

Original



GENERAL LEGAL COUNCIL

c/o The Registrar
Supreme Court Registry
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St. George's
Grenada

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BEFORE THE GENERAL LEGAL COUNCIL

COMPLAINT NO:0004 of 2019

IN THE MATTER OF THE LEGAL PROFESSION ACT

RAPHAEL BAPTISTE	ATTORNEY-AT-LAW
AND	
LESLEY-ANN CELESTIN	APPLICANT

Before:

Honourable Justice Rosalyn E. Wilkinson (Retired) – Chairman

Honourable Attorney-General Dia Forrester

Mrs. Celia Edwards Q.C

Ms. Leslie-Ann Seon

Ms. Skeeta Chitan

Mr. Daniel Roberts

Mrs. Xiomara Forsyth, Registrar (Ag)

Present: Mr. Raphael Baptiste, the Attorney-at-Law.

Absent: Ms. Lesley-Ann Celestin with medical excuse (medical certificate presented)

Appearances: Mr. Alban John for Ms. Celestin

Heard on the 14th day of July 2021

Decision delivered the 24th day of August 2021

1. The facts of this complaint are not in dispute. Sometime prior to 27th April 2016¹, the Applicant approached the Attorney-at-Law for legal advice in regard to: (i) filing an application for probate in the Estate of Catherine Josephine St. Louis-Walker, her mother ("the deceased"), (ii) preparing and recording a re-conveyance from the National Commercial Bank (now the Republic Bank (Grenada) Limited) ("the Bank") in connection with a mortgage held by the deceased, (iii) preparation of a deed of assent from the estate of the deceased to

¹ The bill of costs was stated to be made on 12th January 20? (year incomplete)

the Applicant, and (iv) preparation of a conveyance for other land. The Applicant was presented with a bill of costs for \$10,000.00 to complete the matters. On 27th April 2016, the Applicant paid the Attorney-at-Law \$5000.00 and this payment was recorded in receipt no.23 dated 27th April 2016, and signed by the Attorney-at-Law. The description on the receipt reads: "being part payment of legal fees for Probate of Will and preparation of title Deeds". The Applicant provided the Attorney-at-Law with at least the Will of the deceased to support the legal work which she sought.

2. The deceased had obtained a mortgage with the Bank which was secured by the deceased's land and it held the original title deed. The Applicant was the beneficiary of this land. The mortgage was paid off prior to the Applicant's instructions to the Attorney-at-Law and so she gave instructions for a reconveyance to be prepared.
3. The Attorney-at-Law commenced working on the Applicant's instructions. He retrieved from the Bank the deceased's original mortgage deed and title deed. He also applied for and obtained probate of the deceased's Will.
4. At some point in time prior to 7th March 2019, the Applicant verbally informed the Attorney-at-Law that she wished to cancel her remaining instructions. She then sought to retrieve from the Attorney-at-Law the documents that she had delivered to him and those which he had retrieved from the Bank. Despite numerous verbal requests for the documents the Attorney-at-Law failed to deliver the documents to the Applicant. The Attorney-at-Law admits to these requests and his failure to deliver the documents.
5. The Applicant then retained the services of attorney-at-law, Mr. Alban John to assist her in retrieving her documents. Mr. John telephoned the Attorney-at-Law and therein the Attorney-at-Law admitted to holding the Applicant's documents and that he was not owed any fees. In that conversation the Attorney-at-Law agreed to deliver to Mr. John the documents shortly. He failed to do so.
6. Mr. John then sought the assistance of Ms. Lisa Taylor, President of the Grenada Bar Association in retrieving the documents. Following a telephone conversation between the President of the Bar Association and the Attorney-at-Law, he promised to deliver the documents to Mr. John's Chambers by 1st February 2019. Again he failed to deliver the documents.
7. On 7th March 2019, Mr. John wrote to the Attorney-at-Law and therein he outlined his instructions, his previous efforts and demanded delivery of the documents by 15th March 2019. Once again the Attorney-at-Law failed to deliver the documents by 15th March 2019.

8. When promises on delivery of the documents were not met, Mr. John made several telephone calls to the Attorney-at-Law, a person well-known to him, begging him to deliver the Applicant's documents.
9. On 23rd July 2019, Mr. John wrote to the Registrar of the High Court, Mrs. Xiomara Cherebin-Forsyth outlining the history of the matter based on his instructions and his own efforts to retrieve the documents. He stated further that the Applicant worried that her ill health (she suffers from sickle cell anaemia) would overtake her and she would leave the problem behind for her family and this she did not want to do. He also stated that the Applicant had no desire to take the matter to court because she feared that the stress of doing so might bring about her demise sooner than she wished. Mr. John asked the Registrar to see if she could use her good office to cause Mr. Baptiste to produce and deliver the documents or show proof as to why he was entitled to hold them.
10. The Registrar referred the matter to the Council. On 28th October 2019, and the matter was deemed an official complaint before the Council. The Council acknowledged receipt of Mr. John's letter of 23rd July 2019.
11. The Council on 24th February 2021, having reviewed the complaint, instructed that the Attorney-at-Law be served notice to appear before the Council with the documents on 24th March 2021. He failed to appear on 24th March 2021, however, during the course of the meeting he telephoned the Registrar and tendered the excuse of motor vehicle trouble. The complaint was then fixed for hearing of the parties and production of the documents on 14th July 2021.
12. The hearing of 14th July 2021, was fixed to commence at 2.00p.m and did so. The Attorney-at-Law appeared half-an-hour late. His reasons were that he was delayed due to certain domestic matters at home and traffic congestion.
13. The Attorney-at-Law acknowledged all of Mr. John's efforts by way of telephone calls, letters and the President of the Bar's intervention. Members of the Council through several questions tried to ascertain from the Attorney-at-Law as to why from at least the time that Mr. John contacted him in 2019, this being at least 2 years prior to the hearing, he failed to deliver the documents.
14. The Attorney-at-Law said that the Applicant was a person well-known to him for several years, she was a friend before she became his client. They had a good professional relationship. He acknowledged that the Applicant did tell him to stop working on her instructions and he did stop. The excuses tendered by the Attorney-at-Law for his delay in delivering the Applicant's documents, for in excess of at least 2 years, were:
 - i. he was settling the file but there was a delay;
 - ii. it took him 2 years to settle the file;

- iii. he appeared to have misplaced the documents at either his St. George's or Sauteurs Chambers;
 - iv. he did not always have in his hand the documents or within his operation;
 - v. he was working on the documents – drafting the reconveyance and assent;
 - vi. after receipt of Mr. John's letter, he had a confidential conversation which involved "an element of privacy", and it was one of the reasons why he thought that the Applicant might change her mind (and so allow him to finish the work);
15. A Council member asked the Attorney-at-Law if on 24th March 2021, he was coming to the meeting with the documents and he responded that he did not have the documents "in my hands then."
16. On the evening before the hearing, the Attorney-at-Law sought to deliver the documents to the Applicant and she refused to accept them and referred him to Mr. John.
17. The hearing broke for a few minutes for Mr. John and the Attorney-at-Law to leave the room for the documents to be delivered to Mr. John and hold discussions on costs. On return, Mr. John informed the Council that he had received: (i) the original title deed of the deceased, and (ii) the mortgage deed. No costs was agreed. The Attorney-at-Law informed that Council that he had given the Applicant the probate for the deceased's Will.

The law

18. The **Legal Profession Act, 2011** provides:

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SCHEDULE III

LEGAL PROFESSION CODE OF ETHICS

1. (1) An attorney-at-law shall in pursuit of the practise of his profession, comply with, and be subject to, this Code of Ethics.

...

IN RELATION TO CLIENT

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42. (1) An attorney-at-law shall reply promptly to letters from other attorneys-at-law, whether on behalf of their clients or on behalf of themselves.

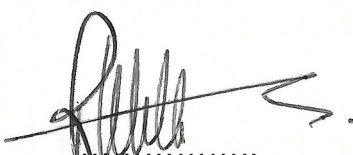
- ...
68. In the performance of his duties, an attorney-at-law shall not act with inexcusable or undue delay, negligence or neglect.
84. A breach by an attorney-at-law of any of the provisions contained in this Part, shall constitute professional misconduct, and an attorney-at-law who commits a breach, is liable to any of the penalties which the Council, the Court, or both are empowered to impose.

Decision

19. The Council finds the reasons given by the Attorney-at-Law for his delay and failure to deliver the Applicant's documents in excess of 2 years to be without merit. The reasons are simply untenable and bordering on trivializing the situation as he sought to make the crowning statement towards the end of his evidence "...as we all do."
20. The Council on listening to the Attorney-at-Law never gathered that he at any point accepted that it was his duty to the Applicant to act with haste once she terminated the retainer having been paid in full for the work which he had completed. Further, if as the Attorney-at-Law says, he knew the Applicant well, he probably knew of her ill health and the consequent stress his actions would bring upon her.
21. The Council finds that the Attorney-at-Law's conduct of failing in excess of 2 years to deliver to the Applicant her documents after all fees due were paid, must be classified as professional misconduct.
22. The Council having that found a case of professional misconduct has been made out, issues the Attorney-at Law a stern reprimand.
23. The Council has noted Mr. John's continuous efforts for over 2 years on the Applicant's behalf and the subsequent need to eventually file a complaint. The Council is of the view that this is a matter deserving of an award of costs.

Order:

1. The Council hereby issues a stern reprimand to the Attorney-at-Law.
2. The Attorney-at-Law to pay the Applicant legal fees in the sum of \$2500.00 within 21 days.


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Chairman
