

**JUDGMENT OF THE DISCIPLINARY COMMITTEE  
OF THE GENERAL LEGAL COUNCIL**

**IN THE MATTER** of Yasmin  
Scharschmidt-Fisher v Dalton Reid,  
Complaint #218/2001

A N D

**IN THE MATTER** of the Legal Profession  
Act.

Before: Miss Hilary Phillips, Q.C.  
Mrs. Merlin Bassie  
Mr. David G. Batts

1. The hearing of this matter commenced on the 21<sup>st</sup> June, 2003. The complaint is dated 19<sup>th</sup> September, 2001. It is a matter of some regret that there was such a hiatus between the date the complaint was filed and the date the hearing ultimately commenced. Once commenced we endeavoured to hear all the evidence as expeditiously as possible given the fact that both the complainant and her witness lived overseas.

Hearing dates were the 21<sup>st</sup> June, 2003, 25<sup>th</sup> June, 2003, 2<sup>nd</sup> July, 2003 and 6<sup>th</sup> March, 2004.

2. On the last date we upheld Mrs. Valerie Neita-Robertson's submission that no prima facie case to be answered had been made out. We at that time promised to give our reasons in writing and this we now do.
3. The evidence for the complainant can be shortly summarized. Mrs. Yasmin Scharschmidt-Fisher deponed that in November 2000 she went to see the attorney, Mr. Dalton Reid at his offices in Montego Bay. With her were her brother Nyron Scharschmidt and a family friend, Mr. Gladstone Blair. The purpose of her visit was, at her father's request, to see the attorney to enquire about the progress of a matter being handled for her father, that is a divorce. Her father was extremely ill.
4. At that visit Mr. Reid informed her that the court's file was misplaced and a date for the divorce could not be set until the papers were found. He indicated that he had a town agent who was looking after it.

5. Mr. Reid she said also dealt with instructions to change her father's Will. This aspect of the matter is not the subject of the complaint.
6. She said also that Mr. Reid dealt with a Power of Attorney. This she indicated was handled quite satisfactorily and in her words "efficiently".
7. Mr. Reid was also retained to act in a claim for maintenance against her father.
8. The complainant deponed that at that time also (December 2000) she retained Mr. Reid in relation to a Certificate of Deposit. She paid Mr. Reid a \$15,000.00 deposit in relation to this matter. Mr. Reid told her it would be on a contingency basis. She says that she called Mr. Reid several times but could not get through to him. She faxed him handwritten notes and letters in the period 22<sup>nd</sup> December, 2000 to 14<sup>th</sup> March, 2001. The letters were tendered in evidence as **Exhibit 1A - 1G**.
9. The complainant says she received only one written acknowledgment to the letters and was only able to speak to Mr. Reid once. The response was dated 5<sup>th</sup> January, 2001 **Exhibit 2**. She returned to Jamaica in April 2001. Her father then was on his last legs. On the 19<sup>th</sup> April, 2001 she went to see Mr. Reid, her brother Nyron and Mr. Blair accompanied her. Mr. Reid told her then that the divorce papers had been found. With regard to the matter of the maintenance Mr. Reid had failed to attend court. He explained to her that he had gone to Duncans but the court was sitting in Clark's Town. By the time he got to Clark's Town court had adjourned.

An argument then ensued between herself, her brother and Mr. Reid who said she was accusing him erroneously. She admits that her frustration came to a "high". Voices were raised and Mr. Reid asked her brother Nyron to leave his office and not return. Mr. Blair also told her brother to leave.

10. The complainant then asked for her file but Mr. Reid declined to give it and said in order to get it a bill of \$35,000.00 would have to be paid. She got the bill that same day and never returned to his office. The Bill is dated the 23<sup>rd</sup> April, 2001 and was tendered as **Exhibit 3**.

Having seen the Bill the complainant corrected herself and said that it was on the 19<sup>th</sup> April, 2001 that she was asked to return for the bill. She did so on the 23<sup>rd</sup> April, 2001.

11. The complainant says she then objected to the Bill for \$35,000.00 as she did not believe Mr. Reid had done sufficient work. That bill related solely to the work on the matter of the Certificate of Deposit.

12. The complainant consulted another attorney before the end of April 2001. That attorney was Mr. George Traille. Mr. Traille was retained both in relation to the Certificate of Deposit and the divorce. Her father never obtained his divorce as he died on the 17<sup>th</sup> May, 2001. The complainant says her complaint is that Mr. Reid did not respond to several efforts at communication or in a timely manner and charged for work which he said he had done but which she could not verify. She had no problem with the \$15,000.00 already paid to Mr. Reid only with the additional \$20,000.00 charged.
13. When cross examined the complainant did not significantly change her account. She did admit that in March her brother Nyron collected but did not return a paper from Mr. Reid. That paper was to be signed. She also admitted that the money in the bank re the Certificate of Deposit had been frozen and this was a direct consequence of a letter written by Mr. Reid. A letter dated 29<sup>th</sup> January, 2001 was put in evidence as **Exhibit 4**.

The complainant also admitted that the retainer of \$10,000.00 paid in relation to the maintenance matter was returned by Mr. Reid. Further, that on the day that Mr. Reid was to attend court, but did not, the case was adjourned and was not heard on that day.

14. Nyron Scharschmidt gave evidence on the 2<sup>nd</sup> July, 2003. He said that he lived in London, England and was a builder by profession. He had been to see Mr. Reid three (3) times without his sister, the complainant being present. He first saw Mr. Reid in her absence in February 2001. This was in respect of a claim for maintenance against his father. He gave Mr. Reid's secretary information which was "possibly incorrect" about where the hearing was to be.
15. He later found out the correct place and called on the morning of the hearing and told Mr. Reid's secretary. She said she would contact Mr. Reid on his mobile. Mr. Nyron Scharschmidt says he went to Clark's Town but Mr. Reid was not at court. The case was called up and he told the judge he had a lawyer. He never returned to court on that matter.
16. Nyron then went to see Mr. Reid and asked for a refund of the \$10,000.00 paid for the maintenance case. This was refunded. Nyron did not retain any other lawyer to deal with the maintenance claim.
17. Nyron Scharschmidt also deponed that Mr. Reid gave him some papers which he left with Yasmin Scharschmidt (the complainant). On a subsequent visit he said "we all got heated". Mr. Reid he said, treated them with total disrespect. Once they were to meet and Mr. Reid said he had to go to a funeral. He had been to the office for an appointment and not seen him. In Mr. Scharschmidt's words he "did not get that sense of urgency or understanding" from Mr. Reid.

On two (2) occasions he said Mr. Reid passed them going out of his office.

18. In cross examination Nyron Scharschmidt admitted he had received documents relating to proof of service of the divorce papers. He could not recall if they had been returned to Mr. Reid. He admitted that he left most of the paper work to Yasmin (complainant).

He admitted that documents were accepted from Mr. Reid by letter dated 23<sup>rd</sup> March, 2001, **Exhibit 6**. He did not however remember what documents. On the occasion of the missed appointment due to a funeral, he admitted returning the following day and seeing Mr. Reid.

He reiterated "he (Mr. Reid) never had the decency to come down and tell us face to face he has to go to court."

19. Such was the evidence in the case. It is important to note that Mr. Nyron Scharschmidt at the end of the hearing on the 2<sup>nd</sup> July, 2003 indicated that he had no objection to the matter being completed in his absence. Mr. Scharschmidt, it should be said, impressed the tribunal as a witness of truth.
20. On the 6<sup>th</sup> March, 2004 neither Mr. Scharschmidt nor the complainant were present. The Committee decided to proceed with the matter. Mr. Reid's attorney, Mrs. Valerie Neita-Robertson thereupon made a submission that there was no case for which her client should be called upon to answer. We will not restate the submission which was eloquently presented and admirably prepared and structured. We will content ourselves by stating the reasons why we agree that on the evidence no prima facie case of professional misconduct has been made out. Thereafter, we will make some general observations.
21. The Affidavit of the complainant dated 19<sup>th</sup> September, 2001 states the charges against the attorney as follows:-
- (a) He has not provided me with all information as to the progress of my matter with due expedition, although I have reasonably required him to do so.
  - (b) He has acted with inexcusable negligence in the performance of his duties.
  - (c) He has charged me fees that are not fair and reasonable.
  - (d) He has not accounted to me for all the moneys in his hands for my account, although I have reasonably required him to do so.


22. It is manifest on the evidence that the complainant and Nyron were aware of all aspects of the matters in respect of which Mr. Reid was instructed. They knew the delay in the divorce was due to a lost Supreme Court file and they knew that the funds in relation to the Certificate of Deposit were frozen.

The complainant, her brother and the attorney had had more than one meeting in the period December 2000 to April 2001. There was correspondence and at least one telephone conversation between them. In short, there is no evidence of information which was requested and not provided or of any significant delay in the provision of such information.

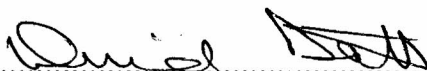
23. As regards the complaint of inexcusable negligence there is no evidence that the attorney has failed to do something, or has done something, which no reasonable attorney would have done. The complaint of his non-attendance at court is reasonably explained by the fact that Nyron had provided misleading information as to the place of the maintenance hearing. The effort to change the information was on the very morning of court. In any event no prejudice resulted and the attorney refunded the retainer of \$10,000.00. He is reported to have said that he did eventually go to the correct court albeit after court had adjourned. As regards the divorce he took reasonable steps by appointing a town agent and did eventually obtain a date. It is reasonable to infer that delay resulted because Nyron admitted collecting documents and passing them to the complainant but these were not returned to Mr. Reid.
24. The matter of fees not being fair or reasonable caused the greatest concern. However, at the end of the day this Committee on the face of the bill presented and on the evidence of the complainant that there were meetings, that the accounts were frozen and that there was correspondence between the bank and Mr. Reid, cannot say that the fee was so out of line with the work done as to motivate a finding of professional misconduct. If the complainant wishes to challenge the bill as not being correct she may still proceed to have the Registrar of the Supreme Court tax (assess) the bill. Our finding that there is no professional misconduct in relation to the bill is not to be taken to be a finding that the bill is fair and reasonable. The fact is there is insufficient evidence to lead us to a conclusion that it is not.
25. With reference to the allegation of a failure to account there has been no evidence at all to substantiate the complaint. Mr. Reid refunded \$10,000.00 retainer for the matter of maintenance. The complainant insisted she had no problem with the \$15,000.00 retainer on account of the Certificate of Deposit. There is no allegation that money was held or collected on their account by Mr. Reid.
26. We therefore find that there is no prima facie case of professional misconduct to proceed against the attorney.

27. The above decision notwithstanding this Committee wishes to make the following general remarks:-
- (a) It is apparent that the complaints were laid at a time when the complainant and her brother Nyron were in a personally stressful situation. Their father was dying or had died. His affairs needed attention. They both lived outside the jurisdiction and were therefore in need of prompt attention and communication from their attorneys. The fact that disagreement emerged and a parting of the ways occurred probably related more to the manner in which things were communicated rather than to the things which were done or not done by the attorney.
  - (b) If there is a lesson to be learned it is that as attorneys we should try to be sensitive to the peculiarities of the individual client. An extra 5 minutes to say "sorry I will be late", or "I have to miss this appointment" may save many hours of hearing before this Committee.
28. In the circumstances of this matter therefore, this Committee whilst dismissing the application as disclosing no prima facie case of professional misconduct will make no Order for costs.

Dated the 29<sup>th</sup> day of May 2004

  
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Hilary Phillips, Q.C.

  
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Merlin Bassie

  
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David G. Batts