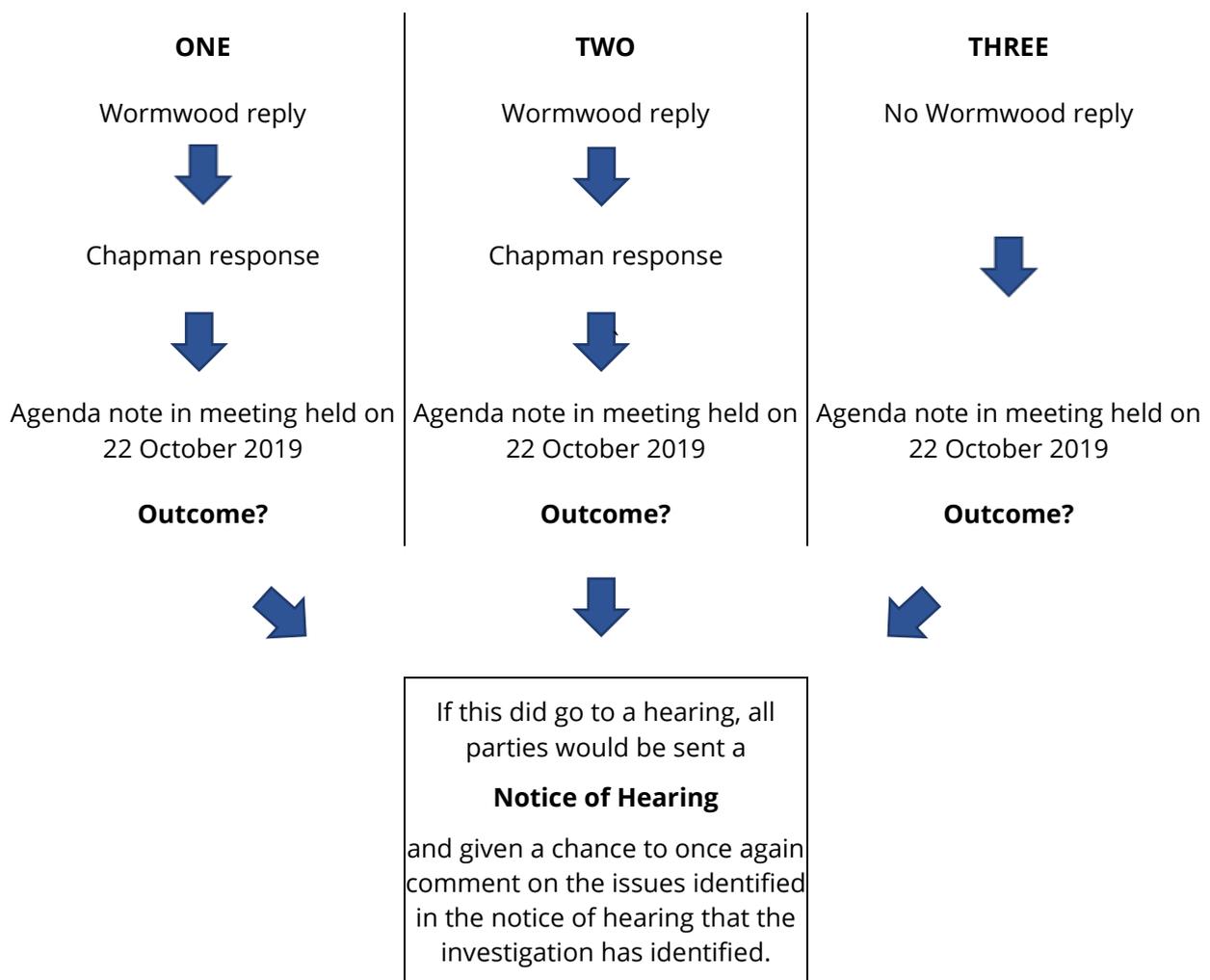


WHAT HAPPENS NEXT?

1. The complaint about Wormwood now follows three paths.
2. These paths will be explained to you presentation you will see.
3. This document explains the documents (which might be quite similar) that you might expect to see along the way as these pathways are followed.
4. We will call these pathways: ONE, TWO, and THREE. Initially we called them GOOD, BAD, AND WORST, but we thought we'd let you decide that for yourself.
5. Follow each pathway below and use the table of links below to take you straight to the documents relevant to each.



6. Once you have read the materials and followed the pathways. What do you think the outcome of each of the three pathways would be?
7. Tell us.
8. Go to: www.menti.com and use code 43 70 63.

PATHWAY ONE

WORMWOOD ANGLE BEAVIS

LAW

15 October 2019

Susan Loveys
New Zealand Law Society
AUCKLAND

Dear Ms Loveys

18980: Complaint by Peter Chapman

Thank you for your letter of 8 October 2019. I have read the materials you have provided carefully, and respond to the issues that have been raised as follows:

Background

Mr Chapman's sister and I were appointed executors of their mother's estate by her will.

Since her death and our appointment in April 2016 we have been looking to realise the assets of the estate, repay its not inconsiderable debts and proceed to distribute the residue to the beneficiaries. Mr Chapman is one of those beneficiaries.

The estate comprises three principal assets:

A portfolio of shares

A BNZ bank account

A property in Pember Place, Tauranga

On its face, the task facing the executors to deal with the estate assets and distribute the residuary in accordance with the will ought not to have been a difficult or time consuming task. Things have not, however, been as straightforward as they first seemed.

The principal difficulty the executors had to deal with arose in relation to the condition of the property at the time of Mrs Chapman's death. The property was a large one and initial appraisals revealed a significant amount of uncompleted and unconsented building work. It seems that Mrs Chapman's lodger was a retired builder and he "paid his way" by various renovation projects he volunteered to do for Mrs Chapman. At the time of Mrs Chapman's death approximately sixteen of these "building projects" had been started and not finished.

While the projects were all of different size and complexity, we identified at least four significant areas of building work that did not have appropriate

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building consents, and another three areas where the work done had not been done to the appropriate standard.

Mr Chapman ought to have been aware of this, as he visited the property on a number of occasions. During early meetings with Mr Chapman and his sister he appeared to take a dislike to me, and my observations (concurring with my co-executor) that the state of the property would need attention first and foremost before any thought could responsibly be given to its sale. Following that, Mr Chapman's sister volunteered to be the point of contact with Mr Chapman and I have left most of the direct dealings for her to take care of. I understand from speaking to her that she too has struggled to re-assure him that everything is in order.

I have asked her to provide a narrative of her involvement with Mr Chapman for the benefit of the Committee, and will forward that to you when it is received by me.

Mr Chapman's questions

Mr Chapman asks 5 questions in his complaint, I will respond briefly and directly to each:

1. *Why won't Mr Wormwood just talk to me? Why all the secrecy?*

While I accept I have been reluctant to engage with Mr Chapman directly, there has been no secrecy. His sister has and remains only too happy to discuss issues with him.

2. *What happened with the house sale?*

This was reported to him by his sister and he was kept apprised of everything from the very outset. The short story with the house is that it could not be sold to maximise the return for the estate until the unfinished building work was completed and all relevant compliance certificates obtained. It took some considerable time to achieve this. I attach the settlement statements on the house sale that show the total net proceeds after costs. This sum is now held in my firm's trust account pending distribution to the beneficiaries.

3. *Why can't he simply tell me what is going on in my mother's estate?*

I have attempted to do this, through Mr Chapman's sister/my co-executor. I believe the communication has been full and complete at all times.

4. *What has he advised by sister as co-executor?*

Technically my advice to the estate is privileged to the estate, but there is nothing much to any of it. I provided legal advice and services as required to assist the executors, and will continue to do so until the task is complete.

5. *How much is he charging and is there any oversight of his fees?*

I charge for my firm's professional attendances and have rendered fees on an ongoing basis from the start of the file. All fees rendered have been set in accordance with RCCC and my firm's terms of engagement.

I **attach** the retainer information provided to the estate at the outset, together with the invoices rendered to this point. I summarise the charges in a table attached. All invoices have been paid as rendered, and with the consent and approval of Mr Chapman's sister.

The issues identified

Your letter to me about the complaint identified three issues. I will respond briefly and directly to each:

Whether you provided copies of your invoices to Mr Chapman before or immediately after the fees were debited and, if not, whether you complied with regulation 9(2) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

I have not taken these steps as I did not believe I was required to do this. Mr Chapman's sister has always been aware of the invoices as they were rendered, and approved their payments. I have left it with her to discuss these matters with her brother, and believe she has done so. I have never understood the requirement of that regulation to mean I have to send copies of invoices to all beneficiaries of the will.

Whether you have acted competently and in a timely manner consistent with the terms of your retainer and the duty to take reasonable care in relation to the administration of the Estate - Rule 3 of the RCCC.

My explanation as to the issues that were faced with the house and the building work should be enough here. I believe that I have acted diligently in difficult circumstances.

Whether you have promoted and maintained proper standards of professionalism in your dealings with Mr Chapman - Rule 10 of the RCCC.

I accept that in the early stages I have had to be firm with Mr Chapman. It was as a result of those encounters that I decided it was better for communications to him to be managed by his sister. I do not believe that any of my interactions with Mr Chapman have been discourteous or fell below the standards the profession might expect.

I hope this reply answers all of your queries. If you need any further information, then please let me know. I will forward the note I expect to receive from my co-executor as soon as I receive it.

Yours sincerely

J. Wormwood

Jacob Wormwood
Managing Partner

HAND DELIVERED

Ms. Susan Loveys
New Zealand Law Society
Lawyers Complaints Service

Dear Ms. Loveys

Thank you for forwarding Mr. Jacob Wormwood's response to me. He has certainly set out things clearly in his letter to the NZLS.

I have learned more from his letter, than I ever could have hoped for in trying to deal with him directly, and in this respect, I am puzzled by his comment that quote

'During early meetings with Mr Chapman and his sister
appeared to take a dislike to me.'

I have no idea how this impression formed in his mind, and can only say that he in turn became increasingly hostile as I sought to have common sense questions answered in a civil way.

If he had dealt with me in the manner he has answered the NZLS letter, then I can honestly say there would likely have been no complaint. While I did indeed visit the property of my late mother I had no idea of the sixteen defects, which Mr Wormwood could so easily have explained to me.

He says that quote 'I accept that in the early stages I have had to be firm with Mr Chapman.' The word 'firm' is disingenuous. The correct words are 'brusque and rude', so much so that I was left isolated in my grief. On this point my sister was unable to answer my questions and referred me back to Mr. Wormwood, putting me in a Catch 22 situation.

In view of Mr Wormwood's reply, I have searched my conscience and still feel that Mr Wormwood has erred significantly in his dealings with me and therefore my complaint still stands.

Yours sincerely,

Peter Chapman

Peter Chapman

AGENDA NOTE

LEGAL STANDARDS OFFICER: Susan Loveys

BEFORE COMMITTEE: Auckland Standards Committee X

MEETING DATE: 22 October 2019

FILE: 18980

Jacob Wormwood – File 18980 - Complaint by Peter Chapman

Issue for consideration

This is an initial consideration pursuant to s137 of the Lawyers and Conveyancers Act 2006 (“LCA”).

Background

1. Mr Peter Chapman is a residuary beneficiary in the estate of his mother, the late Noralee Annie Chapman (“estate”). The executors are Mr Jacob Wormwood and Mr Chapman’s sister, Cecelia. Mr Chapman and Cecelia are the residuary beneficiaries.
2. The deceased passed away on 29 April 2016. It appears that the estate comprised a residential property in Tauranga, shares, and a reasonably substantial bank account. The property has apparently been sold, although there has been no reporting to Mr Chapman. It is unclear what has happened to the shares or the proceeds of the bank account. There has not yet been any distribution to the beneficiaries.
3. Mr Chapman believes that Mr Wormwood has been charging fees to the estate, but he has not been provided with any of the invoices.
4. Mr Chapman says that Mr Wormwood has refused to discuss estate matters with him until all estate matters have been finalised, and has given no indication when this will be. Cecelia has also refused to discuss estate matters, simply referring him to Mr Wormwood.
5. Mr Chapman is concerned about the secrecy. He would like to know what is going on with the estate, when it is going to be distributed and how much Mr Wormwood has charged for his services.

Issues

6. The issues for consideration by the Standards Committee appear to be as follows.
 - (a) *Whether Mr Wormwood provided copies of his invoices to Mr Chapman before or immediately after the fees were debited and, if not, whether he complied with regulation 9(2) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (“TAR”);*
 - (b) *Whether Mr Wormwood acted competently and in a timely manner consistent with the terms of his retainer and the duty to take reasonable care in relation to the administration of the Estate - Rule 3 of the Lawyers and Conveyancers Act (Lawyers Conduct and Client Care) Rules 2008 (“RCCC”);*
 - (c) *Whether Mr Wormwood promoted and maintained proper standards of professionalism in his dealings with Mr Chapman - Rule 10 of the Lawyers & Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.*

Examining the issues

(a) Whether Mr Wormwood provided copies of his invoices to Mr Chapman before or immediately after the fees were debited and, if not, whether he complied with regulation 9(2) of the TAR

7. Mr Chapman is concerned that he has not been informed about fees being invoiced to the estate and apparently deducted from the trust account. He has not been provided with any invoices.
8. Regulation 9 of the TAR provides:

Restriction on debiting trust accounts with fees

(1) No trust account may be debited with any fees of a practice (except commission properly chargeable on the collection of money and disbursements) unless—

- (a) a dated invoice has been issued in respect of those fees, and a copy of the invoice is available for inspection by the inspectorate; or*
- (b) an authority in writing in that behalf, signed and dated by the client, specifying the sum to be so applied and the particular purpose to which it is to be applied has been obtained and is available for inspection by the inspectorate.*

(2) If fees are debited under subclause (1)(a), an invoice must be delivered or posted to the person who has a legal or beneficial interest in the trust account to be debited before or immediately after the fees are debited.

9. The Committee would need to consider whether Mr Chapman, as a residuary beneficiary, had a legal or beneficial interest in the trust account.
10. The Committee is referred to the decision of the LCRO in *Mr IV v Ms DD, Ms EE and Ms FF*¹. The LCRO stated at para 35:

“A beneficiary under a will is beneficially interested in the estate funds, and must therefore be provided with a copy of the invoice. This may come as something of a surprise to many lawyers, but links in with s 160 of the Lawyers and Conveyancers Act 2006 which enables a beneficiary under a will (and others) to complain about a lawyer’s bill of costs.”

11. Mr Wormwood has advised that he was not aware that he was required to send copies of his invoices to Mr Chapman as a residuary beneficiary. He says that they were provided to and approved by his co-executor. He has provided copies of his letter of engagement and the invoices with his response.
12. Mr Chapman has not commented on the quantum of fees in his response.
13. The Committee will need to consider what, if any, further action to take in relation to this issue.

(b) Whether Mr Wormwood acted competently and in a timely manner consistent with the terms of his retainer and the duty to take reasonable care in relation to the administration of the Estate - Rule 3 of the RCCC

14. Rule 3 of the RCCC requires a lawyer, when providing regulated services to a client, to act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.
15. Mr Chapman’s complaint raised an issue of timeliness. This appeared to be a relatively simple estate, yet it still had not been distributed three and a half years after the date of death.

¹ LCRO 272/2012

16. Mr Wormwood has explained that difficulties arose as there were incomplete and unconsented works at the Tauranga property. This needed to be resolved before the property could be sold. He said that Mr Chapman ought to have been aware of this as he had visited the property on a number of occasions, and at the initial meetings did not agree with the executors' decision to resolve the issues prior to sale in order to obtain the best possible price from the sale.
17. Mr Chapman's response indicates that he was not aware of the defects in the property as Mr Wormwood had not previously explained this to him.
18. The Committee will need to consider what, if any, further action to take in relation to this issue.

(c) Whether Mr Wormwood promoted and maintained proper standards of professionalism in his dealings with Mr Chapman - Rule 10 of the RCCC

19. Rule 10 of the RCCC requires a lawyer to promote and maintain proper standards of professionalism in his or her dealings.
20. Mr Chapman is concerned about Mr Wormwood's refusal to speak to him or give him any information concerning the administration of the estate of which he is a residuary beneficiary.
21. Mr Wormwood said that it was clear at the outset that Mr Chapman had taken a dislike to him. His co-executor, Cecelia, therefore volunteered to be the point of contact for brother and he had left it to her to take care of most of the direct dealings. She will be providing a narrative of her involvement. This has not yet been received.
22. Mr Wormwood has responded to Mr Chapman's concerns as set out in his letter of complaint as follows:
 - (a) He accepts he has been reluctant to speak to Mr Chapman, but there has been no secrecy. Cecelia has discussed all issues with him.
 - (b) The house was sold after all building works were complete and relevant compliance certificates obtained. He has provided a settlement statement showing the net proceeds of sale. The sum is held in his trust account pending distribution to the beneficiaries.
 - (c) He believes there has been full and competent communication through his co-executor.
 - (d) Technically his advice to his co-executor is privileged, but there is nothing much to any of it. He has provided legal advice and services as required to assist the executors.
 - (e) He has provided copies of all invoices rendered, and the amount of fees charged is summarised in the table attached to his response (Appendix 4). All invoices were paid with the consent and approval of his co-executor.
23. Mr Chapman does not accept that he took a dislike to Mr Wormwood at an early stage. He maintains that Mr Wormwood refused to answer his "common sense" questions, and that Mr Wormwood had been "brusque and rude" with him.
24. The Committee will need to consider what, if any, further action to take in relation to this issue.

Applicable legislation

The conduct in question all took place after 1 August 2008 and accordingly the provisions of the Lawyers and Conveyancers Act 2006 apply.

Recommendation

Options available to the Committee include:

- (a) inquiring into the complaint and calling for further information;
- (b) directing that the parties explore the possibility of resolving the complaint by mediation; and
- (c) taking no further action.

Attached

1. Complaint 01/10/2019
2. Letter NZLS to Mr Wormwood 08/10/2019
3. Letter NZLS to Ms Chapman 08/10/2019
4. Letter Mr Wormwood to NZLS 15/10/2019
5. Letter Mr Chapman to NZLS 20/10/2019
6. LCRO Decision, *Mr IV v Ms DD, Ms EE and Ms FF*, LCRO 272/2012

PATHWAY TWO

WORMWOOD ANGLE BEAVIS

LAW

15 October 2019

Susan Loveys
New Zealand Law Society
AUCKLAND

Dear Ms Loveys

18980: Complaint by Peter Champan

I have received your letter of 8 October 2019, with the complaint materials lodged by Mr Champan.

He has chosen to set out to try to impugn my professionalism. I am unable to let that lie without putting him in his place. That is what he has invited. In that invitation he has made a number of unfounded and quite subjective remarks along with comments based on a quite remarkable and perceptible ignorance of the issues he has chosen to address. He has laced then these remarks with a certain amount of "arm-waving". I am to address all of this in the comments that follow. I shall demonstrate no sympathy for him.

It will become readily apparent that he knows very little about the principal matters that he has decided to comment on. He appears to have placed himself out on a limb with his approach in this complaint and seems to be inviting me to saw that limb off. I shall not hesitate to do so.

Mr Chapman's sister and I were appointed executors of their mother's estate by her will. Since her death and our appointment on [date 2016] we have attempted to realise the assets of the estate, repay its not inconsiderable debts and proceed to distribute the residue to the beneficiaries. Mr Chapman is one of those beneficiaries.

I am a busy man. Mr Chapman does not seem to realise this. His approach pays no heed to my commitments or workload, and has been one to constantly seek to have appointments and meetings with me, even though I have nothing to tell him about the process of administering the estate, and indeed, until the residue is determined he had no entitlement to seek any of the things he seeks from either me, or his sister as the executors.

I have observed this to him on a number of occasions and yet he seems to be deaf to my counsel. His recent approaches to me have become increasingly rude and obnoxious, so much so that his sister has now stopped attempting to deal with him and has referred all of his queries to me.

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On at least two occasions he has presented himself with no appointment at my office and demanded to meet with me. On one of those occasions I was out of Auckland and despite being told this he did not believe my receptionist and demanded to see my empty office for himself. The poor sweet fellow who mans our reception did not know how to handle himself when faced with such a request and I believe showed him into my office to demonstrate my absence. Since that visit I have not been able to locate one of the files relevant to the estate and believe that Mr Chapman may have "uplifted it". If this is so, I would very much like it returned.

I assure the Law Society that both myself and my co-executor are well aware of our duties and obligations in this situation, and are doing our best in a very trying situation.

Mr Chapman will have to wait for us to deal with the matters outstanding and in due course, I will, as I have told him, be in touch with him to deal with the finalisation of his entitlements.

Until then, my client remains the estate, and only the estate. The other executor is comfortable with the services and assistance I have been rendering and has approved payments of all legal invoices rendered to the estate. All invoices comply with the requirements of the RCCC.

Mr Chapman can have no complaint. I urge the Committee to dismiss this complaint swiftly and immediately.

Yours sincerely

J. Wormwood

Jacob Wormwood
Managing Partner

HAND DELIVERED

Ms. Susan Loveys
New Zealand Law Society
Lawyers Complaints Service

Dear Ms. Loveys

Thank you for forwarding Mr. Jacob Wormwood's response to me. All I can say is, I rest my case.

Mr. Wormwood's continuing arrogance towards me as a beneficiary of my late mother's estate can best be seen in the way he has worded his reply. What exactly is his problem? First, has he never been trained in basic human relations. Second, does he specialize in insulting people who have a completely reasonable interest in the distribution of an estate. Third, he says I have stolen a file. I did go into his office with his minion but it was such a shambles I couldn't even find an estate file, let alone think about stealing one.

I must say now, I am truly angry, and whereas before I was prepared to be reasonable in terms of the questions I posed in my letter, now I am seeking for the Law Society to impose a harsh penalty on this Dickensian example of a misguided lawyer (Mr. Jagers he is certainly not). In addition, I am also seeking a formal written apology from Mr. Wormwood at the earliest instance. He is a disgrace to the legal community and should be struck off before he can inflict himself on others.

I would like to thank the Law Society for its evenhandedness in dealing with my complaint in the face of a calculated and unbridled rudeness.

Yours sincerely,

Peter Chapman

Peter Chapman

PS; It would be comforting if Mr. Wormwood checked his correspondence as he has twice misspelt my name. Once beneath the Dear Ms. Loveys and again on his opening line. It doesn't give one much confidence.

AGENDA NOTE

LEGAL STANDARDS OFFICER: Susan Loveys

BEFORE COMMITTEE: Auckland Standards Committee X

MEETING DATE: 22 October 2019

FILE: 18980

Jacob Wormwood – File 18980 - Complaint by Peter Chapman

Issue for consideration

This is an initial consideration pursuant to s137 of the Lawyers and Conveyancers Act 2006 (“LCA”).

Background

1. Mr Peter Chapman is a residuary beneficiary in the estate of his mother, the late Noralee Annie Chapman (“estate”). The executors are Mr Jacob Wormwood and Mr Chapman’s sister, Cecelia. Mr Chapman and Cecelia are the residuary beneficiaries.
2. The deceased passed away on 29 April 2016. It appears that the estate comprised a residential property in Tauranga, shares, and a reasonably substantial bank account. The property has apparently been sold, although there has been no reporting to Mr Chapman. It is unclear what has happened to the shares or the proceeds of the bank account. There has not yet been any distribution to the beneficiaries.
3. Mr Chapman believes that Mr Wormwood has been charging fees to the estate, but he has not been provided with any of the invoices.
4. Mr Chapman says that Mr Wormwood has refused to discuss estate matters with him until all estate matters have been finalised, and has given no indication when this will be. Cecelia has also refused to discuss estate matters, simply referring him to Mr Wormwood.
5. Mr Chapman is concerned about the secrecy. He would like to know what is going on with the estate, when it is going to be distributed and how much Mr Wormwood has charged for his services.

Issues

6. The issues for consideration by the Standards Committee are set out below.
 - (a) *Whether Mr Wormwood provided copies of his invoices to Mr Chapman before or immediately after the fees were debited and, if not, whether he complied with regulation 9(2) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (“TAR”);*
 - (b) *Whether Mr Wormwood acted competently and in a timely manner consistent with the terms of his retainer and the duty to take reasonable care in relation to the administration of the Estate - Rule 3 of the Lawyers and Conveyancers Act (Lawyers Conduct and Client Care) Rules 2008 (“RCCC”);*
 - (c) *Whether Mr Wormwood promoted and maintained proper standards of professionalism in his dealings with Mr Chapman - Rule 10 of the RCCC.*

Examining the issues

(a) Whether Mr Wormwood provided copies of his invoices to Mr Chapman before or immediately after the fees were debited and, if not, whether he complied with regulation 9(2) of the TAR

7. Mr Chapman is concerned that he has not been informed about fees being invoiced to the estate and apparently deducted from the trust account. He has not been provided with any invoices.
8. Regulation 9 of the TAR provides:

Restriction on debiting trust accounts with fees

(1) No trust account may be debited with any fees of a practice (except commission properly chargeable on the collection of money and disbursements) unless—

- (a) a dated invoice has been issued in respect of those fees, and a copy of the invoice is available for inspection by the inspectorate; or*
- (b) an authority in writing in that behalf, signed and dated by the client, specifying the sum to be so applied and the particular purpose to which it is to be applied has been obtained and is available for inspection by the inspectorate.*

(2) If fees are debited under subclause (1)(a), an invoice must be delivered or posted to the person who has a legal or beneficial interest in the trust account to be debited before or immediately after the fees are debited.

9. Mr Wormwood says that he has been rendering invoices to the estate, and these have been approved by the other executor. He apparently does not consider that he is required to provide the invoices to Mr Chapman.
10. The Committee would need to consider whether Mr Chapman, as a residuary beneficiary, had a legal or beneficial interest in the trust account.
11. The Committee is referred to the decision of the LCRO in *Mr IV v Ms DD, Ms EE and Ms FF*¹. The LCRO stated at para 35:

“A beneficiary under a will is beneficially interested in the estate funds, and must therefore be provided with a copy of the invoice. This may come as something of a surprise to many lawyers, but links in with s 160 of the Lawyers and Conveyancers Act 2006 which enables a beneficiary under a will (and others) to complain about a lawyer’s bill of costs.”

12. Mr Wormwood has not provided copies of his invoices. The Committee may wish to consider requiring him to do so.
13. The Committee will need to consider what, if any, further action to take in relation to this issue.

(b) Whether Mr Wormwood acted competently and in a timely manner consistent with the terms of his retainer and the duty to take reasonable care in relation to the administration of the Estate - Rule 3 of the RCCC

14. Rule 3 of the RCCC requires a lawyer, when providing regulated services to a client, to act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.
15. Mr Chapman’s complaint raises an issue of timeliness. This appears to be a relatively simple estate, yet it still has not been distributed. It is now three and a half years since the date of death.

¹ LCRO 272/2012

16. Mr Wormwood has not given a detailed response to this issue. He indicates that there were “*not inconsiderable*” debts, but does not explain what they are, or why they have delayed distribution. It may be necessary to review his file.

17. The Committee will need to consider what, if any, further action to take in relation to this issue.

(c) Whether Mr Wormwood promoted and maintained proper standards of professionalism in his dealings with Mr Chapman - Rule 10 of the RCCC

18. Rule 10 of the RCCC requires a lawyer to promote and maintain proper standards of professionalism in his or her dealings.

19. Mr Chapman is concerned about Mr Wormwood’s refusal to speak to him or give him any information concerning the administration of the estate of which he is a residuary beneficiary.

20. Mr Wormwood says that he and his co-executor are doing their best in a very trying situation. However, he has not expanded on what makes the situation trying. He considers that his client is the estate and the executors and that his is not required to report to Mr Chapman. He accuses Mr Chapman of being “*increasingly rude and obnoxious*” and has accused him of “*uplifting*” a file without his permission.

21. The Committee will need to consider what, if any, further action to take in relation to this issue.

Applicable legislation

The conduct in question all took place after 1 August 2008 and accordingly the provisions of the Lawyers and Conveyancers Act 2006 apply.

Recommendation

Options available to the Committee include:

- (a) inquiring into the complaint and calling for further information;
- (b) directing that the parties explore the possibility of resolving the complaint by mediation; and
- (c) taking no further action.

Attached

- | | |
|---|------------|
| 1. Complaint | 01/10/2019 |
| 2. Letter NZLS to Mr Wormwood | 08/10/2019 |
| 3. Letter NZLS to Ms Chapman | 08/10/2019 |
| 4. Letter Mr Wormwood to NZLS | 15/10/2019 |
| 5. Letter Mr Chapman to NZLS | 20/10/2019 |
| 6. LCRO Decision, <i>Mr IV v Ms DD, Ms EE and Ms FF</i> , LCRO 272/2012 | |

PATHWAY THREE

AGENDA NOTE

LEGAL STANDARDS OFFICER:	Susan Loveys
BEFORE COMMITTEE:	Auckland Standards Committee X
MEETING DATE:	22 October 2019
FILE:	18980

Jacob Wormwood – File 18980 - Complaint by Peter Chapman

Issue for consideration

This is an initial consideration pursuant to s137 of the Lawyers and Conveyancers Act 2006 (“LCA”).

Background

1. Mr Peter Chapman is a residuary beneficiary in the estate of his mother, the late Noralee Annie Chapman (“estate”). The executors are Mr Jacob Wormwood and Mr Chapman’s sister, Cecelia. Mr Chapman and Cecelia are the residuary beneficiaries.
2. The deceased passed away on 29 April 2016. It appears that the estate comprised a residential property in Tauranga, shares, and a reasonably substantial bank account. The property has apparently been sold, although there has been no reporting to Mr Chapman. It is unclear what has happened to the shares or the proceeds of the bank account. There has not yet been any distribution to the beneficiaries.
3. Mr Chapman believes that Mr Wormwood has been charging fees to the estate, but he has not been provided with any of the invoices.
4. Mr Chapman says that Mr Wormwood has refused to discuss estate matters with him until all estate matters have been finalised, and has given no indication when this will be. Cecelia has also refused to discuss estate matters, simply referring him to Mr Wormwood.
5. Mr Chapman is concerned about the secrecy. He would like to know what is going on with the estate, when it is going to be distributed and how much Mr Wormwood has charged for his services.
6. There has been no reply by Mr Wormwood to the complaint. He has not responded to recent emails reminding him of the Committee’s meeting.

Issues

7. The issues for consideration by the Standards Committee are set out below.
 - (a) *Whether Mr Wormwood provided copies of his invoices to Mr Chapman before or immediately after the fees were debited and, if not, whether he complied with regulation 9(2) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (“TAR”);*
 - (b) *Whether Mr Wormwood acted competently and in a timely manner consistent with the terms of his retainer and the duty to take reasonable care in relation to the administration of the Estate - Rule 3 of the Lawyers and Conveyancers Act (Lawyers Conduct and Client Care) Rules 2008 (“RCCC”);*
 - (c) *Whether Mr Wormwood promoted and maintained proper standards of professionalism in his dealings with Mr Chapman - Rule 10 of the RCCC.*

Examining the issues

(a) Whether Mr Wormwood provided copies of his invoices to Mr Chapman before or immediately after the fees were debited and, if not, whether he complied with regulation 9(2) of the TAR

8. Mr Chapman is concerned that he has not been informed about fees being invoiced to the estate and apparently deducted from the trust account. He has not been provided with any invoices.
9. Regulation 9 of the TAR provides:

Restriction on debiting trust accounts with fees

- (1) *No trust account may be debited with any fees of a practice (except commission properly chargeable on the collection of money and disbursements) unless—*
 - (a) *a dated invoice has been issued in respect of those fees, and a copy of the invoice is available for inspection by the inspectorate; or*
 - (b) *an authority in writing in that behalf, signed and dated by the client, specifying the sum to be so applied and the particular purpose to which it is to be applied has been obtained and is available for inspection by the inspectorate.*
- (2) *If fees are debited under subclause (1)(a), an invoice must be delivered or posted to the person who has a legal or beneficial interest in the trust account to be debited before or immediately after the fees are debited.*

10. The absence of any response from Mr Wormwood makes this aspect difficult to advance. The Committee does not know if any invoices have been rendered. The Committee may wish to require Mr Wormwood to provide his file.
11. On the assumption that invoices had been rendered, the Committee would need to consider whether Mr Chapman, as a residuary beneficiary, had a legal or beneficial interest in the trust account.
12. The Committee is referred to the decision of the LCRO in *Mr IV v Ms DD, Ms EE and Ms FF*¹. The LCRO stated at para 35:

“A beneficiary under a will is beneficially interested in the estate funds, and must therefore be provided with a copy of the invoice. This may come as something of a surprise to many lawyers, but links in with s 160 of the Lawyers and Conveyancers Act 2006 which enables a beneficiary under a will (and others) to complain about a lawyer’s bill of costs.”

13. The Committee will need to consider what, if any, further action to take in relation to this issue.

(b) Whether Mr Wormwood acted competently and in a timely manner consistent with the terms of his retainer and the duty to take reasonable care in relation to the administration of the Estate - Rule 3 of the RCCC

14. Rule 3 of the RCCC requires a lawyer, when providing regulated services to a client, to act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.
15. Mr Chapman’s complaint raises an issue of timeliness. This appears to be a relatively simple estate, yet it still has not been distributed. It is now three and a half years since the date of death.
16. Mr Wormwood’s lack of reply does not assist the Committee in dealing with this aspect.

¹ LCRO 272/2012

17. The Committee will need to consider what, if any, further action to take in relation to this issue.

(c) Whether Mr Wormwood promoted and maintained proper standards of professionalism in his dealings with Mr Chapman - Rule 10 of the RCCC

18. Rule 10 of the RCCC requires a lawyer to promote and maintain proper standards of professionalism in his or her dealings.

19. Mr Chapman is concerned about Mr Wormwood's refusal to speak to him or give him any information concerning the administration of the estate of which he is a residuary beneficiary.

20. Mr Wormwood's lack of reply does not assist the Committee in dealing with this aspect.

21. The Committee will need to consider what, if any, further action to take in relation to this issue.

Applicable legislation

The conduct in question all took place after 1 August 2008 and accordingly the provisions of the Lawyers and Conveyancers Act 2006 apply.

Recommendation

Options available to the Committee include:

- (a) inquiring into the complaint and calling for further information;
- (b) directing that the parties explore the possibility of resolving the complaint by mediation; and
- (c) taking no further action.

Attached

- | | |
|---|------------|
| 1. Complaint | 01/10/2019 |
| 2. Letter NZLS to Mr Wormwood | 08/10/2019 |
| 3. Letter NZLS to Ms Chapman | 08/10/2019 |
| 4. Letter Mr Wormwood to NZLS | 15/10/2019 |
| 5. Letter Mr Chapman to NZLS | 20/10/2019 |
| 6. LCRO Decision, <i>Mr IV v Ms DD, Ms EE and Ms FF</i> , LCRO 272/2012 | |

Auckland Standards Committee X

In the Matter of Part 7 of the Lawyers and Conveyancers Act
2006

And

In the Matter of Complaint No. 18980

Peter Chapman against Jacob Wormwood

Notice of Hearing of Complaint

This complaint is to be the subject of a hearing before Auckland Standards Committee X. The hearing is to be conducted on the papers, which means that the complainant and the lawyer complained about cannot attend the hearing.

You and every other party to whom this notice is given are entitled to make submissions to the Standards Committee in writing. You may make those submissions yourself or they may be made by your lawyer.

Submissions should address any matters of fact or law the party believes should be taken into account including:

1. The issues raised by the alleged conduct itself, such as:
 - (i) *Whether Mr Wormwood provided copies of his invoices relating to the administration of the estate of Noralee Chapman to Mr Chapman (as a residuary beneficiary) before or immediately after the fees were debited and, if not, whether he complied with regulation 9(2) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008;*
 - (ii) *Whether Mr Wormwood acted competently and in a timely manner consistent with the terms of his retainer and the duty to take reasonable care in relation to the administration of the estate of Noralee Chapman as required by Rule 3 of the Lawyers and Conveyancers Act (Lawyers Conduct and Client Care) Rules 2008 ("RCCC");*
 - (iii) *Whether Mr Wormwood promoted and maintained proper standards of professionalism in his dealings with Mr Chapman as required by Rule 10 of the RCCC.*

The issues will be considered by the Standards Committee individually and collectively.

2. The appropriate orders the Standards Committee may make under s 156 of the Lawyers and Conveyancers Act 2006, if there is a finding of unsatisfactory conduct.
3. The possibility of publication of the determination or decision (facts, reasoning and outcome) as directed by the Standards Committee or a summary thereof pursuant to s142(2) of the Lawyers and Conveyancers Act 2006.

4. The possibility of charges being laid with the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.

If the Standards Committee wishes to direct publication of the identity of the person complained about the parties will be given a separate opportunity to make submissions on that issue.

Your submissions should be delivered to Auckland Standards Committee X by:

5.00 pm on 8 November 2019

Submissions should be sent by post or email to:

New Zealand Law Society Lawyers Complaints Service
Auckland Office
PO Box 4417, Shortland Street, Auckland 1140
DX CX10008

Email: susan.loveys@lawsociety.org.nz

Susan Loveys
Legal Standards Officer
for and on behalf of Auckland Standards Committee X

Date: 22 October 2019

To: Jacob Wormwood

Peter Chapman