

November 14, 2017

The Law Society alleged that **Wayne Sydney Novak**, 1978, of Thornhill, committed professional misconduct.

The panel determined that the following allegations were established:

- On or about February 15, 2005, the Respondent charged his client, HJ, a contingency fee in a civil litigation matter that was not reduced to writing, had not been agreed upon or fully disclosed at the outset of the retainer, and did not otherwise comply with the *Solicitors' Act*, R.S.O. 1990, c. S.15, and the regulations thereunder, contrary to Rule 2.08(3) of the *Rules of Professional Conduct*, as it then was;
- Since February 15, 2005, following the termination of his retainer by his client HJ, the Respondent failed to provide an accounting to HJ of the funds held by the Respondent and the distribution of those funds, despite HJ's written and telephone requests, contrary to Rule 2.07(5) and 2.09(9) of the *Rules of Professional Conduct*, as they then were;
- Since July 21, 2015, the Respondent failed to cooperate with an investigation of the Law Society (Case No. 2007-25889) by failing to respond to correspondence from the Law Society and produce information and documents, including books and records of his law practice, contrary to section 49.3 of the *Law Society Act* and Rule 7.1-1 of the *Rules of Professional Conduct*;
- Since August 4, 2015, the Respondent failed to respond to a letter from the Law Society dated July 21, 2015, in contravention of an undertaking given to the Law Society dated July 25, 2007, to respond to all communications within two weeks, contrary to Rule 7.02-11 of the *Rules of Professional Conduct*;
- Between December 23, 2004, and February 8, 2005, the Respondent withdrew \$ 25,215, more or less, of trust funds held on behalf of his client HJ, as payment of his fees, prior to delivering an account, contrary to section 9 of then By-Law 9, made pursuant to the *Law Society Act*;
- On or about December 23, 2004, the Respondent misapplied \$6,000, more or less, from the funds he held in his mixed trust account on behalf of his client HJ to the benefit of another client, the Estate of PW, contrary to then By-Law 9, section 4, made pursuant to the *Law Society Act*;
- On or about March 29, 2005, the Respondent failed to conduct himself in a way that maintained the integrity of the profession, in that he provided false information to the Ministry of Health and Long Term Care, for whom he acted on a subrogated claim, and thereby misled the Ministry, contrary to Rule 6.01(1) of the *Rules of Professional Conduct*, as it then was;

- On or about November 3, 2006, the Respondent failed to conduct himself in a way that maintained the integrity of the profession, in that he provided false information to his client HJ regarding the status of her file, and thereby misled his client, contrary to Rule 6.01(1) of the *Rules of Professional Conduct*, as it then was;
- On or about October 1, 2009, the Respondent failed to conduct himself in a way that maintained the integrity of the profession, in that he provided false information to the Law Society in response to an inquiry from Complaints Resolution Counsel regarding the funds held by the Respondent on behalf of his client HJ, and thereby misled the Law Society, contrary to Rule 6.01(1) of the *Rules of Professional Conduct*, as it then was;
- On or about December 9, 2004, and thereafter, the Respondent failed to serve his client, contrary to Rule 2.01(2) of the *Rules of Professional Conduct*, as it then was, in that
 - he failed to fully advise his client HJ with respect to the liability she assumed in a release for a subrogated claim and thereafter failed to take necessary steps to protect her interests with respect to that claim; and,
 - he failed to respond to HJ's numerous telephone and written communications, over the period December 2004 to April 2007 in a conscientious, diligent and timely manner.
- Since April 13, 2005, following the termination of his retainer by his client the Estate of PW, the Respondent failed to provide an accounting to the Estate of PW of the funds held by the Respondent and the distribution of those funds, despite the executor's written and telephone requests, contrary to Rule 2.07(5) and 2.09(9) of the *Rules of Professional Conduct*, as they then were;
- In the period from June 2011 to November 2011, the Respondent failed to serve his client PT in relation to a summary judgment motion for which he was retained, contrary to Rule 2.01(2) of the *Rules of Professional Conduct*, as it then was, in that:
 - he failed to prepare a factum for the hearing of the summary judgment motion, although he obtained an adjournment for the express purpose of filing materials;
 - he failed to file any materials on the summary judgment motion, other than those prepared by previous counsel, although he obtained an adjournment for the express purpose of filing materials, as a result of which his client's position was prejudiced;

- he failed to report to the client in a timely manner upon receipt of the decision on the summary judgment motion, such that the time to appeal the decision had effectively expired; and,
 - he failed to keep his client advised of the status of the matter, despite requests for updates.
- In the period from September 14, 2011 to November 21, 2011, the Respondent failed to serve his client PT in relation to the defence of an action and the removal of a certificate of pending litigation for which he was retained, contrary to Rule 2.01(2) of the *Rules of Professional Conduct*, as it then was, in that:
 - he failed to take steps to reschedule the pre-trial, bring a motion to expedite the trial or otherwise expedite a resolution of the litigation, despite having been expressly instructed to do so and having indicated that he would do so; and
 - he failed to keep his client advised of the status of the matter, despite requests for updates.
- Since May 29, 2013, the Respondent failed to cooperate with an investigation of the Law Society (Case No. 2011-102575) by failing to respond to correspondence from the Law Society in a complete and timely way and to produce information and documents, including books and records of his law practice, contrary to section 49.3 of the *Law Society Act* and, prior to October 1, 2014, Rule 6.02 of the *Rules of Professional Conduct* and, since October 1, 2014, Rule 7.1-1 of the *Rules of Professional Conduct*;
- Since April 14, 2014, the Respondent failed to respond to a letter from the Law Society dated March 31, 2014, in contravention of an undertaking given to the Law Society dated July 25, 2007, to respond to all communications within two weeks, contrary to Rule 6.03(10) of the *Rules of Professional Conduct* (prior to October 1, 2014) and Rule 7.02-11 of the *Rules of Professional Conduct* (since October 1, 2014);
- Between March 29, 2006 and December 6, 2007, the Respondent failed to serve his client, DM, contrary to Rule 2.01(2) of the *Rules of Professional Conduct*, as it then was, in that
 - he failed to complete the work that he was retained to do in that he failed to prepare a separation agreement consistent with DM's particular circumstances and failed to file applications with respect to DM's divorce and custody and access for her daughter, notwithstanding being instructed to do so; and,
 - he failed to keep appointments with DM without reasonable explanation between December 2006 and September 2007 despite receiving numerous requests from the client to meet.

- On or after March 29, 2006, the respondent withdrew \$8,000, more or less, of trust funds held on behalf of his client, DM, as payment of his fees, prior to delivering an account, contrary to section 4 of By-Law 19, as it then was, or, after May 1, 2007, contrary to section 9 of By-Law 9, made pursuant to the *Law Society Act*.
- Since December 6, 2007, following the termination of his retainer by his client DM, the Respondent failed to provide an accounting to DM of the funds held by the Respondent and the distribution of those funds, despite DM's written requests, contrary to Rule 2.07(5) and 2.09(9) of the *Rules of Professional Conduct*, as they then were.
- In the period between July 10, 2013 and November 15, 2014, the Respondent failed to serve his client, DN, contrary to Rule 2.01(2) of the *Rules of Professional Conduct*, as it was prior to October 2014, and Rule 3.1-2 of the *Rules of Professional Conduct*, thereafter, in that
 - he failed to keep his client advised as to the progress of the file;
 - he failed to respond to his client's email communications in a conscientious, diligent and timely manner, including communications after this time; and,
 - he terminated his retainer without notice, thereby causing prejudice to his client's interests.
- In the period between March 7, 2014 and November 15, 2014, the Respondent failed to be honest and candid with his client, DN, contrary to Rule 2.02(1) of the *Rules of Professional Conduct*, as it was prior to October, 2014 and Rule 3.2-2 of the *Rules of Professional Conduct*, thereafter, in that he failed to notify DN or her family members that his licence had been suspended or that he would be unable to represent them at trial.
- Since November 15, 2014, following the termination of his retainer by his client DN, the Respondent failed to provide an accounting to DN of the funds held by the Respondent and the distribution of those funds, despite receiving written requests sent by DN's family members on her behalf, contrary to Rule 3.6-3 the *Rules of Professional Conduct*.

The panel orders:

1. The Respondent's licence to practise law is revoked effective immediately.
2. The Respondent shall comply with the Law Society's *Guidelines for Former Lawyers Whose Licences Have Been Revoked or Who Have Been Permitted to Surrender Their Licences*.

3. The Respondent shall refund, within two days of the date of this order, to his client, DM, fees in the amount of \$2,000.00, which had been paid to the Respondent by the client.
4. The Respondent shall refund, within two days of the date of this order, to his client, HJ, fees in the amount of \$2,634.85, which had been paid to the Respondent by the client.
5. The Respondent shall execute, within two days of the date of this order, a direction to the estate of PW, directing that any funds owed or found in the future to be owing to the Respondent by the estate of PW shall be paid to HJ and confirming that the Respondent releases any claim to those funds.
6. The Respondent shall provide an indemnity to his client, HJ, to pay her for any amount that is sought from her by the Ministry of Health and Long Term Care in relation to a subrogated Ontario Health Insurance Plan claim, Ministry File No. U9-631599, arising from an incident on February 10, 1998.
7. The Lawyer shall pay costs to the Law Society in the amount of \$10,000 on or before November 14, 2021, with interest to accrue from the date of this Order at the rate of 2% per year.

(Counsel for the Society, Glenn Stuart and Keith Crawford / Counsel for the Lawyer, Graeme A. Hamilton and Veronica Sjolín)