

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

Complaint No. 160/2007

IN THE MATTER of BERTON I.
ADAMS and CARLTON H.
CAMPBELL, an Attorney-at-Law

A N D

IN THE MATTER of the Legal
Profession Act.

Panel: Pamela Benka-Coker, Q.C.
Charles Piper
David G. Batts

1. This complaint was filed on the 8th January, 2007. It is supported by an affidavit of Berton Adams dated 29th June, 2007.
2. The complaint is that the attorney withdrew from his employment without taking reasonable steps to avoid foreseeable prejudice or injury to the complainant's position and also that having withdrawn he has not properly refunded such part of the fees paid in advance as may be fair and reasonable.
3. The matter was first listed for hearing on the 15th November, 2008. No parties attended although they had been properly served. It was therefore relisted for the

21st March, 2009. The Complainant and the attorney were written to and advised to attend. The usual notices were also sent.

4. On the 21st March, 2009 a Mr. Edison Adams attended as a representative of the Complainant but the attorney did not attend. A letter was written to the attorney dated 12th May, 2009 directing that he send the Will of Nathaniel Adams to the General Legal Council failing which the matter would be heard. The matter was relisted for the 4th July, 2009.
5. On the 4th July, 2009 this panel satisfied itself that notice of the hearing had been properly served on the attorney who was absent. Mr. Edison Adams was present to represent the Complainant who is his brother. The Complainant he informed the panel was ill and unable to attend the hearing. We therefore commenced hearing the matter.
6. The evidence of Mr. Edison Adams was taken. The matter was then adjourned part heard to the 3rd October, 2009. By letter dated 29th September, 2009 the attorney was sent a copy of the typed notes and advised that the matter would be completed on the 3rd October, 2009.
7. By letter dated 2nd October, 2009 the attorney wrote to the Council advising that he was still awaiting typed notes of evidence and that he was making efforts to retrieve the Will of Nathaniel Adams, deceased which was "handed over to Mr.

G. Nanco, the then Deputy Clerk of the Courts for probate some time ago.” He also indicated that he was still ailing from a heart and lung condition that had led to hospitalization in early January. On the 3rd October, 2009 the matter was adjourned to the 5th December, 2009.

8. On the 3rd December, 2009 the office received a letter dated 2nd July, 2009 from the attorney which again spoke to his illness and efforts to retrieve the Will.
9. On the 3rd December, 2009 the office also received a letter dated 3rd December, 2009 from Mr. Carlton Campbell. This letter stated that he had met with Mr. Edison Adams and informed him of the efforts being made. He stated that a copy of the Will had been located. He requested “a final date” in the new year in about March 2010 to “settle” the matter.
10. On the 5th December, 2009 this panel had regard to the letters from the attorney. Mr. Edison Adams was in attendance. The matter was therefore adjourned to the 30th January, 2010 and costs of \$5,000.00 awarded to the Complainant. The attorney be it noted did not attend on the 5th December, 2009 nor was he represented.
11. On the instructions of the panel a letter dated 14th December, 2009 was written to the attorney advising him that the matter was listed for continuation on the 30th January, 2010 and asked that a copy of the copy Will found be sent to the

Council. The Committee also asked to be informed of the steps being taken to resolve the matter. He was also advised of the costs awarded.

12. By letter dated the 26th January, 2010 the attorney advised that he had paid costs to the Complainant. He advised that he was using the photocopy will to apply for probate in solemn form. On the 30th January, 2010 when the matter came on for hearing the panel was not properly constituted. The matter was listed for mention on the 24th April, 2010.
13. On the panel's instructions the attorney was written to, advised of the date and that he was expected to be in attendance on that date.
14. On the 3rd April, 2010 the office received a copy letter written by the attorney and addressed to the Complainant. In that letter he advised the Complainant of the pending proceedings in the Black River Resident Magistrate's Court for the 2nd June, 2010.
15. On the 24th April, 2010 the hearing of this complaint was further adjourned to the 12th June, 2010.
16. On the 12th June, 2010 the attorney did not appear, however the panel was not properly constituted as the matter was not before the panel who had started

hearing the evidence. The Complainant was again represented by Mr. Edison Adams.

17. The matter was next set down for hearing on the 13th November, 2010. This committee satisfied itself that notice of hearing was duly posted to the attorney on the 7th October, 2010. The attorney did not attend for the hearing on the 13th November, 2010 nor was he represented. The Complainant was again represented by Mr. Edison Adams. The panel therefore determined to conclude the hearing of the complaint. Costs of Ten Thousand Dollars (\$10,000.00) were awarded to the Complainant. The Complainant's case was closed and we adjourned to consider our decision. Having done so we now deliver this judgment on the matter.
18. Mr. Edison Adams as indicated at paragraph 6 above gave evidence on the 4th July, 2009. He stated that his brother, the Complainant Mr. Berton Adams is troubled with loose bowels and unable to attend. He confirmed and identified his brother's signature. As such Mr. Berton Adams' affidavit dated 29th June, 2007 in support of the complaint was admitted as **Exhibit 1(a)**. He advised that Nathaniel Adams was his father.
19. That Affidavit **dated** the 29th June, 2007 [(**Exhibit 1(a)**)] states at paragraph 3(h):

“On the first of October 1992 an agreement was entered with Mr. Carlton Campbell attorney-at-law, for the probating of a will re Nathaniel Adams estate (Deceased) for a fee of five thousand five hundred dollars (\$5,500.00). This amount was fully paid on

September 7, 1995. Since then number of attempts have been made to contact him but to no avail. In November 2006 contact was made with him, I asked for the return of the will, he said he could not comply as the will was in Kingston. Further attempts to contact him have been futile.

My only interest in contacting him is for the safe return of the will.”

20. In this matter we are aware that it is necessary for the Complainant by his evidence to satisfy us so that we feel sure. The mere fact that the attorney is absent and has not attended to challenge the allegations is not sufficient. We must still examine the quality of the evidence when making our determination.
21. We accept the evidence of the deponent. We find as a fact the following:-
- (a) In or about October 1992 the attorney agreed to obtain probate of the Will of Nathaniel Adams.
 - (b) That the original Will was handed to the attorney for the purpose.
 - (c) That \$5,500.00 was paid to the attorney.
 - (d) That Probate has not yet been obtained.
 - (e) In November 2006 the attorney told Mr. Adams that the Will was in Kingston.
 - (f) The attorney had not up to the date of the complaint been in regular contact with the Complainant.
 - (g) The Complainant's efforts to contact the attorney bore no fruit.

22. The Complainant alleges that the attorney withdrew from his employment. The conclusion in this regard must have been inescapable having regard to the period of time that has elapsed since he retained the attorney and the absence of communication.
23. Although not in evidence this panel cannot disabuse itself of the attorneys letters to the Council which indicate that the original Will was lost albeit he says by the Clerk of Courts to whom it was handed along with other documents. The attorney's recent reported attempts to have the copy will proved have not it seems borne fruit. These belated efforts serve only to mitigate what has been an egregious breach of professional standards by the attorney.
24. 1992 to 2007 makes a total of 15 years since a retainer was paid and a will delivered to the attorney for probate to be obtained. We find therefore that the complaint has been made out and that the attorney withdrew from his client's employment without notifying him and without taking steps to return the documents to the client for whom he had ceased to act.
25. We therefore decide as follows:-
 1. The attorney is in breach of Canon IV (o) of the Legal Profession (Canons of Professional Ethics) Rules.
 2. The attorney is to pay a fine of \$100,000.00 all of which is to be paid to the Complainant in part satisfaction of any loss or injury he may suffer

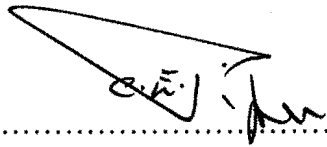
particularly as the estate still requires probating and the cost to do so will have gone up exponentially.

3. The attorney is to pay costs of \$40,000 to the General Legal Council.

Dated the 3rd day of DECEMBER 2011



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Pamela Benka-Coker, Q.C.

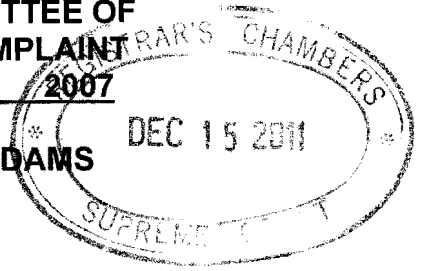


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Charles E. Piper



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David G. Batts

**FORMAL ORDER OF THE DISCIPLINARY COMMITTEE OF
THE GENERAL LEGAL COUNCIL MADE ON COMPLAINT
NO.160**



**IN THE MATTER OF BERTON I ADAMS
VS CARLTON CAMPBELL**

AND

**IN THE MATTER OF THE LEGAL PROFESSION
ACT 1971**

**PANEL: MRS PAMELA BENKA-COKER, Q. C.
MR. CHARLES PIPER
MR. DAVID BATTS**

DECISION DELIVERED ON THE 3RD DECEMBER, 2011

UPON THE APPLICATION dated 8TH January, 2007 made under section 12(1) (a) of the Legal Profession Act coming on for hearing before the Disciplinary Committee on the 4th July, 2009,

AND UPON THE Edison Adams appearing for and on behalf of the Complainant, and having given evidence on oath

AND UPON THE attorney Carlton Campbell failing to appear when the evidence was taken, he having been given an opportunity to do so

AND UPON DUE CONSIDERATION of the evidence of Edison Adams

THE COMMITTEE FINDS: The attorney is guilty of professional misconduct. The panel further finds that the attorney is in breach of Canon IV (o) of the Legal Profession (Canons of Professional Ethics) Rules.

**PURSUANT TO THE FOREGOING FINDINGS THE COMMITTEE
UNANIMOUSLY HEREBY ORDERED THAT:-**

Pursuant to s 12(4) of the Legal Profession Act:

- (a) The Attorney is to pay a fine of \$100,000.00 all of which is to be paid to the complainant in part satisfaction of the loss or injury he may suffer particularly as the estate still requires probating and the cost to do so will have gone up exponentially.
- (b) The attorney is to pay costs of \$40,000.00 to the General Legal Council
- (c) The attorney is also to pay costs of \$10,000.00 to the Complainant for travelling expenses.

Dated 9th December, 2011


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CHARIMAN OF PANEL