

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

Complaint 200/2020

**IN THE MATTER OF SHERRIL TAYLOR SMITH TENN AND SERENA ELAINE
BYRON, an Attorney-at-Law**

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT, 1971

BETWEEN SHERRIL TAYLOR SMITH TENN COMPLAINANT

AND SERENA ELAINE BYRON RESPONDENT

Panel: Mrs. Daniella Gentles Silvera, KC.

Mr. Pierre Rogers

Mr. Seyon Hanson

Appearances: Sherril Tenn represented by Shadecia Hamilton

Serena Byron represented by Sean Kinghorn

Hearing dates: October 20, 2021, January 7, 2022, March 18, 2022, April 29, 2022, September 30, 2022, January 27, 2023, March 15, 2023, March 31, 2023, May 19, 2023, June 9, 2023, June 23, 2023, July 7, 2023, *30 November 2022*

COMPLAINT

1. This is a complaint brought by Mrs. Sherril Taylor Smith Tenn (“the Complainant”) against, Attorney-at-Law Serena Elaine Byron (“the Respondent”), by way of an Application dated December 2, 2020, and supported by an Affidavit sworn to by the Complainant on December 14, 2020, in which the following grounds are set out:
 - a. The Attorney has acted with inexcusable or deplorable negligence in the performance of her duties;
 - b. The Attorney is in breach of canon 1(b) which states that, “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.”

2. The Complaint was tried, and the panel of the Disciplinary Committee (“the Panel”) heard evidence from both parties and their respective witnesses at sittings held on diverse dates spanning October 20, 2021 to July 7, 2023. The parties were both invited to file written submissions at the conclusion of the evidence, and both complied. The Panel reserved its decision in order to consider the evidence and the submissions filed. The relevant Canons for consideration in respect of this complaint are Canons IV (s) and I(b).

EVIDENCE OF THE COMPLAINANT

3. The Complainant’s evidence is that in January 2013 she was involved in a motor vehicle accident which resulted in her sustaining injuries which included a torn rotator cuff. She engaged Sean Kinghorn to represent her. The fee arrangement was on the basis of a contingency. A claim was eventually filed by the firm Kinghorn & Kinghorn, after which there were issues with the service of court documents on the Defendant which resulted in the progress of the matter being delayed. Prior to 2019 various Attorneys from the firm were sent to represent her. Ms. Byron was the Attorney who represented her from 2019 onwards. She recounts that the matter came up for hearing in Court in 2019, however, the Respondent arrived at Court after the proceedings were finished, and another Attorney handled the matter on that occasion. The matter was adjourned to February 20, 2020 for Assessment of Damages.
4. On the 20th February 2020, the Attorney arrived at Court late. The Complainant’s evidence commenced with the Respondent asking the Complainant questions around receipts. The presentation of the case by the Respondent was chaotic. She was unprepared and not organized, which earned the ire of the Judge. In the presentation of her case the Respondent did not refer to several receipts from doctors and physiotherapists and medical reports which spoke to the Complainant’s impairment. The Judge allowed the Attorney some time to organize herself, after which a decision was taken for the matter to be adjourned. After the adjournment, the Complainant expressed her discomfort with the Respondent as to her level of organization and preparedness and requested a meeting so she could determine what documents were missing.
5. The Complainant’s evidence is that there had been no pre-hearing Attorney/Client meeting, no prior preparation, no options, guidance, or direction before the Court hearing in February 2020. A meeting was scheduled between the Complainant and the Respondent, for the 27th February 2020 with the intention to prepare for the upcoming hearing and determine what if any documents were missing from the file, as based on the brief cross-examination the Complainant formed the view that crucial documents were missing as they were not being presented to her to be tendered in evidence by the Respondent.

6. The meeting proceeded as scheduled, but ended prematurely when the Complainant accepted a telephone call to the consternation of the Respondent. During the meeting, attempts were made by the Complainant to view her file in order to ascertain what if any documents were missing so she could try and have them replaced; however, the Respondent, on the Complainant's account, did not allow her to view the file. The Complainant said the Attorney clutched the file to her chest and said, "this is my job, not yours". The Complainant expressed her concerns to the Respondent with respect to the missing receipts. The Attorney's response was that the receipts could not now be submitted to the Court and in response to the question as to who would stand the loss, she said the Complainant should have kept a file. After the meeting, the Complainant thereafter sought and met with Sean Kinghorn and eventually sent him an email dated 2nd March 2020 setting out her concerns and dissatisfaction with the Respondent which included her concern about the missing receipts.
7. When the matter eventually returned to Court on the 5th March 2020 a number of what the Complainant describes as crucial documents were still not presented, leading to a lower award of damages than what would have been awarded had the missing documents been presented, which documents included both items of special damages and medical reports from Dr. Lindo and Dr. Rose (Exhibit 4 and 3), which would have been used towards the assessment of general damages. According to the Complainant, these missing documents ... "spoke to my recuperation and surgery and everything I have been through from the accident, physiotherapy, my disability and my impairment". As regards her impairment she said the Judge kept asking if she had any impairment, but the Respondent could not answer as she had no medical report which referred to her being impaired.
8. The Complainant felt that the Respondent did not act in her best interest.

Hamilton: So, Mrs. Tenn why did you bring Miss Byron to the GLC? What is your reason for bringing Miss Byron to the GLC?

Tenn: Well, I believe in fairness, I believe in professionalism, I believe if you have a job to do you must do it properly. I believe the lawyer represents the client as best as is humanly possible and I don't think that she gave me the best representation and that she acted in my best interest at the time.

Hamilton: So, you took her to the GLC because you don't believe she acted in your best interest?

Tenn: I think she was negligent; I don't think she presented my case well or did the relevant research to do so and my documents, receipts, and

reports were not presented in Court. Since all the lawyers I spoke with pointed me to the GLC I say that is the avenue I have to take...

Hamilton: Mrs. Tenn, we don't want you to restate the evidence that you have already given. So, I am going to ask you again, what is it you want from the GLC today?

Tenn: I would like for her to be disciplined, as an attorney who is to act in her client's best interest and to represent her client as best as possible. I would also like for those reports that were not used in my best interest any at all, which they did not claim to have but I was presented with the receipts for them when I went to pick up the cheque for the insurance money. I was presented with the receipts for them, but they claim the company claim to not have the reports on file. I would like for those that cannot be charged to me. You said you didn't have them so how are you charging me for them.

Hamilton: So, you said you want her to be disciplined and you wish not to be charged or the sum of the receipts to be deducted from the insurance amount, correct?

Tenn: Yes''

9. The Complainant also gave evidence that a number of receipts and medical reports that were not shown to her while giving evidence, were presented to her by Kinghorn and Kinghorn in the form of bills for doctor's reports (including payment of reports from Dr. Lindo and Dr. Rose) to support the reduction of the sum paid on account of the judgment obtained. These medical reports with her physical impairment were not presented at Court thus negatively affecting the award of damages.
10. The Complainant's Affidavit evidence was entered in evidence as her evidence in chief supported by a number of exhibits including copies of medical reports, receipts emails, her witness statement, and the final judgment.
11. The Complainant also called her spouse, Mr. Arthur Tenn, to give evidence on her behalf. He filed an affidavit, gave evidence, and was cross-examined. The evidence of Mr. Arthur Tenn was in many respects embellished and bore marked inconsistencies with the evidence of the Complainant on whose behalf he was called to give evidence. These inconsistencies became even more glaring, as his cross examination continued. The Panel has disregarded Mr. Tenn's evidence as it was unreliable.

EVIDENCE OF RESPONDENT

12. The Respondent filed an Affidavit in response dated the 7th day of April 2021 in which she stated inter alia as follows:
- i. The Complainant's case was assigned to her for the purpose of conducting an assessment of damages hearing, within days of the scheduled hearing;
 - ii. The physical file was located in the Spanish Town office. She worked from the St. Ann's Bay office;
 - iii. She denies being negligent as she had no prior conduct of the matter prior to receiving instructions to conduct the Assessment of Damages, and the preparation of the bundles were done prior to her employment with at the Firm;
 - iv. She was briefed by a clerk of the firm Ms. Avon Parris who had been handling the matter from its initial stages;
 - v. She was late to court on February 20, 2020 because of a disabled trailer on the road;
 - vi. She had the Complainant's matter and two others on February 20, 2020;
 - vii. She noted the existence of only photocopied versions of certain receipts and the absence of medical reports of Dr. R.E Christopher Rose dated December 19, 2014 and February 16, 2015 as she observed the said reports to have been mentioned in the List of Documents filed April 30, 2015 and the Witness Statement filed September 29, 2015;
 - viii. She was advised by the Clerk at the firm, Ms. Avon Parris that the Complainant had only presented photocopies of some documents and that the Complainant had told the firm between 2013-2014 that she had submitted the original medical reports to Sagikor for her claim;
 - ix. The medical report speaking to the Complainant's impairment was not within her knowledge as it was not contained in the Notice of Intention to Tender Hearsay Statement made in a document filed on April 30, 2015;
 - x. Only the Witness Statement and the List of Documents provided an indication of the missing medical reports, however, she observed cheques for payment for the reports which were collected by the Complainant;

- xi. In her meeting with the Complainant, she was told that there was a missing report stating that she had a whole person impairment of 9%, and enquired as to its whereabouts, and the Respondent indicated that she had not seen same;
- xii. She told the Complainant during the meeting to return to see her with the missing medical report. The Respondent had been told by the office that the Complainant took the medical report to Sagicor, so she told her to go to Sagicor to get the report or go back to the doctor for the report;
- xiii. She begged the Complainant to return to her with the report, but the Complainant was insistent on meeting with Mr. Sean Kinghorn;
- xiv. She obtained final judgment on the Complainant's behalf with \$2,500,000.00 awarded for general damages and \$320,277.88 awarded for special damages (Exhibit 5);
- xv. The award by the Court exceeds the policy limit which the 2nd Defendant had with its insurer, of \$2,000,000.00, which has been wound up, and the whereabouts of the 1st Defendant are unknown.

13. The following persons were called to give evidence on behalf of the Respondent. Affidavits were filed on their behalf, they gave oral evidence, and were cross examined, and their evidence has been taken into account in arriving at the decision regarding the complaint:

- i. Ms. Avon Parris;
- ii. Ms. Tedesha Cowell.

14. Ms. Paris' evidence revealed that there was a database in existence at the firm which logs the clients' documents including medical reports and receipts. Her evidence is that the medical reports would have been placed on the file and placed on the database. She confirmed that the Notice of Intention to Tender Hearsay Statements filed on 30th April 2015 which was prepared contained documents which the firm had received, and that any Attorney from Kinghorn and Kinghorn would have access to both the electronic database and the physical file, and that if a document is not on the physical file, it could be printed from the electronic database.

"Hamilton: And the Notice of Intention filed by your firm on the April 30th 2014 contained all the medical reports and receipts that your Firm had in its possession.

Parris: Yes ma'am. Based on what we have on the file we do the Notice of Intention to get these documents.

Hamilton: Ms. Parris your Affidavit says that you interacted with Mrs. Tenn, and she told you that she had submitted the originals to Sagicor life. Isn't it true that you were speaking to receipts?

Parris: Yes, we were talking about receipts."

15. She also denied telling the Respondent that medical reports were missing and that the medical report from Dr. Rose dated 16th February 2015 had been submitted to Sagicor. She said she was aware that it was receipts that had been submitted to Sagicor not reports. Further, she confirmed that if the firm paid for a medical report, it would have it in hand.
16. The evidence of Ms. Cowell did not shed much light on the matter, and only confirmed that the file was in a state of disarray at the February 20, 2020 court appearance, which both the Complainant and the Respondent admit to, to varying degrees.

DISCUSSION AND ANALYSIS

17. The main complaint of the Complainant is that they had all of her receipts and medical reports, especially the ones from Dr. Rose dated 16th February 2015 and Dr. Lindo dated 5th October 2015, put into evidence she would have gotten more damages. She states that the medical report spoke to her 9% whole-person impairment. The Respondent's evidence is that the firm never had those reports or receipts. The Complainant says they did.
18. In determining who is telling the truth we have noted the following dates as important:
 - a) Dr. Rose's medical report dated 16th February 2015;
 - b) List of Documents was filed in April 2015;
 - c) The Notice of Intention to Rely on Hearsay Statements was filed on 30th April 2015;
 - d) The Witness Statement was filed on 29th September 2015;
 - e) Dr. Lindo's medical report dated 5th October 2015;
 - f) Respondent represented the Complainant at the hearing of the Assessment of Damages on 20th February 2020 (Indeed she started to represent from 2019);
 - g) The Complainant and the Respondent met on the 27th February 2020;
 - h) The Complainant wrote a letter of complaint to Sean Kinghorn on the 2nd March 2020; and
 - i) The Respondent represented the Complainant on the 5th March 2020 when the Assessment of Damages was completed before the Court.

19. The inclusion in the witness statement filed on the 29th September 2015 and List of Documents filed on the 30th April 2015 and the Notice of Intention to Tender Hearsay Statements of a reference to the various medical reports including those of Dr. Lindo and Dr. Rose dated 5th January 2015 and the 16th February 2015 respectively, is indicative of the importance of the said reports to the presentation of the Complainant's case. In the report of Dr. Rose dated 16th February 2015, he states that he has assessed the Complainant's total impairment at 9% of the whole person. We note at this point that the medical report of Dr. Lindo which stated that the Complainant's whole person impairment at 14% was not contained in any of these Court Documents which is understandable as that report came into being after as, it being dated 5th October 2015.
20. Based on these Court Documents clearly, the Firm would have had possession of the medical reports or was at the very least aware of same. We remind ourselves of the evidence of Miss Parris who said the Notice of Intention to Tender would have been prepared based on the documents which the firm had. One of the documents referred to in that document is the medical report of Dr. Rose dated 16th February 2015 in which he set out the Complainant's percentage impairment. We further note that Ms. Parris said she never told the Respondent that the Complainant had taken medical reports to Sagicor but, receipts. This accords with the evidence of the Complainant that she gave the Firm the medical reports in 2015 and that she never gave any medical reports to Sagicor. The documents she gave to Sagicor were tendered into evidence at exhibits 11-16 and none were medical reports. It is of interest to note at this point that although Mr. Kinghorn in cross-examination of the Complainant sought to imply that the Complainant never gave the medical report to the firm but probably gave it to Sagicor and that the Complainant knew that the firm did not have the reports, he did not in fact put a case to her that she gave the medical reports to Sagicor. That is probably because he really had no such evidence and the evidence of the Respondent in this regard was not reliable. She said that a clerk at the Firm told her that the Complainant told them sometime between 2013 and 2014 that she had submitted the original medical reports to Sagicor for the claim, however, the two medical reports where the Complainant's impairment was stated were both dated in 2015 which is after this purported conversation. Further, the evidence of Ms. Parris contradicted the cross-examination of the Complainant and the evidence of the Respondent in that she admitted that she did not tell the Respondent that the Complainant had taken the medical reports to Sagicor. What she said is that she had taken receipts to Sagicor. Further, Ms. Parris said the Court documents were prepared based on documents which the firm would have had. Therefore, it is a reasonable inference that the firm had the medical report of at least Dr. Rose dated 16th February 2015 as it was referred to in the List of Documents, Notice of Intention to Tender, and the Witness Statement.
21. The Complainant's email dated March 2, 2020 (Exhibit 1) which is contemporaneous with the period between the two assessment of damages hearings, confirms her state of mind, and account of what transpired in her view. The said email records her displeasure

with the handling of her case by the Respondent, and recounts a series of missing documents, the brief adjournment of the matter at the request of the Judge to allow the Respondent an opportunity to organize the file and herself, and the eventual adjournment of the hearing to March 5, 2020. The email also referred to the request for the meeting and the Complainant's loss of confidence in the Respondent, and it describes her frustration with how her case was being handled. Conversely, the Respondent says she sent an email that she had prepared, but it was not produced. Instead, a letter dated 9th March 2020 after the fact dated May 2020 was produced which made no reference to the previous letter.

22. On more than one occasion the Respondent contradicted herself. For example, she gave evidence that it was the Complainant who brought to her attention that Dr. Rose's report was missing as before she was not aware. Later she then contradicted herself and said although the report of Dr. Rose was referred to in the Notice to Tender a copy was not attached so she asked the firm and they said they knew about it but never had it.
23. The final point to note is what benefit would it be to the Complainant to have these reports and receipts and not give it to her Attorneys. Upon analysis of the witnesses and consideration of their evidence and the documents, we prefer the evidence of the Complainant over the Respondent that she gave the reports, certainly that of Dr. Rose, to the firm.
24. Further, both the Complainant and the Respondent agree that the medical reports were requested and paid for by the firm Kinghorn and Kinghorn. It is apparent based on the totality of evidence, both oral and documentary that the various medical reports would have come to the attention of Kinghorn & Kinghorn at some point and as such the Respondent was put on actual notice of their existence and should have recognized the importance of locating them prior to attending court.
25. The fact that by the time the Respondent got the matter the bundles and documents had already been prepared does not excuse her from taking steps to properly represent her client and ensure that all evidence was in place before the Court for the Assessment of Damages, and she had time as she began to represent the Complainant from 2019 some months before the Assessment of Damages which was in February 2020. Further, the fact that the Complainant highlighted that based on what was being presented to her while giving evidence, documents were missing, which was reiterated in the meeting between the Complainant and the Respondent, would have put the Respondent on further notice, which would reasonably have required her to take additional steps to procure copies if not originals of the receipts and reports and if necessary seek an adjournment of the case to do so, in order to present the best case on behalf of the Complainant, and recover the best award possible. There is no evidence of contact being made with any of the Doctors listed, in an attempt to either recover copies of the medical reports, and/or

receipts, and the Respondent proceeded with the assessment of damages without the said reports, much to the dismay of the Complainant, a decision which undoubtedly had an adverse effect on the ultimate award received by the Complainant.

26. Further, given the importance of these documents, one would have expected the Respondent to write to the Complainant requesting these documents, but the only letter tendered was after the hearing and judgment dated 9th March 2020 exhibited to Affidavit of Avon Parris filed 8th December 2021. In the letter she refers to the Complainant having after the judgment indicated that she had submitted these medical reports yet in cross examination she admitted that it was the Complainant who alerted her of the missing reports at the meeting held on the 27th February 2020. The point of this letter at the stage escapes us and it supports our finding that the Respondent was not a credible witness.
27. The Respondent's evidence consisted of marked admissions in relation to the salient matters in issue in this complaint. She admitted to receiving the file only days prior to the hearing, however this evidence must be viewed against the background that she had previously been assigned the file in 2019. Notably, on her account she never met with the Complainant to review the file or prepare for the assessment of damages in circumstances where she recounts that the file consisted of approximately 106 exhibits. The Respondent's failure to use the opportunity of the meeting with Complainant to achieve the objective of jointly reviewing the file and preparing for the part heard assessment of damages is consistent with the pattern of the Respondent's handling of the matter which in a word was "poor".
28. Her evidence in its totality highlighted the opportunities the Respondent would have had to research the location of the missing reports and receipts, which were not presented in Court. It highlights the mishandling of the Complainant's case, insofar as systems existed to prevent the exact occurrence that impacted same.
29. Based on the Affidavit and oral evidence of the witnesses, the Panel finds that the following facts were proven:
 - a. The Respondent was assigned to represent the Complainant in 2019, at which point the matter did not proceed, and was adjourned to February 20, 2020;
 - b. The Respondent did not meet with the Complainant prior to the scheduled court date in 2019, and was again assigned to represent the Complainant at the February 20, 2020 hearing;
 - c. The Respondent did not meet with the Complainant prior to the February 20, 2020 hearing, and upon the assessment of damages commencing, the Judge afforded the

Respondent time to organize herself, and eventually allowed an adjournment of the matter (which was part heard) to March 5, 2020;

- d. The Complainant appreciated that based on the receipts being shown to her while giving her evidence, a number of receipts for surgery and medical reports had been omitted and she was concerned as the said receipts were for more significant sums than the receipts for pharmaceutical drugs, and she raised this with the Respondent and requested to view her file for the purpose of determining what if any receipts were missing;
- e. The Complainant and the Respondent scheduled a meeting for the purpose of preparation for the adjourned assessment, and they both attended as scheduled, however the meeting ended prematurely without the Complainant being allowed to review the file to determine what if anything was missing;
- f. The matter returned to Court as scheduled and the assessment of damages was completed, without a number of receipts and medical reports being tendered into evidence including medical reports which had set out the impairment of the Complainant being omitted, and an award was made by the Court based on the evidence presented;
- g. The Witness Statement, Notice of Intention to Tender, and List of Documents were prepared based on documents which the firm of Kinghorn and Kinghorn had which included the medical report of Dr. Drose dated 16th February 2015 which set out a whole person impairment of 9%;
- h. The Complainant was then charged by the firm, of which the Respondent is a member, for the medical reports that were not presented in support of her case in Court, and a request was made for charges in relation to documents not presented to be waived, or for the percentage of the contingency to be adjusted on account of same, which request was refused; and
- i. The Respondent's firm received the medical report of Dr. Rose dated 16th February 2015.

THE LAW

30. For ease of reference, we set out hereunder the Canons of professional misconduct which the Complainant alleges the Respondent has breached, which is contained in the Legal Profession (Canons of Ethics) Rules:

“IV(s) In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect.”

“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.”

31. In determining whether or not the Respondent is guilty of inexcusable or deplorable negligence we are guided by the Court of Appeal decision in Witter v Roy Forbes (1989) 26 JLR 129 where Carey JA said:

“The Council is empowered to prescribe rules of professional etiquette and professional conduct. Specially, Rule (s) of Canon IV is concerned with professional conduct for Attorneys. It is expected that in any busy practice, some negligence or neglect will occur in dealing with the business of different clients. But there is a level which may be acceptable, or to be expected, and beyond which no reasonable competent Attorney would be expected to venture. That level is characterized as ‘inexcusable or deplorable’. The Attorneys who compromise a tribunal for the hearing of disciplinary complaints, are all in practice and therefore appreciate the problems and difficulties which crop up from time to time in a reasonably busy practice and are eminently qualified to judge when the level expected has not been reached. I cannot accept that the determination of the standard set will vary as the composition of the tribunal changes. The likelihood of variation is in the sentence which different panels might impose but that, doubtless, cannot be monitored by the Court or the Counsel itself. What I have said in regard to Canon IV (s) applies equally to Canon IV(r) on the ground the phrase ‘with due expedition’ is not certain and positive in its terms”

Various panels of the Disciplinary Committee have relied on this Court of Appeal decision and in particular the judgment of Carey JA.

32. In the decision of Marnol Limited et al v Grant Complaint No. 11/2003 at para. 18 the panel stated as follows:

“18. We accept the submissions made on the Attorney’s behalf that it is not every negligent act or omission on the part of an attorney which gives rise to a finding of professional misconduct, even though such act or omission could ground a cause of action in the Supreme Court for negligence. This is so because the exercise of a disciplinary jurisdiction against attorneys-at-law has a penal element whereby the conduct of the attorney must be such as to warrant being described as unbecoming of a professional and meriting reproof or as captured in the wording of Canon IV (s) of the Legal

Professions (Canon of Professional Ethics) Rules the negligence or neglect of duty must be such as to be described as “inexcusable or deplorable.”

This must however be applied against the following as was stated in the case of **John Grewcock v Lord Anthony Gifford** Complaint No.59/2005 at para. 24:

“24...the discharge of his responsibilities must be judged in accordance with the standard of an attorney-at-law reasonably competent in that field. The Panel is of the view that the Respondent’s discharge of his responsibilities fell far short of what could reasonably be expected of a competent attorney after making allowances for the slips and omissions that can occur in a busy practice. We find that the Respondent’s conduct in the discharge of his responsibilities to enforce the judgment crossed the line that constitutes inexcusable and deplorable negligence and neglect.... was negligence on the part of the Respondent that went beyond what was acceptable and beyond which no reasonably competent attorney would have been expected to venture even with the demands of a busy practice. The degree of negligence was simply inexcusable and deplorable and constituted professional misconduct in breach of Canon IV (s).

33. The panel reminds itself that the burden of proof to establish the complaint rests entirely on the Complainant and that the Panel must be satisfied that she has proven her case beyond all reasonable doubt (Campbell v Hamlet [2005] UKPC 19. In light of the history of the matter and the evidence presented, it is apparent that the Respondent from 2019 had been assigned to prepare the Complainant’s case for hearing, and had an opportunity from then, to assess the state of readiness of the file, independent of what was relayed to her by a clerk at the firm she being the Attorney who would have to appear in court and present the case. She had the opportunity from then, and during the intervening period, to identify what if any deficiencies there were, documentary or otherwise, and to take steps to cure them, and would have had ample opportunity to meet with the Complainant in advance of the assessment hearing to determine the manner in which she would have been comfortable giving her evidence, and ultimately to review the file in preparation. She was put on actual notice of the deficient state of the file on multiple occasions, both by documents in the file itself, and by the Complainant who voiced her concerns. This being the case the Panel is of the view that the Respondent’s handling of the case fell below what was acceptable, and beyond which no reasonably competent attorney would have been expected to venture even with the demands of a busy practice. This was tantamount to culpable nonperformance, or gross recklessness (see **Samuels (Norman) v General Legal Council (The)** [2021] JMCA Civ 15. Counsel must always remember, that notwithstanding the adversarial nature of litigation, the client is not the adversary

against which you enter the field of battle, but rather the one whose cause you represent, and defend in battle. The panel finds that the Complainant has discharged the burden in relation to the breach of Canon IV(s) in that the Respondent acted with inexcusable or deplorable negligence in the performance of her duties. However, it is our finding that the Complainant failed to discharge the burden in relation to Canon I(b).

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

DATED THE 30th DAY OF November 2023



DANIELLA SILVERA, K.C. (CHAIRPERSON)



PIERRE ROGERS



SEYON HANSON