

GENERAL LEGAL COUNCIL

IN THE MATTER OF THE LEGAL PROFESSION ACT

Complaint No. 12 of 2023

BETWEEN:

PASTOR DOZIE IFEANYICHINEKE

COMPLAINANT

and

ORSON J. ELRINGTON

ATTORNEY-AT-LAW

PANEL:

Mr. Justice Rajiv Goonetilleke (Chair)

Mrs. Magali Marin-Young SC

Mrs. Cheryl-Lynn Vidal SC

Mrs. Ashanti Arthurs Martin

Ms. Vanessa Retreage

Mr. Adler Waight

Date of Hearing: 19th February 2024

Appearances

Pastor Dozie Ifeanyichineke, the Complainant (In person)

Orson J. Elrington, Attorney-at-Law (In person) who was accompanied by Hubert Elrington, SC

DECISION

Introduction

1. This is the General Legal Council's (**Council's**) decision on a Complaint (**Complaint**) brought by Pastor Dozie Ifeanyichineke (**Pastor Dozie**), a widower of Dangriga, Stann Creek District, against Attorney-at-Law, Orson J. Elrington (**Mr. Elrington or the Attorney**), a sole practitioner.
2. The Complaint is that Mr. Elrington, who had been retained by Pastor Dozie to institute a claim, had entered terms to settle that claim and obtained a sum of money in fulfillment of the settlement without the consent or authority of Pastor Dozie, his client. It is alleged that by doing so, Mr. Elrington breached his professional duty as an Attorney-at-Law. The hearing of the Complaint took place on the 19th February, 2024.
3. Pastor Dozie lost his wife on the 8th December, 2021, and he applied to the Social Security Board (**SSB**) for survivor's grant. Upon consulting Mr. Elrington, Pastor Dozie was advised that he was unable to claim the said pension as the provisions under the *Social Security Board Act*, Chapter 44 of the Laws of Belize (**SSB Act**) and the *Social Security (Benefits) Regulations* did not make provision for widowers to claim the survivor's grant that is payable to a widow on the death of a husband.
4. Therefore, Mr. Elrington was engaged by Pastor Dozie to pursue a constitutional claim challenging certain provisions in the Social Security Act as being discriminatory, as well as to recover the widower's pension and damages. Consequently, on the 4th May 2023, Mr. Elrington's firm filed Claim No. 256 of 2023 Dozie v Social Security Board and the Attorney General (**Claim**).
5. The terms of engagement of Mr. Elrington were contained in a written engagement that was signed by Pastor Dozie on the 17th May, 2022. This is discussed in further detail below.

Evidence

6. The Council allowed Pastor Dozie to rely on his Form 2 dated the 18th December, 2023, and his accompanying letter of the 5th December, 2023, as well as copies of certain documents, including the engagement letter of the 17th May, 2022 that he stated that he had signed. The Council also allowed him to give his oral evidence on the 19th day of February 2024 and to also submit screenshots of his WhatsApp texts; (1) with Mr. Elrington's then paralegal, Mr. Romilio Castaneda (**Mr. Castaneda**) on the 17th October, 2023 as well as (2) with Mr. Elrington on the 17th and 18th October, 2023. He was also allowed to submit several documents at the hearing, including his letter of engagement with original ink signatures. Mr. Elrington was then allowed to cross-examine him, and the Council also asked him questions.
7. The Council allowed Mr. Elrington to rely on both of his affidavits submitted to the Council and sworn on the 5th February, 2024, with exhibits; and that of his former paralegal Mr. Castaneda which were sworn on the same date. The Council permitted Mr. Elrington and

Mr. Castaneda to give oral evidence, and permitted Mr. Castaneda to submit the transcript of WhatsApp texts between himself and Pastor Dozie between the period 29th March, 2023 through to 12 December, 2023. Pastor Dozie was given an opportunity to cross-examine Mr. Elrington and Mr. Castaneda, and he asked a question of Mr. Elrington, but then sat down, while members of the Council proceeded to ask questions of Mr. Elrington and Mr. Castaneda.

8. It is noteworthy that Mr. Elrington first submitted an affidavit which he swore on the 5th February, 2024 (**first affidavit**), as well as a revised affidavit which was also sworn on the 5th February, 2024 (**second affidavit**). The second affidavit was submitted to the Council shortly before the hearing of the Complaint on the 19th February, 2024. In the first affidavit, Mr. Elrington stated that there were two engagement letters signed by Pastor Dozie on the 17th May, 2023, with the second engagement letter being "*redrafted*." The first engagement letter, he says, required a retainer of \$3000.00 and a contingency fee of 15% of funds recovered and the second engagement letter required a retainer of \$1500.00 and contingency fee of 40% of funds recovered. The second affidavit, however, simply exhibited both engagement letters, but without the explanation that the second engagement letter was "*redrafted*." Copies of both engagement letters were exhibited to both of Mr. Elrington's affidavits. The Council allowed Mr. Elrington to include, as exhibits, WhatsApp's texts between himself and Pastor Dozie, for the period between 20th May, 2022, through to 18th October, 2023. After Mr. Castaneda gave his oral evidence, the Council also allowed Mr. Elrington to submit an email sent by his office on the 29th September, 2023, to SSB's counsel with a consent order.
9. At the hearing, Pastor Dozie was emphatic that he had only signed one engagement letter on the 17th May, 2022, and he produced his original engagement letter with his original wet ink signature thereon.
10. At the conclusion of the hearing of the Complaint on the 19th February, 2024, the Council required that Mr. Elrington produce, by way of sworn affidavit, both of the original engagement letters. He thereafter produced an affidavit dated the 20th February, 2024, exhibiting colour copies of both engagement letters that Pastor Dozie purportedly signed, instead of the original wet ink signatures that was required to be submitted by the order of the Council.
11. The Council subsequently by letter of the 24th February, 2024, once again required Mr. Elrington to produce the original engagement letters with wet ink signatures by the 1st March, 2024. He failed to do so.
12. From the evidence, the Council established the following factual matrix to be undisputed:
 - (1) Mr. Elrington was retained by Pastor Dozie to commence action against the SSB and the Attorney General. Pastor Dozie paid \$1,500.00 in furtherance of the Agreement. Pastor Dozie also agreed to a percentage of any sums recovered to be paid to Mr. Elrington.

The percentage agreed is in dispute. The dispute arises due to Mr. Elrington's assertion that there was a second engagement letter. This dispute will be separately addressed below.

- (2) After filing the Claim, Pastor Dozie also orally instructed Mr. Elrington to settle the same for the highest sum due to him for the pension payable under the SSB Act and damages by way of constitutional redress.
- (3) On the 20th July, 2023, Mr. Elrington wrote to the SSB's counsel to propose that the Claim be settled out of court by way of the SSB paying the survivor's grant and vindicatory damages in the sum of \$60,000.00 and cost in the sum of \$22,000.00. Settlement discussions ensued in July, 2023.
- (4) On the 15th September, 2023, the SSB through its Attorney, made a written offer to Mr. Elrington to settle the Claim in the sum of \$40,000.00, which included the survivor's grant of \$29,800.00, \$1,788.00 interest and cost in the sum of \$5,000.00. This offer was said to be open up until the 16th October, 2023. On or about the 18th September, 2023, this offer was communicated to Pastor Dozie by Mr. Elrington's paralegal, Mr. Castaneda, via WhatsApp message. Mr. Castaneda had also communicated to Pastor Dozie that Mr. Elrington advised against accepting that offer. Pastor Dozie consequently rejected that offer of settlement.
- (5) Subsequently, the Claim came on for case management hearing on the 18th September, 2023, before the Hon. Justice Nadine Nabie. Pastor Dozie did not attend, and the matter was adjourned for the 19th October, 2023.
- (6) Counsel for the SSB and Mr. Elrington thereafter continued settlement negotiations orally, without Pastor Dozie being present.
- (7) On the 29th September, 2023, counsel for the SSB prepared a draft Consent Order containing settlement terms, which included "*widower's pension, interest and damages*" in the sum of \$46,588.00 to be paid on or before the 25th October, 2023 and cost in the sum of \$5,000.00. In addition to the said sums, the settlement terms under the said Consent Order also included a provision that the SSB would advise the Minister responsible for the SSB to amend the SSB Act to ensure equal treatment of men and women with respect to claims made for a survivor's grant (**Settlement Terms**).
- (8) This Consent Order was received by Mr. Elrington from SSB's counsel, Mrs. Myles, on the 29th September, 2023. The Consent Order was approved by Mr. Elrington and emailed by his office on the same date; 29th September, 2023 at 3:20 p.m. to SSB's Mrs. Myles. Thereafter, it was evidently uploaded as a perfected Consent Order on the 6th October, 2023 (**Consent Order**).
- (9) Mr. Elrington thereafter collected the Settlement Sum of \$46,588.00, He continues to possess the said sum, and has not paid any portion thereof to Pastor Dozie. Mr. Elrington

in his defence states that Pastor Dozie did not provide him with a bank account to transfer the money to him.

- (10) Pastor Dozie emailed Mr. Elrington on the 4th December, 2023, to reference a telephone conversation they had on the 18th October, 2023, and he demanded all funds received from the SSB, including the initial retainer of \$1500.00. To date, these funds have not been paid over. Pastor Dozie confirmed that he did not provide Mr. Elrington with his banking details.

13. From the evidence, the Council established the following facts to be disputed:

Consent Order

- (1) Pastor Dozie categorically denies ever having approved the Settlement Terms contained in the Consent Order that Mr. Elrington approved on the 29th September, 2023. Pastor Dozie states that he was aware of settlement discussions but denies approving the Settlement Terms in the Consent Order and he denies being aware that the said Consent Order was perfected and filed in the Claim.
- (2) According to Pastor Dozie, it was not until he enquired on the 17th October, 2023 whether the Claim would be heard on the rescheduled date of the 19th October, 2023, that he was informed that the matter had been settled. Again, he states he was aware of settlement discussions, but he was not aware that Mr. Elrington had agreed to settle the entire claim for \$46,588.00 as set out in the Consent Order.
- (3) Mr. Elrington was emphatic that he orally explained the Settlement Terms set out in the Consent of the 29th September, 2023, and that he obtained Pastor Dozie's approval in the presence of his paralegal, Mr. Castaneda. Mr. Elrington urged that Pastor Dozie was not concerned too much about the settlement sum, but was more concerned about the legacy of his deceased wife, and that it was essential for him to get a commitment from the SSB and the government that the law would be amended for pension benefits to be paid to widowers as well as widows. Mr. Elrington states that he therefore approved the Settlement Terms in the Consent Order since the settlement contained the commitment to amend the law.

Engagement Letter

- (4) Pastor Dozie said he signed one engagement letter on the 17th May, 2022 where he agreed to pay a retainer of \$3,000.00 and he agreed that Mr. Elrington was to be paid a contingency fee of 15% of the sums collected.
- (5) Mr. Elrington said that Pastor Dozie was made to sign a second "*redrafted*" retainer on the same date; 17th May, 2022, to replace the one signed previously, since Pastor Dozie did not have and was not in a position to pay the full retainer sum of \$3,000.00. Therefore, according to Mr. Elrington, Pastor Dozie paid \$1,500.00 down and agreed to pay Mr. Elrington 40% of the sums received instead of the initially agreed 15%. Pastor

Dozie admits to having paid only \$1,500.00 but stated that he agreed with Mr. Elrington that the remaining \$1,500.00 of the initial payment requested should be recovered from any funds collected (in addition to the agreed 15%)

- (6) The dispute as to the engagement letters is whether Pastor Dozie signed the second engagement letter for a retainer of \$1500.00 and a contingency fee of 40% of sums received.
 - (7) The Council has taken note that Mr. Elrington has failed to provide it with the original engagement letters with the wet ink signatures, though he was twice directed to do so. The only original document with wet ink signatures which the Council was able to review was the initial engagement letter referring to a retainer of \$3,000.00 and contingency fee of 15% of the sums collected, which Pastor Dozie had in his possession and produced.
 - (8) A perusal of the documents by the members of the Council indicate that the scanned copy of the signature of Pastor Dozie on the second engagement letter (denied by Pastor Dozie) is blue, whilst the first one is black, and the signature on the second engagement letter appears to be identical in size and shape, including the points where the signature intersects the alphabetical letters at the bottom of the signature line, that spell out his name. Exactness in two signatures of the same person to such a degree are not usually found and tends more to the probability that the latter signature is a copy made by scanning or copying by a machine. These observations are made not on the basis of expert opinion but on general experience of the members of the Council on the basis of what is visible to the naked eye. The issue which has therefore arisen during the course of the hearing of this Complaint is whether Pastor Dozie did sign the second engagement letter.
14. The Council also noted with concern, several ancillary issues which arose during the hearing, namely:

Reliance on Paralegal to explain legal issues to client

- (1) The Council is troubled by an ancillary issue that arose in this Complaint, that it is a fact that Mr. Elrington relied heavily on his paralegal, Mr. Castaneda, to not only conduct his legal research, but to also communicate directly with clients, including Pastor Dozie, to explain legal matters. In his oral testimony before the Council, Mr. Castaneda spoke of Mr. Elrington's clients as being his own. He signed (albeit for and on behalf of Mr. Elrington) the letter of the 20th July, 2023 containing Pastor Dozie's first offer to the SSB. In fact, he said he drafted the letter and did the research. During his oral testimony, Mr. Castaneda said he in fact had 20 clients of his own and that "*these were my clients at the end of the day. I had conduct of these matters.*"

- (2) The troubling issue for this Council is whether Mr. Elrington's practice of allowing his paralegal to be advising clients on legal matters constitute dereliction of his professional duty as an attorney, to his client.

Practice on Securing Client's Approval on Consent Orders

- (3) The next issue that arose which troubles this Council is the fact that Mr. Elrington admitted that it is the standard practice to obtain the client's written consent to terms of settlement, and yet while being fully aware of the standard practice, he failed to comply with this standard practice with regard to settling Pastor Dozie's claim. At the minimum, this amounts to professional negligence in the conduct of his practice.

Conduct of Attorney towards Pastor Dozie during the Proceedings

- (4) There was a further issue which arose during Mr. Elrington's cross examination of Pastor Dozie. This Council found Mr. Elrington to be unnecessarily belligerent and insulting towards Pastor Dozie, so much so that the Council had to remind him that he was expected to conduct himself as a professional during the proceedings.

Law

15. Attorneys-at-Law hold a special position in society. They act as stewards and guides for those that retain their services. They help lay clients navigate the labyrinth of the legal system and as such those clients repose a particular trust in them.
16. Attorneys-at-Law play a vital role in the system of justice and the administration of justice. Consequently, it is expected that Attorneys-at-Law will maintain the highest ethical standards as guardians of the law.
17. Attorneys-at-Law must be, at a minimum, guided by the Legal Profession (Code of Conduct) Rules¹(**Rules**). Attorneys-at-Law that do not meet these standards may, depending on the nature of the complaint, expect appropriate and severe sanctions. This is necessary in order to maintain a high degree of professionalism in the practice of the law and to maintain the dignity and standing of the profession and the trust and confidence that clients and the general public repose in an Attorney-at-Law. Even momentary or inadvertent lapses may therefore be visited with condign punishment.
18. Attorneys-at-Law should treat all clients and their matters whether large or small, routine or complicated with the attention, sensitivity, and care that they deserve; a standard this Council will continue to insist on.
19. The issues for this Council in regard to this complaint are, whether Mr. Elrington breached any or all of the following Rules:
 - (1) Rule 4:

¹ Rule 4(1): An attorney shall uphold at all times the standards set out in these Rules.

Rule 4 (2) "An attorney shall maintain his integrity and the honour and dignity of the legal profession and of his own standing as a member of it and shall encourage other attorneys to act similarly both in the practice of his profession and in his private life and shall refrain from conduct which is detrimental to the profession, or which may tend to discredit it:

Provided that the Council will not normally be concerned with the purely private or extra-professional activities of an attorney which do not bring his professional integrity or competence into question."

(2) Rule 14:

Rule 14 "Every attorney should also bear in mind that he can only maintain the high traditions of his profession by being a person of high integrity and dignity."

(3) Rule 22 which sets the standard that an attorney should place the interest of his client before his own and shall act in the client's best interest:

"Rule 22. (1) An attorney shall always act in the best interest of his client, represent him honestly, competently and zealously and endeavour by all fair and honourable means to obtain, for him the benefit of any and every remedy and defence which is authorised by law, steadfastly bearing in mind that the duties and responsibilities of the attorney are to be carried out within the bounds of the law.

(2) The interests of his client and the exigencies of the administration of justice should always be the first concern of an attorney and rank before his right to compensation for his services."

Discussion and Analysis

20. The Council's deliberations have been limited to the information presented and the sworn oral evidence given at the hearing.
21. Given the conflicting oral and written statements of Mr. Elrington and Pastor Dozie as to whether Pastor Dozie had indeed approved the Settlement Terms of the Consent Order before Mr. Elrington signed off and sent it to the SSB, this Council had to carefully and, to the extent that we could, forensically sift through the documents, WhatsApp texts, and oral evidence, to firstly determine whose evidence was most credible on the issue of whether Pastor Dozie had approved the said Consent Order.
22. This Council found that the affidavit of Mr. Castaneda was vague at paragraphs 17, 18 and 19, in establishing the exact date when the Consent Order that was sent on the 29th September, 2023 to Mr. Elrington by the counsel for the SSB, was shared with Pastor Dozie. But in his oral evidence, this Council found that Mr. Castaneda, who was the paralegal who had direct conduct of Pastor Dozie's matter, to have done his best to recall what had transpired regarding the legal affairs of Pastor Dozie and the firm regarding the Claim, and he was most helpful in answering the Council members' questions. This Council notes that

though Mr. Castaneda was a former employee of Mr. Elrington, he had no ax to grind with his said former employer, so to speak, having demitted his former employment on good terms.

23. In his oral evidence, Mr. Castaneda was initially certain that the terms of the Consent Order were explained to Pastor Dozie, but he could not establish with any certainty whether Pastor Dozie had approved the Settlement Terms as set out in the Consent Order. He produced a transcript of all the WhatsApp texts between Pastor Dozie and himself during the period from the 29th March 2023 to 9th December, 2023. When asked to show the Council where in the WhatsApp texts it was shown that the Consent Order was shared with Pastor Dozie, he initially pointed to the one sent on the 18th September, 2023, which contained original terms proposed by SSB's counsel on the 15th September, 2023 and which Pastor Dozie was advised not to accept by Mr. Elrington.
24. When Mr. Castaneda was shown the screenshot of the WhatsApp exchange of the 17th October, 2023 between himself and Pastor Dozie, which showed that the Consent Order in draft in 'Word' format was sent to Pastor Dozie on the 17th October, 2023 via the same WhatsApp text; he was asked by the Council if at that point in time he still believed that the Consent Order was still pending and had not been signed. In reply he answered that the Consent Order was still in a draft form. It was Mr. Castaneda's evidence that until 17th October, 2023, the Consent Order was still in draft and that it was on the 17th October, 2023 that it was in fact shared with Pastor Dozie. The evidence of Mr. Castaneda on this fact was consistent with Pastor Dozie's evidence. Pastor Dozie maintained that it was not until the 17th October, 2023, when he called to enquire about the hearing and got to know that the hearing was rescheduled to the 18th October, 2023, that he was provided with the Draft Consent Order.
25. There is also the evidence of Pastor Dozie's WhatsApp message to Mr. Elrington on the 18th October, 2023, after being sent the Draft Consent Order by Mr. Castaneda on the 17th October, 2023. In that WhatsApp message Pastor Dozie stated; *"For the record, IF the Draft proposal is a way to obtain the 80k plus you proposed in the letter dated July 20, 2023, providing it be explained to me, then I am open to follow along the process..."* This exchange was also contained in Mr. Elrington's transcript of his WhatsApp exchanges. This exchange that took place by WhatsApp messages corroborates Pastor Dozie's Complaint that he had not approved the settlement terms up until he was sent the Consent Order on the 17th October, 2023, and that even thereafter, he had not approved the settlement terms of the Consent Order.
26. Pastor Dozie said that after his exchange on the 18th October, 2023, with Mr. Elrington, he made it his business to visit the High Court to make his own enquiries of the administrative staff; and, it was only then that he ascertained for the first time that Mr. Elrington had gone ahead without his consent and approved the Consent Order which had thereafter been perfected on the 6th October, 2023. This Council notes with concern that the perfected

Consent Order had not been shared with Pastor Dozie even when it was perfected and uploaded. In fact, the perfected Consent Order appears not to have been shared with him at any point in time. The only version of the Consent Order that was shared with Pastor Dozie was the 'Word' format version in draft form that was shared with him by Mr. Castaneda via WhatsApp text on the 17th October, 2023.

27. The Council finds that the evidence of Pastor Dozie has been corroborated by Mr. Castaneda and that the evidence of both these witnesses is credible especially since their testimony is also supported by the contemporaneous WhatsApp exchanges. Mr. Elrington's testimony on this aspect is not supported by any other evidence and therefore the Council cannot rely on his evidence in the teeth of the credible evidence of the other two witnesses, which contradicts the evidence of Mr. Elrington. This Council finds therefore, that Mr. Elrington signed off on the Consent Order without first obtaining Pastor Dozie's consent; whether written or oral, in breach of his professional duty to his client under Rule 22; to act in the best interest of his client and to represent him honestly, competently and zealously and to endeavour by all fair and honourable means to obtain, for him, the benefit of any and every remedy. This constitutes grave misconduct on the part of Mr. Elrington.
28. This Council is also satisfied of the fact that Mr. Elrington in his oral evidence was fully aware that the standard practice in settling claims for clients was to obtain their written approval to the terms of the settlement, which was not done in this case. At the minimum, this Council finds that he was derelict in not securing the written consent of Pastor Dozie, especially since the SSB's counsel in the first offer had given time until the 16th October, 2023 to accept the terms of the initial offer.
29. On the matter of the engagement letter, during Mr. Castaneda's oral evidence, he gratuitously, without any question being posed on the subject matter to him, offered his opinion that he believes that this Complaint has been made because Pastor Dozie does not want to pay the 10%/ 15% contingency fee as per the letter of engagement. Though opinions are inadmissible, Mr. Castaneda, who was intimately involved in Pastor Dozie's matter, mentioned that the contingency was 10% or 15%, which would coincide with the original engagement letter (with ink signatures) that Pastor Dozie produced, which stated the contingency of 15% of funds and not 40% as alleged by Mr. Elrington.
30. Given that Mr. Elrington failed to produce the originals of both engagement letters with wet ink signatures, despite being required to do so by this Council, this Council finds that there

is a high degree of probability that there was no second “redrafted” engagement letter that was signed by Pastor Dozie. This finding then leads to the conclusion that the only engagement letter signed by Pastor Dozie was the one with the contingency of 15%.

31. This finding then raises serious concerns about the authenticity of the second engagement letter referred to and produced by Mr. Elrington. The Council makes no finding on the authenticity of that document as the Council has not retained expert evidence in this regard.
32. However, this Council notes with interest that in his first affidavit, Mr. Elrington said that Pastor Dozie signed the original retainer, but omitted to say if Pastor Dozie signed the second retainer.
33. This Council takes this matter very seriously and will therefore refer to the Police, the second engagement letter that was produced by Mr. Elrington to the Council, for the police officers to forensically investigate whether the signature of Pastor Dozie has been fabricated on the second engagement letter.
34. Independent of any criminal liability that may arise upon investigation by the police, this Council heard, Mr. Elrington’s testimony and does not find him credible on the matter of this second engagement letter. This Council gave him two opportunities to produce the original wet ink signature and he failed to do so.
35. In the circumstances of the failure of Mr. Elrington to produce the original engagement letters despite being directed to do so, this Council draws an adverse inference as to the authenticity of the 2nd engagement letter. Depending on the investigation of the Police Department, this Council may revisit this issue to make further findings of possible misconduct before this Council.
36. This Council therefore finds Mr. Elrington in breach of Rules 4, 14, and 22, which constitutes grave misconduct.

Conclusion

37. Considering all the material placed before this Council, the Council is satisfied and is unanimous in its finding that Mr. Elrington is guilty of grave professional misconduct in respect of representing his client Paster Dozie and is in breach of Rules 4, 14 and 22.

38. This Council summons Mr. Elrington to a hearing on th24 May 2024 at ^{1:00 PM}..... to show cause why any of the sanctions set out in section 16(2) of the Legal Profession Act should not be imposed on him.

Dated the th19 of April 2024

By the General Legal Council