upcoming deadline.

83. On October 8, 2015, I emailed opposing counsel to advise him that AFS had been considering a corporate dissolution at its upcoming Annual General Meeting and that I wanted to discuss the matter further with him.

84. Between October 8, 2015 and November 26, 2015, opposing counsel attempted to arrange for a telephone conference six times (October 8; October 22; October 26; November 5; November 18; and November 26). As discussed previously, I was experiencing difficult family circumstances at the time, which is why I did not respond to his communications. Further, I had been invited to meet with the client at the client's annual General Meeting to discuss the matter and have the Affidavit of Records sworn, but this attendance was cancelled by the client.

85. On November 26, 2015, opposing counsel stated the following in his letter:

> Further to the above noted matter, and our letters of October 8, October 22, October 26, November 5, and November 18, we note that we have yet to receive the courtesy of a response from you or your office.
>
> We also note that, notwithstanding the fact that our client's Affidavit of Records was served on you on August 24, 2015, we have yet to receive your client's Affidavit of Records. You are therefore in contravention of Rule 5.5(3).
>
> Please accept this correspondence as formal notice that, should we fail to receive your client's Affidavit of Records prior to the close of business on November 27, 2015, we have been instructed to proceed according to the Rules.

86. On December 9, 2015, opposing counsel emailed me a copy of an Application returnable on December […], 2015, to compel the production of an Affidavit of Records from AFS plus a costs penalty pursuant to the Rules of Court for having failed to serve an Affidavit of Records within the deadline.

87. I did not see the application in my inbox as it had been marked "read". Consequently, I did not attend the application on December […], 2015.

88. On December […], 2015, the Court issued an Order which provided as follows:

> 1. The Defendant shall file and serve their Affidavit of Records on the Solicitor for the Plaintiffs on or before January 15, 2016.
>
> 2. The Defendant shall pay the Plaintiffs costs in the amount of two times the amount set out in item 3.1 of the Tariff in Division 2, Schedule C, that being $2,000 forthwith.
>
> 3. In default of the Defendant preparing and serving their Affidavit of Records as required in clause 1 of this Order, the Statement of Defence and the Counterclaim filed by the Defendant shall be struck, and the Plaintiff shall be entitled to apply for a default judgment against the Defendant.
>
> 4. If the Defendant does not pay the monetary penalty outlined in clause 2 of this Order within 30 days of the date of this Order was granted, the Statement of Defence and the Counterclaim filed by the Defendant shall be struck, and the Plaintiff shall be entitled to apply for a default judgment

against the Defendant.

89. On December 17, 2015, opposing counsel emailed me a copy of the Order.

90. I again did not see the Order in my inbox as it had been marked “read”.

91. On January 18, 2016, the Plaintiffs noted AFS in default pursuant to paragraph 3 of the Order.

92. Eight months later, on August 26, 2016, opposing counsel filed an Application and supporting Affidavit, returnable on September […], 2016, claiming judgment for damages in the amount claimed by the Plaintiffs in the Statement of Claim (the “**Damages Application**”).

93. That day, opposing counsel served a copy of the Damages Application and Affidavit on me by email. I was away from the office until August 30, 2016.

94. Upon my return to the office, I attended to various administrative tasks and eventually reviewed the email on September 6, 2016. This was the first time I became aware of the December application and of the Order.

95. On September 6, 2016, I emailed opposing counsel, explained the situation, and requested an adjournment of the Damages Application.

96. I then spoke with M.W. and forwarded her several emails in the early hours of September 7, 2016, to update her on the situation.

97. I then sent an email to opposing counsel to advise him that I would be unable to attend Court that morning. I also attached the Affidavit that had been filed in support of G.T’s application for leave to appeal the Dismissal Orders to explain that I had had this issue before with my emails.

98. Opposing counsel sought and obtained instructions to consent to my adjournment request.

99. On September 7, 2016, opposing counsel wrote to me and outlined his position about service of the application, about my client’s plans to reorganize, and advised me that the Damages Application had been adjourned to September […], 2016.

100. As noted, on September 12, 2016, M.W. submitted the complaint to the LSA on behalf of AFS.

101. On September 20, 2016, I emailed opposing counsel seeking an adjournment because M.W. had reported me to the LSA and because I intended to report myself to ALIA. I viewed it as a conflict for me to continue acting and wanted time for ALIA repair counsel to become familiar with the matter before appearing in Court. I reported this matter to ALIA the next day.

102. On September […], 2016, Master [P] granted an adjournment of the Damages Application to October […], 2016, which Order was served on me on September 29, 2016.

103. On November 10, 2016, repair counsel filed an application returnable on November 16, 2016, seeking to set aside the Order and the Notice of Default, and seeking permission to serve AFS's Affidavit of Records. I swore an Affidavit in support of the application.

104. On November 16, 2016, the parties agreed to file a Consent Order that set aside the Order of December […], 2015, as well as the Default Notice, and gave AFS until December 1, 2016, to serve its Affidavit of Records on the Plaintiffs. Costs in the amount of $8,180.34 were ordered payable forthwith and in any event of the cause.

105. The Affidavit of Records of AFS was filed on December 1, 2016.

106. The Statement of Claim and Counterclaim were eventually discontinued in May 2017.

Admissions of Guilt

Citation 7: Failure to File Affidavit of Records

107. I admit that I failed to provide competent, timely, and conscientious service to AFS when I failed to serve an Affidavit of Records on its behalf, which is contrary to Rule 3.2-1 of the *Code*.

Citation 8: Failure to Attend Court

108. I admit that I failed to provide competent and diligent service to AFS by failing to implement a system that would have allowed me to be alerted the Plaintiffs' application to compel production of the Affidavit of Records, which was provided to me by email on December 9, 2015, and which resulted in my failure to attend Court on December […], 2015, all of which is contrary to Rule 3.2-1 of the *Code*.

Citation 9: Failure to Respond to Another Lawyer

109. I admit that I failed to respond to several communications from opposing counsel between October 22, 2015, and November 26, 2015, which resulted in the Plaintiff's application on December […], 2015, to compel production of the Affidavit of Records, which is contrary to Rule 7.2-7 of the *Code*.

Citation 10: Failure to Communicate with Client

I admit that I failed to provide competent, timely, conscientious, and diligent service to AFS when I failed to communicate with its principal for a period of approximately eleven

months, between October 2015 and September 2016, which is contrary Rule 3.2-1 of the *Code*.

COMPLAINT #3: D.M. (CO20170038)

Background

110. On February 7, 2017, the LSA received an Information Concerning a Lawyer Form from D.M., a former client of mine, alleging poor client service.

111. The LSA conducted a review of the allegations, which resulted in a referral to the Conduct Committee.

112. On October 25, 2017, the Conduct Committee directed that the following two citations be dealt with by a Hearing Committee:

> 11. It is alleged Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to follow up on the application to set aside the Default Judgment granted against her and that such conduct is deserving of sanction; and
>
> **12.** It is alleged Toby D. Schultz failed to provide competent, timely, conscientious, and diligent service to his client when he failed to address a Writ of Enforcement granted against her and such conduct is deserving of sanction.

Facts

113. On April 12, 2016, I was retained by D.M. to defend her in litigation for breach of contract arising out of a failed real estate venture. As per my Retainer Agreement with D.M., I had anticipated that most of the legal work would be performed by my student-at-law.

114. The following is a chronology of events that had occurred before I was retained:

a. On June 2, 2015, a Statement of Claim was filed;

b. On August […], 2015, the Plaintiff obtained an Ex-Parte Substitutional Service Order;

c. On January […], 2016, the Plaintiff obtained a Default Judgement for $110,695.14 plus pre-judgment interest;

d. In February 2016, another lawyer was retained to defend D.M.;

e. On February 19, 2016, this lawyer proposed setting aside the Default Judgment in exchange for the thrown-away costs of having obtained the judgment;

f. On February 23, 2016, the proposal was rejected;

g. On April 5, 2016, the lawyer sent me the file after he was conflicted; and

h. On April 7, 2016, the Plaintiff obtained a Writ of Enforcement, which was registered in the Land Titles Office in August 2016.

115. Shortly after I was retained, but before I advised opposing counsel of my retainer, opposing counsel served D.M. with a Financial Statement of Debtor Form (the "**Debtor Form**"), seeking to discover what assets could be seized to satisfy the Writ.

116. On May 6, 2016, my office filed an Application with a Supporting Affidavit, returnable on May 18, 2016, to set aside the Default Judgment claiming that D.M. had not been served correctly with the Statement of Claim. The materials were sent to opposing counsel by email on May 6, 2016, and I requested an extension to May 30, 2016, to fill out the Debtor Form.

117. My student-at-law departed my firm on May 13, 2016, and I assumed conduct of this matter.

118. The parties agreed to adjourn the Application to a Special Chambers Date, to schedule a cross-examination on D.M.'s affidavit on June 21, 2016, and to extend the deadline to submit the Debtor Form to May 30, 2016.

119. On May 26, 2016, I forwarded the Debtor Form to D.M. and asked her to send it back to me by May 30, 2016. I also sent her a copy of her affidavit in advance of the cross-examination.

120. The Debtor Form was submitted to opposing counsel on June 10, 2016, but it was incomplete and unsworn.

121. The cross-examination on D.M.'s affidavit occurred on June 21, 2016.

122. I took no steps in this matter for the next 2½ months, when on September 7, 2016, I emailed D.M. to provide her with my thoughts about how to proceed.

123. Shortly thereafter, D.M. provided me with the information that I would need to draft the affidavit that I proposed in my email of September 7, 2016. I then started to draft the affidavit, which was substantially complete in November 2016.

124. On October 12, 2016, opposing counsel wrote to me to advise that she was seeking instructions to collect on the judgment and asked about the dates for a Special Chambers Application.

125. I did not respond until November 17, 2016, when my assistant wrote to opposing counsel with the next available dates for a Special Chambers Application.

126. As noted, on December 19, 2016, I became an inactive member of the LSA.

127. On January 9, 2017, I sent a text message to D.M. alerting her to the fact that the custodian would soon be in touch and that she would have to retain a different lawyer.

128. As noted, D.M. complained the LSA the next day.

Admissions of Guilt

Citation 11: Failure to Deal with Default Judgment

129. I admit that I failed to provide timely service to D.M. when I failed to more urgently pursue the scheduling of a special chambers application to set aside the Default Judgment after the cross-examination on her affidavit on June 21, 2016.

Citation 12: Failure to Deal with Writ of Enforcement

130. I admit that I failed to provide timely service to D.M. when I failed to address the Writ of Enforcement granted against her by failing to take more significant steps to schedule a special chambers application to set aside the Default Judgment after the cross-examination on her affidavit on June 21, 2016.

COMPLAINT #4: LSA (CO20163072)
COMPLAINT #5: S.B. (CO20180677)

Background

131. In late 2014 and early 2015, My law office was subject to a random LSA audit and that was completed without significant concern except that it was discovered that my last GST return had not been filed.

132. In December 2016, I advised the LSA that I intended to stop practicing law because of various personal and professional issues. I also stated that my accounting records were not current.

133. The LSA investigated my trust accounting, revealing disorganized files and incorrect accounting procedures. An Investigation Report was issued followed by a referral to the Conduct Committee.

134. On July 17, 2018, the Conduct Committee directed that the following five citations be dealt with by a Hearing Committee:

> 13. It is alleged Toby D. Schultz breached Rule 119.21(4) of the Rules of the Law Society of Alberta when he failed to provide Statements of Account to his clients prior to disbursing Trust funds, and that such conduct is deserving of sanction;
>
> 14. It is alleged Toby D. Schultz failed to provide competent, conscientious, and diligent services when he improperly billed clients and that such conduct is deserving of sanction;

15. It is alleged Toby D. Schultz breached Rule 119.19(1) of the Rules of the Law Society of Alberta when he failed to deposit Trust funds into his Trust Account on or before the next banking day and that such conduct is deserving of sanction;

16. It is alleged Toby D. Schultz breached Rule 119.21(2)(3)(a)(ii) of the Rules of the Law Society of Alberta when he transferred Trust funds between client ledgers without obtaining his client's authorization and that such conduct is deserving of sanction; and

17. It is alleged Toby D. Schultz failed to fulfill an Undertaking and that such conduct is deserving of sanction.

135. The conduct that is the subject of Citation 17 is also the subject of a separate complaint by S.B. (the "**S.B. Complaint**"). The S.B. Complaint has not yet been referred to the Conduct Committee.

Citation 13: Failure to Send Statements of Account

136. During the final 18 months of my practice, I fell behind on client matters and decided, wrongly, that my billing and accounting tasks would take a back seat to getting the legal work done. I also thought about re-drafting several statements of account to make them appear more professional, but never found the time to do so. Consequently, after having performed the legal work, I sometimes paid myself from trust monies without issuing a concurrent statement of account to my clients. The LSA investigation confirmed that I did this several times in six separate matters.

Citation 14: Improper and Double-Billing Clients

137. During this same period, I was having trouble with my legal assistant, who was also my spouse (we have since divorced). Although I have the ultimate responsibility for how my legal fees were being billed, I had understood that my assistant was billing clients correctly when she was not. I subsequently retained a new legal assistant but failed to train him properly and he never gained the level of competence that I had hoped for.

138. The LSA investigation uncovered three instances of mistakenly double-billing clients (for $500.00; $650.00; and $1,500.00) and one instance where I provided a cheque to a client J.D. (also discussed in Citation 17), the quantum of which I knew to be incorrect.

Citation 15: Delayed Deposits to Trust Account

139. In two instances, I accepted funds from clients for work that I had not yet done and deposited those funds directly to my general account (instead of to my trust account) before doing the work:

a. In one case, a client paid me a retainer to file annual returns for a company. I deposited the funds to my general account before preparing the filings. However, I did not do the work and the company's annual returns. When the client brought this mistake to my attention, I reimbursed her for the fees paid to me; and

b. In the second case, my client paid me a retainer to revive a company. I deposited the funds to my general account before doing the legal work. Most, but not all, of the legal work was done by the time I became an inactive lawyer.

Citation 16: Improper Transfers between Client Ledgers

140. I was retained by a single client with six separate matters, each of which had a separate client ledger. During my representation of this client, I transferred funds between several of the ledgers.

141. I understand that my client has stated that he authorized me to transfer trust funds between only two ledgers and not the remaining four. My recollection is that I received verbal permission to effect trust transfers between all the ledgers. I do not, however, have any written communications to support my recollection of events.

Citation 17 & S.B. Complaint: Failure to Fulfill an Undertaking

Background

142. In December 2015, I was approached by two family friends, J.R. and J.D., who were married and who wanted to get divorced. As part of the joint proceedings, their joint residence was to be sold. I agreed to represent them jointly and advised them that I would have to withdraw if there was any dispute between them.

Matrimonial Proceedings

143. Neither the matrimonial proceedings nor the sale of their residence went smoothly. Although Citation 17 and the S.B. Complaint relate only to the sale of the residence, there was conflict between my clients throughout the matrimonial proceedings, which I mediated and attempted to smooth over.

Sale of Residence

144. Pursuant to a Residential Purchase Contract dated December 9, 2015, my clients agreed to sell their residence to S.B. with a closing date of December 31, 2015.

145. I was advised by my clients they would be able to provide me with a current Real Property Report ("**RPR**"). In fact, the RPR that they eventually provided me was dated 1998 and did not contain details about a fence that had been built after 1998.

146. On December 30, 2015, I sent a letter to opposing counsel in which I stated the following:

> Our client has an RPR that requires updating. Our clients' realtor is of the belief that your client may be planning further changes to the structures on the property.

> Rather than incurring the expense of an updated Real Property Report, it may be in both of our clients' best interests to negotiate a waiver of the RPR requirement. For example, we propose that our client would be happy to purchase a lender and owner title insurance policy for your client.

147. In this letter, I gave the following undertaking:

> We undertake to:
> …
> (c) Unless otherwise agreed upon, provide you with an updated real property report with a Certificate of Compliance endorsed therein, and in the event a certificate of compliance is refused, I undertake to apply for any Encroachment Agreements and/or Development Permits which may be required in order to obtain a relaxation of the Land Use By-Laws. This undertaking does not extend to appealing the ruling of the municipality in the event of any unsuccessful Applications for Encroachments an.cl/or relaxations.

148. On December 30, 2015, opposing counsel emailed me as follows:

> We confirmed with our client with regard to RPR issue and he advised us that he requires the updated RPR with compliance as our client further advised us that he is not going to make any changes over the property in the near future or so. Further to this we already have title insurance policy for both owner and the lender.
>
> Kindly provide us with an undertaking for updated RPR with compliance and holdback $5000 until such time we are in receipt updated RPR with compliance

149. On December 31, 2015, I confirmed my undertaking in an email to opposing counsel, as follows:

> I confirm my undertakings contained in my letter of December 30, 2015 with respect to providing an updated RPR and further confirm that I will hold back $5,000.00 from the sale proceeds until such time as you are in receipt of an updated RPR with compliance.

150. It was not my practice to hold back funds in this manner, but I did so in this instance.

151. When the sale closed, I held back an additional $1,000.00 to pay for the RPR Report, for a total of a $6,000.00 holdback. A survey was ordered shortly thereafter.

152. On May 6, 2016, I received a copy of the RPR, which was deemed non-compliant because part of the fence encroached on the city's road allowance by 59 cm. The city refused to waive the encroachment and that part of the fence would have to be removed.

153. On August 12, 2016, I sent a lengthy email to J.R. in which I discussed the litigation issues that had arisen, one of which was that the "*$6,000.00 holdback needs to be applied to fix the RPR issue …*". However, by then, the LSA investigation shows that there was only $1,135.10 left in my trust account. After paying for disbursements post-closing, I had not paid attention to the quantum of sale proceeds that I had distributed to each of my clients and to the amounts that I had billed them. In fact, I know that the

amount I sent to L.D. was incorrect because he was insisting that I pay him (also discussed in Citation 14).

154. On August 30, 2016, I wrote to opposing counsel, explained the problem with the fence, and proposed that my client, a general contractor, take steps to move that part of the fence that was encroaching on the road allowance. Opposing counsel responded that his client did not object to my client moving the fence, but only if a completely new fence was built in its place. In my view, his position was unreasonable, and I asked my client to obtain a quote for the removal of the encroaching part of the fence. My recollection was that my client obtained one quote, which estimated that it would cost $500.00 to complete the work.

155. On November 10, 2016, I wrote an email to my clients to discuss various issues, including the fence problem. I proposed that we send the estimates to opposing counsel and offer to send them a cheque for that amount, plus the amount to obtain a new RPR. If they refused, I proposed that we apply to Court to obtain a declaration to release the holdback amount in my trust account. Although I did not advise my clients that I only had $1,135.10 remaining in my trust account, I was of the view that this sum was sufficient to cover the cost of removing the fence, updating the RPR, and obtaining the compliance. I did not take any steps to further this plan and this was my last communication with my clients before going inactive in December 2016.

Transfer of Trust Monies by Custodian

156. In December 2016, a custodian was appointed to wrap up my practice.

157. On March 15, 2017, because the matrimonial proceedings had not been finalized when I ceased practicing, the custodian transferred my file to another lawyer to finish the matter, along with a cheque for $1,135.10, representing the balance of the monies in my trust account.

158. In July 2017, opposing counsel sent a letter to the custodian asking about the status of the hold back. On July 11, 2017, the custodian emailed opposing counsel as follows:

> … There are no funds in trust in connection with this matter. It appears that Mr. Schultz disbursed all funds to his clients. I therefore am not in a position to deal with this matter.
>
> It appears that the transaction closed in December of 2015 and insofar as any remedial action by your clients is concerned, they should be mindful of any limitation period. I would suggest that in the circumstances, because it appears that Mr. Schultz forwarded holdback funds to his client, that your client should seek recourse from the vendor.

159. The custodian was incorrect insofar as his email infers that I transferred all trust monies to my clients. As noted, he was the one who transferred the balance of trust monies to another lawyer.

LSA Involvement

160. On March 22, 2018, the LSA received a written complaint from S.B. requesting assistance in securing the monies that were to be held in trust. He was advised in writing that the LSA would investigate, but that it had no power to provide restitution and that he should seek legal advice about how to proceed.

161. On April 30, 2018, LSA Conduct Counsel wrote to me asking for a response to the S.B. Complaint by May 15, 2018.

162. On May 15, 2018, I sought and obtained an extension to May 31, 2018, to provide a response. I did not provide a response by then, nor did I contact the LSA to seek another extension.

163. On June 7, 2018, LSA Conduct Counsel again wrote to me seeking a response to the S.B. Complaint. I did not respond to this letter, nor did I provide a response to the complaint.

164. By then, I was in discussions with LSA Hearing Counsel and we were exploring the possibility of resolving all citations by agreement or resignation. I assumed that the S.B. Complaint would be resolved as part of this process, although I never confirmed this with anybody at the LSA.

Admissions of Guilt

Citation 13: Failure to Issue Statements of Account

165. I admit that I breached *Rule 119.21(4)* by failing to provide concurrent statements of account to my clients before transferring monies from my trust account to my general account in payment of legal fees.

Citation 14: Incorrect Billing of Clients

166. I admit that I breached *Rule 119.21*. by failing to provide competent, conscientious, and diligent services to four of my clients when I billed them incorrectly.

Citation 15: Failure to Deposit Monies to Trust Funds

167. I admit that I breached *Rules 119.19(1)* and *(2)* of the accounting *Rules* when I deposited trust funds directly to my general account, and not into trust account before the next banking day, prior to completing the legal work that I was hired to do.

Citation 16: Unauthorized Client Ledger Transfers

168. I admit that I breached *Rule 119.21(3)(a)(ii)* of the accounting Rules when I transferred trust funds between my client's matter ledgers without obtaining his explicit written authorization beforehand.

Citation 17/S.B. Complaint: Failure to Fulfill an Undertaking

169. I admit that I failed to fulfill my undertaking to opposing counsel to hold back $5,000.00 after the closing of the house sale, contrary to section 7.2-14 of the *Code*.

S.B. Complaint

170. I admit that I breached Rule 3.4-12 of the *Code* by representing family acquaintances in divorce proceedings.

MENTAL HEALTH HISTORY

171. [paragraph redacted]

172. [paragraph redacted]

COMPLAINT HISTORY

173. The LSA has recorded a total of 16 complaints against me, summarized as follows:

a. Five are the subject matter of these proceedings;

b. Seven were dismissed or no unprofessional conduct was found;

c. Two were resolved by other means (mediation or abandoned)

d. One was referred to ALIA; and

e. One was referred for Independent Legal Advice.

PRACTICE REVIEW HISTORY

174. An informal file with Practice Review was opened in May 2016 arising out of a referral from ALIA. I also contacted Practice Review voluntarily in or about June 2016. I was contacted by Practice Review staff and advised them that I required further time to prepare for the practice review. The file was subsequently closed without further action.

175. A direct referral to the Practice Review Program was made on October 7, 2016, following the complaints against me. A Practice Assessment Report dated December 12,

2016 outlined concerns for the high volume of files that I was carrying without support, numerous practice management issues, and my significant personal pressures.

176. There was no follow up as I became an inactive lawyer shortly thereafter and the Practice Review file was closed on January 4, 2017.

THIS STATEMENT OF AGREED FACTS AND ADMISSIONS OF GUILT IS MADE THIS

_2nd_ DAY OF ____APRIL_____ 2019.

"T. Schultz"
TOBY D. SCHULTZ