

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF JERRY KIRIAK
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Lou Pesta, QC – Chair
Sandra Mah – Adjudicator
Jodi Edmunds – Adjudicator

Appearances

Kelly Tang – Counsel for the Law Society of Alberta (LSA)
Peter Royal, QC – Counsel for Jerry Kiriak

Hearing Date

August 24, 2020

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. Mr. Kiriak was admitted as a member of the LSA on July 15, 1993. At the time of the hearing his status was “Active”. His practice areas are primarily family law and real estate law, although at the time of the hearing he was not accepting any new real estate files pursuant to an undertaking given to the LSA in February 2018. All of the conduct issues which resulted in the hearing arose from real estate matters handled by Mr. Kiriak during the period of 2014-2018.
2. On August 24, 2020, the Hearing Committee (Committee) convened a hearing regarding the following fourteen citations arising from six complaints brought against Mr. Kiriak.

CO20170305

1. It is alleged that Jerry Kiriak failed to supervise his real estate practice and, as result, failed to properly serve some of his real estate clients and that such conduct is deserving of sanction;

2. It is alleged that Jerry Kiriak failed to honour an undertaking and that such conduct is deserving of sanction;
3. It is alleged that Jerry Kiriak failed to respond to communications from another lawyer and that such conduct is deserving of sanction;
4. It is alleged that Jerry Kiriak failed to comply with Law Society accounting rules in that he signed blank trust cheques and that such conduct is deserving of sanction;

CO20170376

5. It is alleged that Jerry Kiriak failed to comply with an undertaking and that such conduct is deserving of sanction;
6. It is alleged that Jerry Kiriak failed to respond to communications from another lawyer and that such conduct is deserving of sanction;

CO20171218

7. It is alleged that Jerry Kiriak failed to respond to communications from his client and that such conduct is deserving of sanction;
8. It is alleged that Jerry Kiriak failed to properly supervise his staff and that such conduct is deserving of sanction;

CO20171446

9. It is alleged that Jerry Kiriak failed to properly supervise his staff and that such conduct is deserving of sanction;
10. It is alleged that Jerry Kiriak failed to respond completely and accurately to communication from the Law Society and that such conduct is deserving of sanction;

CO20171732

11. It is alleged that Jerry Kiriak failed to comply with an undertaking and that such conduct is deserving of sanction;
12. It is alleged that Jerry Kiriak failed to respond to communications from another lawyer and that such conduct is deserving of sanction;

CO20181017

13. It is alleged that Jerry Kiriak failed to respond to communications from his client and that such conduct is deserving of sanction; and
14. It is alleged that Jerry Kiriak failed to properly supervise his staff and that such conduct is deserving of sanction.

Preliminary Matters

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

Agreed Statement of Facts/Background

4. At the commencement of the hearing, the parties provided the Committee with a Statement of Admitted Facts and Admission of Guilt. The Statement of Admitted Facts and Admission of Guilt is appended to this decision as Schedule 1.
5. Mr. Kiriak confirmed that the admissions were being made voluntarily and he unequivocally admitted guilt to all of the citations. He confirmed that he understood the consequences of his admission and that he was admitting his conduct was deserving of sanction. Mr. Kiriak confirmed his understanding that the Committee would not be bound by the joint submissions.
6. The Committee retired to consider the Statement of Admitted Facts and Admission of Guilt. After careful review the Committee was satisfied that the recitation of facts was acceptable. The statements were robust, clear and unequivocal and they properly and fully substantiated the citations issued. The Committee accepts the Statement of Admitted Facts and Admission of Guilt. In so finding the conduct of the Member is deemed to be conduct deserving of sanction.
7. Having made that determination, the only remaining question for the Committee was one of appropriate sanction. Exhibit 6 was introduced in evidence as the record of Mr. Kiriak. It indicates that Mr. Kiriak has no discipline record with the LSA.

Decision Regarding Sanctions and Costs

8. Counsel for the LSA made a submission recommending a suspension of two to four months. In support of this recommendation she provided five cases for our consideration (*Law Society of Alberta v. Leonard*, 2014 ABLS 31; *Law Society of Alberta v. Souster*, 2016 ABLS 1; *Law Society of Alberta v. McKay*, 2016 ABLS 34; *Law Society of Alberta v. Hodgson*, 2017 ABLS 11; *Law Society of Alberta v. Carlson*, 2019 ABLS 14). She stated that due to the number of citations and the inconvenience to clients and opposing counsel as well as costs incurred by opposing counsel in one instance to remedy an undertaking which was not complied with by Mr. Kiriak, the situation was comparable to those set out in the five cases provided. In addition, she highlighted portions of the Final Practice Management Report, which addressed some delays and difficulties with Mr. Kiriak's initial compliance with the completion of undertakings as an aggravating factor. Counsel for LSA argued that the governability of Mr. Kiriak's practice was an issue and therefore, a suspension was required for specific and general deterrence and

denunciation. In addition, Mr. Kiriak had participated in the LSA's Practice Review program in 2015, 2016 and 2018.

9. Mr. Royal then made an initial motion for the proceedings to be stopped and the Committee to be reconstituted due to a misunderstanding with respect to the length of suspension sought by the LSA. It was Mr. Royal's understanding that a suspension in the range of two to four weeks rather than two to four months would be recommended by the LSA.
10. After retiring to caucus with respect to Mr. Royal's motion and carefully considering the arguments advanced, the Committee denied the motion on the basis that no joint submissions respecting sanction were actually agreed to by the parties and so the Committee was not constrained or prejudiced in their ultimate sanction decision in any respect. LSA counsel did provide a notice to Mr. Kiriak and his legal counsel that LSA would be seeking a suspension.
11. Mr. Royal then made his submissions on sanction on behalf of Mr. Kiriak arguing that;
 - The facts of the cases presented by the LSA contained much more serious circumstances including, in three of the cases, the member's unknowing entanglement in mortgage fraud causing major financial losses to lender clients.
 - The lack of prior disciplinary proceedings in 27 years of Mr. Kiriak's practice was a strong mitigating factor.
 - Mr. Royal also highlighted portions of the Final Practice Management Report which reflected positively on Mr. Kiriak, including statements that Practice Management Staff were "encouraged by the efforts he made to engage in the process and become more connected to his practice" and that the "Manager of Practice Management is not recommending citations for breaches of undertakings and a failure to cooperate".
 - A reprimand would be a reasonable sanction in the circumstances.
12. Mr. Royal requested that if the Committee were to order costs that Mr. Kiriak be provided a grace period of one year to pay.
13. The Committee reserved its decision with respect to sanction to permit a careful review of the cases, which were only received by it on the morning of the hearing. The Committee subsequently reached consensus with respect to sanction.

Analysis and Decision on Sanction

14. In carefully reviewing the cases submitted by LSA counsel the Committee found the majority of the cases to not be relevant to its decision. Three of the five cases (*Leonard*, *Souster* and *Hodgson*) involved circumstances of mortgage fraud with dramatic financial losses caused to lender clients. Although the lawyers were not implicated in the fraud,

they failed to recognize red flags of same. We have no such circumstances here.

15. The *McKay* case involved very dramatic consequences where an appeal was struck and the ability of a client to pursue recourse through a hearing was lost due to the solicitor's negligence. In addition, the solicitor in that case failed to cooperate with investigations by the LSA. No loss of access to justice was caused by Mr. Kiriak's actions.
16. As a result, the only case which the Committee felt was relevant to this case was the *Carlson* case which involved a sanction of a one-month suspension recommended in a joint submission of the parties. There are some distinguishing, mitigating and aggravating factors which we considered as follows:
 - the matter at hand involves 14 citations and 6 complaints while Mr. Carlson's involved 5 citations and 2 complaints;
 - Mr. Carlson had a prior disciplinary record whereas Mr. Kiriak does not;
 - the conduct of Mr. Carlson caused more dramatic consequences to his client including contributing to the loss of the client's driver's license and employment;
 - the consequences of Mr. Kiriak's conduct were frustration, time, and costs on the part of both clients and opposing counsel; delays in payments of funds to clients and third parties; and failing to comply with LSA accounting rules in that he signed blank cheques;
 - Mr. Kiriak has participated in the LSA's Practice Review program three times since 2015.
17. The Committee finds that, based on the facts of this case, the appropriate sanction is suspension. In accordance with section 72 of the *Act*, the Committee orders that Mr. Kiriak be suspended for a two- week period. The suspension is to commence within 90 days of this written decision. Mr. Kiriak must confirm with the LSA the commencement date of the suspension within two weeks of receiving this written decision.
18. In addition, pursuant to subsection 72(2) of the *Act*, the Committee orders costs in the amount of \$23,170.12 to be paid. Mr. Kiriak has one year from the date of this written decision to pay the costs.

Concluding Matters

19. No Notice to the Attorney General is required.
20. The LSA is directed to issue a Notice to the Profession regarding the suspension.
21. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, September 8, 2020.

Lou Pesta, QC - Chair

Sandra Mah

Jodi Edmunds

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
JERRY DALE KIRIAK
A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING FILE 20190076

STATEMENT OF ADMITTED FACTS, EXHIBITS AND ADMISSIONS OF GUILT

INTRODUCTION

1. This hearing arises out of six complaints comprising of fourteen citations. The citations deal with my conduct from the period of 2014-2018.

BACKGROUND

2. I was admitted as a member of the Law Society of Alberta (the "**LSA**") on July 15, 1993. My current status is "Active". I practice in the areas of family law and real estate law, although I am currently not taking new real estate files pursuant to an undertaking I gave to the LSA in February 2018.

FACTS AND ADMISSIONS

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

ADMISSIONS OF GUILT

4. When I admit guilt to the conduct described herein, I agree that the conduct is "conduct deserving of sanction" as defined under section 49 of the *Legal Profession Act* (the "**Act**").

NO DURESS AND INDEPENDENT LEGAL ADVICE

5. 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.

THIS STATEMENT OF ADMITTED FACTS, EXHIBITS, AND ADMISSIONS OF GUILT IS MADE THIS 4th DAY OF August, 2020.

1. COMPLAINT #1: A.D. - (CO20170305)

Background

1. On February 3, 2017, the LSA received a complaint from A.D., my former conveyancing assistant, alleging that I had failed to properly supervise my real estate practice during the years that she was employed with my firm, Kiriak Law. A.D. also alleged that I did not allow her to take proper vacations during her employment and that I wrongfully terminated her.

Tab 1 - Information Concerning a Lawyer Form, dated February 3, 2017

2. A.D. was employed at Kiriak Law from May 1, 2014 to January 20, 2017 as my conveyancing assistant.
3. In September 2017, the LSA commenced an investigation regarding A.D.'s complaints.

Tab 2 - Investigation Order, September 15, 2017

4. The investigation resulted in a referral to the Conduct Committee. On March 19, 2019, a panel of the Conduct Committee directed that the following citations be dealt with by a Hearing Committee:
 1. It is alleged Jerry Kiriak failed to supervise his real estate practice and, as a result, failed to properly serve some of his real estate clients and that such conduct is deserving of sanction;
 2. It is alleged that Jerry Kiriak failed to honour an undertaking and that such conduct is deserving of sanction;
 3. It is alleged Jerry Kiriak failed to respond to communications from another lawyer and that such conduct is deserving of sanction; and
 4. It is alleged that Jerry Kiriak failed to comply with Law Society accounting rules in that he signed blank trust cheques and that such conduct is deserving of sanction.

Tab 3 - Conduct Committee Panel Minutes

Summary of Former Employee Information and Concerns

5. During the course of their investigation, the LSA interviewed the following individuals, who are current or previous employees of mine:
 - a. M.A., my current conveyancing assistant since October 2017;
 - b. E.L., my former articling student and associate from July 2014 to August 2016;
 - c. B.N., an independent contractor who practiced at my firm from April 2015 to April 2018; and
 - d. A.D.
6. My former employees shared information and concerns regarding my law practice with the LSA investigators, summarized as follows.

Information provided by M.A.

7. M.A. was interviewed by a LSA investigator on February 6, 2018. A transcript of her interview was provided to me by the LSA.
8. M.A. advised the LSA that since she began working at my office, I had met with 100% of my real estate clients. She believed that prior to her starting, and based on her review of client files, assistants at Kirak Law met with clients instead of the lawyers.

**Tab 4 – Transcript of Interview of M.A., dated February 6, 2018
("M.A. Transcript"), p.12-13**

9. M.A. advised that the practice of assistants meeting with clients changed when she began working at the firm because she expressed to me that client meetings were not part of her job.

Tab 4 – M.A. Transcript, p.18-19

10. M.A. stated that she noticed the following issues respecting my law practice:
 - a. A titled parking unit had erroneously not been transferred on a real estate file where I acted for the vendors, W.C. and C.C. The sale closed in 2016 and the error was not discovered or rectified for 2 years;
 - b. Estoppel certificates should have been ordered on certain files but had not been;
 - c. The firm's reporting hadn't been done in approximately one year;
 - d. The firm's accounts have not been paid; and
 - e. On a real estate file that closed in 2014, I was supposed to hold back the sum of \$5,000.00 from my clients, A.B. and J.B., pending the receipt of a real property report but I had failed to do so.

Tab 4 – M.A. Transcript, p.21-28, 58
Tab 5 – Email from M.A. to LSA, dated February 6, 2018

Concerns of B.N.

11. B.N. was interviewed by an LSA investigator on February 14, 2018. A transcript of his interview was provided to me by the LSA.
12. B.N. advised that he started noticing issues with the real estate practice at my firm in late 2015 to 2016 because work was not getting completed on files. For example, B.N. reported seeing a fax from the bank that indicated that it was the 5th request being sent.

Tab 6 – Transcript of Interview of B.N., dated February 14, 2018 (“B.N. Transcript”), p.5-6

13. B.N. stated that I lacked control and management over real estate issues and that the other lawyers at the firm had expressed similar concerns. B.N. was particularly concerned about A.D.’s conveyancing work. He stated that “things would come in, we were never informed, we were never given these documents, things were being prepared and sent out even without our signatures.” B.N. was also concerned that the firm’s trust account was not being properly monitored and that funds were not being disbursed in a timely manner.

Tab 6 – B.N. Transcript, p.6-7, 58-59

14. B.N. advised that when he expressed his concerns to me, I responded by replacing my then conveyancing assistant, A.D., with another assistant, D.J., and subsequently by hiring my [...] to assist at the firm.

Tab 6 – B.N. Transcript, p.6-9

15. B.N. felt that the changes made to the firm did not improve the real estate practice as there were issues with D.J.’s performance and because he felt my [...] was too inexperienced to assist on files. B.N. advised the LSA that D.J. subsequently quit and M.A. was hired to assist her. After B.N. and another associate emailed me in October 2017 concerning the real estate backlog issues we were experiencing and the need for more help, another assistant, S.J. was brought on part-time to assist with the firm’s reporting backlog.

Tab 6 - Transcript, p.10-11

Tab 7 – Emails between J.K. and staff, dated October 30, 2017

16. B.N. stated that he expressed his concerns to me on multiple occasions, both alone and together with other associates who were working at the firm at the time. B.N. also advised that he had difficulties accessing his client files and was concerned that I was not communicative enough with the other lawyers in the office.

Tab 6 – B.N Transcript, p.10-11, 94-95

17. B.N. left the firm in April 2018.

Concerns of E.L.

18. E.L. was interviewed by a LSA investigator on February 26, 2018. A transcript of the interview was provided to me by the LSA.
19. E.L. advised that during his time with my firm, he observed that my conveyancing assistant met with real estate clients the vast majority of times rather than me or another lawyer. His recollection was that I generally did not meet with my clients.

Tab 8 – Transcript of Interview of E.L., dated February 26, 2018 (“E.L. Transcript”), p.6-8, 15

20. E.L. stated that when he had questions for me respecting real estate files, I would direct him to my then-conveyancing assistant, A.D., or to the conveyancing assistant at [H] Law, who we share office space with, instead of answering the questions himself. E.L. did not feel I was able to answer his real estate questions.

Tab 8 – E.L. Transcript, p.12-13, 16

21. E.L. noted that while he was with the firm, I had undergone a Practice Review where it was recommended that the firm limit the number of open files we had. E.L. did not believe that this was done successfully, though he believed the firm implemented a better diary system after the Practice Review.

Tab 8 – E.L. Transcript, p.32-33

22. E.L. also advised the LSA Investigator that while he was with the firm, he observed at least a dozen occasions where I signed 5-10 blank cheques at a time and left them for the conveyancing assistant to handle. E.L. stated that he and B.N. raised with me that they thought this practice was against the Rules but that I did not change my practice after this discussion.

Tab 8 – E.L. Transcript, p.32-33

23. E.L. left the firm in April 2016.

Concerns of A.D.

24. A.D. was interviewed by a LSA Investigator on March 2, 2018. A transcript of the interview was provided to me by the LSA.
25. A.D. advised that during the course of her employment with me, she was generally responsible for all aspects of real estate files. If legal questions or issues arose on files, A.D. stated that she would come to me and I would generally provide her with instructions to reach out to the client or the other lawyer, rather than contacting these parties myself. A.D. stated that she would sometimes negotiate holdbacks on files.

Tab 9 – Transcript of Interview of A.D., dated March 2, 2018 (“A.D. Transcript”), p.14-16

26. A.D. stated that I generally did not review her work or supervise real estate files unless she brought specific issues or concerns to my attention.

Tab 9 – A.D. Transcript, p.27-28

27. A.D. also stated in the fall and winter months, she would typically fall behind on reporting and closing files because she was too busy attending to other aspects of real estate files. This resulted in banks sending multiple reminder notices and placing phone calls to the firm to request outstanding documentation.

Tab 9 – A.D. Transcript, p.33-41

28. A.D. advised that with respect to the 2014 A.B. and J.B. file, A.D. had erroneously released the hold back of \$5,000.00 to the client and likely did not bring this mistake to my attention.

Tab 9 – A.D. Transcript, p.51-52

29. A.D. informed the LSA Investigator that during the 2015-2016 Practice Review process, she was not fully candid with the LSA in that she advised she met with clients much less frequently than she did in reality. After the Practice Review was completed, A.D. stated that she became more involved in my real estate practice but that I still did not meet with real estate clients or review the files A.D. was responsible for.

Tab 9 – A.D. Transcript, p.57-59

30. On January 20, 2017, A.D.'s employment at my firm was terminated. She commenced an Employment Standards Claim against me that has since been settled.

Response to Former Employee Concerns

31. I admit that I did not meet with many of my real estate clients during the time periods described by my former employees. When my conveyancing assistant met with real estate clients, she would sign their documentation with them and sometimes would pass on legal advice that I instructed her to advise the clients.
32. I admit that I did not review my real estate files. I relied on my conveyancing assistants to bring any file issues to my attention, to complete reporting, and close files in a timely manner. As a result of my failure to review real estate files, reporting was delinquent on several files and trust funds were not disbursed in a manner. In addition, files were not being handled properly without my knowledge.
33. I admit that I signed blank cheques during the time E.L. was employed by my firm, although the cheques were always in the possession of V.M., one of my legal assistants, in a locked cabinet.
34. I admit that I did not review client trust listings during the three-year time period A.D. was employed with the firm.
35. After A.D. was terminated and D.J. was hired to replace her, I still did not review my real estate files or client trust listings and relied on D.J. to bring reporting and file closures

up to date. Unfortunately, J.D. was not able to do so during the 8-9 month course of her employment.

36. I was interviewed by a LSA Investigator on May 7, 2018. At that time, the Investigator had asked why the client trust listing I had provided showed some files where funds had not paid out to proper parties despite the files closing 1-3 years ago. I advised that there was no good explanation for the delay.

2014 A.B. and J.B. Real Estate Transaction

37. With respect to the client file noted at paragraph 15(e) herein, I provide the following information.
38. I was retained to act for the vendors, A.B. and J.B., in this transaction. On June 26, 2014, I wrote to the lawyer for the purchaser and undertook to hold back \$5,000.00 from the sale proceeds, releasable to my clients upon the provision of a real property report ("RPR") and evidence of compliance or non-conformance. On June 27, 2014, the transaction closed and all sale proceeds, including the holdback, were released to my clients. At that point, I did not provide the RPR with compliance.

Tab 10 - Trust Letter, dated June 26, 2014

39. As stated above, A.D. advised that she erroneously paid the hold back funds to the clients and did not advise me about the mistake. I was not supervising this file or reviewing it so I was not aware of the mistake.
40. Counsel for the purchaser wrote to me regarding the RPR and compliance on the following occasions:
- a. July 22, 2014;
 - b. October 7, 2014;
 - c. January 25, 2016;
 - d. July 21, 2016;
 - e. August 28, 2017;
 - f. January 29, 2018.

Tab 11 - Letters, dated 2014-2018

41. I did not personally respond to any of these communications. On January 26, 2016 I had my conveyancing assistant respond by email requesting information about the hot tub from counsel for the buyer. On November 14, 2017, a letter was sent in my name to counsel for the purchaser to attach the RPR and advise that we were still awaiting compliance from the City of Edmonton. I believe this letter was prepared and

sent by A.D.

Tab 12 - Letter, dated November 17, 2014

42. Counsel for the purchaser stated in her letter of January 29, 2018 that her office had left numerous voicemails for me regarding this matter but had not received a response. As I was not monitoring my phone, office, client file or conveyancing assistant during the time period in question, I am unable to confirm whether I received these voicemails.
43. I was not aware that there was an issue on this file until it was brought to my attention by the LSA. In February of 2018, I applied for a building permit to the City of Edmonton. The permit was issued on February 22, 2018.
44. I provided an RPR and evidence of compliance to counsel for the purchaser on March 26, 2019.

Involvement with Practice Management

45. Prior to A.D.'s complaint about my supervision of my real estate practice, I knew that there were issues with my real estate practice. I had participated in the LSA's Practice Management during the following occasions:
 - a. From 2005-2007, on an informal, voluntary basis;
 - b. From 2015-2016, as a result of a direct referral by the Manager, Complaints pursuant to section 53(4)(b)(1) of the *Legal Profession Act*; and
 - c. From 2018-2019, as a result of a direct referral by Conduct Counsel pursuant to section 53(4)(b)(1) of the *Legal Profession Act*.
46. During my work with practice management in 2015-2016, they expressed concerns regarding my real estate practice. In a practice assessment report, dated April 6, 2016, it was noted that I had failed to implement their recommendation to meet with every one of my real estate clients. The report further stated that unless I made a genuine effort to adopt Practice Management's recommendations, the steps I had already taken to implement their recommendations may not have a lasting impact on my practice. It was also noted that I would "continue to experience file conduct and client management issues causing [me] to teeter close to the brink of being cited for conduct deserving of sanction.

Tab 13 - Practice Assessment Report, dated April 6, 2016

47. I responded and advised that I would work with my conveyancing assistant to work towards attending all my appointments with clients. However, I provided a subsequent response indicating that I was unable to meet with every one of my real estate clients.

Tab 14 – Response to LSA, dated April 20, 2016

Tab 15 – Response to LSA, dated June 29, 2016

48. During my work with practice management in 2018-2019, I gave several undertakings, two of which currently remain in place after the closure of my practice management file:

- a. To not accept, advise or assist on any real estate matters (residential and commercial); and
 - b. To create and maintain active master file lists for each practice area and meet with my assistance on a recurring once weekly basis to review each file in my master file list; to maintain a file load of no greater than 150 current/active/open files, that I am responsible for and conducting.
49. In a final report to the Practice Review Committee, dated August 7, 2019, it was noted by Practice Management Counsel:

Although full completion of the undertakings in the timeframe requested was consistently difficult and late without reasonable explanations, Mr. Kiriak did engage in the practice assessment process and as a result, he is now more fully engaged in his practice. Without Ms. [R]'s committed involvement, he likely wouldn't be in substantial compliance. In the end, he remained only partially compliant however; in several instances, his compliance was delayed and appeared begrudging despite Mr. Kiriak's positive reception of the Practice Management team generally. It is only because of the progress that Mr. Kiriak did achieve that the Manager of Practice Management is not recommending citations for breach of undertakings and a failure to cooperate.

Tab 16 - Final Report to Practice Review Committee, dated August 7, 2019

Citation 1. Failure to supervise real estate practice and serve

50. I admit that I failed to supervise my real estate practice and, as a result, failed to properly serve some of my real estate clients by:
- a. Failing to review work completed by my conveyancing assistant to ensure that files were being completed correctly;
 - b. Delegating legal tasks on real estate files to my conveyancing assistant, such as meeting with clients to sign documentation and negotiating hold backs, and failing to properly review or supervise these tasks;
 - c. Failing to review client trust listings regularly or at all;
 - d. Failing to address performance issues of my staff for a period of two years, which resulted in delays on real estate files;
 - e. Failing to fully implement recommendations made by the LSA and with respect to real estate files;

- f. Failing to ensure that client communications on real estate files were responded to on a timely basis;
- g. Failing to ensure that real estate file reporting, trust disbursements and file closures were being completed on a timely basis;
- h. Failing to review and assess real estate files to identify legal issues;
- i. Failing to address concerns raised by clients or by counsel for other parties, and delegating such tasks to my conveyancing assistant;

all of which is contrary to Sections 2.02 and 5.01 of the Code of Conduct, (as was in force from November 1, 2011 to November 30, 2016) and Sections 3.2-1 and 6.1-1 of the Code of Conduct (in force from December 1, 2016 to the present date).

Citation 2. Failure to honour an undertaking

51. I admit that I failed to honour the undertakings I gave on the A.B. and J.B. file by:
- a. Failing to hold back the sum of \$5,000.00; and
 - b. Failing to provide an RPR and evidence of compliance to counsel for the purchaser within a reasonable amount of time;

all of which is contrary to Section 6.02(13) of the Code of Conduct (as was in force from November 1, 2011 to November 30, 2016) and Section 7.2-14 of the Code of Conduct (in force from December 1, 2016 to the present date).

Citation 3. Failure to respond to communications from another lawyer

52. I admit that I failed to respond to at least six communications from counsel for the purchaser on the A.B. and J.B. file from 2014 to 2018, all of which is contrary to Section 6.02(7) of the Code of Conduct (as was in force from November 1, 2011 to November 30, 2016) and 7.2-7 of the Code of Conduct (in force from December 1, 2016 to the present date).

Citation 4. Failure to comply with Law Society accounting rules

53. I admit that I signed blank cheques during the period of 2014-2016 and left same with my senior legal assistant to handle, all of which is contrary to Rule 119.22(1) of the *Rules of the Law Society of Alberta*.

2. COMPLAINT #2: M.G. - (CO20170376)

Background

54. On February 16, 2017, the LSA received a complaint from M.G., a lawyer who acted for the purchaser in a real estate transaction in which I acted for the vendor. M.G. alleged that I failed to discharge a Caveat from title pursuant to an undertaking I gave and failed to respond to her communications requesting I obtain the discharge.

Tab 17 - Information Concerning a Lawyer Form, dated February 16, 2017

55. The LSA conducted a review of the allegation, resulting in a referral to the Conduct Committee.
56. On March 19, 2019, a panel of the Conduct Committee directed that the following citations be dealt with by a Hearing Committee:
5. It is alleged that Jerry Kiriak failed to comply with an undertaking and that such conduct is deserving of sanction; and
 6. It is alleged that Jerry Kiriak failed to respond to communications from another lawyer and that such conduct is deserving of sanction.

Tab 18 - Conduct Committee Panel Minutes, dated March 19, 2019

August 2016 Real Estate Transaction

57. In 2016, I was retained by A.W. and J.W. in relation to the sale of their home. The home sold in August and on August 10, 2016, I wrote a trust letter to M.G., the lawyer for the purchaser, and gave the following undertakings:
- a. to payout and discharge non-permitted registrations respecting the home; and
 - b. To forward to M.G.'s office an updated Certificate of Title evidencing the discharges within a reasonable amount of time.

Tab 19 - Trust Letter, dated August 10, 2016

58. On August 12, 2016, the transaction closed. The non-permitted registrations charged against the home included two [bank] (“[B]”) mortgages and a caveat in favour of [B].

Tab 20 - Statement of Adjustments, dated August 12, 2016

59. On September 20, 2016, both mortgages were discharged. My former assistant had requested discharges for the mortgages but failed to request a discharge of the caveat.
60. On October 20, 2016, I wrote to M.G., enclosing a copy of the certificate of title, stating

that it evidenced compliance with the undertakings. However, the copy of title indicated that the caveat in favour of [B] remained on title.

Tab 21 - Letter and Enclosure, dated October 20, 2016

61. On October 25, November 18, and December 19, 2016, M.G. wrote to me requesting I discharge the caveat and provide an update to the title. I did not respond to any of these communications.

Tab 22 - Faxes, dated October 25, November 18, December 19, 2016

62. On January 10, 2017, M.G. wrote to me again, stating that it had been 5 months since the transaction had closed and requesting confirmation within 2 weeks that I had either obtained discharge or submitted it for registration. Otherwise, she would consider compelling me to comply with my original undertaking. I did not respond to this communication.

Tab 23 - Fax, dated January 10, 2017

63. On February 6, 2017, M.G. emailed and left me a voicemail message, seeking my immediate attention. I replied to her email the same day, acknowledging her call and stating that I would investigate the matter immediately.

Tab 24 - Email, dated February 6, 2017

64. On February 9, 2017, M.G. emailed me seeking an update. I did not respond to this email.

Tab 25 - Email, dated February 9, 2017

65. On February 13, M.G. emailed me again stating that if she did not receive a response in the following 2 days, she would take steps to resolve the matter. I did not respond to this email.

Tab 26 - Email, dated February 13, 2017

66. On February 16, 2017, M.G. filed a complaint with the LSA regarding my failure to comply with my undertaking in the Transaction.

Tab 17 - Information Concerning a Lawyer Form, dated February 16, 2017

Post-Complaint Communications

67. Upon being contacted by the LSA on February 28, 2017 in relation to this complaint, I instructed my assistant to follow up with [B] and M.G. I did not follow up with [B] or M.G. myself. I did not communicate with M.G. until March 10, 2017, after she had followed

up with the LSA to advise that she had still not heard from me.

Tab 27 - Emails, dated March 9-10, 2017

68. On March 13, 2017, M.G. wrote to me and LSA counsel to advise that as a result of the delay in this matter, she wrote to [B] directly on February 23, 2017 to request the discharge of caveat.

Tab 28 - Email w/ attachment, dated March 13, 2017

69. On May 18, 2017, M.G. informed the LSA that because of steps she had taken, the Caveat lapsed on May 11, 2017 and she was finally able to complete reporting on the transaction. M.G. stated in her email to the LSA:

In the end, since my office needed to do the work (and incur the time and expense) necessary to obtain the required discharge, it is my view that my complaint was not resolved informally.

Tab 29 - Email, dated May 18, 2017

70. A copy of the discharge of caveat was received by my office on March 28, 2017. My office provided M.G. with a clear certificate of title on July 28, 2017, 4 months after being notified about the discharge.

Tab 30 - Response, dated September 6, 2017

71. In my response to the LSA, I did not address why I failed to respond to M.G.'s communications.
72. As a result of the non-fulfillment of the undertakings I provided, M.G. was required to expend time and resources to obtain the discharge of caveat.

Admissions

Citation 5: Failure to comply with undertaking

73. I admit that I failed to comply with the undertakings I gave to M.G. by:
- a. Failing to obtain a discharge of the [B] caveat within a reasonable amount of time; and
 - b. Failing to provide an updated Certificate of Title evidencing the discharges within a reasonable amount of time;

all of which is contrary to Section 7.2-14 of the Code of Conduct.

Citation 6: Failure to respond to communications from another lawyer

74. I admit that I failed to respond to communications from another lawyer by:
- a. Failing to respond to 7 out of 8 of M.G.'s communications to me from October 25, 2016 to February 13, 2017;
 - b. Failing to communicate with M.G. in a timely manner despite requests by the LSA to do so;

all of which is contrary to 7.2-7 of the Code of Conduct.

3. COMPLAINT #3: P.P. - (CO20171218)

Background

75. On May 12, 2017, the LSA received a complaint from P.P., a former client who retained me to handle the sale of estate property for which he was an executor. P.P. alleged that I failed to respond to his communications.

Tab 31 - Information Concerning a Lawyer Form, dated May 12, 2017

76. The LSA conducted a review of the allegation, resulting in a referral to the Conduct Committee.
77. On March 19, 2019, a panel of the Conduct Committee directed that the following citations be dealt with by a Hearing Committee:
7. It is alleged that Jerry Kiriak failed to respond to communications from his client and that such conduct is deserving of sanction; and

8. It is alleged that Jerry Kiriak failed to properly supervise his staff and that such conduct is deserving of sanction.

Tab 32 - Conduct Committee Panel Minutes, dated March 19, 2019

March 2017 Real Estate Transaction

78. In March 2017, the estate property sold. As part of the agreement between P.P and the purchaser, P.P was to remove an encroaching fence and obtain a deck permit for the property.
79. On February 22, 2017, I wrote to J.C., the purchaser's counsel, undertaking to hold back the sum of \$10,000.00 of the sale proceeds until I had obtained a re-stamped Compliance report indicating that the encroaching fence had been moved and the deck permit had been obtained.

Tab 33 - Trust Letter, dated February 22, 2017

80. The transaction closed on March 1, 2017.
81. On April 24, 2017, P.P. informed my assistant that the fence had been removed and a deck permit had been obtained.
82. That same day, my assistant asked P.P. to fax to our office a copy of the Permit Services report, which he did the following day on April 25, 2017. Our office did not confirm receipt of that fax.

Tab 34 - Fax of Report, dated April 25, 2017

83. In his complaint to the LSA, P.P. indicates that he attempted to contact me and my assistant on the following occasions:
 - a. April 26, 2017 - P.P called my assistant and left a voicemail;
 - b. April 28, 2017 - P.P. called my assistant and left a voicemail;
 - c. May 1, 2017 - P.P. called my assistant and left a voicemail;
 - d. May 2, 2017 - P.P. called my assistant and left a voicemail;
 - e. May 4, 2017 - P.P. called my assistant and left a voicemail;
 - f. P.P. made several unsuccessful attempts to speak to me and left me voicemails on May 1 and 2, 2017;
 - g. P.P. attempted to speak with another lawyer at the firm who assisted him with the sale, but was unable to speak to him directly and left him a voicemail asking for a response;

- h. P.P. personally attended at my office on May 5, 2017, but was told that I was unavailable, despite being present in the office, and that no other lawyer was available to speak with him.

Tab 31 - Information Concerning a Lawyer Form, dated May 12, 2017

84. During the above-stated time periods, I was not properly supervising my staff, office, phone, and P.P.'s client file, and therefore did not respond to P.P.'s attempts to reach me or my assistant.

85. On May 12, 2017, P.P. submitted an Information Concerning a Lawyer Form to the LSA.

Post-Complaint Communications

86. On May 25, 2017, my assistant emailed J.C., the purchaser's counsel, providing him with the Permit Services Report, inquiring whether it was sufficient to release the holdback. The same day, J.C. responded requesting that a re-stamped compliance report be provided, but in the meantime, he authorized us to release the holdback.

Tab 35 - Email, dated May 25, 2017

87. On May 25, 2017, LSA staff spoke with me and I indicated that I would have to look at the file before I could respond. I responded later that day stating, "It appears that my assistant just received an email today giving us authority to release funds".

Tab 36 - Email, dated May 25, 2017

88. Despite advising that I now had authority to release the funds, I did not do so for three additional weeks. On June 14, 2017, the holdback funds were released to P.P.

Tab 37 - Response, dated September 6, 2017

89. In my response to the LSA respecting this complaint, I advised the LSA that J.C. "still required compliance re-stamp before he would authorize release of the holdback funds". However, J.C. had clearly advised that I could release the funds pending receipt of the re-stamped compliance report.

Tab 37 - Response, dated September 6, 2017

Admissions

Citation 7. Failure to respond to communications

90. I admit that I failed to properly respond to communications from P.P. by:

- a. Failing to monitor my phone and office in a manner that would have allowed me to address P.P.'s communications in a timely manner;

- b. Failing to supervise my staff to ensure that P.P.'s communications were responded to in a timely manner;
- c. Failing to provide P.P. with his holdback funds in a timely manner, despite the LSA contacting me regarding this matter and despite receiving authorization from counsel to release the holdback funds;

all of which is contrary to Section 3.2-1 of the Code of Conduct.

Citation 8. Failure to properly supervise staff

91. I admit that I did not properly supervise my staff in handling this file by:

- a. Failing to maintain a direct relationship with the client;
- b. Failing to ensure that my staff carried out the duties that were entrusted to them, including responding to P.P. in a timely manner;

all of which is contrary to Section 6.1-1 of the Code of Conduct.

4. S.J. - (CO20171446)

Background

92. On May 12, 2017, the LSA received a complaint from S.J., a realtor with whom I worked while acting for a vendor in a real estate transaction, alleging I failed to pay the correct balance of his commission.

Tab 38 - Information Concerning a Lawyer Form, dated June 12, 2017

- 93. The LSA conducted a review of the allegations, resulting in a referral to the Conduct Committee.
- 94. On February 26, 2019, a panel of the Conduct Committee directed that the following citations be dealt with by a Hearing Committee:
 - 7. It is alleged that Jerry Kiriak failed to properly supervise his staff and that such conduct is deserving of sanction; and
 - 8. It is alleged that Jerry Kiriak failed to respond completely and accurately to communication from the Law Society and that such conduct is deserving of sanction.

Tab 39 - Conduct Committee Panel Minutes, dated March 19, 2019

March 2017 Transaction

95. In 2017, I was retained to act for the vendor in a real estate transaction. S.J. was the realtor of the vendor.
96. On March 13, 2017, S.J. sent a letter to my office together with the Purchase Contract, indicating that after deducting the deposit, the remaining realty commission due on completion was \$5,545.50.

Tab 40 - Letter, dated Mar 13, 2017

97. The transaction closed on May 2, 2017. That same day, my office mailed a cheque to S.J. in the amount of \$3,750.00 for payment of his commission.

Tab 41 - Letter, dated May 2, 2017

98. On May 9, 2017, S.J. emailed me and my assistant to advise that the commission cheque should have been \$5,540.50 and not \$3,750.00. Neither my assistant nor I responded to his email.

Tab 42 - Email, dated May 9, 2017

99. In his complaint to the LSA, S.J. indicates that he subsequently sent several emails and left several voicemails that went unanswered, except for one where my assistant indicated that she was trying to contact the vendor, as the balance of S.J.'s commission was accidentally paid to the vendor. S.J. did not receive any updated after this phone call, resulting in his complaint to the LSA on June 12, 2017.

Tab 38 - Information Concerning a Lawyer Form, dated June 12, 2017

100. During the time-frame in question, I was not properly supervising my staff, office, phone, email, and this client file, and therefore did not respond to S.J.'s attempts to reach me or my real estate assistant.

Post-Complaint Communications

101. On September 6, 2017, I responded to S.J.'s complaint, stating that D.J. had advised me of the underpayment and that his outstanding commission funds owing had now been provided. I did not provide an apology or explanation for the mistake. Furthermore, I acknowledge that at this time, the funds had not actually been provided.

Tab 43 - Response, dated Sept 6, 2017

102. On September 15, 2017, S.J. wrote to the LSA stating that my response to his complaint was inaccurate. He stated that my office had not taken responsibility for our error and advised that he had not yet received the remaining \$1,795.50 owing.

Tab 44 - Letter, dated Sept 15, 2017

103. On September 27, 2017, I wrote to S.J. apologizing for the inaccurate representations made in my September 6 response. I stated that the representations had been made to me by my assistant and up to that point, I was unaware of our failure to pay the remaining funds owing. I enclosed in that letter a cheque amounting in \$1,795.50 to S.J.
Tab 45 - Letter, dated Sept 27, 2017
104. During the time-frame in question, I was not properly supervising this real estate file and therefore did not realize that the error hadn't been corrected until S.J. advised the LSA of same.

Admissions

Citation 9. Failure to properly supervise staff

105. I admit that I failed to properly supervise my staff in the handling of this file by:
- a. Failing to ensure that my real estate staff carried out the duties that were entrusted to them, including responding to S.J. in a timely manner; and
 - b. Failing to review the work of my real estate staff prior to communications being sent to third parties.

all of which is contrary to Section 6.1-1 of the Code of Conduct.

Citation 10. Failure to respond completely and accurately

106. I admit that I failed to respond completely and accurately to communication from the LSA by:
- a. Failing to address why I had not responded S.J.'s communications in my September 6, 2017 response to the LSA;
 - b. Failing to provide any explanation for why the error occurred;
 - c. Providing information to the LSA regarding the payment of S.J.'s commission that was inaccurate; and
 - d. Failing to verify information before providing same to the LSA all of which is contrary to Section 7.1-1 of the Code of Conduct.

5. P.S. - (CO20171732)

Background

107. On July 24, 2017, the LSA received a complaint from P.S., a lawyer who acted for the purchaser in a real estate transaction for which I acted for the vendor. P.S. alleged that I failed to discharge a mortgage and caveat from title and failed to respond to his communications.

Tab 46 - Information Concerning a Lawyer Form, dated July 24, 2017

108. The LSA conducted a review of the allegations, resulting in a referral to the Conduct Committee.

109. On March 19, 2019, a panel of the Conduct Committee directed that the following citations be dealt with by a Hearing Committee:

7. It is alleged that Jerry Kiriak failed to comply with an undertaking and that such conduct is deserving of sanction; and
8. It is alleged that Jerry Kiriak failed to respond to communications from another lawyer and that such conduct is deserving of sanction.

Tab 47 - Conduct Committee Panel Minutes, dated March 19, 2019

March 2017 Real Estate Transaction

110. In 2017, I was retained to act for the vendor in a real estate transaction. P.S. acted for the purchaser. The property sold in March 2017.

111. On March 14, 2017, I wrote to P.S. and gave the following undertakings:

- a. to payout and discharge all non-permitted registrations within a reasonable period;
- b. to provide an updated Certificate of Title evidencing the discharges.

Tab 48 - Trust Letter, dated March 14, 2017

112. The transaction closed on March 15, 2017 and my office requested the vendor's lender provide a registrable discharge of the mortgage and caveat within 30 days.

113. On May 11, 2017, P.S.'s assistant emailed my assistant, asking whether the discharge of mortgage and caveat had been received. My assistant did not respond to this email.

Tab 49 - Email, dated May 11, 2017

114. On May 24, 2017, P.S. wrote me, requesting confirmation that I had complied with my undertaking and advising that if he did not get a positive response from me within seven days, he would bring the matter to the attention of the LSA.

Tab 50 - Fax, dated May 24, 2017

115. On June 5, 2017, P.S.'s assistant phoned my assistant and advised that the discharge had not yet been received.

Tab 51 - Email, dated June 6, 2017

116. On June 28, 2017, P.S. wrote to me, advising that since he had not received any communication from me, he was seeking instructions to bring an application to the court for the discharge. He requested that I respond by July 4, 2017, failing which he would schedule the application for July 12, 2017.

Tab 52 - Fax, dated June 28, 2017

117. I was not aware that there was an issue regarding this file until I received P.S.'s letter of June 28, 2017. Upon receiving this communication, I instructed my assistant to follow up and request that the lender re-send the discharge documents.

Tab 53 - Response, dated September 6, 2017

118. Later that day, I responded to P.S., indicating that the lender had reported the discharge documents had been mailed and I was awaiting receipt of same. I advised P.S. that upon receipt of the discharge documents, I would provide copies together with verification that they had been submitted for registration.

Tab 54 - Fax, dated June 28, 2017

119. On June 29, 2017, P.S. wrote to me requesting that I provide him an update before July 14, 2017, failing which he would bring a court application. I did not respond to this communication.

Tab 55 - Fax, dated June 29, 2017

120. On July 24, 2017, P.S. filed a complaint with the LSA.

121. On July 25, 2017, approximately 3 weeks after the discharge was registered, my office provided P.S. with a clear certificate of title.

Tab 56 - Fax, dated July 25, 2017

122. On July 27, 2017, the Manager, Investigations spoke with the lender as well as the Land

Titles Office was advised that the discharge was provided to my office on June 28, 2017 and that it was filed at Land Titles Office on July 5, 2017.

123. During the above-stated time periods, I was not properly supervising my staff, office, phone, fax and the client file, and therefore was not aware of P.S.'s attempts to reach me or my assistant until June 28, 2017.
124. As I was not actively supervising my practice, I am unable to confirm the number of attempts P.S. made to communicate with me or my staff.
125. In my response to the LSA respecting this complaint, I did not provide any explanation as to why I did not respond to P.S.'s communications.

Admissions

Citation 11. Failure to Comply with Undertaking

126. I admit that I failed to comply with the undertakings I gave to P.S. by:
 - a. Failing to provide P.S. with an updated certificate of title within a reasonable time;

all of which is contrary to Section 7.2-14 of the Code of Conduct.

Citation 12. Failure to respond to communications

127. I admit that I failed to properly respond to communications from P.S. by:
 - a. Failing to monitor my phone, fax, and office in a manner that would have allowed me to address P.S.'s communications in a timely manner;
 - b. Failing to supervise my real estate staff to ensure that P.S.'s communications were responded to in a timely manner;
 - c. Failing to keep P.S. reasonably apprised of the progress of the matter;

all of which is contrary to Section 7.2-7 of the Code of Conduct.

6. J.D. - (CO20181017)

Background

128. On May 9, 2018, the LSA received a complaint from J.D., the daughter and agent of my former client. I had formerly handled the sale of the former client's home. I was retained by J.D. with respect to the sale of my former client's home. J.D. alleges that I failed to release a \$5,000.00 holdback that was owed to her mother.

Tab 57 - Information Concerning a Lawyer Form, dated May 9, 2018

129. The LSA conducted a review of the allegation, resulting in a referral to the Conduct Committee.
130. On March 19, 2019, a panel of the Conduct Committee directed that the following citations be dealt with by a Hearing Committee:
 7. It is alleged that Jerry Kiriak failed to respond to communications from his client and that such conduct is deserving of sanction; and
 8. It is alleged that Jerry Kiriak failed to properly supervise his staff and that such conduct is deserving of sanction.

Tab 58 - Conduct Committee Panel Minutes, dated March 19, 2019

June 2016 Transaction

131. The transaction with respect to the sale of my former client's home closed on June 17, 2016.
132. The home had a deck built on it without a permit, and as such, the parties agreed that J.D would obtain a permit and Real Property Report evidencing compliance. They further agreed that I would hold back the sum of \$5,000.00 pending the issuance of a permit and a Real Property Report showing compliance.
133. In her complaint to the LSA, J.D. indicated that she contacted me or my staff on the following occasions:
 - a. By email to my assistant on November 10, 2016;
 - b. By email to my assistant on January 30, 2017;
 - c. By email to my assistant on April 3, 2017;
 - d. By email to me on October 16, 2017;
 - e. By voicemail to my office on March 14, 2018; and
 - f. Several other unsuccessful phone calls.

Tab 57 - Information Concerning a Lawyer Form, dated May 9, 2018

134. I did not respond to any of J.D.'s communications.
135. During the time frame in question, I did not properly supervise my email, phone, office

or real estate staff to ensure that client communications were answered in a timely manner.

136. On May 9 2018, J.D. submitted a complaint to the LSA, stating that, almost two years after the sale closed, I had failed to provide her mother with the \$5,000.00 holdback.
137. On July 4, 2018, I provided a response to the LSA complaint. In that response, I acknowledge that my office had received correspondence from J.D. I also stated that I could offer “no good explanation for the delay” in resolving the matter and that it was not brought to my attention until the March 14 voicemail.

Tab 59 - Response, dated July 4, 2018

138. On July 10, 2018, I provided a further response to the LSA complaint, advising that there was no good explanation for why J.D.’s emails were not addressed. I explained staffing issues I was having at the time.

Tab 60 - Response, dated July 10, 2018

139. The holdback was provided to J.D. on March 20, 2019.

Admissions

Citation 13. Failure to respond to communications

140. I admit that I failed to properly respond to communications from J.D. by:
 - a. Failing to monitor my email, phone, fax, and office in a manner that would have allowed me to address J.D.’s communications in a timely manner or at all;
 - b. Failing to supervise my staff to ensure that J.D.’s communications were responded to in a timely manner; and
 - c. Failing to keep J.D. reasonably apprised of the progress of the matter;

Citation 14. Failure to properly supervise staff

141. I admit that I failed to properly supervise my staff by:
 - a. Failing to ensure that my staff handled client communications properly;
 - b. Failing to ensure that my staff were completing tasks entrusted to them in a timely manner or at all; and
 - c. Failing to properly manage staffing issues;

all of which is contrary to Section 6.1-1 of the Code of Conduct.