

BEFORE THE GENERAL LEGAL COUNCIL

COMPLAINT NO:005 of 2019

IN THE MATTER OF THE LEGAL PROFESSION ACT

GEORGE W. PRIME

ATTORNEY-AT-LAW

AND

WELLINGTON JOSEPH

APPLICANT

Before:

Honourable Justice Rosalyn E. Wilkinson (Retired) – Chairman

Honourable Attorney-General Dia Forrester

Ms. Leslie-Ann Seon

Ms. Skeeta Chitan

Mr. Daniel Roberts

Mr. Michael Archibald

Mrs. Xiomara Forsyth, Registrar (Ag)

Present:

Mr. Wellington Joseph, Applicant.

Mr. George W. Prime, Attorney-at-law.

Both Parties were present via zoom.

Heard on the 11th day of August 2021

Decision delivered on the 26th day of November 2021

1. The Applicant's complaint was filed on 25th June 2018. The Parties are persons known to each other and both are of Carriacou. In or about 28th March 2015, the Applicant retained the services of the Attorney-at-law and his instructions were recorded in an engagement agreement prepared by the Attorney-at-law dated 28th March 2015. According to the engagement agreement, the Attorney-at-law was to: (i) prepare letters of administration, and (ii) prepare a vesting deed for the Applicant. In this connection, according to the engagement agreement, the Attorney-at-law received from the Applicant: (i) tax receipts, (ii) evidence of ownership of property, (iii) a death certificate, and (iv) a declaration of paternity. One month later, 28th April 2015, the Applicant executed a power of attorney prepared by the Attorney-at-law. By the power of attorney, the Applicant appointed Mr. Alpheus Adams his lawful attorney for the sole purpose of obtaining letters of administration in the Estate of his mother, Mrs. Leonora Maturine.

2. Following the Applicant's initial instructions, the Applicant during May 2017, gave the Attorney-at-law instructions in regard to the sale of a property at Carriacou. The sale of the property was completed during November 2017. The proceeds of sale due to the Applicant after deduction of government taxes, photocopies cost and legal fees according to the Attorney-at-law's Trust Reconciliation Statement were EC\$123,106.88(US\$45,522.12). The Attorney-at-law was required to transfer the funds in United States dollars to the Applicant's bank at New York, United States of America.

3. According to the Applicant, during November 2017, he provided the Attorney-at-law during an in person meeting with his banking details for KeyBank National Association at New York for immediate transfer of the money due from the sale. There was disclosed the copy of a cheque drawn on KeyBank with banking and account details including that the holder of the account was identified as the Applicant. The swift code details were handwritten on the copy of the cheque.

4. The proceeds of sale were not transferred immediately on close of the sale nor even within a week after the sale. According to the Applicant, he made many requests via telephone calls for his funds but his calls were to no avail. On 6th January 2018, by email he wrote to the Attorney-at-law the following:

"I do not know what the problem is but if Keybank is the problem (I) am sending new bank information. Bank: Chase; Swift code... checking account ...; Bank routing"

On 23rd January 2018, the Attorney-at-law's secretary, Zinzai wrote the following reply:

"Dear Mr. Joseph,

I do apologize for what is happening, it is out of my control. I passed on the message to Mr. Prime and I do hope this transaction is completed soon.

Sincerely,

Zinzai"

5. At 5thFebruary 2018, according to a bank notice issued by CITIBANK, there was a credit to the Applicant's account of US\$18,383.33. The notice also stated that the balance due to the Applicant was US\$18,912.20 (EC\$51,382.56).

6. On 20th February 2018, the Applicant visited the Attorney-at-law's chambers at Grenada to ascertain when he would receive the money due. He was informed that the Attorney-at-law was in court and he left a message with his staff. He received no telephone calls nor other communication following his visit.

7. On 5th July 2018, the Applicant sent a message via whatsapp to the Attorney-at-law exhibiting the bank notice and wrote that it had been awhile now that he had been

asking for the money due and he observed that it was now close to 6 months since the money was due to be paid to him.

8. The Applicant says that there were multiple telephone calls, emails and whatsapp messages to the Attorney-at-law about the funds due and to these inquiries, responses were limited to *"the matter is being checked in to."*

9. In his unsworn statement at the hearing, the Applicant had nothing further to add, save he wanted the Attorney-at-law to pay him his money.

10. On 11th August 2021, at approximately 11.00am, the day of hearing, the Attorney-at-law filed a very brief affidavit with the Council's secretary in response to the Applicant's complaint. This affidavit was not served on the Applicant.

11. In his brief affidavit, the Attorney-at-law deposed that: (i) an engagement letter was signed with Mr. Alpheus Adams (Council received a partial copy of the document – the signature page was missing); (ii) Mr. Adams was appointed under a power of attorney to perform certain legal services; (iii) most of the communication about the Applicant's business took place between Mr. Adams and himself or his staff and there was some direct communication with the Applicant; (iv) there were instructions to transfer EC\$10,000.00 to Mr. Adams; (v) he admitted that his investigation revealed that the current balance of US\$18,912.20 remained unpaid; and (vi) the unpaid sum would be paid to the Applicant within 7 days of the outcome of the hearing.

12. The engagement letter and the power of attorney appear to conflict on exactly when Mr. Adams was authorized to give instructions. The power of attorney was dated one month after the engagement letter so any earlier instructions by Mr. Adams were without the authority of the power of authority. At this juncture this does not appear to be an issue but is merely an observance of the Council.

13. By the power of attorney, Mr. Adams was the Applicant's attorney for the sole purpose of obtaining letters of administration in the Estate of Leonora Maturine.

14. In his unsworn statement at the hearing, the Attorney-at-law said that he had completed a lot of work over a series of transactions for the Applicant. Mr. Adams was the primary person with whom he had contact. His communication with the Applicant was "far and in between". He did act on the Applicant's instructions and paid EC\$10,000.00 to Mr. Adams. Mr. Adams left Carriacou for medical reasons and up until the hearing he was still away from the jurisdiction for medical reasons. His chambers at both Grenada and Carriacou suffered each a burglary and electronic items including mobile phones, an ipad and computers were stolen.

15. Council members posed a series of questions to the Attorney-at-law and to which his responses were instructive:

- (i) He was asked to indicate at what time he confirmed that money was owed to the Applicant, the Applicant, having filed his complaint in 2019. He responded that he did so within the month that the complaint was lodged and he spoke with Mr. Adams before he went to the United States of America. His investigation was carried out between 1 – 2 years after the first payment. He confirmed it was around 2020.
- (ii) He was asked about the nature of his investigations since the Applicant had been requesting the money owed since January 2018. He responded that at that time the Criminal Investigations Department had visited his chambers about the missing items. He was unable to get data since his main computer was stolen. There were hard copies at the Carriacou chambers and therein it was stated that they would see Mr. Adams to discuss the complaint. The Attorney-at-law said that the final payment was not made because he was not satisfied all fees had been settled.
- (iii) He was asked with the statement from the Bank stating a credit of US\$18,383.33 and balance due of US\$18,912.20, whether he was saying that the US\$18,912.20 was questionable. He responded that it was not questionable but subject to review based on file notes as other things had been done and which included matters at Aruba. He had asked Mr. Adams to meet with him to settle the file.
- (iv) He was asked when the burglaries took place. He responded around 2018. The burglary at Carriacou took place before that at Grenada.
- (v) It was put to the Attorney-at-law that if he was to be understood, one of the reasons for the delay was that he was dealing with Mr. Adams . He was asked to comment on the email of 1st September 2017, signed by his secretary, Ms. Cox to the Applicant and which was contrary to what he was saying? He responded that one to one, Mr. Adams was the person he corresponded with. He accepted the conflict.
- (vi) It was put to him that what he was now saying conflicted with his affidavit because: (a) he had known for a long time that the Applicant wanted his money, (b) the matter was a long time before the Council, and (c) there was no excuse in his affidavit for the delay in settlement. He was asked to summarize the reason for the delay and say why he needed 7 days to pay. The Attorney-at-law responded that he had nothing to defend and that he could say that he would pay the money forthwith. He was not under an obligation to come and say to a Council that he was defending himself over an application for money owing.
- (vii) He was asked if he held a clients' account. He responded that he did. He was asked if he received statements for the account to which he responded that he did. His statements were reconciled by an accountant within his chambers.

- (viii) He was asked why he needed 7 days to pay. He said that he could have paid and was even prepared to pay before the 7 days. He could have spoken to the Applicant and paid forthwith
- (ix) It was put to the Attorney-at-law that while it was understood that he was saying that he was dealing with Mr. Adams, since he was away, it would have seemed natural to communicate with the Applicant. The Attorney-at-law agreed. He added that he didn't know the nature of the hearing. He felt that since the complaint was before the Council, "then lets ventilate it and close the matter once and for all".

The law

16. The **West Indies Associated States Supreme Court (Grenada) Act** Cap. 336 provides:

"81.(1) Every person practicing as a solicitor, and whose name is enrolled as a barrister or solicitor, shall be deemed to be an officer of the Court.

82. Any two judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in Grenada during any period, or may order his or her name to be struck-off the Court Roll."

17. The **Legal Profession Act 2011 as amended**, section 33 provides:

"33.(1)The rules contained in the Code of Ethics set out in Schedule III shall regulate the professional practice, etiquette, conduct and discipline of attorney-at-law.

(2) A breach of the rules in –

(a) Part A of the Code of Ethics may constitute professional misconduct;

(b) Part B of the Code of Ethics shall constitute professional misconduct.

...

(5) An attorney-at-law whose name is entered on the Roll shall be deemed to have notice of the provisions of the Code of Ethics.

...

54. (1) All monies received for, or on behalf of a client, by an attorney-at-law, shall be held in trust for that client, to be paid to the client, or as the client may direct.

SCHEDULE III

LEGAL PROFESSION CODE OF ETHICS

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

(2) These Rules shall not be construed as a denial of the existence of other duties and rules of professional conduct, which are in keeping with the traditions of the legal profession, though not specifically mentioned herein.

(3) Where in any particular matter, explicit guidance does not exist, an attorney-at-law shall determine his conduct, by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system, and the legal profession.

2. (1) An attorney-at-law shall uphold, at all times, the standards set out in the Code of Ethics.

(2) An attorney-at-law shall maintain his integrity and the honour and dignity of the legal profession and of his own standing as a member of it, and shall encourage other attorneys-at-law to act similarly, both in the practice of the profession and in their private lives, and shall refrain from conduct which is detrimental to the profession, or which may tend to discredit it:

...

11. Every attorney-at-law should bear in mind that the oath of office taken on his admission to practice is not a mere formality, but is a solemn undertaking to be strictly observed on his part.

...

64. An attorney-at-law shall not retain money he received for his client, longer than is absolutely necessary. (Council's emphasis)

...

68. In the performance of his duties, an attorney-at-law shall not act with inexcusable or undue delay, negligence or neglect.(Council's emphasis)

...

81. (1) In pecuniary matters, an attorney-at-law shall be most punctual and diligent, and shall never mingle funds of others with his own, and he shall at all times be able to refund money he holds for others. (Council's emphasis)

82. (1) An attorney-at-law shall keep such accounts as clearly and accurately distinguish, the financial position between himself and his client, as and when required.

(2) An attorney-at-law shall comply with such rules as may be made by the Council under section 56 of this Act; but nothing contained in Rules 81, and this rule shall deprive an attorney-at-law of any recourse or right, whether by way of

lien, set-off, counter claim, charge or otherwise, against monies standing to the credit of a client's account, maintained by that attorney-at-law.

...

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 such a breach, is liable to any of the penalties which the Council, the Court or both are empowered to impose."

Decision

18. There is no dispute between the Parties that from November 2017, when the sale of the Applicant's property was completed and closed that monies paid to the Attorney-at-law for the benefit of the Applicant were then immediately due. Yet, some 31/2 years later a substantial sum, US\$18,912.20/EC\$51,382.56 remains unpaid and due to the Applicant. As to why the sum remains unpaid, the Attorney-at-law's reasons can be summarized as: (i) he was dealing with Mr. Adams, the holder of a power of attorney from the Applicant and so he was waiting to settle the account as it related to other work with Mr. Adams before paying over any remaining money due to the Applicant; and (ii) he was the victim of two burglaries, one at his Carriacou chambers and a second at his St. George's chambers and where from his main computer was stolen together with other electronic items. He admits to there being hard copies of notes and communication on a hard file at Carriacou and in fact in conducting his investigation as to the amount of money due, he referred to the hard copies of the notes on file.

19. The Council on consideration of the matter is of the view that firstly, it was inappropriate that the payment of the Applicant's money was split into two payments without authority from the Applicant. Secondly, no excuse was tendered to the Applicant either orally or in writing for the delay in making payment and this was despite there being both types of communication between the Parties. In fact the lack of excuse is supported by the email of Zinzai. Thirdly, even in regard to the reason tendered for the delay of the first partial payment i.e. problematic bank transfer information, the Applicant provided at 6th January 2018, another bank's transfer information and it was approximately 30 days later, i.e. 5th February 2018, that the first partial payment was made. No excuse was tendered as to why it took 30 days between receiving the second bank's (Chase) information and the transfer of US\$18,383.33. Fourthly, while the Council sympathizes with the Attorney-at-law on the matter of the burglaries, and indeed which can be an unsettling experience, the burglaries were at 2018, and yet three years later there was still no payment made. Fifthly, even if the Council were to accept that the Attorney-at-law believed that Mr. Adams was acting under the power of attorney in relation to all of the Applicant's matters, Mr. Adams' position as the Applicant's attorney simply could not "trump" that of the Applicant who gave him that power of attorney and who moreover started to communicate directly with the Attorney-at-law and staff orally by way of telephone calls, whatsapp messages and emails with his request for payment as early as 23rd January 2018.

20. The Council is of the view that the Attorney-at-law's delay which has now reached in excess of 31/2 years, in paying the Applicant his money, is an extreme and inordinate delay. This delay is inexcusable and unacceptable. The reasons given by the Attorney – at-law at 31/2 years hold no weight. The Council then notes that even on admission of the money being due, the Attorney-at- law in his affidavit deposes that he will pay the money due within 7 days of the outcome of the hearing. This is indeed a most curious position to hold when at all times, he admits there was money due to the Applicant. The Council's role is not to settle whether the Attorney-at-law owed the Applicant or not, that would be a matter for a court. The Council's examination is solely to find whether or not there has been professional misconduct in the manner in which the Attorney-at-law carried out the Applicant's instructions. From that may flow an order similar to that made by a court. The Code of Ethics rules cited are clear.

21. The Council, having heard the application, is satisfied that the allegations made against the Attorney-at-Law have been established, and that the conduct alleged against him constitutes professional misconduct.


22. The Council, upon considering the nature of the Attorney-at-Law's professional misconduct, was tasked to consider whether the sole sanction available to it at this time, being the issuance of a reprimand, was reasonably proportionate. An examination of section 37(2) of the **Legal Profession Act 2011 (as amended)** highlights the Council's limited disciplinary powers currently, in the absence of Practising Certificates issued to Attorneys-at-Law. The Council, being of the view that the Attorney-at-Law's professional misconduct, in this instance, warrants a more severe sanction than can be imposed by it at this time, has decided to forward its findings and a copy of these proceedings to the Supreme Court pursuant to section 37(2)(a) of the **Legal Profession Act, 2011**, to exercise any of its powers under section 82 of the **West Indies Supreme Court (Grenada) Act**, should it deem such exercise of its powers appropriate in the circumstances .

23. Given the delay in payment to the Applicant, now in excess of 31/2 years, the Council urges the Supreme Court to bring this matter on at the earliest.

24. Finally, in closing, the Council puts on record, its strong dissatisfaction at being presented on arrival at the hearing venue with an affidavit in response filed by the Attorney-at-law at 11.08a.m that day, and which hearing was fixed for 1.30p.m. The affidavit was not served on the Applicant. The record reflects that the Attorney-at-Law had been served notice of the Applicant's complaint by the Council's letter of 30th October 2019, and which letter he acknowledged by his letter of 20th December 2019. Therein he stated: "*The complaint is being investigated within the finance department of my office. We trust that the matter will be resolved within the week.*"

Order

1. Pursuant to section 37(2)(a) of the **Legal Profession Act, 2011** and section 82 of the **West Indies Associated States Supreme Court (Grenada) Act** the Council's findings and a copy of these proceedings are forwarded to the Supreme Court for consideration and determination.



Rosalyn E. Wilkinson
Chairman