

**Decision of the Disciplinary Committee of
The General Legal Council**

Complaint No. 41 of 2013.

BETWEEN	LYDIA PEDLEY-WEBER	COMPLAINANT
AND	IVOR PEYNADO	RESPONDENT

Panel: Mr. Walter H. Scott, Q.C. - Chairman
Mr. Michael Thomas
Mr. Dane Marsh

Hearing Dates

**31 May 2014, 08 November 2014, 16 May 2015, 20 June 2015,
04 November 2015, 27 February 2016, 20 April 2016, 22 June 2016.**

Representation:

Lydia Pedley-Weber	Complainant represented by Mr. Krishna Desai Attorney-at-Law
Ivor Peynado	Respondent – represented by Mr. Leonard Green, Attorney-at-Law.

BACKGROUND

1. By Form of Application against an Attorney-at-Law and Form of Affidavit by Applicant dated the 22nd day of February 2013 Mrs. Lydia Pedley-Weber (hereafter called “the Complainant”) made the following complaints against Mr. Ivor Peynado, Attorney-at-Law (hereafter called “the Attorney”). The complaints alleged that the Attorney breached the Canons of the Legal Profession Act, in particular, Canons I (b), I(c) III (f), V (n) and V (o).

- i. **CANON I (b)**
An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.
 - ii. **CANON I (c)**
An Attorney shall observe these Canons and shall maintain his integrity and encourage other attorneys to act similarly. He shall not counsel or assist anyone to act in any way which is detrimental to the Legal Profession.
 - iii. **CANON III (f)**
An Attorney shall not act contrary to the laws of the land, or aid, counsel or assist any man to break those laws.
 - iv. **CANON V (n)**
An Attorney shall not counsel or assist his client or witness, in conduct that the Attorney knows to be illegal or fraudulent, and where he is satisfied that his client has in the course of the particular representation perpetrated a fraud upon a person or tribunal, he shall promptly call upon him to rectify same.
 - v. **CANON V (o)**
An Attorney shall not knowingly make a false statement of fact or law.
2. The Complainant has classified the conduct of the Attorney as “*unbecoming*” in relation to administering the estate of her late father; Mr. Leopold Pedley (hereafter called “The Testator”). She was of the view that the Attorney witnessed the signature of the Testator and others on certain documents and dated these documents after the date of the death of the Testator that being the 9th day of July 2005, but prior to the Grant of Probate dated the 9th day of January 2007.
 3. These documents included:-
 - (a) Transfer of the property of Conway Drive registered Volume 972 Folio 124 in the Register Book of Titles;

- (b) Transfer of the property of Whitney Drive registered Volume 946 Folio 369 in the Register Book of Titles; and
 - (c) Agreement for Sale of the Delacree Pen property registered at Volume 683 Folio 23 in the Register Book of Titles.
4. There were also complaints in relation to alleged gross delay and default by the Attorney in completing the following:
- i. Obtaining a Title for the property at Re Frenchmen's Heights;
 - ii. Dealing with estate;
 - iii. Communicating with the beneficiaries
 - iv. Taking steps to identify the assets of the estate;
 - v. Resealing the Grant of Probate in England; and
 - vi. Responding to requests made.
5. The complaints were denied by the Attorney by way of a Form of Affidavit by Respondent filed on the 5th day of November 2014. The gravamen of the Attorney's defence is that the delays in settling the estate were not a result of his actions because he did not have possession of the resealed Probate. In addition to which, he asserted that the suit filed against the Executrix halted the administration of the estate.
6. The hearing began on the 31st day of May 2014 on which date the Panel made the following Orders:
- (a) Complainant's case to be clarified;
 - (b) Complainant's Attorneys-at-law to advise the Council of the date for the Case Management Conference for the matter;
 - (c) Date for the Disciplinary Hearing to be set to harmonise with the Court dates due to the Complainant having to travel from Germany;
 - (d) Mr. Peynado to be consulted in relation to dates he will be abroad;
 - (e) Mr. Peynado to file response to the complaint;
 - (f) List of Documents to be exchanged by the 15th day of October 2014;

(g) Mr. Peynado's address for service; 47 Shortwood Road, Kingston 8
The matter was adjourned to the 8th day of November 2014.

7. On the 8th day of November 2014, the Panel ordered that the Complaint should be set for Trial and for the Complainant's Attorneys-at-Law to decide whether the Complainant will be able to give evidence by way of video link. The matter was subsequently set to continue on the 16th of May 2015.
8. The Attorney filed a Supplemental Form of Affidavit on the 5th day of May 2015. On the 16th day of May 2015, the Complainant's Attorneys-at-Law indicated that the Complainant wished to give her evidence by video link. At that hearing the Chairman recused herself from the matter. The matter was subsequently adjourned to the 20th day of June 2015 to accommodate the Complainant's video link evidence.
9. On the 20th day of June 2015, the matter was adjourned to the 4th day of November 2015. On that date, the Panel granted leave for the Complainant to file Further Supplemental List of Documents and for the Affidavit in Response to the Further Supplemental List of Documents to be filed within ten (10) days of the receipt of the said Supplemental List. The Panel also ordered for Written Submissions to be filed and served before the 4th day of January 2015. Documents were also agreed by consent. They include:-
 - i. Form of Affidavit and Application dated the 22nd day of February 2013 with letters attached A-G with letter of complaint and attachments dated the 6th day of December 2012 as Exhibit No. 1;
 - ii. Affidavit of Ivor G. Peynado sworn to on the 30th day of October 2014 and the 5th day of May 2015 as Exhibit No. 2;
 - iii. Affidavit of Yvonne Elliot sworn to on the 6th day of May 2015 as Exhibit No. 3;
 - iv. List of Documents dated the 14th day of May 2014 enclosing twenty one documents as Exhibit No. 4; and
 - v. Supplemental List of Documents dated the 23rd day of September 2014 as Exhibit No. 5.

The matter was adjourned to the 27th day of February 2016 with the Complainant being excused.

10. On the 27th day of February 2016, the Panel ordered Mr. Peynado's Attorneys-at-Law to file and serve Submissions on or before 4:00 p.m. on the 21st day of March 2016. The matter was subsequently adjourned as part heard to continue on the 20th day of April 2016. On that date the matter was further adjourned to the 22nd day of June 2016.
11. On the 22nd day of June 2016, the Complainant's Attorneys-at-Law indicted to the Panel that they will rest on their Written Submissions and Mr. Peynado's Attorneys-at-Law were granted leave to extend the time to file the Written Submissions. The Submissions in reply were filed on the 19th day of July 2016.
12. Written Submissions, Bundle of Exhibits and List of Authorities were submitted by the Complainant. The Respondent submitted Written Submissions and Bundle of Authorities.
13. The Panel took time to review the Transcripts of the evidence, the several exhibits and the Written Submissions and now delivers its Decision.

THE EVIDENCE

14. The Complainant with her address at Freiligrathstrasse 17, 61440 Obersusel Germany, is the daughter of Mr. Leopold Pedley who is now deceased. Mr. Pedley died testate and the Complainant is the beneficiary under her father's estate. He died on the 9th day of July 2005. This date is of great significance to the issues before this Panel.
15. The Attorney had acted for the deceased while he was alive and also had conduct of the Application for Probate and of administering the estate. He was considered the "*family lawyer*". However, the Complainant has expressed concerns in relation to the Attorney's handling of the properties itemised in paragraph 3
16. The deceased also had assets in the United Kingdom and as such it was necessary for the Grant of Probate to be resealed so as to retrieve the said assets. However, the Complainant has indicated that there was a delay in identifying the assets, resealing the Probate, responding to the Complainant and dealing with the assets of the estate. The most important issue in this case is the dating and lodging of Instruments of Transfer for the

abovementioned properties after the 9th day of July 2005, when the Testator had already died.

THE LAW

17. The Panel reminds itself that the burden of proof to establish the complaints rests solely and entirely on the Complainant. The Panel also reminds itself that the standard of proof which is required from the complaint is proof beyond a reasonable doubt. (**Wilston Campbell v David Hamlet (as executrix of Simon Alexander) Privy Council Appeal No. 73 of 2001.**)

1. The main issue before this Panel is whether an inter vivos transfer of land may be dated and perfected by an attorney-at-Law on behalf of a Transferor when the Attorney-at-Law knows that on that date the Transferor is deceased.

2. The significant legal issues in the case arise from Canons Nos.

- i. An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member;*
- ii. An Attorney shall observe these Canons and shall maintain his integrity and encourage other Attorneys to act similarly. He shall not counsel or assist anyone to act in any way which is detrimental to the Legal Profession;*
- iii. An Attorney shall not act contrary to the laws of the land, or aid, counsel or assist any man to break those laws;*
- iv. An Attorney shall not counsel or assist his clients or witness, in conduct that the Attorney knows to be illegal or fraudulent, and where he is satisfied that his client has in the course of the particular representation perpetrated a fraud upon a person or tribunal, he shall promptly call upon him to rectify same;*

v. *An Attorney shall not knowingly make a false statement of fact or law.*

3. In the leading case of **Earl Witter v Roy Forbes (1989) 26 JLR 129** the Court of Appeal in Jamaica had to deal with the issue of delay in conducting the client's business. In Carey JA (as he then was) stated as follows:

“We are not in this appeal dealing with professional misconduct involving an element of deceit or moral turpitude.....as to rule(r) it is not mere delay that constitutes the breach, but the failure to deal with the client's business in a business-like manner. With respect to rule (s) it is not inadvertence or carelessness that is being made punishable but culpable non-performance”.

4. The Panel accepts that in matters such as these the Complainant has to prove, to the requisite Standard of Proof, not mere carelessness or inadvertence that would suffice in a civil trial, but culpable non-performance or gross recklessness.
5. It is noted at page 73 of *Cordery's law relating to Solicitors 8th Edn* that a retainer may be terminated by death. It states that:-

“Where the client dies the solicitor's authority comes to an immediate end, so that the solicitor can recover no costs for subsequent work unless the personal representatives ratify the retainer by continuing the action and so make themselves liable.”

6. Lord Parker in the authority of **Chetty c Chetty (1916) I A.C. 63** enunciated the principle that :

“It is quite clear that an executor derives his title and authority from the will of his testator and not from any grant of probate. The personal property of the testator, including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action in the character of executor before he proves the will. He cannot, it is true, obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of the Court, he is allowed to prove his title. An Administrator, on the other hand,

derives title solely under his 1916 grant, and cannot, therefore, institute an action as administrator before he gets his grant. The law on the point is well settled”.

7. **Section 2** of the *Real Property Representative Act* clearly defines “personal representative” as being either an executor who has obtain a probate or an administrator who has obtained Letters of Administration. **Section 6(1)** of the *Act* goes further in stating that:-

“At any time after the death of the owner of any personal representative to land, his personal representatives may assent in writing to represent any devise contained in his will, or may convey the land to devise of any person entitled thereto as heir, devisee, or otherwise, land and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent in writing or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance”.

8. **Section 3(2)** of the *Forgery Act* defines “false documents” as:-

“A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by, or on behalf or on account of a person who did not make it nor authorise its making; or if, though made by, or on behalf or on account of, the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein; and in particular a document is false-

- (a) If any material alteration whether by addition, insertion, obliteration, erasure, removal or otherwise, has been made therein, or*
- (b) If the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; or*

(c) If though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorised it;

Provided that a document may be a false document notwithstanding that it is not false in such manner as is in this subsection set out.

DISCUSSION

9. The Executor Mrs. Yvonne Elliot has indicated by way of Affidavit evidence that she is the sole executor named in the Will of Leopold Pedley, who was also her father. She also indicated that she was in constant dialog with the Attorney in an effort to reseal the Grant of Probate in England. It is palpable on the face of the evidence that she instructed the Attorney before the Grant was issued and also before it was resealed. As was stated in in Chetty, the executor derives his authority from the Will and not from the Grant of Probate. This clearly showed that after the death of the testator the Attorney was able to act pursuant to the instructions of Mrs. Elliot.
10. The Attorney however did not have the ability to date the previously undated document with a date after the death of the Testator, the Testator having died.
11. Section 3 (1) and (2) (a) & (b) of the Forgery Act are as follows:

“3. (1) For the purpose of this Act, “forgery” is the making of a false document in order that it may be used as genuine, and, in the case of the seals and dies mentioned in this Act, the counterfeiting of a seal or die; and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided.

(2) A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by, or on behalf or on account of a person who did not make it nor authorise its making; or if, though made by, or on behalf or on account of, the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or in the case of a document identified by number or mark, the number or

any distinguishing mark identifying the document, is falsely stated therein; and in particular a document is false-

- (a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein; or*
- (b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; or*
- (c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorised it.*

12. In this case, once the fictitious date was inserted by the Attorney, not only was it, at the date it purported to have been made, made by a deceased person but it contained a material alteration.

13. The date on any Instrument of Transfer is always relevant. It is relevant for the payment of taxes and duties under the Transfer Tax Act and the Stamp Duty Act. It is also relevant for as in this case the alleged maker of the document may have died and so it is being made by a non-existent or fictitious person.

14. Paragraph 22-8 of Archbold Criminal Pleading Evidence and Practice 2006 contains the following:

“it was in R v Windsor (1865) 10 Cox 118, 123 that Blackburn J, said: “Forgery is the false making of an instrument purporting to be that which it is not, it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced into writing. This test was applied in the Court of Appeal in R v Dodge and Harris (1972) 1 Q.B. 416.....as we have said....the primary reason for retaining a law of forgery is to penalise the making of documents which. Because of the spurious air of authenticity given to them are likely to lead to their acceptance as true statements of the facts related in them. We do not think that there is any need for the extension of forgery to cover falsehoods that are reduced to writing...The essential feature of a false instrument in relation to

forgery is that it is an instrument which “tells a lie about itself” in the sense that it purports to be made by a person who did not make it (or altered by a person who did not alter it) or otherwise purports to be made or altered in circumstances in which it was not made or altered”

15. The fact is that Probate was not obtained until 09 January 2007.
16. Between the Testators death on 09 July 2005 to the Grant of Probate the Executor had no authority to approve the previously signed Instruments of Transfer (if it had any such authority at all).
17. The Instruments of Transfer were dated on 27 July 2005, 15 September 2005 and 24 October 2006 clearly represented a state of affairs which did not exist, as on those dates the Transferor did not exist.
18. The very pedestrian approach to having the Probate granted, and to treating with the various issues which stood to be resolved were in our view not mere inadvertence or carelessness. It simply did not meet the standard of a reasonably competent Attorney-at-Law

FINDINGS

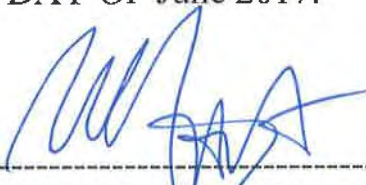
19. The Panel is obliged by Section 15 of the Legal Profession Act to make Findings of Facts. In this regards, the Panel finds as follows:
 - a. At all material times whilst he was alive, the attorney was the attorney-at-law for Leopold Pedley.
 - b. At all material times the attorney was the attorney-at-law for Estate Leopold Pedley.
 - c. After the death of Leopold Pedley, the Attorney inserted dates on Instruments of Transfers (the said Transfers) signed by Leopold Pedley prior to his death.
 - d. The said Transfers were used or uttered by the Attorney.
20. The Panel finds the Attorney guilty of the Complaints lodged against him, namely:-

- i. An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member;
- ii. An Attorney shall observe these Canons and shall maintain his integrity and encourage other Attorneys to act similarly. He shall not counsel or assist anyone to act in any way which is detrimental to the Legal Profession.
- iii. An Attorney shall not act contrary to the laws of the land, or aid, counsel or assist any man to break those laws;
- iv. An Attorney shall not counsel or assist his client or witness, in conduct that the Attorney knows to be illegal or fraudulent, and where he is satisfied that his client has in the course of the particular representation perpetrated a fraud upon a person or tribunal, he shall promptly call upon him to rectify same;
- v. An Attorney shall not knowingly make a false statement of fact or law.

SANCTION

21. The Panel Orders that a Sanction Hearing be caused to be held in accordance with the Decision of the Court of Appeal in *Clunie v The General Legal Council*.


DATED THE 24th DAY OF June 2017.



WALTER H. SCOTT, Q.C.



MICHAEL THOMAS



DANE MARSH