

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

COMPLAINT NO. 78 of 2020

**IN THE MATTER of SHERESE GODSCHILD and
SEYMOUR STEWART, an Attorney-at-Law.**

AND

IN THE MATTER of the Legal Profession Act, 1971

PANEL: Ms Daniella Gentles Silvera (Chairman)
Ms Gloria Langrin
Mr Sundiata Gibbs

APPEARANCES: Ms Sherese Godschild on her own behalf (Via Zoom)
Mr Seymour Stewart on his own behalf (Via Zoom)

HEARING DATES: March 6, 2021; March 20, 2021; March 27, 2021, July 26, 2021

COMPLAINT

1. This complaint features allegations of delay and neglect on the part of the Respondent ("Mr Stewart") who the Complainant ("Ms Godschild") retained to commence court proceedings on her behalf.
2. Ms Godschild's affidavit in support of her complaint specifically alleges that Mr Stewart¹:

¹ Exhibit 2, page 2

- (a) withdrew from her employment without informing her and without avoiding injury to her rights as his client (in breach of Canon IV(o))
 - (b) failed to provide her with all the information as to the progress of her case (in breach of Canon IV(r))
 - (c) failed to deal with her business expeditiously (in breach of canon IV (r))
 - (d) acted with deplorable negligence (in breach of canon IV(s))
 - (e) failed to account to her for any and all money in his hands for her account or credit (in breach of canon VII(b)(ii))
 - (f) failed to uphold the honor and dignity of the profession (in breach of canon I(b))
3. We have found that Ms Godschild has failed to prove the alleged breaches of canons IV(o) and VII(b)(ii). However, we have found Mr Stewart guilty of professional misconduct in respect of canons IV(r) and IV(s).
4. We have set out the reasons for our decision in the paragraphs that follow.

BACKGROUND AND EVIDENCE

5. Both Ms Godschild and Mr Stewart gave evidence in these proceedings. Ms Godschild's evidence is set out in her affidavit sworn on June 10, 2020 and her oral testimony given on March 6 and 20, 2021. Mr Stewart gave oral testimony on March 20 and 27, 2021.

6. According to Ms Godschild, she is entitled to a share of the estates of her deceased grandparents - Stanford and Florence Dustan. She claims this entitlement through her deceased mother Beverly Strachan who Ms Godschild says should have been a beneficiary of both estates.
7. Her uncle, Jassel Dustan, was the administrator of her grandparents' estates. He obtained grants of administration in 2012 but never distributed any assets to Ms Godschild.
8. Ms Godschild, feeling aggrieved by her exclusion, retained Mr Stewart to represent her. The terms of that retainer appear in an e-mail she sent to Mr Stewart on August 6, 2013² in which she instructed him to recover the inheritance she believed was due to her mother and by extension, to her. She promised to pay him 20% of any money he managed to recover on her behalf.
9. Mr Stewart never responded to indicate his agreement to the 20% contingency fee and during the hearing seemed to have denied agreeing to accept it³. However, he did not deny that he was Ms Godschild's legal representative in the dispute with her uncle⁴. So long as there is no dispute regarding that factual issue, the fee he agreed to accept for acting in that role is irrelevant to the issues we have been asked to decide.
10. After receiving instructions from Ms Godschild, Mr Stewart sent pre-action correspondence to Mr Dustan and promised Ms Godschild he would file the claim. He did not do so in 2013 and Ms Godschild did not follow up with him until about

² Exhibit 3

³ Evidence in Chief of Seymour Stewart - Page 15 of the transcript of the hearing held on March 20, 2021

⁴ Evidence in Chief of Seymour Stewart - Page 15 of the transcript of the hearing held on March 20, 2021

June of 2020⁵. After that follow up, Mr Stewart prepared the fixed date claim form and the affidavit to support it. Ms Godschild executed them and they were filed at the Supreme Court of Jamaica on January 27, 2021⁶. The claim is now making its way through the court system with the first hearing of the fixed date claim form being scheduled for May 6, 2021.

11. The evidence of Mr. Stewart is very similar to the evidence of Ms. Godschild. In 2013 he agreed to represent her regarding the estate of her grandparents of which her mother was a beneficiary. He was told to move quickly on the matter as the properties of the estate had been sold and the funds were being distributed. He did nothing and in 2020 Ms Godschild contacted him. He was surprised as he thought the matter had been resolved. Mr Stewart drafted at that time an affidavit to be filed in Court. The Fixed Date Claim Form filed asks for an accounting of the proceeds of sale of the property and he does not anticipate any limitation argument to the claim filed.

12. Having heard both parties' evidence, we make the following findings of fact:
 - (i) Ms Godschild retained Mr Stewart to act as her attorney to recover from Jassel Dustan sums she believed were owed to her;

 - (ii) After being retained Mr Stewart sent a letter to Mr Dustan on Ms Godschild's behalf;

 - (iii) On December 14, 2013 Ms Godschild wrote to Mr Stewart for an update on her matter;

⁵ Cross Examination of Sherese Godschild – Page 9 of transcript of hearing held on March 20, 2021

⁶ Exhibit 9

- (iv) On December 17, 2013 Mr Stewart promised to file a claim by early 2014;
- (v) The e-mail dated December 17, 2013 was the last correspondence between the parties in 2013;
- (vi) Ms Godschild followed up on the claim in or around June 2020; and
- (vii) Mr Stewart filed the claim on Ms Godschild's behalf on January 27, 2021

DISMISSAL OF COMPLAINTS BASED ON CANONS VII(b)(ii) AND IV(o)

13. Canon IV(o) precludes an attorney from withdrawing from his client's employment until he/she has taken reasonable steps to avoid prejudice. It provides:

An Attorney who withdraws from employment by virtue of any of the provisions of Canon IV (n) shall not do so until he has taken reasonable steps to avoid foreseeable prejudice or injury to the position and rights of his client including -

- (i) giving due notice;**
- (ii) allowing time for employment of another attorney;**
- (iii) delivering to the client all documents and property to which he is entitled;**

- (iv) **complying with such laws, rules or practice as may be applicable;
and**
- (v) **where appropriate obtaining the permission of the Court where
the hearing of the matter has commenced**

14. Canon VII(b)(ii) requires an attorney to account for monies held for the credit of his/her client. It provides:

An Attorney shall account to his client for all monies in the hands of the attorney for the account or credit of the client, whenever reasonably required to do so

15. Although Ms Godschild never formally abandoned her complaints based on these canons, she offered no evidence to support them.
16. For example, when the panel asked Ms Godschild whether Mr Stewart ever told her he was withdrawing from her employment, she said he had not⁷. In fact, at the time this complaint came on for hearing, Mr Stewart had filed the claim on her behalf and was doing legal work as if the retainer were still in effect.
17. Ms Godschild proffered no evidence on which the panel could properly find Mr Stewart guilty of withdrawing from her employment, much less doing so in a way that caused her prejudice. We therefore dismissed this complaint.
18. A similar point can be made about Ms Godschild's complaint that Mr Stewart did not account for money he held on her behalf. During her oral testimony she

⁷ Evidence in chief of Sherese Godschild - Page 4 of transcript for hearing held on March 6, 2021

indicated that she did not give Mr Stewart any money and did not know if he collected any money for her. She said:

I did not give him any funds and I don't know if he collected any on my behalf, as I said I had already given him permission to do so and sometimes there are unethical people, so I did not know if he went and collected any without me. I did not know what happened during the six years⁸.

19. Ms Godschild also stated that when she asked Mr Stewart if he collected any funds on her behalf, he said that he had not. To the extent that this question constituted a demand for an account, Mr Stewart gave an account by indicating that he held no money for Ms Godschild.
20. There being no other evidence to suggest that Mr Stewart was being untruthful about having collected money from Mr Dustan, we dismissed this complaint.

CANON IV(r) - FAILURE TO ACT EXPEDITIOUSLY

21. Canon IV(r) requires an attorney to handle his client's business with due expedition and to provide information to the client regarding the progress of any matter undertaken on that client's behalf. The exact wording of the canon is as follows:

An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition.

⁸ Evidence in Chief of Sherese Godschild – Page 5 of transcript for hearing held on March 6, 2021

22. A complaint under this canon requires the panel to assess the alacrity with which Mr Stewart acted on his instructions and his responsiveness to any requests for information about Ms Godschild's claim. One of the leading cases regarding this canon is Witter v Forbes⁹ in which Carey JA stated that a breach of Canon IV(r) arises where the attorney fails to deal with a client's affairs in a business like manner and a breach of Canon IV(s) occurs when there is culpable non-performance. The learned justice of appeal said:

The violated rules, both involved an element of wrong-doing, in the sense that the Attorney knows and, as a reasonable competent lawyer, must know that he is not acting in the best interests of his client. 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. This is plain from the language used in the rules.

23. In Johnson v The General Legal Council (Ex Parte Ferdinand Britton)¹⁰ the Court of Appeal considered canon IV(r) in the context of an attorney who, after being instructed to enforce a judgment, performed work on his client's behalf but with long delays between each of the steps taken. Williams JA emphasized that even if an attorney does a fair amount of work for his client, he can still be guilty of misconduct under Canon IV(r) if he does not perform that work with reasonable alacrity and responsiveness. He said:

⁹ (1989) 26 JLR 129

¹⁰ [2018] JMCA Civ 3

In my view, the periods of inaction after the award of damages to the filing of the application for the writ of seizure and sale and the slow steps taken to address the requisitions, form a sufficient basis for the conclusion at which the committee arrived. In addition to the inaction, there was also before the committee no evidence or explanation for it to have considered concerning the problems that the appellant submitted to this court that he experienced in advancing the matter...

... Additionally, even if we accept, as the appellant sought to emphasize, that a fair amount of work was done on Mr Britton's behalf, that in itself would not be enough to counter the allegations against him, as the focus of the relevant provision is not just the doing of work; but the doing of work with "all due expedition". In light of this, it cannot be said that the committee was plainly wrong in its finding that the appellant did not handle the client's matter with due expedition¹¹.

24. In the present situation, Mr Stewart's delay is more egregious than the delay in the Johnson case. Six years passed between his promise to file the claim and the steps he actually took to file it. Mr Stewart's explanation is that he assumed that Ms Godschild settled the matter with her uncle. The panel did not find that to be a reasonable assumption. While Mr Stewart spoke to Ms Godschild about her conversing with her uncle without his knowledge¹², he did not allege that Ms Godschild actually told him there was a settlement. His basis for reaching that conclusion was Ms Godschild's radio silence for 6 years.

25. Even if Mr Stewart suspected that the matter may have been resolved amicably, the onus was on him to verify that this was indeed the case by reaching out to his

¹¹ At Paragraph 37

¹² Evidence in Chief of Seymour Stewart - Page 15 of transcript for hearing held on March 20, 2021

client. This, he did not do. In his last correspondence to Ms Godschild in 2013 he undertook to file a claim in the new year. In an e-mail to Ms Godschild dated December 17 he responded to Ms Godchild's request for an update by saying:

I will file it early in the new year but earlier if I can¹³

26. Either Mr Stewart forgot to fulfil this promise or chose not to do so based on baseless assumption that there was a settlement. Mr Stewart claims to have told Ms Godschild about the need to pay stamp duty, but when the panel asked if her failure to pay the sum was the reason he did not act, he made it clear that it was not¹⁴.
27. In those circumstances, we concluded that there was a failure to deal with Ms Godschild's business with all due expedition.

CANON IV(s) - DEPLORABLE NEGLIGENCE

28. Canon IV(s) imposes an obligation on an attorney to not act negligently in the performance of his or her duties. It states:

In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect

29. Allegations that an attorney has breached this canon often accompany allegations that there has been a breach of Canon IV(r). This is understandable, because very often a failure to act expeditiously may result in a failure to meet contractual or

¹³ Exhibit 6

¹⁴ Evidence in Chief of Seymour Stewart – page 17 and 18 of the transcript of the hearing held on March 20, 2021

statutory deadlines thereby jeopardizing a client's right to pursue a claim (in the case of litigation) or an opportunity (in the case of a transactional matter).

30. This was the case in Blossom Vassel v Maurice Frankson¹⁵ where the attorney's continuous delays in serving a claim form prejudiced his client's pursuit of her personal injury claim. The Disciplinary Committee of the General Legal Council held that the attorney was guilty of breaching canon IV(r) and canon IV(s) for failing to act expeditiously in

(i) serving a claim form,

(ii) re-filing it after it had lapsed; and

(iii) pursuing an application to extend time to serve the claim form.

31. The delays in taking these steps resulted in the Claimant's claim being statute barred. The Committee wrote:

The various periods of delay as set out in paragraph 46 above are inexcusable and deplorable which is further exacerbated by the fact that the claim is now statute barred. All taken together, there is no doubt that the attorney's conduct amounts to professional negligence¹⁶.

32. Whether the delay in filing Ms Godschild's claim will have a similar adverse effect remains to be seen, but because some of the relief she seeks is discretionary, the risk of prejudice is present. This would not have been the case, had Mr Stewart

¹⁵ Complaint No. 68 of 2014

¹⁶ At paragraph 58

filed the claim in 2013. In those circumstances, we find Mr Stewart guilty of deplorable negligence.

DECISION

33. In all the circumstances, this Panel finds that Mr Stewart is guilty of professional misconduct as per Canon VIII (d) in that he has breached Canon I(b), IV (r) and IV(s) of the **Legal Profession (Canon of Professional Ethics) Rules**.
34. In the interest of fairness, we will adjourn this matter to consider what sanction to impose and to give Mr Stewart an opportunity to present evidence or submissions in this regard.

DATED THE 20th DAY OF JULY, 2021



DANIELLA GENTLES-SILVERA



GLORIA LANGRIN



SUNDIATA GIBBS