

THE LAW SOCIETY OF ALBERTA RESIGNATION COMMITTEE REPORT

IN THE MATTER OF THE *Legal Profession Act, R.S.A. 2000, c. L-8*, and in the matter of the Resignation of John Schneider, a Member of the Law Society of Alberta

1. On June 24, 2014, a Resignation Committee of the Benchers comprised of Anne L. Kirker, Q.C., and Derek Van Tassell Q.C. (the "Committee") convened at the Law Society of Alberta ("LSA") offices in Calgary to hear the resignation application of John Schneider.
2. Brett Code Q.C. had originally been appointed as a member of the Committee, but due to matters beyond his control, he was not able to continue. Pursuant to section 22 of the *Legal Profession Act, R.S.A. 2000 C. L-8* (the "LPA"), the Committee proceeded with a quorum of two. The parties confirmed that they had no objection to this or to the proposed composition of the Committee.

Jurisdiction and Preliminary Matters

3. The following Exhibits were entered by consent:

Exhibit 1	The Letter of Appointment dated June 23, 2014, signed by LSA Policy and Governance counsel.
Exhibit 2	A statement of Outstanding Formal Citations (Citation number 5 having been discontinued on application by Mr. Schneider pursuant to section 62 of the LPA)
Exhibit 3	A letter dated June 20, 2014, signed by the LSA Deputy Executive Director and Director, Regulation confirming that she had complied with Rules 96(2)(a) and (b) of the Rules of the Law Society (the "Rules") in relation to service of private hearing notices
Exhibit 4	A Certificate of Status dated February 11, 2014, confirming Mr. Schneider is a suspended member of the LSA.
4. The Parties agreed that the Committee had jurisdiction to hear Mr. Schneider's application.
5. No party applied to have the application held in private. As a consequence, the application proceeded in public.

6. The Committee was then advised that although the application documents had been completed as required by Rule 92(1), a statement of admitted facts in a form acceptable to the LSA had not yet been finalized. Rule 96(4) requires that a statement of admitted facts be provided on an application for resignation and it must be in a form acceptable to the Committee for the application to be granted. Counsel for Mr. Schneider proposed that the application be adjourned to allow him and counsel for the LSA a little more time to prepare a statement of facts acceptable to both parties so that Mr. Schneider's application could proceed without objection from the LSA.
7. Counsel for the LSA noted that Mr. Schneider sought the LSA's consent to a proposed application to resign under section 32 of the LPA in January, 2014, and had had plenty of time to work with the LSA to finalize the required statement of facts. The application was initially scheduled to be heard in April 2014, but was adjourned to June, 2014 to accommodate the additional time the parties needed then to finalize the application documents, including the statement of admitted facts. LSA counsel was, understandably, concerned with further delay.
8. That said, she also acknowledged that the Committee could not consider Mr. Schneider's application without a statement of facts and that it was in the public interest, and in the interests of the members of the LSA that the LSA and Mr. Schneider try to reach an agreement, if at all possible, so that his resignation application could proceed and a protracted hearing could perhaps be avoided. Counsel confirmed her willingness to continue to work with counsel for Mr. Schneider to finalize an acceptable statement of facts in short order.
9. The Committee granted a short adjournment to July 7, 2014 to give the parties a final opportunity to finalize a statement of facts in an acceptable form. With Mr. Schneider being suspended there was no risk to the public in the short delay and denying the adjournment - which would likely force the parties to a hearing - would not, in the Committee's opinion, accomplish more for the public we strive to protect.
10. Mr. Schneider's application for resignation ultimately proceeded on July 7, 2014 with the consent of the LSA under section 32 of the LPA. In accordance with Rules 92(1), 92(2) and 92(4), Mr. Schneider provided the following application documents which were entered as exhibits as follows:

- Exhibit 5 A letter dated June 20, 2014 signed by the Deputy Executive Director and Director, Regulation setting out Mr. Schneider's discipline record;
- Exhibit 6 (a) The Application for Resignation dated June 11, 2014 and signed by Mr. Schneider.
- (b) A Statutory Declaration sworn by Mr. Schneider on June 11, 2014 confirming *inter alia* that:
- i. he had not practised law since April 24, 2013; and that,
 - ii. Ms. Brenda Edwards had custody of all of his client files and trust account.
- (c) An Undertaking dated July 7, 2014 and signed by Mr. Schneider confirming his agreement:
- i. to cooperate with the LSA and with the Alberta Lawyers Insurance Association ("ALIA") in respect of any claim made against him or against the Assurance Fund;
 - ii. to pay any deductible arising from any claim paid by ALIA;
 - iii. to pay the LSA any amount paid out of the Assurance Fund;
 - iv. to locate and surrender his Certificate of Enrolment;
 - v. not to apply for reinstatement as a member of the LSA;
 - vi. to identify himself as a non-lawyer agent if and whenever he may appear before any tribunal, court or similar body; and
 - vii. to provide the LSA a current active address and email address at all times.
- (d) A Statement of Facts signed by Mr. Schneider on July 3, 2014.

The Submissions of Counsel and Facts Upon Which The Application Was Made

11. It is fair to say that this resignation application is the culmination of complicated, lengthy and expensive conduct proceedings which have resulted in 46 outstanding formal citations set out in Exhibit 2 and attached to this report as Appendix "A":
12. Many of the citations are very serious.
13. The Committee was advised a seven day hearing on the first 17 citations commenced on April 15th, 2013. The hearing was not concluded. When it adjourned, an application was made by LSA counsel to suspend Mr. Schneider pursuant to section 63 of the LPA.

The Hearing Committee accepted its jurisdiction to hear that application and Mr. Schneider was suspended effective April 23rd, 2013.

14. While the first 17 citations were being dealt with, an additional 20 citations were directed to hearing by Conduct Panels as set out in Mr. Schneider's Statement of Facts (Exhibit 6(d)) also attached to this report as Appendix "B".
15. The Committee was advised that additional suspension orders were issued in May and October, 2013, respectively, one of which was for the non-payment of hearing costs Mr. Schneider had been ordered to pay.
16. In January, 2014 all of the outstanding citations were consolidated and directed to be sent to hearing together.
17. Before that hearing convened, however, Mr. Schneider advised the LSA that he would resign as a member of the LSA under Section 32 of the LPA. He sought the LSA's consent to his application.
18. Section 32 of the LPA provides:

Resignation of member

32(1) No member may resign from the Society unless the member's resignation is submitted to and approved by the Benchers or a committee of the Benchers.

(2) If the resignation is approved, the member's name shall be struck off the roll.

19. An extraordinary amount of time and effort was devoted to reaching an agreement on a Statement of Facts that would be acceptable to this Committee for the purposes of this application. Counsel explained that Mr. Schneider made some, but not all, of the admissions sought by the LSA. He denies he ever *intentionally* breached the Rules, misused trust funds or deceived any person or the LSA. However, in the Statement of Facts signed by Mr. Schneider and entered as Exhibit 6(d), he did admit a lack of diligence and a multitude of errors in communicating with clients and with the LSA, in the handling of trust funds and in keeping his accounting records in order as he was required by the Rules and the Code of Professional Conduct to do. He admitted to having failed to remit GST and payroll source deductions which was discovered by a

CRA audit and then corrected, and to having failed to recognize potential conflicts of interests when acting for multiple clients in one matter. While he did not admit facts supporting all of the outstanding citations, he acknowledged that if found guilty on some or all of them, he would face sanction for his conduct. Given the very serious nature of many of the citations, it is fair to say that findings of guilt could result in a severe sanction, particularly given Mr. Schneider's discipline record which included findings of guilt on eight previous citations for:

- 1) failing to keep clients informed,
- 2) failing to promptly communicate a settlement offer to a client,
- 3) failing to ensure a client comprehended his advice and recommendations,
- 4) failing to meet his commitments in the business aspect of his practice; and,
- 5) failing to honour a judgment obtained against him.

20. These findings resulted in a reprimand and an obligation to pay actual costs of a hearing in June, 2011.

21. Given Mr. Schneider's history, and faced with costs which already total near \$300,000 and the prospect of an additional hearing or hearings to deal with 46 outstanding formal citations, counsel for Mr. Schneider and for the LSA agreed that this unusually difficult and protracted matter should be brought to a conclusion with Mr. Schneider's resignation under s. 32 of the LPA notwithstanding that he did not admit every alleged fact. In order to protect the interests of the public and of the members of the LSA, the Committee was advised that in addition to the undertakings given by Mr. Schneider in Exhibit 6(c), he would also give the following undertaking which was entered by consent as Exhibit 6(e):

Further to my undertaking given and executed July 7, 2014 that I, JOHN FRANCIS SCHNEIDER, will not apply for reinstatement as a member of the Law Society of Alberta, in the event that I apply to be relieved of this undertaking, then it is understood and agreed that I am also undertaking to submit to the jurisdiction of the Law Society of Alberta for the purpose of having all outstanding citations disposed of in a disciplinary hearing notwithstanding the passage of time as a condition of any application for reinstatement.

22. In addition, Mr. Schneider agreed that if he ever seeks to be relieved of his undertaking not to seek reinstatement, he will pay all of the LSA costs incurred to date set out in the Estimated Statement of Costs entered by consent as Exhibit 7.

Decision of the Resignation Committee

23. A member of the LSA is not permitted to simply resign in the face of discipline proceedings. He or she is required to make an application to a committee of the Benchers to do so.
24. A Resignation Committee must decide whether or not to accept the application for resignation and if it is accepted, whether or not it is accepted under s. 32 or s. 61 of the LPA. A s. 61 resignation is a deemed disbarment (s. 1(c) of the LPA). Section 106 of the LPA prevents a disbarred person from acting as an agent.
25. If a Resignation Committee is prepared to accept a resignation under s. 32 of the LPA, it may make an order with respect to conditions which must be fulfilled by the member, including the provision of undertakings. The Benchers have broad discretion in this respect.
26. The fundamental issue to be determined on an application such as this is whether it is in the best interests of the public and the other members of the LSA to permit the Applicant to resign pursuant to s. 32 prior to the resolution of all outstanding matters of concern or under review by the LSA. Importantly, a Resignation Committee is required to consider what effect its resignation order may have on any potential application for reinstatement in the future.
27. Herein lies the dilemma in this case. A resignation by Mr. Schneider under s. 32 without resolution of all of the outstanding formal citations against him and without his admission to all of the alleged facts has the potential to compromise the public interest because on any future application for reinstatement, the citations which were not admitted would not form any part of the deliberation. The LSA was not prepared to consent to a s. 32 resignation if it meant that the citations involving allegations of intentional wrongdoing would, effectively, disappear.
28. On the other hand, no public interest is served by devoting further LSA resources to protracted proceedings if a resignation order on appropriate conditions can achieve an end that serves the interests of the public as well as the profession as a whole.
29. In this exceptional case, the LSA was prepared to consent to Mr. Schneider's resignation under s. 32 of the LPA on the basis of his Rule 92(1)(b) Statutory Declaration, the

undertakings given by him and entered as Exhibit 6(c), and on the basis of the facts and history which he did admit - and which, to be clear, reveal a pattern of unacceptable neglect and raise serious questions about Mr. Schneider's governability - provided that he also gave the additional undertaking entered as Exhibit 6(e) and agreed that if he ever applied for reinstatement, he would be required to pay the sum of \$299,838.60 at the time of filing the application. Mr. Schneider agreed to these terms confirming for the Resignation Committee that he did so willingly having consulted with his counsel.

30. In this case, the Resignation Committee is satisfied that the application for resignation is appropriately granted under s. 32 of the LPA on the basis agreed to between the LSA and Mr. Schneider. The public interest and the interests of the members of the LSA are served by Mr. Schneider's voluntary removal from the profession on what can fairly be described as very onerous conditions which guard against future risk.

Concluding Matters

31. The Resignation Committee therefore orders as follows:
- (a) Mr. Schneider's application for resignation under s. 32 of the LPA is granted upon the undertakings given by him and entered as Exhibits 6(c) and (e), respectively.
 - (b) In the event Mr. Schneider ever applies to be relieved of his undertaking not to reapply for reinstatement, he shall be required to pay costs totaling \$299,838.60 at the time of filing the application and he shall also submit to the jurisdiction of the LSA for the purpose of having all outstanding citations disposed of in a disciplinary hearing, notwithstanding the passage of time and before any application for reinstatement proceeds.
 - (c) The parties agreed to a form of notice of Mr. Schneider's resignation which was entered by consent as Exhibit 8. The Resignation Committee confirms that the notice shall go to the profession and the Courts and shall read as follows:

On July 7, 2014, a Resignation Committee of the Benchers of the Law Society of Alberta granted the application of John Francis Schneider to resign. Mr. Schneider was a suspended member of the Law Society at the time of his resignation and had been suspended since April 23, 2013. He lives and formerly practiced in Canmore, Alberta.

Mr. Schneider was facing discipline proceedings in relation to six conduct matters comprising of forty-six citations arising out of investigations which took place over a seven year period. The citations involved allegations concerning governability, deficiencies in office practices and communication and non-compliance with trust accounting rules. While Mr. Schneider did

not admit all of the citations, he acknowledged that if found guilty of some or all of the citations, it would constitute conduct deserving of sanction.

The Resignation Committee determined it was in the best interest of the public to permit Mr. Schneider to resign under s. 32 of the Legal Profession Act rather than having hearings regarding allegations against him, given that:

- 1. Mr. Schneider signed a Statement of Facts in which he admitted facts which support some of the allegations;*
- 2. Mr. Schneider undertook never to apply for readmission to the Law Society of Alberta;*
- 3. In the event that Mr. Schneider applies to be relieved of his undertaking never to reapply, costs of \$299,838.60 will first have to be paid; and*
- 4. In the event that Mr. Schneider applies to be relieved of his undertaking never to reapply, all citations shall first be disposed of by way of a disciplinary hearing notwithstanding the passage of time.*

Mr. Schneider is therefore no longer a member of the Law Society of Alberta.

- (d) Pursuant to Rule 92(10), a Resignation Committee must consider whether there are reasonable grounds to believe a member has committed a criminal offence, and if so, to direct the Executive Director to comply with section 78 of the LPA which mandates a report to the Attorney General. Based on the material before it, there were not reasonable grounds for this Resignation Committee to direct such a report.
- (e) All Exhibits entered on this application shall be made available for inspection and copying pursuant to Rule 98(3).
- (f) Mr. Schneider's name shall be struck from the Roll. This report, including the appendices, and all of the application documents shall otherwise be preserved for future reference.

Dated at Calgary, Alberta, November 11, 2014

Anne L. Kirker, Q.C.

Derek Van Tassell, Q.C.

APPENDIX "A"

JOHN FRANCIS SCHNEIDER

OUTSTANDING FORMAL CITATIONS

1. It is alleged that you or your professional corporation retained the services of a suspended member of the Law Society without the authority of the Benchers, and that such conduct is conduct deserving of sanction.
2. It is alleged that you failed to respond on a timely basis to client communications from G.R. and others which contemplated a reply, and that such conduct is conduct deserving of sanction.
3. It is alleged that you failed to serve your client G.R., and that such conduct is conduct deserving of sanction.
4. It is alleged that you used trust funds for a purpose other than that designated by the trust, and that such conduct is conduct deserving of sanction.
5. It is alleged that you instructed an employee to backdate your postage meter, and that such conduct is conduct deserving of sanction.
6. It is alleged that in public court proceedings you disclosed the fact that a complaint had been made against you and thereby breached the confidentiality of the complaint process, and that such conduct is conduct deserving of sanction.
7. It is alleged that you swore a false affidavit, and that such conduct is conduct deserving of sanction.
8. It is alleged that you failed to comply with the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
9. It is alleged that you misappropriated or wrongfully converted trust funds, and that such conduct is conduct deserving of sanction.
10. It is alleged that you failed to remit GST and source deductions on a timely basis, and that such conduct is conduct deserving of sanction.
11. It is alleged that you borrowed funds from a client without recommending the client seek independent legal advice, and that such conduct is conduct deserving of sanction.
12. It is alleged that you failed to respond to inquiries of the Law Society investigators on a timely basis, and that such conduct is conduct deserving of sanction.
13. It is alleged that you failed to be candid with the Benchers and Law Society staff, and that such conduct is conduct deserving of sanction.
14. It is alleged that you breached conditions attached to the trust deposit of B.B. and R.B., or alternatively failed to exercise reasonable care and attention in regard to the said trust funds under your stewardship, and that such conduct is conduct deserving of sanction.
15. It is alleged that you failed to be candid in communications with the Law Society in the matter of a complaint by B.B. and R.B., or alternatively failed to respond in a complete

and appropriate matter to communications from the Law Society in the said complaint, and that such conduct is conduct deserving of sanction.

16. It is alleged that you failed to serve your client S.A. on a timely basis, and that such conduct is conduct deserving of sanction.
17. It is alleged that you failed to respond to the Law Society on a timely basis and in a complete and appropriate manner in the matter of a complaint by S.A., and that such conduct is conduct deserving of sanction.
18. It is alleged that you failed to respond to the Law Society on a timely basis and in a complete and appropriate manner in the matter of a complaint by M.W., and that such conduct is conduct deserving of sanction.
19. It is alleged that you failed to co-operate with Practice Review as required by a condition imposed by the Benchers, and that such conduct is conduct deserving of sanction.
20. It is alleged that you misappropriated or wrongfully converted trust funds, and that such conduct is conduct deserving of sanction.
21. It is alleged that you created shortages in your trust account, and that such conduct is conduct deserving of sanction.
22. It is alleged that you paid funds out of trust in breach of trust conditions, and that such conduct is conduct deserving of sanction.
23. It is alleged that you failed to comply with the accounting rules of the Law Society, and that such conduct is conduct deserving of sanction.
24. It is alleged that you preferred the interests of some clients over the interests of other clients, and that such conduct is conduct deserving of sanction.
25. It is alleged that you acted while in a conflict of interest, and that such conduct is conduct deserving of sanction.
26. It is alleged that you failed to respond to communications from your clients on a timely basis or in an appropriate manner, and that such conduct is conduct deserving of sanction.
27. It is alleged that you failed to keep your clients informed as to the progress of their matters, and that such conduct is conduct deserving of sanction.
28. It is alleged that you failed to respond to counsel on a timely basis or in an appropriate manner, and that such conduct is conduct deserving of sanction.
29. It is alleged that you failed to serve your clients, and that such conduct is conduct deserving of sanction.
30. It is alleged that you destroyed your records when it was inappropriate to do so, and that such conduct is conduct deserving of sanction.
31. It is alleged that you failed to respond to the Law Society on a timely basis, and that such conduct is conduct deserving of sanction.

32. It is alleged that you failed to be candid with the Law Society, and that such conduct is conduct deserving of sanction.
33. It is alleged that you misled or attempted to mislead your clients, and that such conduct is conduct deserving of sanction.
34. It is alleged that you failed to comply with conditions imposed upon you by a panel of Benchers in 2008, and that such conduct is conduct deserving of sanction.
35. It is alleged that you failed to be candid with the Court, and that such conduct is conduct deserving of sanction.
36. It is alleged that you failed to serve your client, and that such conduct is conduct deserving of sanction.
37. It is alleged that you failed to keep your client informed, and that such conduct is conduct deserving of sanction.
38. It is alleged that you failed to promptly respond to communication from the LSA that contemplated a reply, and that such conduct is conduct deserving of sanction.
39. It is alleged that you failed to discharge your responsibility to your client honourably and with integrity and such conduct is deserving of sanction.
40. It is alleged that you failed to respond to the Law Society and such conduct is deserving of sanction.
41. It is alleged that you improperly withdrew trust monies for services not rendered and such conduct is deserving of sanction.
42. It is alleged that you failed to serve your client in a conscientious, diligent and efficient manner and such conduct is deserving of sanction.
43. It is alleged that you failed to follow accounting rules in relation to your Trust account and such conduct is deserving of sanction.
44. It is alleged that you misappropriated funds given to you in Trust and such conduct is deserving of sanction.
45. It is alleged that you failed to be candid with the Custodian and such conduct is deserving of sanction.
46. It is alleged that you failed to comply with the Custodianship Order by failing to turn over all client file materials and such conduct is deserving of sanction.

APPENDIX "B"
IN THE MATTER OF THE LEGAL PROFESSION ACT
AND
IN THE MATTER OF THE RESIGNATION APPLICATION BY
JOHN FRANCIS SCHNEIDER
A MEMBER OF THE LAW SOCIETY OF ALBERTA
STATEMENT OF FACTS

INTRODUCTION

1. I was admitted to the Law Society of Alberta ("LSA") on August 23, 1991.
2. I was employed as In House Counsel from 1991 to 1995. Between 1995 and 1996, I either practiced law as a sole practitioner or was inactive. In 1996, I opened an office for the general practice of law ("Practice") which I continued until April 24, 2013 when my membership was suspended by an Order of a Conduct Committee. I appealed the suspension. I continue to remain suspended pursuant to that Order at this time.
3. Between 1999 and 2006, my Practice was a general practice of law and I employed associate lawyers and a number of support staff. In 2006 I implemented steps to reduce my staff and associates and to limit my practice, and in particular to wind up the real estate services of my practice. I have been practicing as a sole practitioner since that time.
4. My termination of staff (legal and non-legal) resulted in litigation and numerous complaints to the Law Society from the staff. This resulted in investigations and proceedings which have carried on for the past eight years.
5. In October 2008, the LSA made an Application under Section 63 of the *Legal Profession Act* seeking my interim suspension. That application was denied, while I was not suspended conditions were imposed:
 - a) Trust cheques were to be co-signed by a member of the LSA;
 - b) Any trust cheque or transfer on account of a fee had the following conditions:

- i) The lawyer/mentor co-signing must have evidence of the retainer agreement;
 - ii) There must be evidence of the work done for the account provided to the lawyer / mentor;
 - iii) There must be evidence to the lawyer / mentor that the account is forwarded to the client ten days before payment;
- c) I must have regular meetings with the lawyer / mentor not less than once every two weeks;
 - d) I shall not practice real estate (prior to the hearing I had already decided to close my real estate practice and volunteered this to the hearing committee);
 - e) I am to cooperate with the Practice Review Department; and
 - f) I am to cooperate with the LSA in its ongoing investigations.
6. Pursuant to paragraph 4 above, I was referred to the LSA Practice Review Committee. After two years, in March 2011, the Practice Review Committee directed that my file be closed, and submitted a complaint to the Conduct Committee, which Citation is Group C below.
7. I am applying to resign as a member of the Law Society of Alberta pursuant to Section 32 of the *Legal Profession Act*.
8. I admit the contents of this Statement of Facts, which is tendered in support of my Resignation Application.

CITATIONS BY CONDUCT COMMITTEE

9. In the first part (Group A), I face 18 Citations directed by the Conduct Committee, being 13 on May 25, 2011 and 5 on March 27, 2012. A Conduct Hearing commenced on April 15, 2013 and has not been concluded to this date. Prior to the commencement of the

Hearing, Citation 5 was discontinued by the Conduct Committee.

- i. It is alleged that you or your professional corporation retained the services of a suspended member of the Law Society without the authority of the Benchers, and that such conduct is conduct deserving of sanction.
- ii. It is alleged that you failed to respond on a timely basis to client communications from G.R. and others which contemplated a reply, and that such conduct is conduct deserving of sanction.
- iii. It is alleged that you failed to serve your client G.R., and that such conduct is conduct deserving of sanction.
- iv. It is alleged that you used trust funds for a purpose other than that designated by the trust, and that such conduct is conduct deserving of sanction.
- vi. It is alleged that in public court proceedings you disclosed the fact that a complaint had been made against you and thereby breached the confidentiality of the complainant process, and that such conduct is deserving of a sanction.
- vii. It is alleged that you swore a false affidavit, and that such conduct is conduct deserving of sanction.
- viii. It is alleged that you failed to comply with the accounting rules of the Law Society of Alberta, and that such conduct is deserving of sanction.
- ix. It is alleged that you misappropriated or wrongfully converted trust funds, and that such conduct is deserving of sanction.
- x. It is alleged that you failed to remit GST and source deductions on a timely basis, and that such conduct is conduct deserving of sanction.
- xi. It is alleged that you borrowed funds from a client without recommending the client seek independent legal advice, and that such conduct is conduct deserving of sanction.
- xii. It is alleged that you failed to respond to inquiries of the Law Society Investigators on a timely basis, and that such conduct is deserving of sanction.
- xiii. It is alleged that you failed to be candid with the Benchers and Law Society staff, and that such conduct is deserving of sanction.

- xiv. It is alleged that you breached conditions attached to the trust deposit of B.B. and R.B. or alternatively failed to exercise reasonable care and attention in regard to the said trust funds under your stewardship and that such conduct is conduct deserving of sanction.
- xv. It is alleged that you failed to be candid in communications with the Law Society in the matter of a complaint by B.B. and R.B., or alternatively failed to respond in a complete and appropriate manner to communications from the Law Society in the said complaint, and that such conduct is deserving of sanction.
- xvi. It is alleged that you failed to serve your client S.A., on a timely basis, and that such conduct is conduct deserving of sanction.
- xvii. It is alleged that you failed to respond to the Law Society on a timely basis and in a complete and appropriate manner in the matter of a complaint by S.A., and that such conduct is deserving of sanction.
- xviii. It is alleged that you failed to respond to the Law Society on a timely basis and in a complete and appropriate manner in the matter of a complaint by M.W., and that such conduct is deserving of sanction.

10. In the second part (Group B), I face 16 Citations directed by a Conduct Committee Panel on December 11, 2012. The Citations are from File CO-2009-0349:

- i. It is alleged that the Member misappropriated or wrongfully converted trust funds.
- ii. It is alleged that the Member created shortages in his trust account.
- iii. It is alleged that the Member paid funds out of trust in breach of trust condition.
- iv. It is alleged that the Member failed to comply with the accounting rules of the Law Society.
- v. It is alleged that the Member preferred the interests of some clients over the interests of other clients.
- vi. It is alleged that the Member acted while in a conflict of interest.
- vii. It is alleged that the Member failed to respond to communications from his clients on a timely basis or in an appropriate manner.
- viii. It is alleged that the Member failed to keep his clients informed as to the

progress of the matters.

- ix. It is alleged that the Member failed to respond to counsel on a timely basis or in an appropriate manner.
- x. It is alleged that the Member failed to serve his clients.
- xi. It is alleged that the Member destroyed his records when it was inappropriate to do so.
- xii. It is alleged that the Member failed to respond to the Law Society on a timely basis.
- xiii. It is alleged that the Member failed to be candid with the Law Society.
- xiv. It is alleged that the Member misled or attempted to mislead his clients.
- xv. It is alleged that the Member failed to comply with the conditions imposed upon him by a Panel of Benchers in 2008.
- xvi. It is alleged that the Member failed to be candid with the Court.

11. In the third part (Group C), I face one Citation directed by a Conduct Committee Panel on September 11, 2012. The Citation is from File CO-2011-0569;

- i. It is alleged that you failed to co-operate with Practice Review as required by a condition imposed by the Benchers, and that such conduct is conduct deserving of sanction.

12. In the fourth part (Group D), I face 3 Citations directed by a Conduct Committee Panel on November 5, 2013. These Citations are from File CO-2012-2591:

- i. It is alleged that you failed to serve your client.
- ii. It is alleged that you failed to keep your client informed.
- iii. It is alleged that you failed to promptly respond to communication from the LSA that contemplated a reply.

13. In the fifth part (Group E), I face 3 Citations directed by a Conduct Committee Panel on December 18, 2013. These Citations are from File CO-2013-0158.

- i. It is alleged that you failed to discharge your responsibility to your client Mr. D honourably and with integrity.
- ii. It is alleged that you improperly withdrew trust monies for services not rendered.
- iii. It is alleged that you failed to respond to the Law Society's request for a written response to Mr. D's complaint.

14. In the sixth part (Group F), I face 5 Citations directed by a Conduct Committee Panel on December 18, 2013. These Citations are from File CO-2013-1629:

- i. It is alleged that you failed to serve your client in a conscientious, diligent and efficient manner and such conduct is deserving of sanction.
- ii. It is alleged that you failed to follow accounting rules in relation to your Trust account and such conduct is deserving of sanction.
- iii. It is alleged that you misappropriated funds given to you in Trust and such conduct is deserving of sanction.
- iv. It is alleged that you failed to be candid with the Custodian and such conduct is deserving of sanction.
- v. It is alleged that you failed to comply with the Custodianship Order failing to turn over all client file materials and such conduct is deserving of sanction.

POSITION OF THE MEMBER

1. Particulars of the allegations and my response to them are set out in the Agreed Facts below. I deny that I ever intentionally breached rules of the Law Society, misused trust funds, or was deceitful to any person or to the Law Society of Alberta. I do not admit to or agree with all of the Citations set out above, but I acknowledge that if found guilty of some or all of them, it may constitute conduct deserving of sanction. I am confident that a fair and impartial hearing would exculpate me from most if not all of these citations.
2. From 2006 through 2013, a period of seven years, I have been under investigation, interrogation and review by LSA investigators.

3. I have elected to apply to resign from the Law Society of Alberta as a lawyer in order to:
- (a) avoid a lengthy hearing or hearings into the merits of the Citations;
 - (b) avoid inconveniencing a large number of witnesses for the hearing(s);
 - (c) avoid the significant costs to me of participating in such hearing(s);
 - (d) bring these long standing professional conduct matters to a conclusion.

GROUP A CITATIONS (17 citations)

Citation 1 – It is alleged that I retained the services of a suspended member in my practice, contrary to Section 108(1) of the *Legal Profession Act*. I did hire H.A. through his numbered company. I knew he was a suspended member and thereby precluded from practising law. H.A. was paid on an hourly rate of \$20.00 per hour from September 2006 to January 2007 to train an assistant who was working for me to manage the real estate files in my office. He was not hired to perform any legal services and did not perform any legal services. I did not think that I was precluded from hiring him to provide training services to my practice, and if I am wrong in this, then it was in advertent and unintended. In retrospect, I now see that as a matter of prudent practice, that I should not have hired him, and I so advised the LSA during their investigation of the matter.

Citation 2 – Citation 3 – It is alleged that I failed to respond in a timely basis to client communication from a client, P. GR, and others which contemplated a reply. This litigation file was opened in 2004 and completed in 2007. I assumed conduct of the file in the middle of 2006. At the conclusion of the file there was a delay in the transfer of funds to the other side due to a number of factors including provision of account information for a deposit and the lack of retainer being provided by the client. I acknowledge that I could have been more diligent in completing the matters, but I deny that the delay is conduct deserving of sanction. It is alleged that I failed to serve my client P. GR, on the matter referred to in Citation 2. I deny such and assert that my client received proper legal services.

Citation 6 – It is alleged that I breached the confidentiality of the LSA Conduct Process, in that I disclosed in proceedings in the Court of Queen's Bench of Alberta, being a Statement of Claim issued by my independent lawyer on November 1, 2006. The complaint had been made against me by a former employee, who was the defendant in the said Action. I did not disclose this fact, and I deny that I had any duty of confidentiality in regard to such to the LSA at the time the Statement of Claim was issued. No letter had been sent to me by the LSA under Section 53 of the *Legal Profession Act* calling for such confidentiality.

Citation 7 – It is alleged that I swore a false affidavit in August 2007 in a Court of Queen's Bench Action, relating to my defending a claim by Mr. D, as Plaintiff, a lawyer who formerly worked for me in my practice. The Affidavit I swore was that I had no interest in a piece of real estate. This was true as corroborated by bank records and legal files. I was never cross-examined on the Affidavit, the allegation has not been suggested in the litigation, nor has he

proceeded with his action. I deny that I swore a false Affidavit and this is not substantiated by any of the evidence.

Citation – 8 – Citation 9 – Citation 4 – It is alleged that I failed to comply with accounting rules of the LSA, and used trust funds for a purpose other than designated by the trust.

By 2006 I had delegated all accounting to my staff. In 2006 through 2008, a Law Society audit revealed accounting and book keeping errors in my trust records. For two years I hired an outside accountant to reconcile my trust records, and hired a further trust accountant to ultimately resolve and rectify the errors in my trust records. That second accountant testified that all the errors that were found were nothing more than common bookkeeping errors that she regularly saw in her accounting practice.

Any failure to comply with the Law Society Rules with my trust accounts resulted from bookkeeping and accounting errors and not as a result of any intentional wrong doing. I had hired an accountant with a recognized proficiency in PCLaw to assist me in dealing with the Audit Department. Ultimately, the Law Society determined that there was a deficiency in my trust account of \$4,514.70 despite her position that there was no shortage and that the suggested deficiency was based on a manual reconciliation by someone not knowledgeable in the operation of the PCLaw accounting program. The deficiency could not be identified by the Law Society to any client or client files. I argued against this deficiency, but I deposited that sum from my personal funds into trust to address the alleged deficiency. Since there was no deficiency, my trust account remained in overage until it was closed.

I did not misappropriate or wrongfully convert trust funds. The allegation that I did arose from the fact that for a period of time I billed criminal files on a flat fee basis and paid them from retainers before the work was completed. The practice was immediately discontinued when I was informed that this practice was not appropriate. The trust funds were all retainers and all work was completed on those files. With respect to the use of trust funds for a purpose other than designated by the trust, the file involved matters relating to a divorce settlement managed by another lawyer in my office. Inadvertently the file was billed and paid from the settlement funds. I acknowledge that this was not appropriate under the rules. When the error was discovered, it was corrected without cost or delay to the client.

All trust account issues involved accounting deficiencies or errors. I deny any misappropriation, wrongful conversion or misuse of trust funds.

Citation 10 – It is alleged that I failed to remit GST and payroll source deductions on a timely basis in 2007. The amounts owing to CRA for GST and payroll source deductions came as a result of a CRA audit where it was determined that there were funds owing. As a result of the CRA audit, I entered into payment arrangements to pay that deficiency on a monthly basis. The payment arrangement was fully honored and in place prior to any investigation by the Law Society. In addition the outstanding balance was paid in full prior to the citation being laid.

Citation 11 – It is alleged that I borrowed funds in 2006 from a former client, without recommending that the client seek independent legal advice. This was a personal loan from a friend and had nothing to do with my practice, and the loan was repaid. The complaint is from

the LSA. I had not acted for the lender for many years and did not consider him a client at the time of the loan. I deny that I had any professional duty to treat the lender as a client and recommend that he seek independent legal advice in the circumstances.

Citation 12 – Citation 13 – It is alleged that I failed to respond to inquiries of the LSA investigators on a timely basis. It is alleged that I failed to be candid with the Benchers and LSA Staff. I respond to all inquiries as soon as I was able in the circumstances and when unable to comply within time frames I asked for, and was given additional time to respond. I was candid in this regard and these allegations would not be proven in a Conduct Hearing. It must be remembered that I was under constant investigation, interrogation and review by LSA investigators from 2006 through 2013, a period of seven years. I endeavored to cooperate with LSA Investigators and was at all times candid with the Benchers and LSA Staff.

Citation 14 – Citation 15 – It is alleged that I breached conditions attached to the trust deposit of D.B. and R.B. or alternatively failed to exercise reasonable care and attention in regard to the said trust funds. I received monies for my client, a builder, as a deposit for construction of a home by Mr. & Mrs. B, who were not my clients. The monies were placed in trust for my client. I paid the monies to my client when Mr. & Mrs. B defaulted on their agreement. As a result of a direction by the Law Society, I put the monies back into trust where they remained until they were paid out pursuant to a court ordered settlement.

It is alleged that I failed to be candid in communications with the LSA in regard to this citation or alternatively failed to respond in a complete and appropriate manner to communications from the LSA on this citation.

I had advised the Law Society and Mr. & Mrs. B that the monies were in an interest bearing account when in fact I was in error and the monies had been taken out of the GIC at the end of its term. I apologized for that misstatement. The matter was resolved by a Court ordered settlement in February of 2011. The funds were never taken from trust until the Court Order. The LSA communication is after the said Court Order which concluded the matter. The LSA had dismissed complaints from the non-clients in 2003 and 2007, and chose for some unknown reason to process another complaint by them in 2011. I deny that I was not candid or failed to respond to the LSA on this Citation in the circumstances. Any misstatement to the LSA or to Mr. & Mrs. B was a mistake and accidental, not intentional.

Citation 16 and 17 – It is alleged that I failed to serve my client S.A. on a timely basis. It is alleged I failed to respond to the LSA on a timely basis and in a complete and appropriate manner in regard to the complaint in Citation 16. This involved being retained to complete the estate of the client's mother in 2007, and the client complained to the LSA in 2010 that the work had not been completed. I acknowledge that this matter ought to have been completed sooner than what occurred. The delays in the completion of the matter arose due to repeated rejections by Surrogate Court as well as the client not maintaining her retainer. S.A. did not appear to testify on this matter when it was before a Hearing Committee.

Citation 18 – It is alleged that I failed to respond to the LSA on a timely basis and in a complete and appropriate manner in the matter of a complaint by Mr. W in 2010. Mr. W. was my landlord for my practice office at the time. He alleged that rent was in arrears after I had rectified the

deficiency. I responded in a complete and appropriate manner to the LSA on May 18, 2010, that the rent arrears had been paid in full prior to the complaint being filed. On March 8, 2011, the LSA wrote to me for a response to the complaint. I did not reply as I believed that the complaint had been resolved. I acknowledge that I should have replied to the LSA in response to their correspondence.

GROUP B CITATIONS (16 Citations)

Citation 1 – 16

These next series of citations relate to a complaint made by Mr. D. in respect to work performed by me in commercial foreclosure proceedings against condo units held by CCR. The complaint was that I had failed to respond to communications and provide requested information on trust funds. This complaint expanded to 16 different citations including violations of trust accounting, acting in a conflict as between clients, and failure to provide information to the Law Society. Some general comments will be helpful to put the complaint, the citations and my response into context.

In 2000, I was retained to act on behalf a number of mortgagees to foreclose on properties owned by CCR. There were 18 entities which had advanced money to CCR and the claims were ultimately consolidated into one action. The Plaintiffs had initially provided retainers and all mortgages required the payment of legal fees in the event of default. In the course of the proceedings, I received a payment for all arrears owed to the clients. I also received funds from other counsel in the amount of approximately \$55,000.00 to be applied to legal costs and disbursements on trust conditions that my accounts be taxed. My account was taxed and reduced by the taxing officer from \$83,000 to \$55,000. I commenced an appeal of the Taxing Officer's decision.

The appeal of the Taxing Officer's decision was heard in November, 2004. Justice LoVecchio, as Case Management Justice, had heard the appeal and suggested that the appropriate amount for fees would be at least \$75,000.00 and that the original amount approved by the Taxing Officer could be released from trust.

At issue then arose as to whether the funds paid were sufficient to payout all mortgages. A Master directed an issue to be tried such that any of my clients who believed they have not received sufficient payment to retire the mortgages were to commence a new action. Funds held in trust on behalf of all the clients were transferred to the new action. Some of the original Plaintiffs elected not to take part in the new action, including Mr. D. They were advised if they did not participate they would not be entitled to any of the funds. Mr. D determined that he no longer wanted to pursue the matter.

Citation 1 – It is alleged that I misappropriated or wrongfully converted trust accounts. All mortgage payments were pooled in one trust account and the clients were paid out their proportionate share, less legal fees. Justice LoVecchio's case management directive of an approval of at least \$75,000.00 was never formalized. Payment of fees by the Defendant were at least \$20,000.00 short of what Justice LoVecchio advised what the fees would be. The funds in trust were to be proportionately split amongst those Plaintiffs who carried on with the action.

Mr. D. did not participate in the face of that advice. As a result, Mr. D was not provided a proportionate share of the funds. Mr. D initially agreed to this approach but ultimately changed his mind.

Citation 2 – It is alleged that there were shortages in my trust account. My accounting system was on a manual system and I initially had individual trust ledgers for each client which was ultimately consolidated into a combined trust ledger. A CGA calculated the amounts owing on the mortgages to ensure that each client received their appropriate share of the trust funds received. Funds were paid out on the mortgages after confirmation of the amounts owed to each client. There were never shortages in my trust account.

Citation 3 – I had received funds from counsel for CCR under trust conditions that my account be taxed. My account was taxed at \$55,000. The \$55,000 remaining in trust was ultimately distributed to the clients who participated in the ongoing litigation. These funds were either paid out to the clients or applied to ongoing legal fees. I never paid out funds from my trust account in breach of any trust conditions. The trust conditions imposed by CCR's solicitor were that I tax my account and my accounts were taxed at \$55,000.

Citation 4 – I acknowledge that I pooled the funds in question and did not maintain individual trust ledgers for my clients. I should have and this is against the trust accounting rules. The accounts were monitored and kept by a CGA as a result of which, none of my clients suffered any prejudice as a result of this inadvertent non-compliance with the accounting rules.

Citation 5 – It is alleged that I preferred the interest of some clients over the interest of others. Some clients choose to participate in the Cost action and those that did not, waived their right to recover full funds to pay their costs. However, the money that I was holding in trust was for the benefit of all the clients and yet was transferred to the new client Costs action. I believed that those clients that choose not to participate in such Costs action would have no claim against those funds, and so advised both the participants as well as the non-participants such as Mr. D. In retrospect, while Mr. D initially agreed to this when he declined to participate, I should have documented the agreement of the non-participants to this course of action.

Citation 6 – It is alleged that I acted while in a conflict of interest. I received funds to pay out mortgages from the CCR's solicitor. When CCR's solicitor sought discharges on instructions from the clients, I refused to provide discharges on the basis that while some of my clients had been paid in full, all of them wanted payment of their full legal fees pursuant to the terms of the mortgage. I acknowledge that in these unique circumstances, there was a potential conflict of interest in the individual positions of the clients but none of them ever raised this or complained.

Citation 7 – It is alleged that I failed to respond to communication from clients on a timely basis or in an appropriate matter. There were approximately a dozen mortgages for whom I acted. Due to the multiplicity of the individuals involved, one client was designated as the contact person for the progression of the action. To repeat the same interaction (phone calls, emails and meetings) to all clients would have significantly increased the legal costs on the action to those clients. In addition, it could have resulted in potentially confusing instructions. If there was a failure in this approach, it was a mistake and not intentional.

Citation 8 – It is alleged that I failed to keep clients informed as to the progress of the matter. As provided for in the response to Citation 7, I had one individual with whom I reported to and received instructions on behalf of the group. However I should have regularly provided written reporting letters to each individual client advising them of their progress of the matter. I acknowledge that this was an error.

Citation 9 – It is alleged that I failed to respond to counsel in a timely basis or in an appropriate manner. This allegation relates to my interaction with Mr. A., Mr. D.'s new counsel. My position is that Mr. D. was not a party to the Costs action and therefore not entitled to any information about the funds in trust.

Citation 10 – It is alleged that I failed to serve my clients. It is alleged that some money in the amount of \$27,000.00 was paid into Court. If funds were paid in they were done on the direction of a Court Order. However they would have been paid into Court to deal with the ongoing litigation. Due to the passage of time, I cannot comment on the existence of any monies paid into Court. If monies were paid into Court, they are to be paid out to any of the litigants in this matter.

Citation 11 – It is alleged that I destroyed my records and hampered the Law Society investigation. As a result of a move to a smaller office space, I destroyed a number of files and records prior to commencement of the Law Society investigation in this matter. The files that were destroyed were part of a normal purging process and were done to accommodate the space in a new office. The investigation commenced in June 2011 and deals with matters going back to 2000. I did not destroy any files relating to the funds in trust. I destroyed files and records in the normal course of operating a law firm and not on a deliberate basis to hamper the Law Society investigation.

Citations 12 and 13 – It is alleged that I failed to respond or be candid with the Law Society. From time to time, I requested extensions of time in which to respond to the complaint and none of these constitute a failure to respond on a timely basis. It is important to note that in order to comply with the many requests of the investigators I often spent over 40 hours in a week collecting material and responding to their requests for information over the entire investigation.

Citation 14 – It is alleged that I misled or attempted to mislead clients. In 2007, I told Mr. D's new counsel that there were funds in trust for the benefit of all clients; however, a year later I advised that they had received all funds due and owing and no further funds would be paid. I maintain that Mr. D lost his right to a share of the monies in trust when he declined to participate with the ongoing action. I acknowledge that there is an issue as to whether this is a correct position.

Citation 15 – It is alleged that I failed to comply with conditions imposed upon me by a panel of Benchers in 2008. A condition imposed upon me in 2008 by the Benchers was that I could not withdraw funds from trust to pay my accounts until ten (10) days after the account has been mailed. This condition was faithfully complied with. Compliance was maintained although it involved me regularly traveling three and one half hours round trip from my home at my time and cost to ensure compliance. I was never in breach of the Benchers directions.

Citation 16 – it is alleged that I failed to be candid with the Court. It is alleged that I failed to tell

Justice LoVecchio about the trust conditions imposed by CCA's lawyer, when he ordered that the \$55,000 could be released from trust. The trust and conditions imposed by CCR's lawyer, was that I would tax my accounts. I did that and this was an appeal from the taxation setting my accounts at \$55,000.00. The reason that I did so was that this was an appeal from the taxation and that the original trust conditions had been fully complied with. In addition, I believed the Justice had the ability to make the order that was made regardless.

In the foregoing 16 Citations, I was acting for approximately eighteen mortgagees in a complicated mortgage foreclosure action which ran for many years. At no time did I intentionally breach trust conditions or misapply trust funds.

GROUP C CITATIONS

Citation 1 – It is alleged that I failed to cooperate with Practice Review. As a requirement of Practice Review it was necessary for me to provide my monthly reconciliations. Those reconciliations were regularly completed at the end of the time period under the rules and were mailed to the Law Society. The mailing would often cause a delay in their receipt. I was unaware that this was a serious concern until I was advised that my Practice Review file was being closed. I attempted to address this concern by an offer to fax the reconciliations from that point forward. However, the Practice Review department was unwilling to allow me to stay in Practice Review. As a result, my Practice Review issues were never rectified.

At the same time as dealing with this issue, my mentor informed me that for personal reasons he was needing to step down from this role. He assisted me in having Mr. Gordon Hoffman, QC, assume the role as mentor from that point forward. Mr. Hoffman graciously agreed and stayed in that role until my suspension. I diligently complied with all requests of Mr. Hoffman in his role as mentor from that point forward.

GROUP D CITATIONS

Citation 1 – Citation 2 – It is alleged that I failed to serve Mr. S. and keep him informed in his divorce proceedings. I acted for Mr. S. in his divorce commencing in April of 2009. During the course of acting for him, I failed to attend an application in June of 2010, due to my diarization error and his wife obtained a disclosure order which included costs claimable against him. When I subsequently determined this mistake, I advised Mr. S. of my oversight. The wife's lawyer advised he would not pursue the claim for costs if he received the disclosure, which was ultimately provided to him.

Citation 3 – It is alleged that I failed to promptly respond to communications from the Law Society regarding the complaint of Mr. S., when such communication contemplated a reply. Mr. S. complained by letter of October 22, 2012. The Law Society requested a response by letter of November 21, 2012. They forwarded a further letter on January 24, 2013 requesting my response to the now formal complaint. It is alleged the materials were also emailed and faxed to me. I did not receive any of this correspondence. On April 8, 2013, I telephoned to request that these correspondences be faxed to me. I then requested an extension of time to respond and I ultimately responded to this complaint on June 10, 2014. I don't know what happened with my mail service, fax communication or email communication. I must accept responsibility for the

failure of my office to be able to accept these communications.

GROUP E CITATIONS

Citation 1 – It is alleged that I failed to discharge my responsibility to my client Mr. D. honorably and with integrity. Mr. D. was charged with a criminal offence of running a large marijuana grow operation. He retained me to represent him in both the preliminary inquiry and trial of the matter. The retainer letter provided that all funds provided were non-refundable. His brother provided me with a partial retainer and additional funds for pre-booked travel expenses relating to the preliminary inquiry. His brother subsequently decided to withdraw his financial support and I was forced to withdraw as counsel due to financial reasons. As a courtesy, I had agreed to refund the portion of the pre-booked travel expenses that could be recovered. Due to issues with the mail delivery of the refund, the funds were not returned to the client's brother prior to my suspension. I failed to ensure that the funds were returned to him promptly.

Citation 2 – It is alleged that I improperly withdrew trust monies for services not rendered. Mr. D. was billed for all work completed on his behalf. I withdrew as counsel due to the breach in the retainer agreement in providing the full funds required for the preliminary inquiry. Prior to my withdrawal, I billed and was paid for all work that was completed on behalf of the client. The only services which were not rendered were those associated with the conduct of the preliminary inquiry for which I withdrew due to a breach of the retainer agreement.

Citation 3 – It is alleged that I failed to respond to the Law society's request for a written response to Mr. L.D.'s complaint. I was interviewed by the Law Society's investigator on this matter before a Court Reporter. I did not provide a formal written response to the complaint as I felt that my evidence under oath would have been sufficient to address the complaint. I now accept that this was not the prudent way of addressing this matter.

GROUP F CITATIONS

Citation 1 – It is alleged that I failed to serve Mr. G. in a courteous, diligent and efficient manner. I was retained by Mr. G. in December 2011 for the purpose of dealing with the separation and divorce from his then wife. As a result, I prepared a Separation Agreement as well as all documentation for a divorce. All work completed for Mr. G. was done at the commencement of the file.

Citations 2 & 3 – It is alleged that I failed to follow accounting rules in relation to my trust account and that I misappropriated funds given to me in Trust. I was suspended during proceedings on April 24, 2013. On April 25, 2013, Ms. E. was appointed Custodian of my practice. I understand that many of my files, including this file, have gone missing including those of Mr. G. As a result, I am unable to review the hard copy of the file to respond to this allegation. I also do not have access to my PCLaw records. My fees for this type of divorce, including the preparation of all affidavits and divorce documentation would normally be \$2,500.00. My fees for the separation agreement would normally be at least \$3,000.00. These fees include disbursements (\$210.00 filing fee plus photocopies, stationery and courier). However, the estimate does not consider that Mr. G. required considerably more communication (email and phone calls) than the average client. I would suspect that there would actually be an

outstanding balance owing in this circumstance. I deny that any funds were misappropriated.

Citations 4 & 5 – It is alleged that I failed to be candid with the Custodian and failed to comply with the Guardianship Order by not turning over all client file materials. The application for my suspension came in the midst of a hearing in which it had already been determined that it would have to be adjourned. Prior to the suspension, I was under the full belief that there would have been no final determination at that point. At the time of the Custodianship Order, all my active files were in my office. The only exception was two active files that I had in my personal briefcase and those were provided to the Custodian after she had removed all files from my office. There was no opportunity to deliberately withhold any files from the Custodian due to the timing of all events. I had discovered that I had Mr. G.'s marriage certificate in my possession after all materials were seized by the Custodian as I had taken his divorce documents with me so that I could meet with him some evening after the hearing. Due to the stress of the situation I inadvertently forgot that I had that document in my possession. I believed that the document was properly provided to Mr. G. instead of turning it over to Ms. E. who would then provide it to him. I now realize that this was an incorrect approach but was an innocent error in judgment.

ALL OF THESE FACTS ARE ADMITTED THIS 3rd DAY OF JULY, 2014.

JOHN FRANCIS SCHNEIDER