

**DECISION OF THE DISCIPLINARY COMMITTEE
COMPLAINT NO. 175/2002**

CARLENE PETERS

COMPLAINANT

E.H.WILLIAMS

RESPONDENT-ATTORNEY-AT-LAW

PANEL

PAMELA BENKA-COKER Q.C.
GEORGE MAGNUS
LILITH DEACON

MS. DANIELLA GENTLES FOR THE COMPLAINANT. THE RESPONDENT ATTORNEY DID NOT APPEAR AT THE HEARING, NOR WAS SHE REPRESENTED.

Hearing dates, the 13th November 2004 and the 30th September 2005

BACKGROUND HISTORY: The complainant Carlene Peters became a client of the attorney Ericson H. Williams in or around 1996, and the client attorney/relationship ended in August 2002. Carlene Peters will hereinafter be referred to as the "complainant," and the attorney as "the respondent." The respondent first represented the complainant in a Family Court case, and then on charges of obtaining by false pretences, while concurrently representing the complainant in relation to the sale of property. The respondent then operated her practice from 3 King Street, Montego Bay in the parish of St.James.

In the year 1998, the complainant was arrested for allegedly obtaining money by false pretences. She appeared in the Resident Magistrates' Court for the parish of St. James on these charges, which consisted of 84 counts on the indictment. These charges arose out of a business, which the complainant operated with her then husband Franklyn Peters, which business was an employment agency and a hospitality-training centre. The complainant pleaded guilty to the charges, in the year 2002, but prior to that, she had undertaken to repay the persons whom she had allegedly defrauded. The Resident Magistrate who had presided in the case gave the complainant time to repay the funds.

In order to facilitate this repayment, she decided to sell property jointly owned by herself and her husband, who had fled the island, and left her alone with the problem of securing the funds to fulfill her undertaking. This property was situated at Chelsea Drive, Montego Bay, in the parish of St.James. The respondent acted for the complainant in the sale of this property, and therefore had carriage of sale. A number of proposed sale agreements fell through, but one was finally entered into between the complainant and one Mr. Clive Service for whom the respondent also acted.

The arrangement between the complainant and Mr. Service was that she could use the deposit paid under the agreement to make certain payments. These payments included the sums owed to the persons to whom the complainant owed monies arising out of the criminal charges laid against her. The respondent was privy to the arrangement between the complainant and Mr. Service as to the use of the deposit, prior to completion. The amount paid as the deposit was \$550,000.00. This sum was paid over to the attorney in January 1999. The complainant and Mr. Service signed this agreement in 1999. The husband was not a signatory to the agreement.

The relationship between the complainant and the respondent started deteriorating when the complainant appeared in court on the 22nd August 2002 to make restitution to the complainants in the criminal charges. The respondent, who should have appeared on her behalf, failed to appear in court. The respondent was responsible for producing the relevant sum from the cheque paid to her by Mr. Service, to be paid to the complainants.

The complainant's bail was revoked and the Resident Magistrate remanded her in custody. The case was fixed for the following day but the attorney again failed to appear in court on the complainant's behalf. On the 26th August 2002, the respondent appeared in court but did not bring the money to be paid to the complainants. The complainant was again remanded in custody until the 27th August 2002. On that date, the respondent appeared in court on behalf of the complainant and paid into court on behalf of the complainant a sum of about \$119,000.00 to be paid over to the complainants in the criminal charges.

The respondent also paid a fine of \$84,000.00 to the court in relation to the said charges. Upon payment of these sums the complainant was released from custody. It is then that the respondent told the complainant, that she no longer wished to continue representing her. The complainant orally and in writing, asked the attorney to return the duplicate certificate of title to the premises at Chelsea Drive, as well as to give her the balance of the deposit paid to her by Mr. Service and which the attorney had received from January 1999. The attorney never complied with these requests.

The issues in this complaint were further complicated by the death of Mr. Service in the year 2000. He left infant dependants, and so the Administrator General's Department is responsible for administering his estate. This Department is now seeking a refund of the deposit paid by Mr. Service, as it is not interested in completing the sale on behalf of his estate. The complainant has to account to the Administrator General's Department for the said deposit.

THE COMPLAINT

On the 28th day of February 2003, the complainant swore to an affidavit against the respondent in which she set out the facts on which she relied to base her complaint. Having recounted the facts she set out a synopsis of her complaints, which are as follows:

- 1 the attorney charged her fees that were not fair and reasonable.

- 2 She withdrew from her employment without taking reasonable steps to avoid foreseeable prejudice or injury to her position and rights as her client.
- 3 Having withdrawn from her employment, the respondent has not refunded such part of the fees paid in advance as may be fair and reasonable
- 4 She has not accounted to her for all money in her hands for her account or credit although the complainant has required the respondent to do so.
- 5 On the first date for the hearing of this complaint, the attorney for the complainant applied to amend the affidavit by adding a 5th charge which was that " the attorney had acted with inexcusable and deplorable negligence in the performance of her duties contrary to cannon 4(s) of the Legal Profession (Canons of Professional Ethics)Rules.

The complaint came up for hearing before a panel of the Disciplinary Committee on the 13th November 2004 and the 30th September 2005. On each occasion the panel satisfied itself that the respondent attorney had been properly served with the Notice of Hearing in compliance with the provisions of Rule 5 of the Fourth Schedule to the Legal Profession Act.

On determining that proper service of the Notice of hearing had been effected on the respondent, the panel decided to commence hearing the complaint in the absence of the respondent attorney as it is permitted to do by rule 8 of the Fourth Schedule. The hearing first commenced on the 13th November 2004. The complainant then gave evidence.

EVIDENCE OF THE COMPLAINANT: The complainant stated that she lives at Junction, in the parish of St.Elizabeth and that she is a songwriter. She knew the attorney E.H. Williams who was her attorney up until August 27th 2002. The respondent represented her in a slander case, a Family Law case, assault charges, and charges of obtaining by false pretences.

In 1998, she was running a hospitality training centre, and a business school. These various businesses were known as Wildfire Music School, Wildfire Hospitality Training Centre, and Wildfire Employment Agency. She ran these businesses with her husband, Franklyn Peters. The businesses fell into financial trouble because her husband had an affair with the secretary, and the husband was the manager of the businesses. The complainant was arrested in February 1998 for the offence of obtaining by false pretences. The total sum in relation to which she was charged was Ja. \$300,000.00 and a sum of \$300 U.S.

The respondent sent her representative, one Mr. Malcolm, to see the complainant while she was in custody. Mr. Malcolm took a statement from her, and advised her that the respondent said that she would represent her on the false pretences charges for \$30,000.00. The complainant told him that she had no money to pay up front, but she would sell property in Chelsea, St.James and pay the respondent her fees. This property is half an acre of land.

The complainant appeared in the Resident Magistrates' Court in Montego Bay, and was granted bail. Her husband, now her ex-husband, had run away, so he was never arrested on any criminal charges. The Resident Magistrate gave the complainant time to secure the funds to permit her to make restitution to the complainants in the criminal prosecution. She was charged on 84 counts of obtaining money by false pretences.

The respondent had also agreed with the complainant that she would act for her in the sale of the land at Chelsea, from the proceeds of which, the complainant would make restitution to the complainants in the criminal cases. The respondent prepared several agreements for sale. One to Mr. & Mrs. Campbell which was admitted in evidence as exhibit 1. The next agreement for sale was one to Mr. & Mrs. Gordon. This agreement was tendered as exhibit 2.

One ultimately bore fruit, that is the sale to Mr. Clive Service. This agreement, which is undated, but was entered into in 1999, was admitted in evidence as exhibit 3. This agreement is at **pp 13-15 of exhibit 1A**, which is the bundle of documents produced and relied on by the complainant. The complainant accompanied Mr. Service to the bank, where he obtained a manager's cheque in the sum of \$550,000.00 made payable to E.H. Williams & Co. the respondent's firm. The complainant then went with Mr. Service to the respondent's offices, and the cheque was delivered to one Ms. Soares, who at that time was an attorney in the offices of the respondent. The attorney, Ms. Soares, received the cheque on behalf of the respondent, and gave a receipt to ~~the~~ Mr. Service for that sum. This receipt was admitted as exhibit 4 and is at **p 17 of exhibit 1A**.

The respondent appeared in court several times on behalf of the complainant, but the case was never tried, as the complainant was trying to secure the funds to make restitution. During that time the complainant kept asking the court for more time to find the funds, hoping that the property at Chelsea Drive would be sold.

The duplicate certificate of title in relation to Chelsea Avenue registered at Volume 1146 Folio 952 was admitted in evidence as exhibit 5. This copy of the title is at **p 16 of exhibit 1A**. The complainant said that, the sale to Mr. Service was a cash sale, and that there was no mortgage on the property. She also spoke to an agreement that was made between her and Mr. Service, under which, Mr. Service gave the complainant, through her attorney, the respondent, the authority to pay out certain sums of money on her own behalf, including the sums owed to the complainants in the charges against her for obtaining money by false pretences. This agreement was reduced into writing, is dated the 20th February 2000 and was admitted as exhibit 6. **This exhibit is at p 18 of exhibit 1A.**

The respondent prepared the agreement. A sum of \$50,000.00 was to be paid to Chandra Soares & Co. town agents for the respondent. This was to institute proceedings under the Married Women's Property Act to enable the sale of the Property at Chelsea Drive, the title to which was jointly registered in the names of the complainant, and her husband Franklyn Peters.

The respondent did indeed disburse certain sums from the amount of the deposit paid over by Mr. Service under the agreement for sale. The complainant stated that the following sums were paid.

1	To make restitution	\$119,000.00
2	Court Fine	\$084,000.00
3	Cost of manager's cheque	\$01,000.00
4	Bailiff's fees	\$04,500.00
5	Attorney's fees payable to respondent on criminal charge of obtaining by false pretences	\$30,000.00
6	Attorney's fees payable to respondent in custody case	\$10,000.00
7	Attorney's fees payable to respondent in assault case	\$10,000.00
8	Attorney's fees payable to Chandra Soares & Co.	\$10,000.00

The above sums represent the amounts that ought to have been deducted by the respondent from the deposit paid by Mr. Service pursuant to the agreement for sale of the property at Chelsea Drive. These sums stated by the complainant amounted to \$268,500.00. The complainant however, said that the total sum that the respondent ought to have deducted was about \$280,000.00.

The complainant also gave evidence that she was to appear in court on the 22nd August 2002 for her to repay the complainants, the sums due to them under the charges of obtaining money by false pretences. The respondent attorney was supposed to have brought the funds to court to effect this repayment. These funds were to come from the deposit of \$550,000.00, which had been paid to the respondent in January of 1999.

The respondent did not appear in court as she was supposed to have done. The Resident Magistrate revoked the complainant's bail, and the case was put for the following day. The respondent again failed to appear in court to represent the complainant. The case was again adjourned to the 26th August 2002, and the complainant was again remanded in custody.

On the 26th August 2002, the respondent did appear in court, but she did not take the money to enable a refund to the complainants in the criminal case. The complainant again had to remain in custody until the 27th August 2002. On that date the respondent

appeared in court on the complainant's behalf and paid into court a manager's cheque in the amount of \$119,000.00 which was to be paid to the complainants in the criminal case. She also paid a fine of \$84,000.00 on behalf of the complainant. A receipt was given evidencing payment of the fine. This receipt is exhibit 7 and is at p 19 of exhibit 1A. The cheque stubs to the manager's cheques paid by the respondent for the complainant are at p20 of exhibit 1A.

A number of other documents were put in evidence, which are part of exhibit 1A. Exhibit 8 is the statement of account presented to the complainant by Chandra Soares & Co. which is dated the 15th January 2005. This statement indeed indicates that a sum of \$10,000.00 was paid to that firm towards fees. That firm was trying to make it possible for the complainant to sell Chelsea Avenue in spite of the fact that she was not the only registered proprietor. Exhibit 9 is at pp 26-27 and is a copy of the court order dated the 10th June 2003 by which the court "inter alia" ordered the sale of the property at Chelsea, Irwin, owned by the complainant and Franklyn Peters to be sold.

The complainant further stated after the death of Clive Service, the sale was never completed, as the Administrator General's Department had taken over the administration of Mr. Service's estate, and had indicated that it did not intend to complete the sale. This letter is at p 25 of exhibit 1A and is exhibited as 10. In this letter, the AGD also seeks a refund of the sum of \$550,000.00 paid by Mr. Service as a deposit under the agreement for sale between the complainant and himself.

By letter dated the 9th October 2002, at p 20 of exhibit 1A and exhibited as 11, the AGD wrote to the respondent advising her that the purchaser of Chelsea, Mr. Clive Service had died intestate leaving minor children, and that department was administering his estate. The letter referred to the agreement for sale between the complainant and Mr. Service, and asked that the respondent supply them with certain information to permit the AGD to make a decision in relation to the sale.

The complainant further stated, that by letter dated the 27th March 2003, the AGD wrote to her and asked that she refund the sum of \$550,000.00 paid on her behalf to the respondent by Mr. Service. She then sold the premises at Chelsea to another purchaser. The intention was to try to repay the sum demanded by the A.G.D. from the proceeds of that sale. The new attorney -at-law acting for her in that sale is one Mr. Ray Nortcliffe Edwards. This attorney has given an undertaking to the A.G.D. to refund the sum paid by Mr. Service.

In September 2002, the complainant had written to the respondent asking for the return of the duplicate certificate of title to the property at Chelsea and the refund of the balance of the deposit held to her account. This letter was exhibited as 13 but is not in exhibit 1A. The respondent did not respond to this letter from the complainant, nor did she receive the title. She has never received the balance of the sum of \$550,000.00 from the respondent, which she estimates at \$260,000.00. She has never received a statement of account from the attorney in relation to the sum paid as a deposit by Mr. Service.

The complainant also stated that she telephoned the respondent attorney and she said "I do not business with you" and the respondent hung up the telephone.

The complainant also advised the panel that the respondent still has offices at 3 King Street, Montego Bay in the parish of St.James. She has an attorney working in the offices for her. She saw the offices open up to the week before the 30th September 2005.

By letter dated the 5th February 2004, **see p 28 of exhibit A**, the AGD wrote to the respondent "inter alia" requesting that she place the funds held from the deposit paid by Mr. Service on an interest bearing account pending the application for letters of administration by the AGD.

By letter of even date, the AGD wrote to Chandra Soares and Company, **see p 29 of exhibit 1A**, seeking confirmation of the fact that an order had been obtained on behalf of the complainant, permitting her to sell the property which she had agreed to sell to Mr. Service, in spite of the fact that the complainant's husband's name was on the title, and he had not signed the agreement for sale.

The AGD, in the said letter advised, that it had "received nothing in writing from the respondent attorney-at-law confirming the amount, if any, being held from the deposit money paid by the captioned deceased." The letter also stated that the AGD would be looking to the complainant for a refund of the funds paid by Mr. Service as deposit. The AGD also advised that it would not be seeking specific performance of the contract and sought an undertaking from Chandra Soares & Company of the sum to secure the refund of \$550,000.00.

EVIDENCE OF STACIE ANN PINNOCK: this witness stated that she is an attorney-at-law attached to the AGD, with offices at 12 Ocean Boulevard in the parish of Kingston. She is employed as a legal officer within the Legal Services Department. She is familiar with the estate Clive Service. The AGD is administering the estate. Mr. Service died on the 15th October 2000.

She knew that Mr. Service had entered into an agreement with Carlene Peters to purchase land at Irwin in St.James. This land is registered at Volume 1146 Folio 952 of the Register Book of Titles. (The witness was allowed to refresh her memory from her file re the said estate of Clive Service.). She further stated that from the records she noticed that the sale had never been completed. She confirmed that the AGD had written to the respondent and referred to exhibit 11, She also referred to letter at **p 28 of exhibit 1A**, in which letter the AGD had asked that any sums that the respondent attorney had on account relative to the said estate, be placed on an interest bearing account.

On a search of the file, the witness did not see that the Letters of Administration had been granted in relation to the estate. The respondent attorney had never confirmed to the AGD what sum if any stood to the account of Mr. Service as a consequence of his having deposited the sum of \$550,000.00 with the attorney in January 1999. She has never confirmed that she placed this sum on an interest bearing account as requested by the A.G.D. By letter dated 7th July 2004, the A.G.D. received an undertaking from an

Attorney-at law Ray Norcliffe Edwards that on completion of the then sale of the property he would refund the sum of \$550,000.00 due to the estate of Clive Service to the A.G.D. This undertaking is exhibit 12.

EVALUATION OF THE EVIDENCE: The only evidence on which the panel is obliged to deliberate, is that adduced for and on behalf of the complainant. The respondent did not appear at either of the scheduled hearing dates, nor did the panel receive any explanation for her absence.

The panel finds that the complainant was a credible witness whose evidence was supported in material particulars by documentary evidence. Her witness Ms. Pinnock was a disinterested person whose evidence related to the affairs of the estate Clive Service. It is therefore left to us to determine if the evidence has persuaded us to the standard of proof required that the salient allegations in the complaint have been proven.

BURDEN OF PROOF: the burden of proof is on the complainant to provide the panel with evidence to prove her complaint.

THE STANDARD OF PROOF. The standard of proof in all cases alleging professional misconduct against an attorney is "beyond reasonable doubt". Contrary to dicta in the case of **Bhandari v Advocates Committee 1956 1 WLR p 452**, which had suggested a duality of standards depending on whether deceit or moral turpitude is alleged or allegations of less gravity, where the standard would be on a balance probabilities, it is now clear that the standard of proof is beyond reasonable doubt. See the recent Privy Council case **73/2001 of Winston Campbell v Davida Hamlet (as executrix of Simon Alexander)**.

This case definitively states that the standard of proof is that of "beyond reasonable doubt." See paragraph 16 of the said judgment, which states "that the criminal standard of proof is the correct standard to be applied in all disciplinary proceedings concerning the legal profession, their Lordships entertain no doubt. If and insofar as the Privy Council in **Bhandari v Advocates Committee** may be thought to have approved some lesser standard, then that decision ought no longer, nearly fifty years on, to be followed.

It is now necessary to examine the charges as set out in the affidavit in support of the complaint in order. In the paragraph of this judgment intituled "Complaint", the charges against the respondent are listed. They will be examined sequentially to determine if each has been supported by the evidence to the requisite standard.

- 1 The panel agrees with counsel for the complainant that the charge at (1) is not proven to the required standard of proof. We therefore find that the charge against the respondent, that she charged the complainant fees that were not fair and reasonable should be dismissed.
- 2 The panel also agrees with counsel for the complainant, that the complaint listed at 3 is not supported by the evidence and should be dismissed. The evidence does not support the charge that "having withdrawn from the

complainant's employment, the respondent has not refunded such part of the fees paid in advance as may be fair and reasonable"

- 3 There are 3 other charges, which will warrant findings of fact and mixed law and fact to be made.

CHARGE NO. 2: THE LAW: Canon 1V (n) lists the circumstances in which an attorney may properly withdraw from the client's employment and canon 1V (0) states "An attorney who withdraws from employment by virtue of any of the provisions of canon 1V(n) shall not do so until he has taken reasonable steps to avoid foreseeable prejudice or injury to the position and rights of his client including-

- (i) giving due notice
- (ii) allowing time for the employment of another attorney
- (iii) delivering to the client all documents and property to which he is entitled;
- (iv) complying with such laws, rules or practice as may be applicable; and
- (v) where appropriate obtaining permission of the Court where the hearing of the matter has commenced.

FINDINGS: 1 On the 27th August 2002 the respondent withdrew from the employment of the complainant after she was released from custody.

- 2 The complainant requested from the respondent, the return of the duplicate certificate of title in relation to the property at Irwin registered at Volume 1146 Folio 952 of the Register Book of Titles and the balance of the deposit paid to the respondent by Mr. Clive Service.
- 3 This request was made in writing as well as orally. See exhibit 13 for the letter written to the respondent by the complainant. This letter is not part of exhibit 1A.
- 4 The respondent did not reply to the complainant, nor did she send the duplicate certificate of title to her.
- 5 The respondent did not present a statement of account to the complainant, nor did she advise her of the amount if any forming the balance of the deposit held by the respondent, to the complainant's account, nor has she sent any part of the balance of the deposit to the complainant.
- 6 The sale to Mr. Clive Service was cancelled by the AGD.
- 7 The AGD demanded the return of the deposit from the complainant. See letter dated the 27th March 2003, at p 40 of exhibit 1A.
- 8 The deposit was paid to the respondent, who received it on behalf of the complainant, who was the vendor under the agreement for sale with Mr. Clive Service.

- 9 In law, the deposit became the property of the complainant after the agreement for sale was signed.
- 10 In the light of the cancellation of the sale agreement, it is the primary responsibility of the complainant to pay over the sum of \$550,000.00 to the AGD which is now acting for the estate Clive Service.
- 11 The complainant entered into a subsequent agreement for sale to sell the property at Irwin.
- 12 The duplicate certificate of title, which is still in the possession of the respondent, is necessary to complete this new sale.
- 13 The complainant has been severely prejudiced by the failure of the respondent to return the duplicate of title to complete the new agreement for sale.
- 14 The complainant has been severely prejudiced by the respondent having failed to provide her with a statement of account as to how the deposit was dealt with, and how much of it was used to pay off the liabilities of the complainant in the criminal suit and how much of it represents fees charged by the respondent.
- 15 The respondent has placed the complainant in the position of having to find the full sum of \$550,000.00 plus interest to pay to the AGD, when any sum standing to her account with the attorney could be turned over to the AGD in partial satisfaction of the sum due to the estate of Clive Service.
- 16 In light of the above findings, the panel is of the view that the complainant has established by the evidence, to a standard of proof of "beyond reasonable doubt," that the respondent attorney Ericson H Williams is guilty of professional misconduct pursuant to section 12(1) of the Legal Profession Act in that she has breached canon 1V (o) of the Legal Profession(Canons of Professional Ethics)Rules.

COMPLAINT NO. 4: this charge alleges a breach of canon V11 (b) (ii) of the Legal Profession(Canons of Professional Ethics) Rules. This canon states " An Attorney shall account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably required to do so and he shall for these purposes, keep the said accounts in conformity with the regulations which may from time to time be prescribed by the General Legal Council."

It should be noted here that canon V11(b) (1) demands that " The attorney keep such accounts as shall clearly and accurately distinguish the financial position between himself and his client as and when required."

The Legal Profession(Accounts and Records)Regulations of 1999, give detailed mandates to attorneys as to the manner in which funds and property belong to clients and third parties are to be maintained.

FINDINGS:

- 1 Mr. Clive Service paid over the sum of \$550,000.00 by manager's cheque to the respondent in January 1999.
- 2 This sum represented the deposit paid by Mr. Service under the agreement for sale to purchase land known as Chelsea, at Irwin, in the parish of St.James. The respondent had carriage of sale.
- 3 The vendor under the said agreement for sale was the complainant.
- 4 In the year 1998, the complainant was arrested on a number of charges of "obtaining money by false pretences".
- 5 The Resident Magistrate before whom she appeared gave her time to secure the funds to repay the complainants in the criminal case.
- 6 The complainant, with a view to getting the funds to fulfill her undertaking to the court to repay these sums, entered into the agreement for sale with Mr. Service.
- 7 Mr. Service had agreed in writing with the complainant that she could use the deposit to repay the sums due in order to facilitate a resolution of the criminal charges. **See the authority at p 18 of exhibit 1A.**
- 8 The direct authority to so utilize the deposit was given to the respondent.
- 9 In August 2002, after the complainant appeared in the Resident Magistrates Court for the parish of St. James, and was remanded in custody on several occasions, because she had not yet paid the monies in relation to the criminal charges, the respondent paid over the sums needed to secure the freedom of the complainant.
- 10 She also paid attorney's fees from the said deposit. The respondent therefore paid a total sum of approximately \$280,000.00 from the sum of \$550,000.00 paid by Mr. Clive Service.
- 11 There should therefore be a balance of \$270,000.00 in the possession of the respondent attorney standing to the account of the complainant.
- 12 The respondent terminated her employment with the complainant on or around the 27th August 2002.
- 13 By letter dated the 19th September 2002, the complainant demanded the balance of the deposit standing to her account and the return of the relevant duplicate certificate of title.
- 14 The respondent has not, to the date of the completion of the hearing, returned the duplicate certificate of title to the complainant, nor has she paid over to her, the balance of the deposit standing to her account in the possession, of the respondent.
- 15 The respondent has not accounted to the complainant for the sums standing to her account in her possession
- 16 The respondent has not provided the complainant with a statement of account recounting the disbursements from the account and any balance remaining.

- 17 She has not paid over any balance due to the complainant after disbursements from the deposit of \$550,000.00.
- 18 The respondent was holding the deposit in trust for the complainant, and to her order, as from the signing of the agreement, the deposit became the property of the complainant who was the vendor.
- 19 The respondent is under a duty to account to the complainant for the deposit.
- 20 Further the respondent has given the AGD no information as to how the deposit was disbursed and any balance left, or if she has placed any sum in an interest bearing account.

In the light of the within findings, the panel finds that the respondent attorney-at-law has breached canon V11(b) (ii) of the Legal Profession(Canons of Professional Ethics) Rules in that she failed to account to the complainant as to the use of the deposit of \$550,000.00 when she was reasonably required to do so. She is guilty of professional misconduct contrary to section 12 of the Legal Profession Act.

COMPLAINT NO. 5 this allegation is that the respondent acted with “ inexcusable and deplorable negligence or neglect in the performance of her duties” contrary to canon 1V (s) of the Legal Profession (Canons of Professional Ethics) Rules.

FINDINGS:

- 1 The respondent was retained by the complainant to appear for her on charges of obtaining money by false pretences in the Resident Magistrates Court for the parish of St. James.
- 2 The respondent was aware that the complainant had agreed to refund the sums due to the complainants in these criminal charges.
- 3 The sum of \$550,000.00 was paid over to the respondent by Mr. Clive Service in January of 1999, as deposit under the agreement for sale between the complainant and Mr. Service.
- 4 By written authority dated the 20th September 2000, Mr. Service gave the respondent permission to settle the sums owed by the complainant in relation to the criminal charges from the deposit paid.
- 5 The Court had given the complainant time to secure the funds in order for her to make restitution to the complainants in the criminal charges.
- 6 The respondent knew that the deposit was to be utilized to make restitution.
- 7 On the 22nd August 2002 the complainant appeared in court for the specific purpose of making restitution to the complainants under the criminal charges.
- 8 The respondent failed to appear in court on behalf of the complainant, and failed to bring the sums necessary to make restitution to the complainants in the criminal charges.
- 9 As a consequence of this failure the complainant was remanded in custody pending the restitution of the sums in the criminal charges.
- 10 The respondent did not appear in court until the 26th of August 2002, and on that day she did not take the funds to enable the complainant to make

- restitution to the complainants in the criminal cases. The complainant was again remanded in custody on that date because restitution was not made.
- 11 On the 27th August 2002, the respondent appeared in court on behalf of the complainant, and paid the funds necessary to make restitution to the complainants in the criminal charges.
- 12 These funds were paid from the deposit made by Mr. Service under the agreement for sale entered into with the complainant.
- 13 The Resident Magistrate then released the complainant from custody.
- 14 It was the respondent's duty in law to appear in court on the scheduled date to represent the complainant.
- 15 It was the respondent's duty in law to ensure that the funds were taken to court in order to make restitution to the complainants in the criminal charges against the complainant.
- 16 As a consequence of the respondent's inexcusable and deplorable negligence or neglect in the performance of her duties, the complainant was deprived of her liberty for five days.
- 17 The respondent is in breach of canon 1V (s) of the Legal Profession (Canons of Professional Ethics (Rules) .
- 18 The respondent is guilty of professional misconduct contrary to section 12 of the Legal Profession Act.

CONCLUSIONS: In the premises, the panel finds the respondent attorney-at-law Ericson H Williams guilty of professional misconduct for her breaches of Canons V11 (b) (ii), 1V(o), and 1V (s) contrary to section 12 of the Legal Profession Act.

She has failed to account to her client Carlene Peters for sums held by her for and to the account of Mrs. Peters, paid as a deposit under the agreement for the sale of land at Irwin, in the parish of St.James. She has never responded to the oral or written requests from her client for an accounting for the sum of the deposit, this from September 2002. She has never advised the AGD acting for the estate of Clive Service, of the amount she has on account from the deposit, or if she has same in an account whether savings or otherwise.

The attorney withdrew from the employ of the complainant without fulfilling any of her obligations under canon 1V(0) and severely prejudiced the complainant as a consequence of her conduct. This conduct is inexcusable.

The attorney acted with inexcusable negligence and neglect in the performance of her duty to represent her client with the aim of protecting her interests on the serious criminal charges of "obtaining money by false pretences." We are of the opinion, that viewing the respondent's conduct as a whole, she clearly acted in a manner calculated to "discredit the profession of which she is a member" contrary to canon 1(b) of the Legal Profession (Canons of Professional Ethics) Rules.

We therefore have the responsibility to impose sanctions, exercising the powers given to us, under section 12(4) of the Legal Profession Act.

- 1 We hereby order that the respondent Attorney-at-law, Ericson H Williams do make restitution to the complainant Carlene Peters of the sum of \$281,500.00, which represents the balance due to her from the deposit paid by Clive Service. We also order that interest be paid on the said sum at the rate of 12% from the 1st February 1999, until payment. This order is made under section 12(4) © of the Legal Profession Act.
- 2 We hereby order that the ^{name of the} attorney-at-law Ericson H. Williams be struck from the Roll of attorneys-at-law entitled to practice in the several courts of the Island of Jamaica. This order is made under section 12(4) (a) of the Legal Profession Act.
- 3 We also order that the attorney-at-law pay to the complainant costs of \$50,000.00.

Benka
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DATED THE *14th* DAY OF *January* 2006

Pamela E Benka-Coker
PAMELA E BENKA-COKER Q.C.

Lilieth Deacon
LILIETH DEACON

George Magnus
GEORGE MAGNUS