

7. The Attorney failed to obtain my specific approval after giving full disclosure and acted in a manner in which her professional duties and her personal interests conflict or are likely to conflict in breach of canon IV (j);
8. The Attorney is in breach of regulation 16 of the Legal Profession (Accounts and Records) Regulations 1999; and
9. She is in breach of Canon 1(b) which states that "An Attorney shall at all times maintain the honour and dignity of the profession of which she is a member."

THE FACTUAL BACKGROUND

- [3] The Complainant is Ms. MARIA SILVERA.
- [4] The late DAPHNE ELAINE SILVERA was the mother of the Complainant.
- [5] The Estate of the late DAPHNE ELAINE SILVERA had an interest in three parcels of land namely:-
- (i) Land in Granville Pen known as New Haven in the Parish of Trelawny registered at Volume 1195 folio 31 of the Register Book of Titles (a one third interest)
 - (ii) Land in Granville pen known as New Haven in the Parish of Trelawny registered at Volume 1109 Folio 396 of the Register Book of titles (a quarter interest)
 - (iii) Land in Granville Pen known as New Haven in the Parish of Trelawny registered at volume 1109 Folio 395. (a 100% interest)
- [6] The Complainant MARIA SILVERA, does not currently own a legal interest in any of the properties forming an part of her late mother's estate.
- [7] A last Will and Testament, in which the Complainant is named as Executrix, was executed by DAPHNE ELAINE SILVERA.

- [8] DAPHNE ELAINE SILVERA died on March 27, 2021 in Ontario Canada.
- [9] The Complainant/Executrix ordinarily resides in Canada.
- [10] Whilst within Jamaica, in or about April of 2023, the Complainant engaged the services of the Respondent for two purposes. Firstly, to Probate the Last Will and Testament of DAPHNE ELAINE SILVERA and secondly, to facilitate the sale of properties the subject of the Estate.
- [11] The Complainant asserts that she delivered the following documents to the Attorney namely:-
- Duplicate of Certificate registered at Volume 1195 folio 31 of the Register Book of Titles
 - Duplicate of Certificate registered at Volume 1109 Folio 395 of the Register Book of Titles
 - Duplicate Certificate registered at volume 1109 Folio 396 of the register Book of Titles.
 - The original Last Will and Testament of her late mother.
 - The original death certificate of her late mother,
 - Valuation Reports for all three (3) properties
- [12] There is no evidence that a written retainer was executed by the Complainant in relation to the services to be provided by the Attorney.
- [13] Neither party tendered a copy of the Last Will and Testament of DAPHNE ELAINE SILVERA as an exhibit.
- [14] The Complainant paid the Attorney the sum of FORTY THOUSAND DOLLARS (\$40,000.00) on May 9, 2023, and a further sum of ONE HUNDRED AND TWENTY THOUSAND DOLLARS (\$120,000.00) on May 17, 2023.

- [15] In May, 2023, the Complainant signed several documents, prepared by the Attorney, to initiate the probate of the Last Will and Testament of DAPHNE ELAINE SILVERA, namely -
- Affidavit of Value
 - Will Bond
 - Affidavit of Delay
 - Affidavit in proof of death
 - Oath of Executor
- [16] An Inventory was prepared by the Respondent. There is no evidence that it was signed.
- [17] The Inventory prepared by the Respondent declared the estate of DAPHNE ELAINE SILVERA as being entitled to three (3) properties which were identified by their address, lot numbers and Volume and Folio numbers.
- [18] The value of the three properties described in the Inventory was capped at THREE MILLION DOLLARS (\$3,000,000.00).
- [19] A Declaration of Counting of Will was signed by the Respondent's legal secretary KHRISTANE PARKES.
- [20] An Affidavit of Attesting Witness was signed by DAMIR LUTVIC and TARA CUSACK.
- [21] The abovementioned documents were prepared for filing in the Resident Magistrate's Court for the Parish of Trelawny.
- [22] There is no evidence that these documents were accepted, or filed, in the Parish Court. They do not bear the Court's stamp.

- [23] The Respondent presented documents relating to the probate of the estate of DAPHNE SILVERA to the Trelawny Parish Court at an undetermined time.
- [24] The documents presented by the Respondent to the Trelawny Parish Court were returned to the Respondent. This was verified through letter dated August 25, 2023, signed by Miss Sharon Miller, Deputy Clerk of Courts in the Parish of Trelawny.
- [25] There is no evidence of re-submission, by the Respondent, of the probate documents at the Trelawny Parish Court,
- [26] On or about June 12, 2023, the Complainant signed a multiple Listing Agreement sale form in respect of the property registered at Volume 1109 Folio 395 of the Register Book of Titles.
- [27] On or about November 8, 2023, the Complainant signed a multiple listing agreement sale form in respect of the property registered at Volume 1109 Folio 396 of the Register Book of Titles.
- [28] Two Offer to Purchase forms were generated, in relation to properties related to the Estate of DAPHNE SILVERA on November 5, 2023 and November 8, 2023, respectively.
- [29]. On both offer forms the Respondent is the Attorney having carriage of Sale. None of the offer forms were signed by the Complainant.
- [30] On one of the offer forms, the Realtor signed in acceptance of the purchase offer on the Complainant's behalf pursuant to a purported conversation with her.

- [31] In 2023, the Respondent prepared an Agreement for sale and Instrument of Transfer and received a deposit from the Purchasers (Cindy and Martin Payne) in relation to property registered at Volume 1109 Folio 395 of the Register Book of titles.
- [32] By special condition (7), the Agreement for Sale is deemed a cash transaction to be completed within 60 days.
- [33] The Paynes signed the Agreement for sale and Instrument of Transfer in the United Kingdom on December 21, 2023.
- [34] In the Agreement for Sale, the Complainant is identified as the Vendor and, for the same transaction, DAPHNE SILVERA is identified as the Transferor, in the Instrument of Transfer.
- [35] In the Instrument of transfer there is no reference to the Complainant as an Executor, or to the death of DAPHNE SILVERA.
- [36]. The sale transaction with the Paynes was cancelled by the Respondent and the deposit refunded.
- [37]. The Respondent presented the Complainant with two Statements of accounts each reflecting an outstanding balance based on a percentage of a stated consideration.

THE COMPLAINANT'S EVIDENCE

- [38] On July 26, 2024, the hearing commenced. Present were the Complainant, via zoom and the Respondent in person.
- [39] The Complainant's evidence was that, as the named Executrix of the estate of her late mother DAPHNE ELAINE SILVERA, who died on March 27,

2021, she engaged the Respondent's services to probate the said estate. For this purpose, the Complainant delivered to the Respondent the titles for three properties that forms part of her late mother's estate, Valuation reports on these three properties, the original death certificate and the Last will and Testament of DAPHNE ELAINE SILVERA. Delivery of these documents were made at the Respondent's office at Duke Street in the Parish of Trelawny sometime in April 2023.

[40] In May 2023, prior to her return to Canada, where she lives, the Complainant executed documents prepared by the Respondent in order to initiate the process of probating her mother's estate and paid the Respondent the total sum of ONE HUNDRED AND SIXTY THOUSAND DOLLARS (\$160,000.00) in two installments.

[41] As advised by the Respondent, the fee for probating DAPHNE ELAINE SILVERA's estate, which involved three properties, was calculated at the sum of FORTY THOUSAND DOLLARS (\$40,000.00) per property. No receipts were ever provided to the Complainant on payment or upon delivery of the abovementioned documents.

[42] The Complainant was introduced to a realtor who was purportedly a friend of the Respondent and, in or about June, 2023 and November, 2023, she signed forms to list two of the properties, forming a part of the assets of the estate, on the open market for sale. She listed the properties on the understanding that the Attorney would get on the obtaining probate as a prerequisite for the properties to be sold. One of these properties were registered solely in the name of the Testatrix.

- [43] Between November and December 2023, the Respondent was contacted by the Realtor and informed by him of the making of offers to purchase the estate's properties that were listed.
- [44] It is the Complainant's evidence that since the execution of documents in May, 2023, the Respondent had not provided her with any information regarding her business, despite her phone calls and messages.
- [45] The information regarding the offers made to purchase the estate's properties peaked the Complainant's desire to be updated as to the progress of the probate application as well as to discuss the offers and she intensified her efforts, though unsuccessfully through WhatsApp texts and calls, to make contact with the Respondent.
- [46] Given the mounting pressure applied by the Complainant's elderly relatives who also hold a legal interest in two of the properties whose titles were delivered to the Respondent, the Complainant decided to travel to Jamaica on January 4, 2024, to find the Respondent. She told the Attorney of her travel plans which the Attorney responded to. They spoke and the Attorney told her about the offers to purchase. The Complainant said she tried to get information from the Attorney as to the status of the probate but heard nothing from the Attorney. She suspected something was wrong and called the Titles Office, the Supreme Court and the Trelawney Parish Court and discovered that probate was not granted. She decided to try and get her documents back from the Attorney.
- [47] The Complainant amplified the nature of the pressure being borne by her in relation to her aged Aunts and indicated that her inability to contact the Respondent for the purpose of collecting the duplicate certificates of

titles prevented the registration of a Deed of Gift thereby delaying the resolution of land access issues.

- [48] The quest to contact the Respondent and retrieve the titles included the engagement of two Attorneys-at-law, the Complainant's visits to the Falmouth and Brown's Town Police Stations and several locations where the Respondent purportedly once operated her practice namely, two buildings in Brown's Town in the Parish of Saint Ann.
- [49]. With the assistance of personnel from the Brown's Town Post Office, the Complainant located the office from which the Respondent practiced in that parish near an Ice cream shop. There was, however, no one at the office.
- [50] Since January, 2024, whether indirectly through her Attorneys-at-Law or by way of calls made, or messages sent by her, the Complainant has relayed her desire to meet with the Respondent for the purpose of retrieving the titles and the other documents in the Respondent's possession. The Complainant also expressed her disinterest in pursuing the sale of the properties, requested delivery of receipts and required an update on the probate process.
- [51] On January 24, 2024, the Complainant met with the Respondent but the Complainant's request for the return of the Titles was not satisfied. The Respondent instead attempted to persuade the Complainant to proceed with the sale of the properties.
- [52] On January 29, 2024, the Respondent communicated that she was preparing statements of account and would return the titles, and other documents, once her fees were paid.

[53] During February 2024, the Complainant retained the services of Page Haisley, Attorneys-at-Law. By letter of demand dated March 8, 2024, the said Attorneys-at-Law wrote to the Respondent outlining the challenging history of the Complainant's interaction with the Respondent and requested documentary proof of the filing of the probate application and delivery of the documents retained by the Respondent.

[54] These demands were never satisfied by the Respondent.

[55] Instigated by the Complainant, searches were conducted at the Supreme court as well as the Parish Court for the Parish of Trelawny. As a consequence, the Complainant was supplied with a letter from the Clerk of Court for the Trelawny Parish Court, dated August 23, 2023, which in essence, established that, as at that time, Probate had not been granted and the steps required for that Grant had been interrupted. The Complainant said that the Grant of Probate should have been applied for in the Supreme Court as the value of all the properties exceeded the jurisdictional value for the Parish Court.

[56] After this complaint was served on the Respondent, the Respondent contacted the Complainant and advised her that she was willing to let her have the titles for the properties. This was never done.

[57] None of the exhibits tendered by the Complainant were challenged by the Respondent.

THE RESPONDENT'S RESPONSE

[58] Four days prior to the hearing date, the Respondent provided a response which focused primarily on the Respondent's success in handling a prior

matter for the Complainant, her extreme industry and her entitlement to compensation for work done in respect of two sale transactions.

[59] The Respondent admits that she was retained by the Complainant and paid the sum of ONE HUNDRED AND SIXTY THOUSAND DOLLARS (\$160,000.00) to apply for a Grant of Probate. She stated that she was also engaged by the Respondent to handle the sale of properties belonging to, or in which, the estate of DAPHNE SILVERA has an interest.

[60] In respect of the Grant of Probate, she does not deny receiving Titles for three properties, the original Last Will and Testament, DAPHNE SILVERA's death certificate.

[61] In respect of the Grant of Probate, after filing the relevant documents at the Parish Court for the Parish of Trelawny, the Respondent says that she regularly followed up on the progress of the matter and asserts that in or about September, 2023, she resubmitted the documents, which had been returned to her for amendments, to the said Parish Court, although she did not provide proof The Attorney's evidence was that she made regular enquiries of the Trelawny Parish Court regarding the progress of the Complainant's matter,

[62] Two emails were put into evidence by the Respondent (Exhibit 5) bearing partial dates; February 15 and March 12 with the year omitted as well as the recipient's email address though purportedly directed to a "Ms. Miller". In the first email, the Attorney asks for confirmation that Ms. Miller is in receipt of documents concerning the estate. The estate is not named. In the other email, the Attorney seeks confirmation that the application has been filed.

- [63] Despite the existence of this complaint, the Respondent admitted that she had not obtained a grant of Probate in respect of the estate of DAPHNE ELAINE SILVERA. She has, however, shown that she prepared lost title applications and presented, as an exhibit, a draft application for registration on transmission.
- [64] This panel notes that an application for registration on transmission can only be utilized after a Grant of Probate or Letters of Administration.
- [65] It is during the giving of her evidence that the Respondent disclosed that she had packaged the documents (including the titles) for remittance to the Complainant and left them in a motor vehicle in her garage on a Friday evening. She said that on the following date she discovered that the vehicle was stolen from her garage. Consequently, she filed a police report.
- [66] The receipt first proffered by the Respondent as proof of this theft did not make any connection with the Respondent. At the Respondent's request, the Respondent's case was reopened to allow the admission of a formal Police report as an exhibit. (Exhibit 7)
- [67] The Police Report dated 16 October 2024 confirmed that on 27 April, 2024, the Respondent reported the theft of a motor vehicle, not owned by her, from her place of abode on the 26 April 2024. Interestingly, the report contained Information, obviously provided by the Respondent, that multiple land titles left in the vehicle were stolen during the incident.

THE BURDEN OF PROOF

- [68] Notwithstanding reference to the Respondent's evidence, this panel is

cognizant that the burden of proof remains solely on the Complainant. It is the Complainant's burden to prove her case beyond a reasonable doubt.

[69] **"...the criminal standard of proof is the correct standard to be applied in all disciplinary proceedings concerning the legal profession ... [but, to] find [a] complaint proved it was not necessary for the committee or the Court of Appeal to find each and every sub-issue proved beyond reasonable doubt. A sufficient number of strong possibilities or even mere probabilities) can in aggregate amply support a finding of proof beyond reasonable doubt..."¹**

[70] We conclude that the Complainant has discharged this burden of proof, to the requisite degree, in relation to her complaint save and except in respect of the following complaints namely:-

- "6. The Attorney shall not give a professional undertaking which he cannot fulfill and shall fulfill every such undertaking which she gives.**
- 7. The Attorney failed to obtain my specific approval after giving full disclosure and acted in a manner in which her professional duties and her personal interests conflict or are likely to conflict in breach of canon IV (j).**
- 8. The Attorney is in breach of regulation 16 of the Legal Profession (Accounts and Records) Regulations 1999."**

ANALYSIS

She has charged me fees that are not fair and reasonable;

[71] Appreciating that Attorney's fees in respect of a Grant of Probate are normally calculated on the value of the estate, this panel finds as a fact that the fixed sum charged as fees by the Complainant, in relation to the grant of Probate being \$40,000 per property, is reasonable. However, we note that the Attorney never obtained the said Grant of Probate.

¹ Campbell v Hamlet [2005] UKPC 19

- [72] The Complainant produced two statements of accounts which were created by the Respondent. Each statement outlined fees which were calculated on a percentage (1.5%) of the value of the sale transactions initiated in respect of two of the properties which form a part of the estate of DAPHNE ELAINE SILVERA. The fee for the property which was to be sold for \$24,000,000.00 was \$380,000.00 inclusive of a fee for miscellaneous letters and \$342,500.00 for the property with a sale price of \$21,500,000.00.
- [74] This panel finds, as a fact, that whilst there was no prior negotiation of the fees to be charged and the Complainant was not previously aware of the specific parties to the sale transactions; by the execution of the listing forms and her verbal acceptance of the offer, the Complainant gave unequivocal approval for these sale transactions upon which the Respondent acted.
- [75] From an isolated perspective, the percentage applied by the Respondent to each sale transaction is not unreasonable. However, a review of the circumstances surrounding the entering into these sale transactions vitiates that conclusion.
- [76] The panel finds as a fact that the Respondent was fully aware when she negotiated the terms and prepared the sale contracts, sent them overseas for execution by the Purchasers and accepted the respective deposits; that the Grant of Probate was not issued by the Court or at the least, that there was a suspension, or no progression, of the application for the Grant of Probate.
- [77] Furthermore, we also find as a fact that in the sale transaction relating specifically to the property registered at Volume 1109 Folio 395 of the Register Book of Titles, the Respondent was fully aware when she prepared

the documents, and had it executed by Cindy Sue Payne and Martin John Payne on the 21st December 2023, that Daphne Silvera had died although the Instrument of Transfer names her as the Vendor; that the Complainant had not been registered as proprietor on transmission; no reference was made to the Complainant's testamentary role as Executor on either the Sale Agreement or Transfer although she was stated as the Vendor on the Agreement and the Agreement did not state that it was subject to the grant of probate. Finally, the Agreement specified that it was a cash sale and completion was to be within sixty (60) days.

The fact is that the Transfer, as presently drafted, could not effect the sale. Accordingly, the work done by the Attorney in preparing the Agreement for Sale and Transfer was ineffective. Further, and in any event, by the 18th January 2024, the Complainant told the Attorney that she was not selling the property.

[78] This panel concludes that, in all the circumstances, the fees demanded pursuant to the undated and dated statements of account being 1.5% of the sale price are both unfair and unreasonable.

The Attorney has not provided me with all information as to the progress of my business with due expedition, although I have reasonably required her to do so in breach of Canon IV(r)

AND

She has not dealt with my business with all due expedition.

[79] The emails and other messages provided through the Complainant by which she requested information and/or the remittance of her documents, establish the absence of regular contact with the Respondent and a desire for information. These documents were not challenged by the Respondent, and neither was the evidence of the Complainant who said she sent numerous WhatsApp texts and placed calls between November and

December 2023 to the Respondent to ascertain the status of the probate and to discuss the offers.

[80] Additionally, the Complainant's recount of all the physical steps undertaken by her to locate the Respondent portrays the desperation experienced by the Complainant as result of the lack of communication and update. This aspect of the Complainant's account also remained unchallenged.

[81] Having signed the requisite documents in May, 2023, the most striking evidence of the Attorney's failure to deal with the Complainant's business with due expedition or to provide information to the Complainant on the status of the Grant of Probate is the procurement, by the Complainant, of information from the Clerk of Court via letter dated August, 2023 that there had been a prior remittance of the documents supporting the probate application. The reasonable conclusion is that, as at the date of the letter, there had been no resubmission of the requisite documents. Further, and in any event, there is a handwritten note on an email sent on the 12 March 2024 from the Complainant to Ms. Biggs at the Parish Court in which it is stated that since returning the documents to the Attorney for correction, the Court officer had not heard from her (Exhibit 3 No. 6).

[82] In relation to the resubmission of the documents, the Respondent verbally indicated that this was done in September, 2024, after the vacation period but brought no corroborating evidence. The "emails" supporting the assertion of follow-ups were purportedly generated in February and March of 2024 which is before the documents were supposed to have been resubmitted. Almost a year after receiving her retainer and payment for the entire process, the Grant of Probate was yet unresolved.

[83] Receipt of this information through the Clerk of Court fortifies the conclusion that there was an absence of any prior or subsequent notification by the Respondent as to either the suspension of the application or proof of satisfaction of the requisition issued by the Court.

[84] Additionally, the Respondent did not communicate with the Complainant to advise her that the titles had been lost consequent upon her car being stolen as the titles were in the motor vehicle. Remarkably, the Respondent did not even state this in her Affidavit in Response to the complaint. This information was not disclosed until during the hearing of this complaint.

The Panel finds that these canons were breached by the Respondent.

She has acted with inexcusable or deplorable negligence in the performance of her duties;

[85] In addressing the submission that a charge of negligence included wrongdoing, the late Carey JA, in the 1989 Court of Appeal decision of **EARL WITTER v ROY FORBES**, provided clarity on the definition of professional negligence and stated

“ ...with respect of rule (s).it is not inadvertence or carelessness that is being made punishable but culpable non-performance. This is plain from the language used in the rules. (p.131)

.....
.....

Both rules of which the Appellant was found guilty are concerned with the proper performance of the duties of an attorney to his client. The canons under which these rules fall, prescribe the standard of professional etiquette and professional conduct for Attorneys-at-Law, vis-à-vis their clients. It requires that an attorney “shall act in the best interests of his client and represent him honestly, competently and Jealously within the bounds of the law. He shall preserve the confidence of his client and avoid conflict of interests.

.....
.....

.....
“ 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 “in excusable or deplorable.” (p.133)

[86] In the Court of Appeal decision of Norman Samuels v General Legal Council² , McDonald-Bishop JA (as she then was) expounded on the definition of professional negligence as follows:-

[84] The learned authors of the text, *The Law of Legal Services (2015)* at pages 144 - 146, helpfully noted at paragraphs 4.39 - 4.40 that there is a distinction between the fault required for professional negligence and that required for misconduct. They referenced dicta from *Saif Ali v Sydney Mitchell & Co [1980] AC 198* at pages 218 and 220, where Lord Diplock explained that the concept of negligence within this context involves “advice, acts or omissions in the course of their professional work which no member of the profession who was reasonably well-informed and competent would have given or omitted to do”.

[85] At page 145, paragraph 4.40 of the same text, the learned authors noted that the culpability required for misconduct does not have to amount to a lack of integrity; but it is more than simply making a mistake. Citing the words of Lord Cooke in *Preiss v The General Dental Council [2001] 1 WLR 1926* at 1936, they continued:

“It is settled that professional misconduct does not require moral turpitude. Gross professional negligence can fall within it. Something more is required than a degree of negligence enough to give rise to civil liability but not calling for the opprobrium that inevitably attaches to disciplinary offences.”

In *Re A Solicitor [1972] 1 WLR 869*, the Court of Appeal decided that negligence by a solicitor may amount to professional misconduct “if it is inexcusable and as such to be regarded as deplorable by fellow solicitors” (see John Gould et al, *The Law of Legal Services (2015)*, page 145 at paragraph 4.41). “

² [2021] JMCA Civ 15

[87] Having been retained in May, 2023 by the Complainant to obtain probate in the estate of Daphne Elaine Silvera, the Respondent firstly filed the documents for the Grant of Probate in the Parish Court which had a jurisdictional limit of \$3,000,000.00, and in circumstances in which she was aware that the estate contained three properties which had values greater than \$3,000,000.00. We so find because the Complainant said that she gave the Respondent the valuation reports for the properties which we accept.

[88] The Respondent did not expressly say whether, or not, she received these reports but said she was not fully cognizant of the value until when the properties were listed for sale. Two of the properties were listed on the MLA for \$30,000,000.00 and \$25,000,000.00. We do not believe the Respondent's assertion that she did not know the values when she applied for probate in the Parish Court.

[88] According to the Respondent she filed it in the Parish Court to protect her client's and their pocket but the effect of this was engaging in conduct to defraud the Revenue.

[89] The panel finds as a fact the following-:

- a. The Respondent appreciated that the sale of the properties associated with, or belonging to, the estate of DAPHNE ELAINE SILVERA depended on a Grant of Probate being secured expeditiously.
- b. Prior to preparing the documents in support of the application for the Grant of Probate, the Respondent was cognizant of the value of each property.
- c. Prior to preparing the documents for the grant of Probate in respect of the estate of DAPHNE ELAINE SILVERA, the Respondent was aware that aged third parties had an interest in two of the three properties.
- d. The errors made in drafting the documents in support of the application for the Grant of Probate **did not constitute professional negligence.**
- e. The Respondent crafted documents to sell the property which reflected serious deficiencies in her professional competence., specifically :
 - a) It did not recite the fact that the Vendor (the Complainant) was selling as Executor of the estate

- b) the sale is expressed as being a sixty (60) day cash sale from the date of the agreement in circumstances where at the time of entering into the agreement, no Grant of Probate had yet been issued.
- c) The Complainant has not been registered on the property as owner on transmission so the property could not have been transferred.
- f. The Respondent was grossly negligent in removing the duplicate certificates of title (intended to be collected for delivery to the Complainant by a courier after the weekend} from the presumed security of her office and by leaving them in a motor vehicle, or outside of a building, over the weekend.
- g. the period of delay in addressing, or in otherwise advancing, the application for the Grant of probate was inordinate.

[90] These facts all amount to inexcusable and deplorable negligence.

She is in Breach of Canon 1(b) which states that "An Attorney shall at all times maintain the honour and dignity of the Profession of which she is a member."

[91] In examining Canon 1(b) of the Canons the Court of Appeal in the case of **Gresford Jones v The General Legal Council exp Owen Ferron (Misc Appeal No. 22/2022 and 27/2002** delivered on the 18th March 2005 said:

"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 behaviour. 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 not fail to contravene the requirements of the proper conduct demanded by Canon I (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 I (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. The Canon may also be construed in light of the cumulative effect of the overall conduct of the appellant towards Ferron and the other beneficiaries from 1988 up to the filing of the complaint in 1996." (Emphasis Added)

[92] This panel finds as a fact that the Respondent has failed to maintain the honour of the profession in that -:

- Over a protracted period, she has refused, neglected and/or failed to supply any information on the progress of the transaction to the Complainant.
- She persistently acted in a manner which totally disregarded the urgency faced by the Complainant and interested third parties and the trauma suffered by them as a result of her conduct.
- The Respondent, knowing the value of the properties the subject of the estate, deliberately misrepresented their values to facilitate the filing of the application for a Grant of Probate in a Court lacking jurisdiction and with the express purpose of providing financial benefit to her client and defrauding the Revenue.
- The Respondent prepared legal documents which were filed with inaccuracies and could not achieve the intended purpose of the documents.

This is conduct that should not be expected of an Attorney.

CONCLUSION

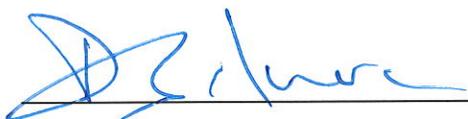
[93] This panel finds the Complainant has established, beyond a reasonable doubt, that the Attorney is guilty of breaches of Canons IV (f), IV(r), IV(s) and Canon 1(b).

[94] In all these circumstances we find that the Attorney has committed the following acts of professional misconduct as per **Canon VII of the Canons**.

-
- a) *In breach of Canon IV (f) the Attorney has charged fees that are not fair and reasonable.*
 - b) *In breach of Canon IV (s) the attorney has "In the performance of his duties as an Attorney for the complainant acted with inexcusable or deplorable negligence or neglect."*
 - c) *In breach of Canon IV (r), the Attorney has not dealt with his client's business with due expedition and has failed to provide the complainant with all the information as to the progress of his business with due expedition when reasonably required to do so.*
 - d) *In breach of Canon I(b) of **the Legal Profession (Canons of Professional Ethics) Rules**, has failed to "maintain the honour and dignity of the profession and has not abstained from behaviour which may tend to discredit the profession of which she is a member."*
-

Given our findings we will permit the parties to address us on sanction before handing down same.

Dated April 14, 2025

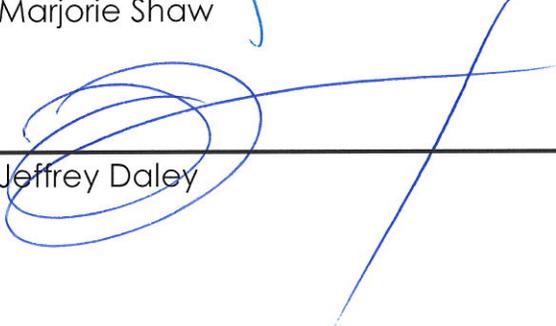


Daniella Gentles-Silvera, K.C

0 2 1 2 6



Marjorie Shaw



Jeffrey Daley