

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

Complaint No. 93/2015

BETWEEN	DESMOND FRANCIS	COMPLAINANT
A N D	ANTHONY PEARSON	RESPONDENT

PANEL: **MR. MICHAEL THOMAS – CHAIRMAN**
 MS. LILIETH DEACON
 MS. ANNALIESA LINDSAY

Hearing Dates:

1 July, 2017; 2 December, 2017; 5 May, 2018; *11 May, 2018; *6 June, 2018; 21 June, 2018; 22 September, 2018; 3 July, 2020; *15 July, 2020 (*evidence taken).

Representation:

The Respondent/Attorney was unrepresented.

The Complainant as of the 22nd September, 2018 represented by Mr. Patrick Bailey, Attorney-at-Law.

BACKGROUND

1. By a Form of Application signed on the 22 February, 2015 supported by an Affidavit of Desmond Francis (hereafter called the Complainant) sworn to on the 23 February, 2015 the Complainant made the following complaints against Mr. Anthony Pearson, Attorney-at-Law (hereafter called “the Attorney”).
 - i. He has not provided me with all information as to the progress of my business with due expedition, although I have reasonably required him to do so. This is evident in all the letters that I have written and the response that was given re the letter from Mr. Anthony Pearson dated March 25, 2014.

- ii. He has not dealt with my business with all due expedition to the best of my knowledge. I travelled to Jamaica on November 23, 2012 to attend court November 24, 2012 under his instructions and when I went to Mr. Pearson's office he was not there. I leave Jamaica January 2013 and while there I tried assiduously to make contact with Mr. Pearson which was proven futile.
2. On the 1st July, 2017 the matter was called up and the Complainant and the Attorney were present. The Panel was not properly constituted and the Attorney informed the Panel that he has prepared an Affidavit in response and will file it with the General Legal Council on Monday July 3, 2017. The matter was adjourned to 2nd December, 2017.
3. On the 2nd December, 2017 the Complainant was absent and the Attorney present. The Panel noted that in the response of the Attorney reference was made to the matter being referred to him by Mr. Charles Piper Q.C. Although the Attorney indicates that he had no difficulty with Mr. Piper remaining, Mr. Piper requested that the matter not be set before him. The matter was adjourned for trial on 5th May, 2018.
4. On the 5th May, 2018 the Complainant and the Attorney were present. The Complainant was directed by the Panel to have the documents on which he relies, copied. The Attorney undertook to collect the copies from the General Legal Council. The matter was set for trial on 11 May, 2018.
5. On the 11th May 2018 the Complainant and the Attorney were present. The Complainant gave evidence and was cross-examined by the Attorney. The matter as part-heard and adjourned to the 6th June, 2018 for Moffett Francis, sister of the Complainant to attend and give evidence.
6. On the 6th June, 2018 the Complainant, the Attorney and Mrs. Moffett Francis-McKenzie were present. The latter gave evidence and was cross-examined by the Attorney.
7. The Attorney was sworn and his Affidavit and all attachments admitted into evidence. The matter was further part-heard and adjourned to the 21st June, 2018.
8. On the 21st June, 2018 the Complainant was absent, and the Attorney present. The matter was adjourned to continue on the 22nd September, 2018.
9. On the 22nd September, 2018 the Complainant was present and represented by Mr. Patrick Bailey, Attorney-at-Law. The Attorney was absent and the Panel advised by Mr. Leonard Green (Attorney-at-Law) that the Attorney was hospitalized. Mrs. Moffett Francis-McKenzie who should

have been present to give evidence was absent. The matter was adjourned to continue on the 24th November, 2018.

10. On the 3rd July, 2020 the Complainant and his Attorney Mr. Patrick Bailey were present as also the Attorney. All parties appeared by way of "Zoom". Due to the poor audio quality of the Attorney's device (cell phone), the attempt to cross-examine the Attorney by Mr. Bailey was aborted. The matter was adjourned to continue on the 15th July at 1:00 p.m.
11. On the 15th July, 2020 the Complainant and Mr. Bailey were present as also the Attorney. All parties appeared by way of "Zoom". The cross-examination of the Attorney was completed and the Attorney advised the Panel that he had no witness to call and he closed his case. The parties were invited to submit closing submissions by the 31st July, 2020. Mr. Bailey stated that he would rely on the evidence which was led in-chief and on cross-examination.

THE COMPLAINANT'S CASE

12. On 11th May, 2018 the Complainant was sworn and his Affidavit dated 23rd February, 2015 [showing his address as being in the United States of America (USA)] was admitted into evidence as his evidence in-chief.
13. He alleged that in July 2004 he retained the Attorney to act on his behalf to collect the sum of \$5,217,560.00 which was awarded to him by the Court as compensation for injuries he received arising from a motor vehicle accident on the 12th September, 1987. The Attorney was to be paid on a contingency basis.
14. He stated that between the 29th January, 2010 and 23rd November, 2012 at the request of the Attorney he visited the Attorney's office on four occasions and had to leave Jamaica without seeing him.
15. He further stated that he then became concerned and wrote to the Attorney three times requesting a copy of his file and to be informed as to the status of his case.
16. He said that the Attorney replied to him on the 25th March, 2014 stating that the Defendant Joseph Wong Ken died and that he had given the relevant documents to his sister Muffett McKenzie.
17. He stated that when his sister asked the Attorney for a copy the file she was told that it was at home. On a subsequent visit to him, he told her that it could not be found.

18. He stated that he visited the court and requested a copy of the file and it was not there.
19. He then saw a letter from Mr. McBean, Attorney-at-Law for Joseph Wong Ken dated 3rd November, 2009 outlining an offer of US\$7,500.00 to be paid monthly over 24 months. When he called the Attorney, he was told that he will be going back to court. He requested a written letter from the Attorney explaining the status of his case and he has not received a response.
20. On cross-examination by the Attorney the following answers were elicited:
 - The driver of the vehicle which knocked him from the motor cycle was Linval Harrow and the owner was Joseph Wong Ken.
 - Enoch Blake, Attorney-at-Law acting on his behalf sued both of these individuals
 - The Supreme Court gave him judgement in the law suit.
 - The judgement was appealed by the Defendants and the appeal was dismissed by the Court of Appeal.
 - Dyoll Life Insurance Company paid to Mr. Blake part of the judgement out of which Mr. Blake paid him a part and told him that he would have to go after Mr. Wong Ken to get back the money that he Mr. Blake had paid to the hospital.
 - The Complainant did not get any money from Mr. Wong Ken and hired Charles Piper & Co. to sue Mr. Blake for the money.
 - Mr. Blake passed away and Mr. Piper told him that he could not take his case any further.
 - The Complainant was then referred by Mr. Cecil Richards to the Attorney.
 - Complainant attended the Supreme Court with the Attorney 3 to 5 times.
 - He was advised that Mr. Wong Ken died and was told by the Attorney that in order to collect the judgement Mr. Wong Ken would have to be replaced by his Executor, Mr. Joe Watt.

- When he attended Court with the Attorney it was for the purpose of enforcing the judgement against Mr. Wong Ken's estate.
 - He was also told by the Attorney that in order to collect from Mr. Watt, the Executor, what he was to get from the estate of Wong Ken he would have to seek to have Mr. Watt sent to prison.
 - He recalled getting letters from the Attorney dated 23rd August, 2013 and 25th March, 2014. He also recalled being told by the Attorney that his file in the Supreme Court could not be found.
 - He got a letter from the Attorney on 25th March, 2014 telling him what work he had done in relation to his case and the document relating to his case had gone to his sister Muffett Francis.
 - He himself went to the court to check on his file and was told that the file could not be found.
 - The reason he complained to the General Legal Council was that the Attorney has not told him what had happened to his case and because he was frustrated because he came down to Jamaica many times to see the Attorney and when he went to his office, the Attorney did not turn up.
 - His heart is full because he can't get the money the court awarded and say he must get.
21. On June 6, 2018 Muffett Francis-McKenzie was sworn and gave her address as residing in the United States.
 22. She stated that the Attorney represented another brother of hers and her sister previously.
 23. In relation to this case she had been in contact with the Attorney on numerous times.
 24. When she went to the Court she was told that the file was missing.
 25. She stated that when we weren't getting anywhere with the case we wrote to Jambar and the General Legal Council.
 26. On cross-examination by the Attorney she said she recalled seeing the letter dated March 25, 2014 sent to her brother. She stated that the Attorney told her that the file was not in his office. She further said that she did not receive any documents from him.

27. She stated the she instructed her brother to write the letter dated 20th February, 2013.
28. In answer to the Attorney's suggestion that a bundle of documents had been given to her more than once, she replied, "not all of them". Mr. Pearson then indicated that was his cross-examination.
29. In answer to the Panel as to what is her understanding of the case, Mrs. Francis-McKenzie replied that up to the present time she is not clear.
30. She stated that after seeing the letter from Mr. McBean she did not have discussions with the Attorney.

LIST OF EXHIBITS

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| 31. | Exhibit 1A | : | Form of Application dated 22 nd February, 2015 |
| | Exhibit 1B | : | Form of Affidavit dated 23 rd February, 2015 |
| | Exhibit 2 | : | Judgement dated 13 th May, 1997 |
| | Exhibits 3 to 35 | : | See pages 2 to 4 of Notes of Proceedings held on 11 th May, 2015 |

CASE FOR THE RESPONDENT

32. The Affidavit of the Attorney was admitted into evidence as exhibit 35 and represents his evidence in-chief. Two letters dated October 13, 2009 and May 20, 2010 were also admitted in evidence as exhibits 36 and 37 respectively.
33. The Attorney's case is that in or about 2004 the Complainant was referred to him by Mr. Cecil Richards. Prior to that the Complainant was represented first by Mr. Enoch Blake Attorney-at-Law, deceased, and later Mr. Charles Piper Q.C. in a claim by him for damages against Mr. Joseph Wong Ken et al arising from injuries incurred in a motor vehicle accident in 1987.
34. The Claimant had obtained a judgement in the Supreme Court against Mr. Wong Ken et al and the Attorney understood that his task was to have the judgement enforced.
35. The Attorney explained the steps taken by him to do so. Those included:
 - a) Substitute Defendant Joseph Wong Ken who died by his Executor Joseph Watt.

- b) Filing Application in September 2008 for committal for contempt by Joseph Watt, Executor of the Estate of Joseph Wong Ken and attending court on a number of occasions.
 - c) Notifying in writing Mr. Garth McBean, Attorney-at-Law for Joseph Watt the amount owed to the Claimant including interest.
 - d) Teleconferences, exchange of letters, conversation in person between the Attorney and Mr. McBean which were acknowledged by letter from Mr. McBean to the Attorney dated October 13, 2009.
 - e) Included in the letters referred to above was an offer made on 11th March, 2009 by Mr. McBean for payment to the Claimant in the amount of US\$7,500.00 over 24 months.
36. The Attorney also in his defense made mention of the Complainant accompanying him to the Supreme Court concerning the enforcement of the judgement against Mr. Wong Ken.
37. The Attorney said that he had written to the Complainant on the 23rd August, 2013 enclosing a bundle of documents and also 25th March, 2014 advising the Complainant what work he had done in relation to his case and that he had provided copy of the documents to his sister Mrs. Muffett Francis-McKenzie.
38. It's the Attorney's case that there was never an occasion that the Complainant came to Jamaica to see him and not had a chance to see him or speak with him.
39. The Attorney further said that he advised the Claimant in his letter of 25th March, 2014 that "regrettably Mr. Joseph Watt has now died and we will have to take steps against his Executor in order to get at Mr. Joseph Wong Ken against whom the Judgement was initially ordered."

THE LAW

40. 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 complainant is proof beyond a reasonable doubt. **(Wilston Campbell v David Hamlet (as executrix of Simon Alexander) Privy Council Appeal No. 73 of 2001).**
41. The complaints against the Attorney are grounded by the Legal Profession (canons of Professional Ethics) Rules Canon IV (r). 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 issues posed by Canon IV (r). Carey JA (as he then was) explained it thusly:

“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”.

FINDINGS

42. The following findings of fact are made by the Panel as is required under Section 15(1) of the Legal Profession Act.

- a) At all material times the Complainant was represented by the Attorney in so far as the actions taken to enforce the judgement obtained by the Complainant in the Supreme Court in 1991 against Joseph Wong Ken et al.
- b) No fees were requested by the Attorney of the Complainant and none were paid.
- c) The Complainant attended Court with the Attorney about three to five times.
- d) The Attorney did provide information to the Claimant including:-
 - (i) Advice that Mr. Wong Ken died;
 - (ii) That in order to collect the judgement Mr. Wong Ken would have to be replaced by Joe Watt.
 - (iii) That in order to collect from Mr. Watt, the executor, he would have to seek to have Mr. Watt sent to prison.
 - (iv) An offer was made by Mr. Garth McBean to pay US\$7,500.00 over 24 months, and the offer was not accepted.
 - (v) Registrar of Supreme Court was written to by the Attorney on 23 August, 2013 advising that the case file at the Court Registry could not be found.
 - (vi) That proceedings against Joe Watt for contempt of court were initiated because he had breached the order of the

court by paying out money from the estate of Wong Ken and transferring assets.

- (vii) That the Attorney advised the Complainant that Joe Watt died and steps would have to be taken against his Executor in order to get at Joseph Wong Ken against whom the judgement was initially ordered.

ANALYSIS

- 43. In order to come to a determination as to whether the Attorney did provide the Complainant with all the information as to the progress of his business with due expedition, it is necessary to ascertain when did the Attorney advise the Complainant of developments, efforts made by him to enforce the judgement and the results of those efforts.
- 44. The time span involved is from 2004 when the Attorney admitted having come into the matter until the date of the Application/Complaint made to the General Legal Council i.e. 22nd February, 2015.
- 45. Up to the occasions that he said he attended the Supreme Court with the Attorney, there can be no doubt that the Complainant was aware of what steps the Attorney was taking to enforce the judgement.
- 46. The evidence of Mrs. Francis-McKenzie, Complainant's wife was that "in 2014 is when we started to enquire of the status of the matter".
- 47. There is no evidence of written correspondence from the Attorney to the Complainant before that of 23rd August, 2013. This letter appears to be in response to that of the Complainant dated 8th August, 2013 addressed to the Attorney complaining that he has reached a state of confusion concerning the accident case and requesting a copy of his file.
- 48. On the 21st February, 2014 the Complainant again wrote to the Attorney and while admitting having in his possession documents dated between 15th July, 2004 and 11th March, 2009 and copies of 2 letters dated 23rd August, 2013 (both of which were provided to the Complainant one year earlier), the Complainant again requests a copy of his file and for the Attorney to give written details about the status of his case and any future action that will occur in the short term, (1-3 months).
- 49. On 25th March, 2014 the Attorney gave the Complainant a written response apparently to his letter of 21st February; 2014 stating the efforts made to collect on the judgement awarded in his favour. The Attorney states that he has already provided copy of the documents to his sister Mrs. Muffett Francis-McKenzie.

50. If therefore up until 2013 there is any doubt as to whether the Attorney did provide the Complainant with all the information as to the progress of his business, the letters from the Attorney to the Complainant dated 23rd August, 2013 and 25th March, 2014 ought to remove such doubt.
51. The Panel finds that in response to the reasonable requirement of the Complainant to provide him with information, the Attorney by way of his letter dated 25th March, 2014 did so albeit late in the day but some 11 months before the Application/Complaint was filed at the General Legal Council.
52. It is now left to look at the second limb of the complaint, i.e. "the Attorney has not dealt with my business with all due expedition."
53. It was suggested to the Attorney by the Complainant through his Attorney, Mr. Patrick Bailey that having been advised by the Court Registry that the Complainant's file was missing he had sufficient material to construct an intelligible file. The Attorney disagreed on the basis that the material which he had was not sufficient for him to put together any file for the Court to accept that as a file they could proceed on.
54. It was also suggested to the Attorney that he did not act in relation to the file in a business-like manner, nor did he approach the file with due diligence. Mr. Bailey also suggested to him he was guilty of inexcusable delay and deplorable negligence.
55. It is instructive to examine what efforts the Attorney made to enforce the judgement after he was advised by Mr. Garth McBean on 20th May, 2010 that Mr. Joe Watt died on 15th May, 2010 and that his application to remove his name from the record is listed for hearing on 27th May, 2010.
56. In his response to the Complainant dated 25th March, 2014 (final correspondence to the Complainant) the Attorney advised him that:

"Regrettably Mr. Joseph Watt has now died and we will have to take steps against his Executor in order to get at Mr. Joseph Wong Ken against whom the Judgement was initially ordered."
57. It is worthy of note that it was some 4 years after learning of Joe Watt's death that the Attorney advised the Complainant of same and the need to take steps against his Executor.

58. Under cross-examination by Mr. Bailey the Attorney was unable to say when did he became aware of the file being lost or how much time had passed between the first time he learnt that the file could not be found and the last time he wrote to the Registrar on the subject of the lost file.
59. Although the Attorney stated that “....., every time the file can’t be found I seek to have it re-listed and wrote to the Registrar to say the file cannot be found”, but the only proof presented of him writing to the Registrar is his letter dated 23rd August, 2013.
60. As to his efforts to have the matter relisted (i.e. the application to have Joe Watt committed to prison for his contempt of the Court Order), no documentary evidence of these efforts have been presented by the Attorney. Further, if any such efforts were made these would have ceased when the Attorney learned of the death of Joe Watt on 15th May, 2010 from Mr. McBean.

61. **CONCLUSION**

Based on the oral and documentary evidence as elicited and the Canons as enunciated the Panel concluded that the Attorney is in breach of Canon IV (r), in that the Attorney:

- a) failed to deal with his clients business with all due expedition;
 - b) had every opportunity to offer the Registrar a reconstruction of the file. We do not accept that given the Attorney’s exclusive conduct of the matter post-judgement, that he would not have had sufficient material to do so.
 - c) has failed to act in the advancement of his client’s interest in a business-like manner over a period extending from mid – 2010 to 2015.
62. Under Canon VIII(d) of the Legal Professions (Canons of Professional Ethics) Rules, breach by an Attorney of Canon IV (r) shall constitute misconduct in a professional respect.

63. In recognition of the directive of the Court of Appeal in the matter of **Owen Clunie v GLC CA 3/2013** this Panel directs that a date be set to give the Attorney an opportunity to be heard in the mitigation before a sanction is imposed.

Dated this 28th day of FEBRUARY 2022



MICHAEL THOMAS



LILIETH DEACON



ANNALIESA LINDSAY