



Law Society
of Saskatchewan

DELBERT DYNNA

HEARING DATE: September 17, 2024

DECISION DATE: September 23, 2024

Law Society of Saskatchewan v. Dynna, 2024 SKLSS 4

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DELBERT DYNNA,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN**

**DECISION OF THE HEARING COMMITTEE FOR THE
LAW SOCIETY OF SASKATCHEWAN**

Corrected Decision:

The text of the original Decision has been changed *per* the corrigendum released October 2, 2024. A copy of the corrigendum is appended to this corrected Decision.

between the offices of:

James A. Morrison, K.C. (Chair), Deborah Parker-Loewen, and Maya Scott

and Delbert Dynna (self-represented):

and counsel on behalf of the Law Society of Saskatchewan:

Timothy F. Huber, K.C.

1. The matter concerns a formal complaint dated November 23, 2023, alleging that Delbert Dynna (“the Member”) failed, and/or refused, to honor a trust condition by which he was bound.
2. The Member has plead guilty to the complaint. Mr. Huber, counsel on behalf of the Law Society of Saskatchewan (“LSS”), and the Member, filed an Agreed Statement of Facts (attached at **Schedule “A”**) setting out the circumstances of the offence.
3. The Member was acting on behalf of the sellers in a real estate transaction for the sale of a condominium unit (“the condo unit”).

4. A Contract of Purchase/Sale (the “Contract”) was entered into between the Buyers and the Sellers on October 1, 2021.

5. An Amendment to the Contract was proposed by the Buyers, and was accepted by the Sellers, on October 14, 2021, which added the following term to the Contract:

“Sellers to provide proof the parking spot [Number 85] for the above property has been titled or to provide proof that paperwork has been submitted to ISC, for processing, prior to possession”

6. The Amendment to the Contract was in place before the Member’s involvement in the transaction.

7. Mr. K (“the Complainant”) was acting on behalf of the Buyers of the condo unit. The Complainant deposited the balance of the purchase price in relation to the purchase/sale of the condo unit to the Member’s trust account on the trust conditions set out in a Reverse Trust Letter dated October 29, 2021, which included the following:

“We have deposited the sum of \$204,409.91 to your Scotiabank Trust Account.

The enclosed funds are forwarded to you in trust on the following trust conditions:

...

6. That you will holdback the sum of \$10,000.00 for 90 days to allow your office sufficient time to provide our office with a registerable transfer of title for parking stall no. 85. In the event your office requires further time to obtain title to this parking stall you will be given a further extension of 90 days. In the event that your office does not provide a titled parking stall that will register to our clients in 180 days you will forthwith send our office \$10,000.00 which shall be released unconditionally to our client.”

(“the Trust Condition”)

8. On October 29, 2021, the Member accepted the Trust Condition by letter stating, in part, as follows:

“Your trust conditions and undertakings in your trust letter of October 29, 2021 are acceptable except if there is difficulty with the unit owner that has title to all the parking spots, a further extension may be needed.”

9. In addition to the Trust Condition itself, there was additional correspondence between the Complainant and the Member regarding the Contract and the Trust Conditions, both before and after the Trust Condition was accepted, as follows:

October 28, 2021: The Complainant sent an email to the Member requesting that the Member's Trust Letter enclosing the Transfer include an undertaking to hold back \$15,000.00 until such time as Title to the parking spot was registered and if title had not issued in 60 days, that the \$15,000.00 would be released to the Buyers.

October 29, 2021: The Member wrote to the Complainant in response to the Complainant's October 29, 2021, email, taking issue with the proposed condition and suggesting a holdback of \$1,000.00 and timeframe of 90 days.

October 29, 2021: The Complainant emailed the Member referring to a telephone conversation between the two and indicating that the sale proceeds will be deposited in trust and a reverse trust letter sent referring to the \$10,000.00 holdback and 90-day time period (with a further 90-day extension).

October 29, 2021: Letter from the Member to the Complainant accepting the Trust Condition, by stating:

“Your trust conditions and undertakings in your trust letter of October 29, 2021 are acceptable except if there is difficulty with the unit owner that has title to all of the parking spots, a further extension may be needed.

Please confirm and therefore, we will authorize release of keys.”

November 1, 2021: Letter from the Member to the Complainant enclosing the Transfer Authorization, etc. and stating: “The enclosed documents are forwarded to you on the trust conditions and undertakings set out in your letter of October 29th, 2021 which are satisfactory.”

November 1, 2021: Email from the Complainant's office to the Member's office confirming:

“The funds are releasable in accordance with the trust conditions and undertakings contained in our correspondence to your office dated October 29, 2021.”

November 30, 2021: The Member wrote to the Complainant advising:

“The Residential Property Manager has confirmed that they will be able to provide a designated parking spot but not a parking title.

ISC has also responded to us, confirming that this condo has been issued a designated parking space.

Please confirm this is satisfactory.”

November 30, 2021: The Complainant emailed the Member indicating they will ask their client whether a designated parking space would be satisfactory and would provide the Member with their client's response.

January 4, 2022: The Member wrote to the Complainant advising: “We have finished the first step of getting a designated parking spot (not title), ...” and indicated it appears another 90-day extension would be required.

January 6, 2022: The Complainant emailed the Member requesting confirmation that a Titled parking stall would be provided, failing which the \$10,000.00 should be released to the Buyers.

January 11, 2022: The Complainant emailed the Member requesting confirmation that a Titled parking stall would be provided, failing which the \$10,000.00 should be released to the Buyers.

January 18, 2022: The Member wrote to the Complainant enclosing a 9-page Condominium Fact sheet obtained from website: Saskatchewan.ca which refers to parking stall designations and titles. The Member states:

“I enclose a photocopy of a 9-page Condominium Fact sheet from Saskatchewan.ca.

Please note the first line in the second half of page 2, which says that the change in parking designations from Plan to Titles must all be at once.

The Condo Association confirms this will be impossible, as almost all of the present 150 condo owners would not want to spend perhaps hundreds of dollars each to obtain a Title to a parking spot that they know is theirs and has been theirs in some cases for many years. Only about 5% of the condo owners have expressed any interest of obtaining confirmation of parking stall designation.

Therefore, the only alternative is to have a Designated Parking Stall, which can be registered against the Condo Title. The owner of a large number of parking spots is prepared to sign a transfer of the Parking Designation Stall to the buyer of the above property so that the Parking Designation Stall would be registered on and remain attached to the title to the property sold herein, being Unit 159 (Suite 2207).

Please confirm this is satisfactory so we may complete this as soon as possible.”

January 20, 2022: The Complainant emailed the Member stating, in part: “Our client’s position is that if you are acknowledging that the Vendor cannot provide the titled parking stall that the Vendor release the \$10,000 holdback to the purchaser.”

March 17, 2022: The Member wrote to the Complainant providing a signed Transfer of Parking Spot Designation and indicating that they have applied for consent of the mortgage company. The Member states: “Please confirm that this is satisfactory and will complete your trust conditions, so that we may complete the transaction as soon as possible.”

March 28, 2022: The Member wrote to the Complainant enclosing a consent of the mortgage company “so that the parking spot designation can be transferred to your client in complete settlement of this matter.” The Member states: “I would therefore hope to pay out the balance of funds in trust to my client by about April 15th, 2022. Please confirm everything is settled.”

April 22, 2022: The Complainant emailed the Member and stated: “This provision of a parking spot designation does not release you from our trust conditions.”

April 27, 2022: The Member wrote to the Complainant stating:

“I have spoken with the seller’s agent, and they find it inconceivable that you would not register the transfer ... which is what was requested in the amendment, and the interpretation that it must be a separate Title is totally beyond the intention of any of the parties at the time this amendment was signed.

By having endorsement right on the Condo Title that they are entitled to that parking spot designation, there is no danger of it not being transferred when the Condo Title is eventually transferred to someone else.

If they are not prepared to agree to that, then we will want the buyers to sign an agreement that they will give up the parking spot designation on a particular date, and no longer be able to use that parking spot, in order that the vendor can sell it to someone else who needs an extra parking spot, and only upon that happening would we even consider refunding the money held in trust to the purchaser.”

April 29, 2022: In the Member’s absence from the office Daniel Katzman responded to the Member indicating: “The Buyers will not sign a declaration that they will give up the parking spot, however, they are agreeable to the holdback of \$10,000.00 being released to them as liquidated damages.”

May 4, 2022: The Member wrote to the Complainant, stating:

“...

It is my opinion, as well as the opinion of the seller and the seller’s agent, and I’m sure all of the other parties involved other than yourself, that this satisfactorily complies with the October 14th, 2021 Amendment to the Offer to Purchase, which provides “sellers to provide proof the parking spot #85 for the above property has been titled or to provide proof that paperwork has been submitted to ISC for processing prior to possession.”

Since the time for that to be done was extended, and we provided the required proof within the time extended, we are satisfied that the parking spot is now owned by your client.

The Saskatchewan condo law is very clear that the only time a parking title is available for a condo parking spot is if the property is built as a condo. If a property, such as the property in this transaction, was built and used as apartment rentals for many years, then it is not possible to obtain a separate parking title unless at least 50% of the 150 owners consent in writing that they wish to obtain title.

I understand that well under 10% have expressed any interest, and I am sure that even they would not want to spend several hundred dollars or more to obtain a parking spot title when they have already been satisfied that they have exclusive use of their own designated parking spot.

I see no other reasonable alternative but to recommend to my clients that they have complied with the terms of the Offer, and that the only delay now is in your office registering the transfer with the appropriate consent to the designation of the parking spot to your client, which would be registered and remain on your client's condo title."

May 26, 2022: The Complainant wrote to the Member stating they believe the Amendment has been complied with by providing a transfer of the designated parking spot and consent of the mortgage company.

"...We appreciate there are significant steps that are required to redesignate an exclusive parking stall as a titled parking stall, however this is not what is at issue.

We remain of the position that the holdback of \$10,000.00 should be released to our clients as liquidated damages, as stated in our letter of April 29, 2022. ..."

August 2, 2022: The Complainant wrote to the Member stating:

"...

With respect, we have given your office more than enough time to either comply with the conditions agreed to or provide the Holdback of \$10,000.00 to our office. You have done neither. We require confirmation that your office holds the \$10,000.00 Holdback in trust, and when our office can expect to receive the same."

August 3, 2022: The Member wrote to the Complainant advising they would be discussing matters with the Sellers, stating:

"Thank you for your letter of August 2nd, 2022. I am forwarding a copy to my client, as my client and the Real Estate Agent will have to discuss your letter and try to resolve the conflict as soon as possible, as clearly my client would not purport to sell something that she did not own.

There is a misunderstanding somewhere along the line, and it seems to me quite likely that the purchaser knew what he was buying and that the addition of a separate parking Title is something that has come up since.

We will try to have this resolved as quickly as possible so that the transaction may be completed.

This will confirm that I am still holding the \$10,000.00 in trust until this matter is resolved.

August 5, 2022: The Member wrote to the Complainant advising:

“My client has informed me that she definitely takes the position that the parking designation on the Surface Title complies with the entire obligation of the vendor, since it is not possible to obtain a separate Parking Title for a decades-old apartment building that was converted to condos.

I am still holding the funds in trust, but my instructions are that these funds are not to be paid to yourself, which will leave your client the option of proceeding with action if he feels that is necessary, unless a settlement is earlier reached.”

(note: The Member does not refer to the Trust Condition)

August 8, 2022: The Complainant wrote to the Member taking issue with the suggestion there was a misunderstanding, or that the Buyer knew they were not receiving a titled parking stall. The Complainant agrees that “changing an Exclusive Use parking Stall to a Title Parking Stall is difficult” but states it is not impossible and refers to the Member’s January 18, 2022 correspondence where the Member set out the required steps to obtain title. The Complainant refers to the Trust Condition and the expiry of the 180 day window and states that the \$10,000.00 is to be provided on or before August 22, 2022 at 5 p.m. or the matter will be reported to the Law Society.

August 23, 2022: The Complainant wrote to the Member taking issue with the suggestion that there was a misunderstanding, or that the Buyer knew they were not receiving a titled parking stall. The Complainant refers to the October 29, 2021 trust condition and states that if the \$10,000.00 is not provided by 5 p.m. on August 30, 2022, the matter will be reported to the Law Society.

August 30, 2022: The Member wrote to the Complainant stating, in part:

“...

The only option that I see of having this settled in a reasonable manner would be a compromise settlement, which I would discuss with my client.

We have provided a transfer so that your client will obtain a designated parking space on his condo Title. He cannot request more than that.

I am prepared to recommend to my client a maximum offer of \$5,000.00 in full settlement of your client's claim, as I believe the funds should be allocated to the client rather than being used up in court costs.

10. The Complainant submitted their complaint on September 16, 2022.

11. The Member provided an initial response to the Law Society on December 9, 2022, but on December 12, 2022, advised he had determined it was not entirely accurate and a new response would be submitted. In the Member's January 19, 2023 response, the Member states:

"...

If the buyer's lawyer were to register the Transfer of Title along with the Consent to Transform by Scotiabank, which they should, they would have a Title for their parking spot, which is all that was required.

...

The attached two ISC published pages explained changes that took effect June 16th, 2014. This confirms that we have complied with the requirements by providing a transfer of the parking spot designation to be registered on the condo unit title. If there is any doubt whether this complied with the offer, the amended offer, and the trust conditions, it can only be decided by a King's Bench Judge after hearing evidence from the parties, the Real Estate Agents, etc., and all arguments. The Transform Approval required if the parking spot is not titled.

I still have some unanswered questions which I am looking into."

12. The Member provided an additional response by letter dated July 26, 2023 and states:

"In reply to your letter of July 13th, 2023, I believe my January 19th, 2023 letter sets out the relevant material:

1. Neither the Offer to Purchase nor the Amendment made to the Offer to Purchase even mention the possibility of a separate title for the parking spot designation.
2. Neither the funds sent on reverse trust conditions from [R.K.] nor our letter accepting the trust conditions makes any mention to the possibility of a separate title for the parking spot designation.
3. A separate parking title is not possible in this case, and it appears to have been an attempt, after the sale and the conditions were agreed upon, to add another condition that the parking spot must be a separate title. This is nowhere in the documentation, and we did provide a transfer and transform on March 28, 2022, one month before the set deadline of April 27th, 2022, which, if registered with the

transform would have provided the buyer with a condo parking designation clearly marked on the title.

4. The buyer's lawyer is holding, and refuses to register, the transfer and transform we provided which would show the designated parking spot on the condo title, which is all the buyers could expect on the wording in the October 14th, 2021 Amendment to the Offer to Purchase. Thus, the buyer has no loss whatsoever.
5. We have complied with the terms of the Offer to Purchase, as amended, and the trust conditions sent and received to complete the transaction."

13. The Trust Condition imposed by the purchaser's lawyer, required the vendor to provide a "Titled Parking Stall" and if they were unable to do so, to return the \$10,000.00 holdback to the purchaser. In the Agreed Statement of Facts, the Member agrees that he was personally bound to provide "a registerable transfer of title for parking stall no. 85", if not, he was to pay the \$10,000.00 holdback to the purchaser. As set out in paragraph 14 of the Agreed Statement of Facts, it was agreed that, "While it would have been difficult to obtain a Titled Parking Stall, it was not impossible. The fact that obtaining title to parking stall no. 85 would have been difficult does not excuse the Member from the Trust Condition."

14. Further, as set out in paragraph 15 of the Agreed Statement of Facts, "Once the Member realized the difficulties involved in obtaining a Titled Parking Stall, the Member moved his focus away from fulfilling the Trust Condition as accepted to arguing that the terms of the Contract and Amendment (and the trust condition itself) only required a Designated Parking Stall."

15. The Trust Condition imposed, and accepted on October 29, 2021, and the 180-day period set out in the Trust Condition expired on April 2022. The Member did not provide "a registerable transfer of title for parking stall no. 85". The Member accepted a trust condition that required him to provide a titled parking stall, or pay \$10,000.00 to the purchaser. The Member's failure or inability to strictly adhere to that condition, entitled the purchaser to demand payment of that \$10,000.00 holdback. As set out in paragraph 18 of the Agreed Statement of Facts, the Member did not do that in a timely fashion. The Member paid the \$10,000.00 out of his trust account to the Complainant on December 21, 2023.

Reasons

16. The Member accepted a trust condition on October 29, 2021 that within the 180-day period set out in the trust condition, which expired in April of 2022, he was to provide "a registerable transfer of title for parking stall no. 85" or pay \$10,000.00 to the purchasers. The Member did not provide "a registerable transfer of title for parking stall no. 85" nor did the Member pay out, in a timely fashion, the \$10,000.00 holdback. The Member only paid the holdback after the complaint was filed against him in this matter.

17. Whether there is any practical difference between a 'designated parking stall' and a 'titled parking stall' is not relevant. The Member accepted a trust condition that required him to provide a titled parking stall or pay \$10,000.00 to the purchasers. His failure or inability to strictly adhere to that condition, entitled the purchasers to demand the payment of the \$10,000.00 holdback. The Member did not pay out the holdback in a timely fashion and

only after the complaint was filed by the Complainant to the Law Society of Saskatchewan. It is well established in the practice of law, in particular real estate practice, that the ability of lawyers to be able to depend upon and rely on another lawyer complying with the trust condition (or undertaking) is of paramount importance. The ability to place an absolute reliance on a lawyer who has accepted a trust condition that the same will be complied with is of paramount importance. Once a trust condition is accepted, whether it is fair or reasonable is not relevant to the issue of compliance. In addition, the Member did not pay the \$10,000.00 out of the trust account to the Complainant until December 21, 2023, well after the complaint was made to the Law Society.

18. It is also important to consider that the Member was found guilty of conduct unbecoming on one prior occasion in 2023 for commissioning a Homestead Affidavit for a client who had not sworn the Affidavit in his presence. He was reprimanded.

19. In view of the length of the time between the offence of 2023 and the current offence, although the Hearing Committee considered this matter, it gave it little weight.

Sentencing

20. The Member and Mr. Huber, on behalf of the Law Society of Saskatchewan, filed a joint submission on penalty. Within the joint submissions on penalty, filed by the Member and Mr. Huber, Mr. Huber provided the relevant regulatory authority and relevant case law from the Law Society's perspective. Firstly, I would like to compliment Mr. Huber with respect to thoroughness of the material provided and for Mr. Dynna who, according to Mr. Huber, cooperated throughout the investigation process and in all matters prior to the date of the hearing before this Hearing Committee.

21. The Hearing Committee has considered the relevant regulatory authorities, which are as follows:

5. The Member's conduct in relation to this matter represents a breach of the *Code of Professional Conduct*. The following provisions are particularly relevant:

Undertakings and Trust Conditions

7.2-11 A lawyer must not give an undertaking that cannot be fulfilled and must fulfill every undertaking given and honour every trust condition once accepted.

Commentary:

[1] Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as "on behalf of my client" or "on behalf of the vendor" does not relieve the lawyer giving the undertaking of personal responsibility.

[2] Trust conditions should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust

conditions should be imposed in writing and communicated to the other party at the time the property is delivered. Trust conditions should be accepted in writing and, once accepted, constitute an obligation on the accepting lawyer that the lawyer must honour personally. The lawyer who delivers property without any trust condition cannot retroactively impose trust conditions on the use of that property by the other party.

[3] The lawyer should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a lawyer accepts property subject to trust conditions, the lawyer must fully comply with such conditions, even if the conditions subsequently appear unreasonable. It is improper for a lawyer to ignore or breach a trust condition he or she has accepted on the basis that the condition is not in accordance with the contractual obligations of the clients. It is also improper to unilaterally impose cross conditions respecting one's compliance with the original trust conditions.

[4] If a lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition should be immediately returned to the person imposing the trust condition, unless its terms can be forthwith amended in writing on a mutually agreeable basis.

[5] Trust conditions can be varied with the consent of the person imposing them. Any variation should be confirmed in writing. Clients or others are not entitled to require a variation of trust conditions without the consent of the lawyer who has imposed the conditions and the lawyer who has accepted them.

...

[8] A lawyer should not impose on other lawyers impossible, impractical or manifestly unfair conditions of trust, including those with respect to time restraints and the payment of penalty interest. In addition, the lawyer shall not impose trust conditions which have the effect of altering the terms of the transaction.
(emphasis added)

6. The penalty provisions relevant to these proceedings were recently moved from *The Legal Profession Act, 1990* to *The Law Society of Saskatchewan Rules*. Specifically, rule 1131 states the following in relation to the penalty process:

1131(1) This Rule applies if the Hearing Committee makes a finding of conduct unbecoming with respect to a Formal Complaint.

(2) The Hearing Committee:

- (a) may consider any relevant information respecting the member's professional conduct history; and**
- (b) shall invite Discipline Counsel and the member to make submissions as to penalty.**

(3) The Hearing Committee may, by order, do one or more of the following:

- (a) assess any penalties or impose any requirements that it considers appropriate, including but not limited to:**

- (i) directing that the member be disbarred and setting the period, not exceeding five years, during which the person is not eligible to apply for reinstatement;
 - (ii) suspending the member from practice for a specified period or until specified requirements are met, including requirements that the member:
 - (A) successfully complete specified courses;
 - (B) obtain medical treatment or treatment for addiction to drugs or alcohol;
 - (iii) specifying conditions under which the member may continue to practice, including conditions that the member:
 - (A) not do specified types of work;
 - (B) successfully complete specified classes;
 - (C) not have exclusive control of the member's trust account;
 - (D) obtain medical treatment or treatment for addiction to drugs or alcohol;
 - (E) practice only as a partner with, or as an associate or employee of, one or more members that the Committee may specify;
 - (iv) imposing a fine in any amount that the Committee may specify;
 - (v) requiring the member to pay restitution, in any amount that the Committee may specify, to any aggrieved party;
 - (vi) requiring the member to pay costs of the inquiry calculated in accordance with Rule 1135;
 - (vii) reprimanding the member;
 - (viii) permitting the member to resign from the Society;
 - (b) if the Formal Complaint relates to the transfer of identified property or funds in an ascertainable amount, require the member to transfer the property or the amount to the rightful owner;
 - (c) make any other direction or set any additional requirement that the Committee considers appropriate.
- (4) In addition to a decision made pursuant to subrule (3), the Hearing Committee may order that, if a member fails to make payment in accordance with an order pursuant to subclause (3)(a)(iv) or (v), the member be suspended from practice.
- (5) When the Hearing Committee makes an order pursuant to this section, the Hearing Committee shall:
- (a) specify the penalty assessed or requirement imposed in its decision pursuant to subrule (3);
 - (b) send the following to the member:
 - (i) a copy of the Committee's decision; and
 - (ii) a notice of the penalty assessed, or requirement imposed; and
 - (c) send a notice of the penalty assessed or requirement imposed to the complainant, if any, and may send a notice

- of the penalty assessed or requirement imposed to any other person that the Hearing Committee considers advisable;
- (d) if it imposes a fine, fix the date by which payment to the Society shall be completed;
 - (e) if it imposes costs, fix the date by which payment to the Society shall be completed;
 - (f) if it imposes a requirement, fix the date by which the requirement shall be fulfilled; and
 - (g) if it imposes restitution, fix the date by which restitution shall be paid.

22. The Member and Mr. Huber presented a joint sentencing submission urging the Hearing Committee to impose a sentence as follows:

- a. A reprimand to the Member;
- b. A fine of \$1,000.00; and
- c. An order of costs against the Member of \$1,000.00 payable to the Law Society of Saskatchewan.

Considering the Relevant Case Law

23. When imposing sanctions against Members of the Law Society of Saskatchewan, the Hearing Committee is to be mindful of the sanctions imposed in the past for similar conduct, both in Saskatchewan and other jurisdictions. The circumstances of this case with respect to non-compliance of a trust condition is not unusual.

24. Mr. Huber relied on four cases in his Written Submissions and oral submissions at the hearing, namely:

- a. *Law Society of British Columbia v Hordal* [2004] L.S.D.D. No. 93;
- b. *Law Society of British Columbia v Kruse* [2002] L.S.D.D. No. 24;
- c. *Law Society of Saskatchewan v Stinson*, 2008 SKLSS 07; and
- d. *Law Society of Saskatchewan v Gale*, 2014 SKLSS 7.

25. In his oral submissions, Mr. Huber was persuasive in his argument that the case before this Hearing Committee is similar to that of *Galey*. In that case, the lawyer acted for the vendor in a residential real estate transaction. A conflict arose between the purchaser and the vendor during the closing process pertaining to the condition of the property.

26. As a result, the lawyer and counsel for the purchaser discussed an appropriate holdback to address the outstanding conflicts. Ultimately, no agreement was reached in relation to the amount of the holdback.

27. Instead, the lawyer wrote to the purchaser's lawyer and undertook as follows: "the balance of the proceeds forwarded to our office will be maintained until further agreement between the parties in relation to the issues involving possession and compliance with the contract." Despite having provided this undertaking, the lawyer released the funds that she had been holding in trust to her client in the absence of any agreement between the opposing parties and without notice to opposing counsel. The release of funds occurred in the midst of ongoing negotiations between the parties.

28. It appeared as if the lawyer intended to hold back funds until discreet issues pertaining to possession and clean-up of the property were resolved. Nevertheless, the undertaking she gave was much broader in scope. Consequently, the lawyer's breach of undertaking appears to have resulted from a mistaken interpretation of her own undertaking. Thus, the breach of undertaking was the result of carelessness on the part of the lawyer as opposed to an intentional or reckless breach.

29. In addition, there was no evidence of financial loss to the purchaser resulting from the lawyer's breach.

30. *Galey* received a reprimand and was ordered to pay a fine of \$1,500.00 and costs of the hearing in the amount of \$1,815.00.

31. We agree with the submission made by Mr. Huber that the gravity of the *Galey* case is similar to this case. In *Galey*, the nature of the conduct was centered around a trust condition that was accepted but poorly understood by the lawyer. The action by the Member in this case is very similar to the lawyer in *Galey*.

32. In addition, ultimately, the \$10,000.00 holdback was paid by the Member to the Complainant.

33. Upon review of the *Hordal* case, the *Kruse* case and the *Stinson* case, each involve conduct that was more serious than the conduct of the Member in these circumstances. The Hearing Committee accepts Mr. Huber's submissions that once Mr. Dynna received a ruling from the Ethics Committee of the Law Society of Saskatchewan that the funds should be returned to the Complainant, as lawyer acting on behalf of the purchasers, he complied.

34. For these reasons, the Hearing Committee concludes that in this circumstance, the joint submission regarding a reprimand provides specific deterrence to this Member.

35. The Member has acknowledged his misconduct. In addition, the Member has agreed to enter into a guilty plea and has, from the onset of the investigation, been cooperative.

36. The Member's conduct was not motivated by personal gain.

37. The Member's conduct did not include deception.

38. The aggravating factors considered by the Hearing Committee were as follows:

- a. The Member has one prior finding of conduct unbecoming on his record but, it should be noted that it was from 2023 and unrelated to the current conduct;
- b. The Member took a long time to ultimately comply with the trust condition and pay the holdback back to the purchasers – more than two years. He should have come to realize sooner that his obligation to pay the holdback was absolute;

- c. It is also important to point out the other sentencing considerations as set out by the Saskatchewan Court of Appeal in *Abrametz v The Law Society of Saskatchewan*, 2023 SKCA 114:

[74] ... As Wilkinson J.A. observed in Merchant 2009, “the reasonable range of sentences in disciplinary matters is elastic...[and]...will be impacted by considerations of age, experience, discipline history, the unique circumstances of the member, and the nature of the conduct complained of” (at para 95). In Gavin McKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, loose-leaf (2023-2) (Toronto: Thomson Reuters, 2018) at 26:18 (WL) (McKenzie), the learned author notes that specific deterrence, general deterrence and, in appropriate cases, improved competence, rehabilitation, and restitution are relevant, and offers this overview of considerations that are often taken into account:

Factors frequently weighed in assessing the seriousness of a lawyer’s misconduct include the extent of injury, the lawyer’s blameworthiness, and the penalties that have been imposed previously for similar misconduct. In a 2022 decision [Abrametz SC], the Supreme court of Canada held that the presence of an abuse of process may be considered when determining the appropriate penalty. In assessing each of these factors, the discipline hearing panel focusses on the offence rather than on the offender and considers the desirability of parity and proportionality in sanctions and the need for deterrence. The panel also considers an array of aggravating and mitigating factors, many of which are relevant to the likelihood of recurrence. These aggravating and mitigating factors include the lawyer’s prior discipline record, the lawyer’s reaction to the discipline process, the restitution (if any) made by the lawyer, the length of time the lawyer has been in practice, the lawyer’s general character, and the lawyer’s mental state. Alcoholism, drug addiction, stress caused by financial and matrimonial difficulties, and mental illness are common factors in discipline cases and are material to the assessment of penalty in cases where a causal relationship exists between the lawyer’s condition and the misconduct being considered. (footnotes omitted).

[75] In James T. Casey, *Regulation of Professions in Canada*, loose-leaf (2023-6) (Toronto: Thomson Reuters, 1994) at 14:3 (WL) (Casey) the learned author identifies a slightly different non-exclusive list of factors that have been treated as mitigating:

- “attitude” since the offence was committed, as a less severe sanction may be imposed where the person genuinely recognizes that their conduct was wrong, with

the caveat that there is authority that while remorse can be a mitigating factor, a lack of remorse cannot be an aggravating factor, in circumstances where the offender honestly believes in their innocence (D'Mello v Law Society of Upper Canada, (2015), 2015 ONSC 5841);

- the age and experience of the offender;
- the offender's disciplinary record;
- entering a guilty plea where doing so shows an acceptance of responsibility; provided that there is authority that it is an error to treat an explanation offered in an attempt to mitigate the sanction as an aggravating factor (McLean);
- whether restitution has been made;
- the good character of the offender; and
- a long unblemished record of public service.

[76] As Casey also observes, aggravating factors may include very serious misconduct, planning and deliberation, the vulnerability of those affected, and the impact of the misconduct on the client and others.

39. These comments by the Saskatchewan Court of Appeal are particularly relevant when a joint submission is brought forward to a Hearing Committee of the Law Society as the Hearing Committee is bound to accept a joint submission provided the penalty is within the acceptable range and the Hearing Committee has carefully considered any mitigating factors advanced by the member. (emphasis mine)

40. No mitigating factors presented by a member facing discipline can be entirely ignored or dismissed out of hand. This does not mean that every mitigating factor must be accepted as being determined one way or another or that the presentation of a mitigating factor must ultimately reduce a sanction. It is a matter of weight. The question is whether a specific mitigating factor is of sufficient weight to influence penalty. Some mitigating factors will have very little weight while others will be more significant. As an example, the Hearing Committee must refrain from taking into consideration something presented by a member as a mitigating factor and turning it into an aggravating factor. An example of this would be a member's explanation for engaging in misconduct and the Hearing Committee looking at that explanation as an aggravating factor in that the member failed to accept the responsibility for their conduct.

41. The Court of Appeal has, however, consistently indicated that the mitigating and aggravating factors are less of a factor when joint submissions are involved as the joint submission is the primary focus in determining the outcome.

42. Having said that, the presence of aggravating or mitigating factors still serves to delineate the appropriate range of penalty in a particular area.

43. The Hearing Committee has considered the following mitigating factors:

- a. that the Member acknowledges his misconduct and entered a guilty plea;
- b. was cooperative with the investigation from the outset;
- c. was not deceptive; and

d. was not motivated by personal gain.

44. Further, after the consideration of these mitigating factors, together with the aggravating factors referred to above, together with the comprehensive and persuasive written submissions provided by Mr. Huber, the Hearing Committee accepts the joint recommendation as to sentence.

45. The Hearing Committee agrees with the submissions of Mr. Huber that the conduct of the Member in this matter is similar to the conduct of the lawyer in the *Galey* decision. On that basis, and for the reasons stated above, we have determined that the recommended penalty is within the acceptable range.

46. For these reasons, and upon review of the cases submitted by counsel, the Hearing Committee finds that the joint recommendation is both fit and reasonable.

47. Accordingly, the Member is to receive a reprimand from the Law Society of Saskatchewan, is to pay a fine of \$1,000.00 and pay the costs of \$1,000.00. Such amounts are to be paid within sixty (60) days.

Dated at Saskatoon, in the Province of Saskatchewan, this 23rd day of September, 2024.

“James A. Morrison, K.C.”
James A. Morrison, K.C., Chair

Dated at Saskatoon, in the Province of Saskatchewan, this 23rd day of September, 2024.

“Maya Scott”
Maya Scott

Dated at Saskatoon, in the Province of Saskatchewan, this 24th day of September, 2024.

“Deborah Parker-Loewen”
Deborah Parker-Loewen



Law Society
of Saskatchewan

DELBERT DYNNA
HEARING DATE: September 17, 2024
CORRIGENDUM DATE: October 2, 2024
Law Society of Saskatchewan v Dynna, 2024 SKLSS 4

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DELBERT DYNNA,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN

CORRIGENDUM TO DECISION OF SEPTEMBER 23, 2024

After rendering the Decision dated September 23, 2024, the Hearing Committee was made aware of a typographical error in paragraphs 18 and 19 of the Decision. The Decision made reference to an incorrect date, namely “2023” instead of the correct date of “2003”. Paragraphs 18 and 19 of the Decision of the Hearing Committee are hereby corrected from the original September 23, 2024 release date to state as follows:

18. It is also important to consider that the Member was found guilty of conduct unbecoming on one prior occasion in 2003 for commissioning a Homestead Affidavit for a client who had not sworn the Affidavit in his presence. He was reprimanded.
19. In view of the length of the time between the offence of 2003 and the current offence, although the Hearing Committee considered this matter, it gave it little weight.

“James A. Morrison, K.C.”
 James A. Morrison, K.C., Chair

“Maya Scott”
 Maya Scott

“Deborah Parker-Loewen”
 Deborah Parker-Loewen

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated November 23, 2023, alleging the following:

THAT DELBERT DYNNA, of the City of Prince Albert, in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

- 1. failed, and/or refused, to honour a trust condition by which he was bound.**

Jurisdiction

48. Delbert Dynna (hereinafter “the Member”) is, and was at all times material to this proceeding, a Member of the Law Society of Saskatchewan (the “LSS”), and accordingly is subject to the provisions of *The Legal Profession Act*, 1990 (hereinafter the “Act”) as well as the *Rules of the Law Society of Saskatchewan* (the “Rules”).

49. The Member is currently the subject of a Formal Complaint initiated by the LSS dated November 23, 2023. The Formal Complaint is attached at **Tab 1** along with proof of service. The Member intends to enter a guilty plea to allegation #1.

Particulars of Conduct

50. The Complainant, Mr. K., (“the Complainant”) was acting on behalf of the Buyers (“the Buyers”) of a condominium unit (“the condo unit”). A copy of the complaint, dated September 16, 2022, is attached at **TAB 2**.

51. The Member was acting on behalf of the Sellers (“the Sellers”) of the condo unit.

52. A Contract of Purchase/Sale (“the Contract” – at **TAB 3**) was entered into between the Buyers and the Sellers on October 1, 2021.

53. An Amendment to the Contract (at **TAB 4**) was proposed by the Buyers, and accepted by the Sellers on October 14, 2021, which added the following term to the Contract:

“Sellers to provide proof the parking spot [Number 85] for the above property has been titled or to provide proof that paperwork has been submitted to ISC, for processing, prior to possession”

54. The amendment to the contract was in place before the Member’s involvement in the transaction.

55. The Complainant deposited the balance of purchase price in relation to the purchase/sale of the condo unit to the Member’s trust account on trust conditions set out in a Reverse Trust Letter dated October 29, 2021 (at **TAB 5**), which included the following:

“We have deposited the sum of \$204,407.91 to your Scotiabank Trust Account.

The enclosed funds are forwarded to you in trust on the following trust conditions:

...

**6. That you will holdback the sum of \$10,000.00 for 90 days to allow your office sufficient time to provide our office with a registerable transfer of title for parking stall no. 85. In the event your office requires further time to obtain title to this parking stall you will be given a further extension of 90 days. In the event that your office does not provide a titled parking stall that will register to our clients in 180 days you will forthwith send our office \$10,000.00 which shall be released unconditionally to our client.”
 (“the Trust Condition”)**

56. On October 29, 2021 the Member accepted the Trust Condition by letter stating (at **TAB 6**):

“Your trust conditions and undertakings in your trust letter of October 29, 2021 are acceptable except if there is difficulty with the unit owner that has title to all the parking spots, a further extension may be needed.”

57. In addition to the Trust Condition itself, there was additional correspondence between the Complainant and Member regarding the Contract and the Trust Condition, both before and after the trust condition was accepted, as follows:

October 28, 2021 (TAB 7a): The Complainant sent an email to the Member requesting that the Member’s Trust Letter enclosing the Transfer include an undertaking to hold back \$15,000.00 until such time as Title to the parking spot was registered and if title had not issued in 60 days that the \$15,000.00 would be released to the Buyers.

October 29, 2021 (TAB 7b): The Member wrote to the Complainant in response to the Complainant’s October 28, 2021, email, taking issue with the proposed condition and suggesting a holdback of \$1,000.00 and timeframe of 90 days.

October 29, 2021 (TAB 7c): The Complainant emailed the Member referring to a telephone conversation between the two and indicating that the sale proceeds will be deposited in trust and a reverse trust letter sent referring to \$10,000.00 holdback and 90-day time period (with a further 90-day extension).

October 29, 2021 (TAB 7d): Letter from the Member to the Complainant accepting the Trust Condition, by stating:

“Your trust conditions and undertakings in your trust letter of October 29, 2021 are acceptable except if there is difficulty with the unit owner that has title to all of the parking spots, a further extension may be needed.

Please confirm and therefore, we will authorize release of keys.”

November 1, 2021 (TAB 7e): Letter from the Member to the Complainant enclosing the Transfer Authorization, etc. and stating: “The enclosed documents are forwarded to you on the trust conditions and undertakings set out in your letter of October 29th, 2021 which are satisfactory.”

November 1, 2021 (TAB 7f): Email from the Complainant’s office to the Member’s office confirming:

“The funds are releasable in accordance with the trust conditions and undertakings contained in our correspondence to your office dated October 29, 2021.”

November 30, 2021 (TAB 7g): The Member wrote to the Complainant advising:

“The Residential Property Manager has confirmed that they will be able to provide a designated parking space but not a parking title.

ISC has also responded to us, confirming that this condo has been issued a designated parking space.

Please confirm this is satisfactory.”

November 30, 2021 (TAB 7h): The Complainant emailed the Member indicating they will ask their client whether a designated parking space would be satisfactory and would provide the Member with their client’s response.

January 4, 2022 (TAB 7i): The Member wrote to the Complainant advising: “We have finished the first step of getting a designated parking spot (not title), ...” and indicated it appears another 90-day extension would be required.

January 6, 2022 (TAB 7j): The Complainant emailed the Member requesting confirmation that a Titled parking stall would be provided, failing which the \$10,000.00 should be released to the Buyers.

January 11, 2022 (TAB 7k): The Complainant emailed the Member requesting confirmation that a Titled parking stall would be provided, failing which the \$10,000.00 should be released to the Buyers.

January 18, 2022 (TAB 7l): The Member wrote to the Complainant enclosing a 9-page Condominium Fact sheet obtained from website: Saskatchewan.ca which refers to parking stall designations and titles. The Member states:

“I enclose a photocopy of the 9-page Condominium Fact Sheet from Saskatchewan.ca.

Please note the first line in the second half of page 2, which says that the change in parking designations from Plan to Titles must all be at once.

The Condo Association confirms this will be impossible, as almost all of the present 150 condo owners would not want to spend perhaps hundreds of dollars each to obtain a Title to a parking spot that they know is theirs and has been theirs in some cases for many years. Only about 5% of the condo owners have expressed any interest of obtaining confirmation of parking stall designation.

Therefore, the only alternative is to have a Designated Parking Stall, which can be registered against the Condo Title. The owner of a large number of parking spots is prepared to sign a transfer of the Parking Designation Stall to the buyer of the above property so that the Parking Designation Stall would be registered on and remain attached to the Title to the property sold herein, being Unit 159 (Suite 2207).

Please confirm this is satisfactory so we may complete this as soon as possible.”

January 20, 2022 (TAB 7m): The Complainant emailed the Member stating, in part: “Our client’s position is that if you are acknowledging that the Vendor cannot provide the titled parking stall that the Vendor release the \$10,000 holdback to the purchaser.”

March 17, 2022 (TAB 7n): The Member wrote to the Complainant providing a signed Transfer of Parking Spot Designation and indicating they have applied for consent of the mortgage company. The Member states: “Please confirm that this is satisfactory and will complete your trust conditions, so that we may complete the transaction as soon as possible.”

March 28, 2022 (TAB 7o): The Member wrote to the Complainant enclosing a consent of the mortgage company “so that the parking spot designation can be transferred to your client in complete settlement of this matter.” The Member states: “I would therefore hope to pay out the balance of funds in trust to my client by about April 15th, 2022. Please confirm everything is settled.”

April 22, 2022 (TAB 7p): The Complainant emailed the Member and stated: “This provision of a parking spot designation does not release you from our trust conditions.”

April 27, 2022 (TAB 7q): The Member wrote to the Complainant stating:

“I have spoken with the seller’s agent, and they find it inconceivable that you would not register the transfer ... which is what was requested in the amendment, and the interpretation that it must be a separate Title is totally beyond the intention of any of the parties at the time this amendment was signed.

By having endorsement right on the Condo Title that they are entitled to that parking spot designation, there is no danger of it not being transferred when the Condo Title is eventually transferred to someone else.

If they are not prepared to agree to that, then we will want the buyers to sign an agreement that they will give up the parking spot designation on a particular date, and no longer be able to use that parking spot, in order that the vendor can sell it to someone else who needs an extra parking spot, and only upon that happening would we even consider refunding the money held in trust to the purchaser.”

April 29, 2022 (TAB 7r): In the Member’s absence from the office Daniel Katzman responded to the Member indicating: “The Buyers will not sign a declaration that they will give up the parking spot, however, they are agreeable to the holdback of \$10,000.00 being released to them as liquidated damages.”

May 4, 2022 (TAB 7s): The Member wrote to the Complaint, stating:

“... ”

It is my opinion, as well as the opinion of the seller and the seller’s agent, and I’m sure all of the other parties involved other than yourself, that this satisfactorily complies with the October 14th, 2021 Amendment to the Offer to Purchase, which provides “sellers to provide proof the parking spot #85 for the above property has been titled or to provide proof that paperwork has been submitted to ISC for processing prior to possession”.

Since the time for that to be done was extended, and we provided the required proof within the time extended, we are satisfied that the parking spot is now owned by your client.

The Saskatchewan condo law is very clear that the only time a parking title is available for a condo parking spot is if the property is built as a condo. If a property, such as the property in this transaction, was built and used as apartment rentals for many years, then it is not possible to obtain a separate parking title unless at least 50% of the 150 owners consent in writing that they wish to obtain title.

I understand that well under 10% have expressed any interest, and I am sure that even they would not want to spend several hundred dollars or more to obtain a parking spot title when they have already been satisfied that they have exclusive use of their own designated parking spot.

I see no other reasonable alternative but to recommend to my clients that they have complied with the terms of the Offer, and that the only delay now is in your office registering the transfer with the appropriate consent to the designation of the parking spot to your client, which would be registered and remain on your client’s condo title.”

May 26, 2022 (TAB 7t): The Complainant wrote to the Member stating they believe the Amendment has been complied with by providing a transfer of the designated parking spot and consent of the mortgage company.

“...We appreciate there are significant steps that are required to redesignate an exclusive parking stall as a titled parking stall, however this is not what is at issue.

We remain of the position that the holdback of \$10,000.00 should be released to our clients as liquidated damages, as stated in our letter of April 29, 2022. ...”

August 2, 2022 (TAB 7u): The Complainant wrote to the Member stating:

“...
With respect, we have given your office more than enough time to either comply with the conditions agreed to or provide the Holdback of \$10,000.00 to our office. You have done neither. We require confirmation that your office holds the \$10,000.00 Holdback in trust, and when our office can expect to receive the same.”

August 3, 2022 (TAB 7v): The Member wrote to the Complainant advising they would be discussing matters with the Sellers, stating:

“Thank you for your letter of August 2nd, 2022. I am forwarding a copy to my client, as my client and the Real Estate Agent will have to discuss your letter and try to resolve the conflict as soon as possible, as clearly my client would not purport to sell something that she did not own.

There is a misunderstanding somewhere along the line, and it seems to me quite likely that the purchaser knew what he was buying and that the addition of a separate parking Title is something that has come up since.

We will try to have this resolved as quickly as possible so that the transaction may be completed.

This will confirm that I am still holding the \$10,000.00 in trust until this is resolved.”

August 5, 2022 (TAB 7w): The Member wrote to the Complainant advising:

“My client has informed me that she definitely takes the position that the parking designation on the Surface Title complies with the entire obligation of the vendor, since it is not possible to obtain a separate Parking Title for a decades-old apartment building that was converted to condos.

I am still holding the funds in trust, but my instructions are that these funds are not to be paid to yourself, which will leave your client the

The attached two ISC published pages explained changes that took effect June 16th, 2014. This confirms that we have complied with the requirements by providing a transfer of the parking spot designation to be registered on the condo unit title. If there is any doubt whether this complies with the offer, the amended offer, and the trust conditions, it can only be decided by a King's Bench Judge after hearing evidence from the parties, the Real Estate Agents etc., and all arguments. The Transform Approval required if the parking spot is not titled.

I still have some unanswered questions which I am looking into.”

60. The Member provided an additional response by letter dated July 26, 2023 (at **TAB 10**) and states:

“In reply to your letter of July 13th, 2023, I believe my January 19th, 2023 letter sets out the relevant material:

1. Neither the Offer to Purchase nor the Amendment made to the Offer to Purchase even mention the possibility of a separate title for the parking spot designation.
2. Neither the funds sent on reverse trust conditions from [R.K.] nor our letter accepting the trust conditions makes any mention of the possibility of a separate title for the parking spot designation.
3. A separate parking title is not possible in this case, and it appears to have been an attempt, after the sale and the conditions were agreed upon, to add another condition that the parking spot must be a separate title. This is nowhere in the documentation, and we did provide a transfer and transform on March 28, 2022, one month before the set deadline of April 27th, 2022, which, if registered with the transform would have provided the buyer with a condo parking designation clearly marked on the title.
4. The buyer's lawyer is holding, and refuses to register, the transfer and transform we provided which would show the designated parking spot on the condo title, which is all the buyers could expect on the wording in the October 14th, 2021 Amendment to the Offer to Purchase. Thus, the buyer has no loss whatsoever.
5. We have complied with the terms of the Offer to Purchase, as amended, and the trust conditions sent and received to complete the transaction.”

61. Designated Parking Stalls are not the same as a Titled Parking Stalls. The Member was personally bound to provide “a registerable transfer of title for parking stall no. 85”. While it would have been difficult to obtain a Titled Parking Stall, it was not impossible. The fact that obtaining title to parking stall no. 85 would have been difficult does not excuse the Member from the Trust Condition.

62. Once the Member realized the difficulties involved in obtaining a Titled Parking Stall, the Member moved his focus away from fulfilling the Trust Condition as accepted to arguing that the terms of the Contract and Amendment (and the trust condition itself) only required a Designated Parking Stall.

63. Whether or not the Contract and Amendment required a Titled Parking Stall to be provided by the Sellers to the Buyers is **not** relevant to the question of whether the Member is in breach of the Trust Condition.

64. The Trust Condition was imposed, and accepted, on October 29, 2021. The 180-day period set out in the Trust Condition expired on April 2022. The Member did not provide “a registerable transfer of title for parking stall no. 85”.

65. Whether there are any practical differences between a Designated Parking Stall and a Titled Parking Stall is not relevant. The Member accepted a trust condition that required him to provide a Titled Parking Stall or pay \$10,000.00 to the purchasers. His failure or inability to strictly adhere to that condition, entitled the purchasers to demand payment of the \$10,00.00 holdback. The Member did not do that in a timely fashion.

66. The practice of law, in particular, real estate practice, depends on a lawyer being able to fully rely on another lawyer complying with a trust condition (or undertaking). This ability to place absolute reliance on a lawyer who has accepted a trust condition that the same will be complied with is of paramount importance. Once a trust condition is accepted, whether it is fair or reasonable is not relevant to the issue of compliance.

67. On December 21, 2023, the Member paid the \$10,000.00 out of his trust account, to the Complainants.

Prior History

68. The Member was found guilty of conduct unbecoming on one prior occasion in 2003 for commissioning a Homestead Affidavit for a client who had not sworn the Affidavit in his presence. He was reprimanded.