DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO. 226/2018

In the Matter of SHERENE PASCOE and CALVIN ROSE, an Attorney-at-Law.

AND

In the Matter of the Legal Profession Act, 1971

Panel:	**Daniella Gentles-Silvera - Chairman** **Gloria Langrin** **Sundiata Gibbs**
Appearances:	**The Complainant, Sherene Pascoe represented by Tamiko Smith (on Zoom).** **The Respondent, Calvin Rose, represented by Moneaque McLeod (on Zoom).**
Hearing Dates:	**6th February 2021; 31st March 2021; 27th April 2021; 10th June 2021; 8th July 2021, 7th September 2021 and** 30th July 2022

COMPLAINT

1. The complaint against the Attorney-at-Law, Calvin Rose, (hereinafter called "the Attorney") as contained in Form of Application Against an Attorney dated 19th November 2018 and Form of Affidavit by Applicant sworn to on the 19th November 2018 by Sherene Pascoe, (hereinafter called "the Complainant") is that:

   (a) The Attorney has not accounted for money collected and paid out for Olive Pascoe;

(b) The Attorney has not given full disclosure nor has he received approval and he has acted in a manner in which his professional duties and his personal interest conflict or are likely to conflict;

(c) The Attorney has breached Canon 1(b) of the Canons which states that "an Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which many tend to discredit the profession of which he is a member";

2. On the 31st March 2021 the Committee ruled that the Complainant was not an aggrieved party under Section 12 of the Legal Profession Act; however, Oswald Nicholson, a beneficiary of the estate of Olive Pascoe, subsequently ratified the complaint filed, and all actions previously taken in relation to the complaint. The ratification was done by a Power of Attorney dated 12th April 2021 by Oswald Nicholson to the Complainant and letter dated 7th April 2021 to the Disciplinary Committee of the General Legal Council from Oswald Nicholson giving authority to the Complainant to proceed with the matter.

BACKGROUND

3. This matter arises out of the fact that under a will dated 24th April 2017, made by Olive Pascoe prior to her death ("the 2017 Will"), she appointed the Attorney her sole executor and made him a beneficiary under the said will. This will revoked a previous will which was dated in 2016, it being later in time. In the 2016 Will, Olive Pascoe appointed two (2) executors including her then Attorney-at-Law, and bequeathed her assets to her relatives. The Attorney was not a beneficiary under that 2016 Will. The Complainant contends that the 2017 Will is a forgery carried out by the Attorney.

4. After the death of Olive Pascoe, a death certificate was issued on which the Attorney was named as the informant and he was described as Olive Pascoe's son which is not true. This death certificate with the inaccurate information was used for the grant of probate of the 2017 Will on the 16th November 2018. At the outset we wish to make it clear that the only

evidence we have taken into account are the witnesses who came and gave evidence in these proceedings. The Complainant has referred to evidence contained in a Report of George Dixon, a letter dated 22nd September 2020 from the Jamaican Constabulary Force and a letter dated 21st February 2019 from Angela Cousins Robinson, but none of these persons gave evidence before the Committee.

EVIDENCE OF COMPLAINANT & WITNESSESS

5. The Complainant described herself as the daughter of Olive Pascoe ("the Deceased") she having lived with the Deceased since she was one (1) year old although never formally adopted by her. She gave evidence that sometime in October/November 2017 the Deceased retained the Attorney to oversee her affairs.

6. She alleges that the 2017 Will (Exhibit 5) was a forgery. She based this allegation on her knowledge of her mother's handwriting and signature. Under the said 2017 Will, the Attorney was appointed the sole Executor of the estate of the Deceased, and was directed to sell the Deceased's property at 11 Greenvale Road and to settle four (4) pecuniary legacies out of the proceeds of sale and then keep the remainder for himself. The residue of the estate was to be disposed of to the Deceased's nephew and the Attorney in equal shares.

7. A prior will dated 2nd April 2016 ("2016 Will") which was made by the Deceased, was also admitted into evidence as Exhibit 4. In this 2016 Will the Executors were Angela Cousins-Robinson, the Deceased's then Attorney-at-Law, and Ervin Robinson. The Attorney was not a beneficiary under the 2016 Will.

8. The Complainant also gave evidence that the Attorney described himself wrongfully on the death certificate of the Deceased, as the son of the Deceased which was corroborated by the Deceased's Death Certificate which was admitted into evidence as Exhibit 6.

9. According to the Complainant, the Deceased got money from the rental of her property at 11 Greenvale Road. She could not say if the receipts which the Attorney relied on as

purportedly representing money paid out by him for the Deceased had been paid, save for the money regarding the construction of the Deceased's vault which she denied as having been paid by the Attorney because she said the grave was incomplete as the concrete was not rendered. She got it rendered and painted. The Complainant also gave evidence that she could not confirm how much money the Attorney collected and paid out and that she heard the Attorney had removed deeds and documents from the Deceased's home without contacting her next of kin who would have been Oswald Nicholson, herself, and the Deceased's other nieces and nephews, but the right person to ask about the removal would be other witnesses whom she named (Gilbert Richards and Fitzroy Phillips). Mr. Phillips never gave evidence.

10. Oswald Nicholson, a beneficiary under both wills of the Deceased, also gave evidence. He was the deceased's nephew and used to visit his aunt up until about 2017. He was aware that the Deceased had an attorney, Angela Cousins Robinson, make a will for her as he went with her to Mrs. Cousins-Robinson's office and the will was read in his presence. This was the 2016 Will. He recognized his aunt's signature on the 2016 Will but said the handwriting on the 2017 Will was not his aunt's handwriting. He denied that at the reading of the 2017 Will, the Attorney said he was going to gift the proceeds of the sale of the property at 11 Greenvale Road to the Deceased's family and that he was not going to take the gift given to him by the Deceased. He said he asked the Attorney how much had he paid for the funeral services but was never told by the Attorney. Mr. Nicholson also expressed his disappointment with the Deceased reducing the amount she was to give him in the 2016 Will being according to him 75%, to 25% in the 2017 Will.

11. A tenant of the Deceased, Mr. Gilbert Richards, also gave evidence. He became the Deceased's tenant from September 2013. He too resided at 11 Greenvale Road. He performed certain chores for the Deceased such as going to the shop and pharmacy for her and calling the gas man whenever gas was needed. He received a Notice to Quit the said property from the Attorney but the Deceased told him that she did not authorize the Attorney to prepare a Notice to Quit, so he did not leave. He said the Attorney disrespected him and did not want to speak to him.

12. The Attorney's legal representative made a no case submission at the end of the Complainant's case, but the Committee dismissed it as it felt the Attorney had a case to answer.

EVIDENCE OF ATTORNEY

13. The Attorney's evidence was contained in an Affidavit of Calvin Rose, Attorney-at-Law in Reply to Complaint of Sherene Pascoe sworn to on 17th January 2019 (Exhibit 12) with paragraphs deleted, specifically paragraph 5, part of paragraph 11 and paragraph 12, and Supplemental Affidavit of Calvin Rose, Attorney-at-Law in Reply to Complaint of Sherene Pascoe dated 8th March 2019 and attachments (Exhibit 13) in addition to his oral testimony.

14. According to the Attorney he was introduced to the Deceased in May 2016 by her nephew, Neville McLarty. He agreed to take care of her and to bury her after she died. He took care of her, meaning he provided food from his farm and paid her medical bills, until she died at the Kingston Public Hospital ("KPH") on the 8th January 2018. He also employed someone to look after her prior to her death.

15. By virtue of a Power of Attorney dated 12th September 2017, he was authorised to handle the affairs of the Deceased. This was the first time he was doing any legal work for her. On a visit to the Deceased on 11th October 2017 the Deceased handed him the 2017 Will in which he was named as the Executor and also as a beneficiary. He did not make the 2017 Will. He told the Deceased he could not accept the gift under the 2017 Will but would hold it for the benefit of some of her relatives.

16. At the end of 2017 the Deceased was admitted to the KPH. He visited the Deceased everyday whilst she was at the hospital. The Deceased told the doctors and nurses at the hospital that the Attorney was her son. The hospital called him to get him to sign a consent for her treatment. He called the Deceased's nephew, Neville, but Neville told him to proceed to do what was required as he was in the country. He therefore signed the consent form so that the Deceased could get immediate medical treatment. After she died he made

the funeral arrangements and paid all costs associated with same from his own personal funds.

17. After the funeral he read the 2017 Will to the beneficiaries under the said will and told them that he would not accept the gift from the Deceased to him but would hold it on trust for them and then engage a valuator to value the property. He got the property valued. The valuation was Nine Million Five Hundred Thousand Dollars ($9,500,000.00). He obtained probate of the 2017 Will on the 16th November 2018 and as Executor of the estate he entered into the sale of the property but the sale is at a standstill as from 2019 the Complainant has taken over full control of the property and a caveat had been lodged.

18. The Attorney denied that he has failed to give account and said he had accounted as he provided a statement of account dated 10th January 2019 to the General Legal Council (Exhibit 12). This statement referred to the amount collected for rent being Three Hundred and Fifty Thousand Dollars ($350,000.00) of which One Hundred and Sixty Eight Thousand Dollars ($168,000.00) was paid over to Neville McLarty for his upkeep and maintenance of the property. Apart from the sums on the statement of account which are designated as arrears, the Attorney said he paid all the expenses. The sums designated as arrears have not been paid save for the water bill. The statement of account also specified the Attorney's fees to obtaining grant of probate. The Attorney, said as the matter is not yet concluded he has accounted as far as he can. In any event his role was as Executor and therefore he had no obligation to give any accounting until the end of the transaction.

19. He did not remove anything of value from the property, (that is, any deeds or documents).

20. The Complainant was not the legal daughter of the Deceased whether by birth or adoption.

21. With respect to the designation of the Attorney on the Death Certificate of the Deceased as being the "son" of the Deceased, he said this was because the Deceased referred to him as her son but in any event the Death Certificate was amended to read Executor on 22nd October 2019 (Exhibit 14).

22. Receipts for payments for funeral expenses were tendered into evidence in support of the Attorney's evidence that he paid for them out of his personal funds.

STANDARD OF PROOF

23. Disciplinary proceedings are neither civil nor criminal. They are "*sui generis*". However, it is well established that the applicable standard of proof is the criminal standard. That has been affirmed in the case of **Campbell v Hamlet [2005] UKPC 19**. Accordingly, where a complaint of professional misconduct is made, the Disciplinary Committee must be satisfied beyond reasonable doubt that the complaint has been established. That means that the panel hearing the complaint must be satisfied on the totality of the evidence adduced that the complaint has heen made out. In the instant case, the Complainant must prove beyond reasonable doubt that the Attorney has not accounted for monies collected and paid out on behalf of the Deceased; the Attorney failed to maintain the honour and dignity of the profession and failed to abstain from behaviour which may tend to discredit the profession; and the Attorney has not given full disclosure and has acted in a manner in which his professional duties and personal interest conflict or are likely to conflict. It is for the Complainant to prove her case not the Attorney. It is important to reiterate the standard of proof required as much of the evidence given by the Complainant and her witnesses in this matter was circumstantial.

DISCUSSION AND ANALYSIS

22. Based on the evidence the main issues seem to be

(a) Whether or not the 2017 Will was forged.

(b) Whether or not the Attorney should have been named a beneficiary.

(c) Whether or not the Attorney told the Deceased and the beneficiaries that he would not accept the gift.

(d) Has the Attorney accounted for money collected and paid out?

(e) Did the Attorney act in a manner in which his professional duty and personal interest conflict?

(f) Did the Attorney give false information which was recorded on a public document?

23. The first thing to note is that the Complainant is not a beneficiary under either will and as she is not the legal daughter of the Deceased, whether by birth or adoption, she does not stand to gain anything if the 2017 Will is set aside. Secondly, much of the Complainant's evidence was really not based on her own personal knowledge but on what others have told her as she readily admitted that she had not seen the Deceased since 2015, approximately three (3) years before her death. The Complainant and her "mother" appear to have been estranged. Thirdly, the Complainant in large part has made certain allegations and left the Committee to infer misconduct without expressly proving same. The most important example of this is her evidence that the 2017 Will is a forgery. She gave evidence that she knew her "mother's signature and handwriting". She also said her "mother's" name was spelt incorrectly on the 2017 Will as the "A" was missing and her "mother" did not know the witnesses on the said Will.

24. The Complainant was however not the only person who spoke to the Deceased having not made the 2017 Will and the signature being forged. Mr. Nicholson also gave evidence that the handwriting on the 2017 Will did not resemble the handwriting of the Deceased. One would have thought the best evidence to establish forgery of a signature would be a handwriting expert but the Complainant never called anyone with such expertise as a witness. Miss Tamiko Smith for the Complainant tried unsuccessfully to put in the report of the handwriting expert, which the Committee would not allow without the expert appearing before us. No expert ever appeared. Neither the Complainant nor Mr. Nicholson

had the requisite skill and expertise in handwriting to give satisfactory evidence that the signature purported to be that of the Deceased on the 2017 Will was a forgery. Further the fact that the Deceased changed her Will is not necessarily proof that her signature on the 2017 Will was forged as the Complainant said the Deceased made several Wills during her lifetime and would drop out beneficiaries due to disagreements with them; "*whenever you had a disagreement with my mother, she booted you out of her Will and included somebody else, that was her temperament*".

25. Whilst giving evidence the Complainant was adamant that her "mother" would not have given the gifts she gave under the 2017 Will to the Attorney, a perfect stranger. This does appear curious on its face, however, the fact is, that the Complainant and the Deceased were estranged for years and the Complainant was not around the Deceased, so she cannot credibly beyond a shadow of a doubt speak to what the Deceased would or would not have done, including leaving gifts to the Attorney in the 2017 Will.

26. Further Mr. Nicholson was not the most reliable witness and appeared to have a motive for saying the 2017 Will was a forgery as he confessed to being upset by the reduction in his gift from the Deceased. He felt he should have been given more than the gift of Two Hundred Thousand Dollars ($200,000.00). The following evidence given by Mr. Nicholson in cross-examination is telling:

"*McLeod:* *Remember earlier you told my friend that your aunt never used that language in her Will when she left you $200,000.00*

Nicholson: *What kind of language, she said she left 75% for me. Me never expect that a less million.*

McLeod: *Lets go back to the 75%. Yuh did well want the 75% don't it?*

Nicholson: *Mi work fi it, its 27 years me di deh inuh, from ina d 80's mi deh deh up and down wid har.*

McLeod: *And you did vex when she drop it for 25%, don't?*

Nicholson: *Yes, because true she did a gwan some way me leave there.*

McLeod: *You said you were vexed when she dropped it to 25%?*

Nicholson: *Mi nuh really vex.*

McLeod:	*But you wanted 75%?*
Nicholson:	*Yes.*
McLeod:	*So, when Mr. Rose told you that you were only getting $200,000.00, yuh did well mad?*
Nicholson:	*Yes, because me she well, anuh dat mi fi get.*"

27. In the 2016 Will the Deceased gave Oswald Nicholson 25% of net proceeds. At no time did he get 75%. Finally, contrary to the evidence of the Complainant and Mr. Nicholson, the Attorney did not admit to preparing the 2017 Will, but said it was valid.

28. For all these reasons referred to above we do not accept either the Complainant's evidence nor the evidence of Mr. Nicholson beyond all reasonable doubt that the 2017 Will is a forgery. Notwithstanding our finding , the fact that the Attorney who had been representing the Deceased in a legal matter, was named as a beneficiary of a substantial gift , warrants an examination of all the circumstances surrounding the 2017 Will and the law where an Attorney is named as a beneficiary in a client's will.

29. An attorney is a fiduciary. He undertakes to act on behalf of another in circumstances which gives rise to a relationship of trust and confidence from which flows obligations of loyalty and transparency. As a fiduciary he has an obligation to his client of loyalty. Accordingly, he must act in good faith, he must not make a profit out of the trust that has been placed in him; he must not place himself in a position where his duty to his client and his own interests may conflict; therefore an attorney who proposes to enter into a transaction with his client must advise the client to obtain independent advice and insist that the advice and representation is actually obtained. Breach of the duty to observe these fiduciary obligations in his personal dealings with a client may result in the setting aside of the transaction or if that is no longer possible, the award of equitable compensation for resulting loss.

30. In The Law of Legal Services and Practice, by John Gould, (2nd Edition) the author, stated at paragraph 8.8.

"The law in relation to solicitors' fiduciary duties derives from the House of Lords' decision in Nocton v Ashburton, which Mummery LJ in Swindle v Harrison described as seminal, although not easy to decipher. He summarised the following principles derived from it:

1. *A solicitor stands in a fiduciary relationship with his client.*
2. *A solicitor who enters into a financial transaction with his client is under a fiduciary duty, when advising his client, to make full disclosure of all relevant facts known to him.*
3. *Liability for breach of fiduciary duty is not dependent on proof of deceit or negligence. Equity imposes duties in special relationships above and beyond the minimal legal duties to be honest and to be careful. Fiduciary duties rest on the idea of trust and of conduct offensive to conscience.*
4. *The equitable remedies available for breach of fiduciary duty are "more elastic" than the sanction of damages attached to common law fraud and negligence."*

31. In light of the fiduciary duty owed by a solicitor to a client, the authorities have established that:

(a) although there is a presumption that a testator had capacity and approved a will where it is duly executed and witnessed, in cases where a solicitor who prepares or procures a will under which he takes a comparatively large benefit, the Court will require definite proof of the testator's knowledge and approval.

(b) where the client is intending to give a substantial benefit to the solicitor, he should insist on the client receiving independent advice and that the will is prepared by another solicitor and should endeavour to ensure the preservation of evidence that the will was read to and approved by the testator and of the instructions from which the will was prepared, though other evidence may suffice.

32. The authors of The Law of Legal Services and Practice put it thus:

8.37 "*A lifetime gift or a bequest from a client to a solicitor will need to be explicable from the circumstances; otherwise a solicitor will have to prove that he did not exercise undue influence. A prudent lawyer would insist that the client obtain independent legal advice. This is both to mitigate the risk that the gift might be set aside, and to avoid possible allegations of misconduct. However, it is possible that the circumstances of a gift which was allowed to stand by the courts would still amount to misconduct on the part of the beneficiary solicitor. The two concepts and standards are not necessarily the same. Behaviour by a lawyer may be considered to be culpable by a tribunal which was not considered sufficient by a court to make a transaction or gift voidable.*

8.38 *The importance of competent independent advice is hard to over-emphasise. Unless the gift is small, the presumption of undue influence in the absence of such advice may be all but irrebuttable. Gifs to members of the solicitor's immediate family would be regarded in the same way and it may not be necessary for the donor to technically be the solicitor's client.*" (Emphasis Added)

33. In **Allcard v Skinner [1887] 36 Ch D 145 Lindley LJ** pointed out that where the gift to a fiduciary is small some proof of the existence of the donee must be given. The mere existence of the influence is not enough. However, "*if the gift is so large as to not to be reasonably accounted for on the grounds of friendship, relationship, charity or other ordinary motives or which ordinary men act, the burden is upon the donee to support the gift.*"

34. In **Re Solicitor (CO/3701/98), Re (unreported) 24/11/1999 QB**. Lord Bingham concluded that the Tribunal had not erred in any way. He recorded the Tribunal's findings below:

"*A solicitor who is to be given a gift of money or other valuable property by a client is in an extraordinarily difficult position. His fundamental duty is to act in the best interests of his client. He may not accept a gift unless he has ensured that the client concerned has received independent advice upon such a matter. The respondent's failure had been that he had not ensured that Miss L had obtained independent advice – it was common ground*

in any event that a mere indication that she should have done so was not adequate for the purposes of complying with the relevant professional conduct rule. Of course there is no intention that a solicitor should not be able to accept a gift from a client in any circumstances, however it is important that such a gift should only be made where there is no vestige of any influence placed upon that client by the solicitor. That client must be independently advised and a clear record of such advice should be kept by the solicitor in order that he might readily demonstrate both to the public and to his own professional body that his bona fides cannot be brought to question." (Emphasis Added)

35. In **Re a Solicitor [1974] 3 All ER 853** Lord Widgery CJ refused to set aside the decision of the Disciplinary Committee of the Law Society striking off the solicitor from the Roll of Solicitors and holding that a solicitor in whose favour a client wished to make a Will, was bound to tell her that she must be separately advised and if she refused to go to another solicitor, it was his duty to forgo the benefit. The Court of Appeal stated:

"*In this case the disciplinary committee adopted as the standard for disciplinary purposes a very high standard. It is to be found in the findings and order of the committee and it is most conveniently expressed in these words:*

'. . . the Committee have no doubt that both [B and the appellant] acted contrary to the well established practice of reputable solicitors in that neither Marie nor Jane were independently advised in relation to their Wills and Jane (a) was not independently advised in relation to the release. In the circumstances, the question of whether either Marie or Jane were advised by [B and the appellant] that they should be independently advised goes only to the gravity of the allegations which have been substantiated.'

That is a high standard because what it is saying is this: that it is not sufficient from a disciplinary point of view for a solicitor to tell his client that she ought to be separately advised. This standard requires that he should tell her that she must be separately advised, and if she refuses to accept that advice and refuses to go to another solicitor, then the standard laid down requires that the solicitor beneficiary should forego his benefit. It is an exceptionally high standard and in my view it is probably higher than that imposed in the probate courts when the validity of the Will is in question" (Emphasis Added)

36. According to the Attorney he went to visit the Deceased sometime in October 2017 and the Deceased handed him the 2017 Will and title for the property at 11 Greenvale Road for safe keeping. Upon reading the Will he discovered that the Deceased had named him as her sole Executor and a beneficiary along with other family members and the Woodford Anglican Church. He says that upon this discovery he told the Deceased he could not accept the gift, and on reading of the Will to the beneficiaries he told all present including Mr. Nicholson, that he would not be taking the gift hut would hold it on trust for them. The Deceased is no longer with us to confirm if it is true that the Attorney told her he would not take the gift and this has been denied by Mr. Nicholson. The gift to the Attorney is part of the proceeds of real estate. It is not a small gift. He himself says it was valued at Nine Million Five Hundred Thousand Dollars ($9,500,000.00) and the pecuniary legacies which he had to pay out, amount to around $2,000,000.00. They were not friends or relatives, in fact, he had only met her the year before. The burden of proof shifted to the Attorney to prove that he advised the Deceased to get independent legal advice and insisted on it and that he has a record of this advice.

37. The Attorney said he did not prepare the 2017 Will, which the Complainant and Oswald Nicholson said he did, but regardless he was representing her as on his evidence he prepared her Power of Attorney about a month before she gave him her will. Therefore, he had a relationship of Attorney and Client with the Deceased, even if the date of the will was prior to the commencement of this relationship. He said he told her that he would not accept the gift.

"*Smith:* *Mr. Rose, in your January 17, 2019, Affidavit you mentioned visiting Mrs. Olive Pascoe in October 2017, that is correct, yes?*

Rose: *That is correct, yes.*

Smith: *At that time, you discovered that in Mrs. Pascoe's Will you were appointed executor and you were also made a beneficiary, is that correct?*

Rose: *That is correct.*

Smith: *It is also your evidence that you told Mrs. Pascoe, that you cannot apply the gift to yourself as an attorney, isn't that correct?*

Rose: *That is correct.*

Smith:	*And that instead you were going to hold the gift on trust for some of her relatives, correct?*
Rose:	*That is correct.*
Smith:	*Mr. Rose, there is no trust document that you created coming from that conversation, is there?*
Rose:	*Trust document?*
Smith:	*To hold the gift on behalf of Mrs. Pascoe's relatives as you said. Did you draft a trust document?*
Rose:	*No ma'am.*
Smith:	*And given your views at that time, you also did not offer to re-write the Will did you?*
Rose:	*I could not re-write what she did not want ma'am, she wanted the Will to remain as it is."*

38. In his Affidavit he said he read the Will and explained it to her and asked if she understood what is contained in the Will and she said yes.

"*That I told Ms. Olive Pascoe that as an Attorney I cannot apply the gift in her Will to myself but will hold same "upon trust" to be applied to the benefit of one of her relatives. That Ms. Olive Pascoe replied that she doesn't care with what I want to do with what she gives to me.*"

39. Apart from his say so, the Attorney did not put anything in writing to the Deceased's testator to record that he was declining to accept the gift and interestingly, no evidence was given by the Attorney that he told the Deceased to get independent legal advice and that he insisted on it. All he said is that he told her he could not accept the gift. Similarly, he said he told this to the beneficiaries when he was reading the 2017 Will but Mr. Nicholson denied that he said this and once again the Attorney did not commit his so called intention to writing. We do not accept that he told the Deceased and Mr. Nicholson that he was not accepting the gift and he did not advise the Deceased to get independent legal advice.

40. In the absence of evidence that the Attorney told the Deceased to get independent legal advice, the Attorney being the Executor and a beneficiary of the estate of the Deceased,

whom he represented in a legal capacity, the Attorney has breached his fiduciary duty and allowed his professional duty to conflict with his personal interest. Such an omission tends , in our view, to bring the profession as a whole into disrepute. In **Re Solicitor [1960] 3 WLR 138 Lords Parker C.J.** said professional misconduct is action that "tends to bring the profession as a whole into disrepute. The action being assessed must be incompatible with ones legal status". Further such behaviour tends to discredit the Profession and is a breach of Canon 1(b) of The Legal Profession (Canons of Professional Ethics) Rules. In coming to this decision we are guided by the Court in **Gresford Jones v The General Legal Council (ex parte Owen Ferron) Miscellaneous Appeal No. 22/2002 delivered March 18, 2005 .** In this case where the Court stated with respect to the Attorney's behaviour tending to discredit the profession in breach of Canon I(b) being an act of professional misconduct as follows:

> *"The governing words of Canon 1 are: "An attorney shall assist in maintaining the dignity and integrity of the Legal Profession and shall avoid even the appearance of Professional impropriety." This standard of conduct required to be maintained by members of the legal profession is easily understood and perceived as basic , good , upright and acceptable behaviors . Any deviation from this legal code is subject to scrutiny as it relates to the requirement of a particular canon. Consequently, "the honour and dignity of the profession... "may be besmirched by a breach of a particular canon or "the behaviour (of an attorney) may tend to discredit the profession ... " and be a breach of a specific canon. Either conduct would fail to contravene the requirements of the proper conduct demanded by Canon 1 (b)...*
>
> *It is my view that the canon is specifically widely drafted in order to emphasize the ever prevailing high standard of conduct demanded by the profession and re enforced by all the canons in the Rules. The Committee was accordingly not in error to find that Canon 1 (b) relates to the conduct of an attorney "in relation to the Court, the regulatory body governing the profession, the law practice, the client, colleagues and certain other persons" and to find that the appellant was in breach thereof... "*

41. With respect to the complaint that the Attorney had not accounted, the Complainant could not categorically say whether or not the receipts for payment purportedly made by the

Attorney for the Deceased had been paid – nor could she give evidence as to how much money the Attorney collected and paid out. Mr. Nicholson said he asked for an accounting with respect to the funeral expenses but never got one. Although late and indeed after the complaint was laid, the Attorney has prepared a Statement of Account dated 10th January 2019, which sets out the monies collected (rent) and the expenses paid including the funeral expenses and the fees charged to obtain the probate which are legal expenses. The others relate to his duties as an Executor and are not in his capacity as an Attorney. The fees charged for the probate should have been accounted for from 2018 when the probate was obtained, but the accounting has never been done.

42. The final issue for determination has to do with the description of the Attorney (Informant) on the death certificate, in which the Attorney was named as the son of the Deceased, which was false. The Attorney accepted this and said it was corrected on a subsequent death certificate which amended the qualification of the informant from son to Executor (Exhibit 14). The first death certificate with the Attorney described as the Deceased's son is the one that was used for the grant of probate on the 16th November 2018.

43. The Complainant's Attorney submitted that the Attorney would have relied on this death certificate and sworn on oath to the Registrar with false information in breach of Section 7 of the Perjury Act. Section 7 of the Perjury Act states:

"*1) Every person who –*

> *(a) wilfully makes any false answer to any question put to him by any registrar of births or deaths or relating to the particulars required to be registered concerning any birth or death, or wilfully gives to any such registrar any false information concerning any birth or death or the cause of any death; or*
>
> *(b) wilfully makes any false certificate or declaration under or for the purposes of any enactment relating to the registration of births or deaths or, knowing any such certificate or declaration to be false, uses it as true or gives or sends it as true to any person; or*
>
> *(c) wilfully makes, gives, or uses, any false statement or declaration as to a child born alive as having been still-born, or as to the body of a deceased person or a*

still-born child in any coffin, or falsely pretends that any child born alive was still-born; or

(d) makes any false statement with intent to have it inserted in any register of births or deaths, shall be guilty of a misdemeanour, and on conviction on indictment thereof liable to imprisonment with hard labour for any term not exceeding seven years, or to a fine, or to both such imprisonment and fine.

(2) A prosecution for an offence against this section shall not be commenced more than three years after the commission of the offence."

44. The Attorney would have contravened Section 7 (1) (a) and (b) of the Perjury Act which are serious offences as regardless of whether the Attorney was referred to by the Deceased as her son, he was not her son and being the informant of her death he was in a position to truthfully state his relationship with the Deceased and/or have it corrected before applying for a grant of probate. The breaches of the Perjury Act we find to be conduct which discredits the profession in breach of Canon 1(b).

45. In the circumstances we find that the Attorney is guilty of professional misconduct, in that he has breached Canon 1(b) and has acted in a manner in which his professional duties and personal interest conflicted.

46. Given these findings, we will give the Attorney time to let us have submissions on sanction or to present evidence to us in this regard.

Dated the 30 day of July 2022

DANIELLA GENTLES-SILVERA

GLORIA LANGRIN

SUNDIATA GIBBS