

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

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: 13th September, 2022 ,4th January 2023.

BACKGROUND

- 1) On the 30th July, 2022 we found the Attorney, Calvin Rose, guilty of professional misconduct, in that he breached Canon 1(b) of the Legal Profession (Canons of Professional Ethics) Rules (“The Canons”), and has acted in a manner in which his professional duties and personal interest conflicted. This decision arises out of our findings that the Attorney:
 - a) breached the Perjury Act in stating his relationship with Olive Pascoe (“the Deceased”) on the death certificate as her son, knowing that not to be true

and using that death certificate for the application for a Grant of Probate of her Will.

- b) failed to tell the Deceased to get independent legal advice upon finding out that in her Will she had appointed him as Executor of her estate and gifted him real estate in circumstances where he had represented her in a legal capacity.
- 2) Given our findings we gave the Attorney an opportunity to address us on sanction at a later date. This decision should therefore be read together with the decision handed down on the 30th July 2022.
- 3) On the 13th September, 2022 the Attorney for Mr. Rose made submissions in which she urged the Committee not to strike the Attorney off the Roll and that we take the following matters into account when deciding what would be the most appropriate sanction:
- a) The Attorney did not prepare the Will of the Deceased;
 - b) The Attorney told the Deceased he would not take the property but hold it on trust which is not demonstrative of dishonesty but ignorance as to his legal obligations in the position he was with a client who had given a gift to him;
 - c) The property has not been utilized by the Attorney. In other words, it has not been sold, therefore, it is still part of the estate so the beneficiaries of the estate have not suffered any loss;
 - d) While stating that he was the Deceased's son on the death certificate is a breach of the Perjury Act, the Act offers a wide range of sanctions including a fine and the Attorney did correct the death certificate; and
 - e) The Attorney has been a member of the legal profession for 30 years and has not been the subject of any disciplinary proceedings.

LAW

- 4) In determining the appropriate sanction to be imposed, the starting point is the case of Bolton v Law Society [1994] 2 ALL ER, 486 and in particular the judgment of Sir Thomas Bingham, MR where he stated that:

"It is required of lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. That requirement applies as much to barristers as it does to solicitors. If I make no further reference to barristers, it is because this appeal concerns a solicitor, and where a client's moneys have been misappropriated the complaint is inevitably made against a solicitor, since solicitors receive, and handle clients' moneys and barristers do not. Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors ... It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the

tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his figure compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission... A profession's most valuable asset is its collective reputation and the confidence which that inspires. "

(Pages 491 - 492) (Emphasis Added)

- 5) The Sanctions Guidance: Breaches of the BSB Handbook Version 5 (15/10/019) produced by The Bar Tribunal and Adjudication Service, The Council of the Inns of Court ("Sanctions Guidance") is also very useful in considering what the appropriate sanction should be.
- 6) Section 3.1 of the Sanctions Guidance sets out the purposes of applying sanctions for professional misconduct which are applicable to cases of professional misconduct with which the Committee has to treat. The purposes are:
 - a) *"To protect the public and consumers of legal services;*
 - b) *To maintain high standards of behaviour and performance at the Bar;*
 - c) *To promote public and professional confidence in the complaints and disciplinary process."*
- 7) Sections 3.2 and 3.3 reads as follows:

"3.2 ...In fulfilling the purposes it is important to avoid the recurrence of behaviour of an individual as well as provide an example in order to maintain public confidence in the profession.

3.3 ...the sanctions imposed may be necessary to act as a deterrent to other members of the profession. Therefore, when considering a sanction, it may be necessary not only to deter the individual barrister from repeating the behaviour but also to send a signal to the profession and the public that the particular behaviour will not be tolerated. A deterrent sanction would be most applicable where there is evidence that the behaviour in question seems to be prevalent in relation to a number of barristers within the profession."

- 8) Another important decision on sanctions for professional misconduct is Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). In this case the Solicitors Regulation Authority ("SRA") appealed a decision of the Solicitors Disciplinary Tribunal who found a solicitor guilty of dishonesty and suspended him from practice for three years. The SRA's appeal was on the basis that the sentence of suspension was excessively lenient and that given the dishonesty found, the normal sanction of striking off the roll should be ordered. The Court found that the approach of the Tribunal was right that for dishonesty unless exceptional circumstances could be shown, the Respondent Attorney should be struck off the roll, however, they were wrong in concluding that the circumstances were exceptional.

- 9) Coulson J said:

"It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury. That is the normal and necessary penalty in cases of dishonesty, see Bultitude. (b) There will be a small residual category where striking off will be the disproportionate

sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or other a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others. " (Para 13)

- 10) The applicable principles gleaned from Bolton v Law Society supra; Solicitors Regulation Authority v Sharma supra and the Sanctions Guidance are as follows:
- (a) Where an attorney is guilty of serious dishonesty, he must expect a severe sanction;
 - (b) For dishonesty, tribunals have "almost invariably" struck off the attorney from the roll no matter how strong his plea in mitigation;
 - (c) The use of the words "almost invariably" refers to the exceptional case where striking off may not be the appropriate result. It would be a disproportionate sanction and one must consider factors such as the nature and scope of the dishonesty; whether it was a momentary lapse as opposed to having been sustained over a period; whether it was committed for personal benefit and whether it had an adverse effect on others;
 - (d) The reason for such seemingly harsh orders such as striking off is:
 - (i) to punish the attorney and deter other attorneys from behaving in a similar manner; and
 - (ii) to maintain the reputation of the profession and give the public confidence in the integrity of the profession.
- 11) The statement on the death certificate of the Deceased by the Attorney, who was the informant of the death, that he was her son, was made knowing that it was

false. This is dishonest and is exacerbated by the fact that the death certificate was not immediately corrected but rather used to obtain a Grant of Probate in the estate of the Deceased. If the Committee was in any doubt of this being dishonest, we remind ourselves of Section 7 of the Perjury Act which states:

“Every person who-

- (a) wilfully makes any false answer to any question to 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.*

- 12) Not only did the Attorney falsely state when informing the registrar of deaths of the death of the deceased, that he is her son, but he then used the death certificate with this false information recorded thereon to obtain a Grant of Probate. Under Section 7 (1) of the Perjury Act the Attorney on conviction would be liable to imprisonment for a term not exceeding seven (7) years or to a fine, or both, which is indicative of the seriousness of this offence.
- 13) Given the dishonesty, the sanction to strike the Attorney off the roll is one that is open to the Disciplinary Committee. However, the question which this Committee has to consider is whether there are exceptional circumstances in this case to warrant us not delivering the ultimate sanction of striking off. In this regard, we have considered the following facts:
- (a) The property has not yet been transferred out of the estate;
 - (b) The Attorney corrected the death certificate to remove the description of himself as the Deceased's son under the heading "informant".
 - (c) As the property has not been transferred out of the estate and the death certificate has been amended, the Attorney's actions have not had a ^{adverse} ~~diverse~~ effect on others and the Attorney has not gained any personal benefit. *JKS*
 - (d) The sanction for breach of Section 7 (1) of the Perjury Act includes a fine by itself.
 - (e) This was not the first disciplinary complaint made against the Attorney. In 2001 a complaint was lodged against him by Donald Scharschmidt Q.C in complaint No 212/2001. The Attorney Calvin Rose was found guilty of professional misconduct in that he had breached Canon 1 (b) of the Canons

in using the name of the complainant , Donald Scharschmidt Q.C, as a consultant and representing him to be a consultant on his letterhead.

14) Knowingly giving false information which is recorded on an official legal document such as a death certificate and using that death certificate/ legal document to obtain a Grant of Probate is very serious. Although the actions of the Attorney fall within the scope of dishonesty and dishonest behaviour, we believe in these circumstances, striking the Attorney off the roll will be too harsh. That said, the Attorney must nevertheless stand the consequences of his actions and any sanction we give must be in the form of deterrence to other Attorneys from behaving in a similar fashion.

15) Accordingly, it is the decision of this panel that:

- (a) The Attorney Calvin Rose is hereby suspended from practice with immediate effect for one (1) year ending on the 4th January 2024;
- (b) The Attorney Calvin Rose is hereby fined in the amount of Five Hundred Thousand (\$500,000.00) which is payable to the General Legal Council within sixty (60) days of the date hereof; and
- (c) The Attorney is to immediately pay costs in the amount of Two Hundred Thousand Dollars (\$200,000.00), of which One Hundred Thousand Dollars (\$100,000.00) is to be paid to the Complainant and the balance of One Hundred Thousand Dollars (\$100,000.00) is to be paid to the General Legal Council.

Dated the 4th day January 2023



DANIELLA GENTLES-SILVERA



GLORIA LANGRIN



SUNDIATA GIBBS

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