

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

Complaint # 167/2003

**IN THE MATTER of a Complaint by
Joseph Terrelonge against Antoinette
Haughton-Cardenas, Attorney-at-Law**

A N D

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

Panel: L eila Parker-Robinson
Margarette Macaulay
David Batts

1. The Form of Application against an Attorney-at-Law is dated 16th September, 2003. In it the complaint is that the attorney:
 - (a) has not provided the complainant with all information as to the progress of his business with due expedition although required to do so.
 - (b) has acted with inexcusable or deplorable negligence in the performance of her duty.

2. The hearing of this matter commenced on the 12th February, 2005 and after several adjournments continued on the 9th June, 2007. We express our apologies to the complainant and the respondent attorney, however, the delay was occasioned in part by personal difficulties of one of our panelists.

3. The complainant gave sworn evidence and deponed that he was involved in an accident in 1995 whilst traveling on a "minitransit". He lost consciousness in the accident but after he was sent home from the hospital the United General Insurance Company Limited sent somebody to interview him. He stated that the bus was insured with United General while the other vehicle involved was insured with American Home Insurance Company Limited. He stated that each company blamed the other. He therefore complained to the Superintendent of Insurance. The Superintendent told him to get a lawyer he therefore went to see Ms. Antonnette Haughton. He says he had tried to file his own Writ but people at court said he should get a lawyer.
4. He therefore in October 2000 went to Ms. Haughton's office at Church Street and spoke to her secretary Miss Williams. The office was on Church Street. He stated that the secretary told him Mr. Clive Williams was taking over the case. He went back in December 2000 and spoke to Mr. Williams personally. The secretary he said stated they would be writing to the two (2) insurance companies. He did not pay any money to the lawyer as Miss Williams did not ask for any money, neither did he sign any paper relating to the payment of money.
5. Mr. Terrelonge said he saw Miss Antonnette Haughton in early 2001 and again in August 2001. He says he asked her back for his documents and that he told her the 6 years would soon expire. These were documents he had given to her secretary ie. (1) the claim from the insurance company, (2) a medical certificate,

(3) police record from Supt. of Black River, (4) papers from the Superintendent of Insurance.

He said Miss Haughton kept telling him to wait as he was a village lawyer. He said he knew the six (6) years would expire in December 2001.

6. Mr. Terrelonge further stated that in 2002 he received a letter dated 26th April, 2002 in the mail this was admitted as **Exhibit 1**. That letter reads as follows:

“Dear Mr. Terrelonge:

Re: Your letter of March 17, 2002

We must remind you that you have been handling this matter on your own all along. You took it here after several years, you have not signed a contingency with us, there is no trace of fees paid to us and there is no medical report on the file.

Therefore we had no contractual agreement with you, to file suit in the matter. If you have in your possession receipts of payments to us you can provide us with same”.

7. In 2002 after he received the letter Mr. Terrelonge saw Miss Haughton at Border. He said she was holding a political meeting. He approached her about his matter and she called him a “cunno munnu”. He understand that to mean he was a fool. He says he holds Miss Haughton responsible not Mr. Williams as Mr. Williams had said he was too “feisty” so Miss Haughton would handle the case.
8. He described the injuries suffered in the accident as blow to the hip, bruise to the foot, blow to his chest, slight cut on the hand. He had also been unconscious. He had been unable to work until February 1996. He stated he was feeling alright

now. He said Miss Haughton prevented him filing his own suit by holding onto his documents.

9. Under cross examination Mr. Terrelonge denied that Miss Haughton told him she had not filed a suit. He stated that he did not expect the attorney to work without payment. He stated that during his meeting with Miss Haughton he never asked how much case would cost. He admitted writing a letter in March 2002 to which Miss Haughton replied. He then went to the General Legal Council one year later.

He denied knowing in March 2001 that no case had been filed on his behalf. It was suggested that he knew a case had not been filed but his response was:

“How I must know. Secretary don’t tell me, Mr. Williams don’t tell me.

Q: Suggest that you know it was not filed as no fees paid.

A: Why she tek mi documents?”

10. Mr. Terrelonge was further cross examined about the occasions of his meetings with Miss Haughton in her office. It was suggested to him that there was no meeting with her prior to August 2001. This he denied. It was suggested that in August Miss Haughton did not see him in her office but came out into the waiting area and spoke to him. He admitted this but said he regarded the whole place as her office. It was suggested to him that Miss Haughton never refused to return his documents. He maintained that she had so refused. **Exhibit 2** being a letter dated

17th March, 2002 from Mr. Terrelonge to Miss Haughton was admitted into evidence during cross examination of the complainant. That letter read as follows:-

**“Joseph Terrelonge
Luna District
Border P.O.
St. Andrew**

March 17, 2002

Dear Mrs. Antonnette Haughton-Cardenas:

I send this letter to you. Asking you to inform me about accident case. What took place in St. Elizabeth on 4 December 1995. I give to your secretary Mrs. Williams all claim document I took from Office of the Superintendent of Insurance. Before I come to your office I went to Registrar of the Supreme Court to take out suits. While I was there a attorney told me that I cannot handle it. I should get a Attorney to make chamber application to tell which one of two insurance to pay the claim. And it cost me nothing for the Attorney fee come out insurance cost when they pay. So I come to your office and give the case to Haughton & Associates in October 2000. Many time I come to Mrs. Williams about suit case and she told me that they right to the two insurance. I make a appointment to see you. All the time I was told you are not coming office. When I see no answer about the case I ask your secretary and Office Manager and Mrs. C. Williams for my document back. That I can go some where. The last time I speak to you Mrs. Haughton in September 2001. And you told me you will deal with the case. And from hat time I come to your office telling the Telephone Operator and Mrs. Williams that suits time his six years and 4 December 2001 from the accident took place in St. Elizabeth. The last time I come to your office in November 27 2001. And Mr. C. Williams disrespect me and I will not coming back to your office. So please give answer about the claim case for is a breach of Promise Law. And I will take action. So please reply in righting all the time.

Your

Joseph Terrelonge”

11. It was suggested to Mr. Terrelonge that he knew since September 2001 that no case had been filed on his behalf. He denied this. The following exchange then occurred:

“Q: Suggest Miss Haughton never agreed to do case without payment .

A: Not free.

To Panel: They agree that if it settle out of court no payment but if it don’t settle out of court I would have to pay a retainer. Mr. Williams told me that. I signed no agreement.”

12. That was the case from the complainant at the end of which the attorney made a submission of No Case to answer. Mr. Beswick submitted that there was no credible evidence that a client and attorney relationship had been established. The reliance on a meeting in a corridor in front of staff and others was unfounded. Lawyers, it was submitted worked for money and Mr. Terrelonge stated that he knew he had to pay before suit was filed. No tribunal properly advising itself could believe his evidence.
13. This Committee ruled that there was a case to answer. In the first place professional misconduct does not occur only in the context of a client attorney relationship, see generally *Cordury on Solicitors 8th ed. Page 319* and the judgment of the *Honourable Mr. Justice Roy Anderson* in the matter of **HCV-2465 of 2004 – Oswald James v The Disciplinary Committee of the General Legal Council 1 December, 2006.**

“I hold as a matter of law that the expression ‘a person alleging himself to be aggrieved by an act of professional misconduct (including any default) committed by an attorney, is clearly wide enough to encompass persons who are not clients of the attorney who is being charged with misconduct.’”

In the second place, Mr. Terrelonge gave evidence of attending Miss Haughton’s office and of her agreeing to take on his case. There was therefore in any event a prima facie case of a client attorney relationship.

14. The attorney at the resumed hearing gave sworn evidence. She admitted to knowing the complainant and stated,

“I understood from staff instructions that he had come and left documents there. That when I enquired he had neither paid fees nor signed a contingency agreement. He had not paid consultation fees.”

15. She stated that upon a perusal of the documents supplied she realized that the insurance company was denying liability. The accident had occurred in 1995. A letter dated 19th March, 1997 from the Superintendent of Insurance was tendered as **Exhibit 3** and a letter dated 7th July, 1997 also from the Superintendent of Insurance as **Exhibit 4**. Both letters were addressed to Mr. Terrelonge. Miss Haughton said she spoke to Mr. Terrelonge and told him:

- (a) There would have to be a suit,
- (b) He would have to pay consultation fee and sign a contingency agreement and pay the basic cost of stamping and service or pay a retainer.

She stated that she pointed out the date of the accident so he would have to act with speed as it was almost six (6) years since the accident. Mr. Terrelonge she said, did not do any of these things and she,

“could do nothing until he had set up a proper contractual agreement with me. I told him what he had to do.”

The following evidence was then led:

“Q: Have you ever had this situation when client left documents?”

A: Yes, a common practice. Documents saying he..... People come and leave documents and do nothing else.

Q: Did you consider you had an attorney client relationship with Mr. Terrelonge?

A: No, I told him in order to proceed that you had to pay or sign contingency.”

The attorney denied refusing to return the documents. She stated that a statement was not taken from Mr. Terrelonge as they had not been retained. She denied telling Mr. Terrelonge a letter would be written on his behalf. She also denies receiving a medical report from him. She admitted knowing the word “cunno munno” but denied calling him that.

16. The attorney was cross examined by Mr. Terrelonge. The following exchange occurred,

“Q: Did you or Mr. Williams take my case?”

A: Nobody took your case.

Q: Why hold my file so long and can't get back?”

A: Because you did not come and request its return.”

In the course of cross examination the attorney admitted meeting the client at Border but said it was a political meeting and she told him it was not the appropriate place.

Mr. Terrelonge repeatedly made suggestions about his visits to the office and the refusal to return his documents. The attorney consistently denied this during cross examination.

In answer to a question from the Panel as to why she had not written to Mr. Terrelonge and returned his documents the attorney stated,

“a) Because they walk in promise they will come back

b) Most never come back

c) It would be my cost to mail it”.

She could not recall what date Mr. Terrelonge had come to the office but it was close to the limitation period.

17. The attorney closed her case. Mr. Beswick in his submissions contended that the issue is when is a lawyer client relationship created. He submitted in the absence of a clear agreement to appear pro bono there was no such relationship until there had been payment or a basis for payment agreed.

18. When considering the evidence in this matter the Committee reminds itself that the complainant is obliged to prove its case beyond a reasonable doubt. The tribunal needs to be sure see *Campbell v Hamlet [2005] 3 All. ER 1116*.

19. Some two (2) years have passed since Mr. Terrelonge gave evidence in February 2005. Nevertheless, his demeanour remains fresh in our minds. He was a firm witness who seemed genuinely concerned that his suit had not been filed. The committee bears in mind also that he had sought a remedy himself by going to the insurance companies and the Superintendent of Insurance. Hence, the letters, **Exhibit 3** and **4**. He only chose to attend upon an attorney when his personal efforts had failed. It seems his communication had largely been through secretaries at Miss Haughton's office and with an attorney Mr. Williams. Miss Haughton only spoke with him once or twice and not in the privacy of her office. His account of the meeting at Border and the words "cunno munno" have a ring of truth and are not the type of account that one would just make up. This Committee therefore having regard to his demeanour, the consistency of his evidence and the documentary exhibits 2, 3 and 4, accepts the complainant as a witness of truth.

20. We find as a fact the following:-
 - (a) That Mr. Terrelonge attended the office of Antonnette Haughton-Cardenas in or about the year 2000.
 - (b) That he spoke to a secretary who accepted his documents.

- (c) He eventually was allowed to see an attorney Mr. Clyde Williams who told him a letter would be written and he would only be required to pay fees if the matter was not settled.
 - (d) That among the documents delivered to the attorney were letters from the Superintendent of Insurance indicating that the insurance companies were denying liability.
 - (e) That he made general enquiries at Mrs. Haughton's office about the progress of his matter and when not satisfied demanded the return of his documents.
 - (f) That the documents were not returned and no suit was filed and no letter of demand was written.
 - (g) That the claim became barred by statute of limitation.
 - (h) That he wrote to Miss Haughton in March 2002 and only then did she write to him in April 2002 denying the existence of a lawyer client relationship.
21. Having regard to these findings of fact it is the conclusion of this Tribunal that the attorney failed in her duty to her client to commence legal action before the six (6) year period of limitation had expired. That she acted with inexcusable and deplorable negligence or neglect contrary to Canon IV (S).
22. This panel now wishes to say something about the submission that no duty arose in the absence of a client lawyer contract being entered into. We do not agree that

- that is so. It appears to us that even on the case put forward by the attorney professional misconduct emerged. The attorney accepted and retained Mr. Terrelonge's documents. The attorney was aware that a period of limitation was fast approaching. Mr. Terrelonge according to the attorney was told to pay or to sign a contingency and left to return but never did. She stated that he was also told that a limitation period was approaching.
23. The question is whether, Mr. Terrelonge having left to return, the attorney had discharged her duty. It is the view of this Committee that by retaining his documentation the attorney thereby retained some responsibility. It was incumbent on the attorney either:-
- (a) To take reasonable steps to contact the complainant and call upon him to collect his documents, or,
 - (b) To file suit and preserve his cause of action.
24. The attorney who retains such a person's documents and does nothing as a limitation period approached would in our view have acted negligently and inexcusably and/or deplorably so.
25. It is therefore the findings of this Committee that the attorney whether or not there existed a client lawyer contract, is in breach of Canon IV(S) (which be it noted makes no reference to the client as do other Canons for example IV (R)).

26. On the matter of punishment the Committee bears in mind that the attorney stated that several persons come and leave documents at her offices and there would be an administrative cost to return such documents. This mitigating factor however is only partially so as the documents perhaps should not be taken from a potential client until and unless the attorney has been retained or has decided to act. That surely is the prudent course.
27. The Complainant described his injuries and stated he is now fully recovered. On the other hand, any sanction must be such as to bring to the attention of the attorney that as a professional to whose office someone has come for assistance it is incumbent on her to so manage her affairs that that person is not deprived of a right or a potential remedy by default.
28. This Committee does not propose to decide on sentence until the attorney has been allowed an opportunity to address us on the matter.

Decided accordingly.

Dated the 1st day of April 2008


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Leila Parker-Robinson

A handwritten signature in cursive script, appearing to read "Margarete Macaulay". The signature is written in black ink and is positioned above a horizontal dotted line.

Margarete Macaulay

A handwritten signature in cursive script, appearing to read "David Batts". The signature is written in black ink and is positioned above a horizontal dotted line.

David Batts