

JUDGMENT OF THE DISCIPLINARY COMMITTEE

COMPLAINT NO. 114/2005

DR. LLOYD BARNETT VS MICHAEL WILLIAMS

PANEL:

PAMELA BENKA-COKER Q.C.

MERLIN BASSIE

DANIELLA GENTLES

THE COMPLAINT: By way of Form of Application and Affidavit in support dated the 11th May 2005, Dr. Lloyd Barnett (hereinafter referred to as the complainant) instituted this complaint against Mr. Michael Williams, attorney-at-Law (hereinafter referred to as the attorney), who practices from 64 East Street in the parish of Kingston. The substance of the complaint is stated in paragraphs 4, 5 and 6 of the affidavit dated the 11th May 2005 which state as follows:

- 4 “ It has come to my attention as a member of the Council that MICHAEL A. WILLIAMS has been involved in conduct which may be in breach of The Legal Profession (Canons of Professional Ethics) Rules and the Legal Profession (Accounts and Records) Regulations, 1999.
- 5 That the conduct to which reference is made in paragraph 4 hereof is that the Respondent Attorney has failed to deliver to the Secretary of the Council an accountant’s report in respect of the financial year(s) 1999,2000,2001, 2002 and 2003 contrary to Rule 16(1) of the Legal Profession (Accounts and Records) Regulations ,1999
- 6 In view of the matters contained in paragraph hereof, I have reasonable and probable grounds to believe that the Respondent is guilty of misconduct in a professional respect having regard to Rule 17 of the Legal Profession (Accounts and Records) Regulations, 1999.”

There is also an affidavit from the Secretary to the General Legal Council, Althea Richards dated the 11th May 2005 which states in paragraph 2 of the said affidavit “ Mr. Michael Williams has not delivered to me or to the office of the General Legal Council any Accountant’s Reports for the years 1999,2000, 2001, 2002, and 2003 and has not for any of those years filed a Declaration in the form of the first Schedule to the said Regulations.”

HISTORY AFTER THE INSTITUTION OF THE COMPLAINT

By letter dated the 13th May 2005, directed to the attorney, the Secretary to the General Legal Council enclosed a copy of the Application and affidavit in support and asked for a response from the attorney. The attorney did not respond to the said letter. The complaint

was set for hearing for the 8th April 2006. Notice of Hearing was sent by registered post to the attorney. This Notice was dated the 20th February 2006 and posted on the 24th February 2006.

On the 8th April 2006, the attorney did not attend the hearing nor was he represented. The panel adjourned the hearing of the complaint to the 13th May 2006. On the 19th April 2006, Notice of Hearing with the hearing date of the 13th May 2006 was sent by way of registered post to the attorney.

On the 13th May 2006, the attorney did not appear at the hearing. The complaint was adjourned. Subsequent to that date, the complaint was set for hearing on the 30th September 2006. On the 11th day of August 2006 Notice of hearing dated the 9th August 2006, was sent by registered post to the attorney indicating that the complaint was now for hearing on the 30th September 2006.

On that hearing date, the attorney did not appear, but he was represented by Mr. Leonard Green Attorney-at-Law. Mr. Green advised the panel that the attorney was ill and unable to attend. The complaint was adjourned to the 4th November 2006 for hearing. On the 6th day of September 2006, by way of registered post, Notice of hearing was sent to the attorney advising him of the date for hearing.

On the 4th November 2006, the attorney for the first time appeared. The attorney requested more time to file his accountant's reports and the panel adjourned the complaint for hearing to the 20th January 2007. On the 21st December 2006 Notice of Hearing for the 20th January 2007 was sent by registered post to the attorney.

On the 20th January the attorney did not appear, certain directions were given as to amendments of the affidavit supporting the complaint.

ADDITIONAL COMPLAINT:

By way of amended affidavit dated the 5th February 2007 the complainant initiated additional allegations of professional misconduct:

“ In paragraph 5 of the said affidavit the complainant avers “ That the conduct to which reference is made in paragraph 4 hereof is that the Respondent Attorney has failed to deliver to the Secretary of the Council an accountant's report in respect of the financial year(s) 1999, 2000,2001,2002, 2003, 2004, and 2005, contrary to Rule 16(1) of the Legal Profession (Accounts and Records) Regulations 1999.”

It will be noted that this amendment added the years 2004 and 2005 to the other years in relation to which the complainant alleges that the Attorney had failed to deliver an accountant's report.

In paragraph 7 of the said amended affidavit the complainant states that “ It has come to my attention, as a member of the Council that MICHAEL A WILLIAMS has been in practice as an attorney -at-Law since 1967 and has neglected or refused to pay any

practice certificate fees for the years from 1986,1987, 1988,1989, 1990,1991,1992,1993,1994, 1995,1996,2005, and 2006 and without being issued with a Practising Certificate thereunder contrary to the provisions of section 5 (2) of the Legal Profession Act and in breach of Canon ii(j) Canon iii(f)and V(s) of the Legal Profession(Canons of Professional Ethics)Rules.”

A copy of the amended affidavit was sent to the attorney under cover of letter dated the 5th February 2007 by the Secretary to the General Legal Council.

The hearing of the complaint was then scheduled for the 17th of February 2007. On the 17th February, the attorney appeared before the panel of the Disciplinary Committee. On that occasion the attorney admitted to the panel that he had failed to pay the practice fees as alleged by the complainant that is to say, for a period of thirteen (13) years.

On this date the attorney paid to the Secretary of the Council cheque No. 01110 drawn on the First Caribbean International Bank in the sum of \$104,250.00. This sum represented the amount due from the attorney for practice fees for the stated period. It is to be noted that the cheque was not a manager’s cheque.

The attorney had filed no Accountant’s report for any of the years in relation to which he is alleged to be in breach. The attorney sought and was granted an adjournment by the panel. In the light of the admission by the attorney that he had failed to pay practice fees and the payment of the said cheque, the panel treated the complaint as being part- heard.

The hearing of the complaint was then adjourned for hearing to the 22nd March 2007 at 10.a.m. at the offices of the General Legal Council at 78 Harbour Street. On that date neither the attorney nor complainant was present. The panel was of the opinion that the complainant need not be present at the hearing unless the attorney required his presence.

The secretary to The Council advised the panel that someone identifying herself as the Secretary to the attorney had telephoned the offices to say that the attorney was not feeling well but he would try to be there by 10.45 a.m.

The panel then satisfied itself that the attorney had been properly served with Notice of Hearing in keeping with Rules 5 and 21 of the Fourth Schedule to the Legal Profession Act. At 10.35 a.m., the panel proceeded to hear the complaint in the absence of the parties as it is permitted to do pursuant to Rule 8 the Fourth Schedule to the Act.

THE EVIDENCE

The panel admitted in evidence the following pursuant to Rule 10 of the Fourth Schedule to the Legal Profession Act.

- 1 Form of Application dated the 11th May 2005 and signed by Lloyd Barnett exhibit 1a
- 2 Affidavit of Lloyd Barnett dated the 11th May 2005 exhibit 1b

- 3 Amended affidavit of Lloyd Barnett dated the 5th February 2007 exhibit 1c
4 Affidavit of Althea Richards dated the 11th April 2005 exhibit 2.

The Secretary gave evidence that the cheque in the sum of \$104, 250.00 which the attorney had paid to the Council was dishonoured by the Bank on which it was drawn, and that the attorney now owes the General Legal Council, the sum of \$119, 700.00 as of the 22nd March 2007. She tendered in evidence as exhibit 3, a letter from the Bank dated the 8th March 2007 advising that the Bank had not honoured the cheque. The cheque itself was admitted in evidence as exhibit 4. Ms. Richards also said in evidence that the attorney now owes the GLC the sum of \$119, 700.00 inclusive of the fee of \$480.00, which the bank had charged the GLC because the cheque had been dishonoured.

After the panel had commenced hearing the evidence, the attorney arrived at 10.50 a.m. The attorney was advised of the proceedings, which had taken place in his absence and told of the sum that he now owed the GLC for practice fees. The attorney agreed to pay the total sum of \$119,700.00 on or before 4.p.m. on the same day, the 22nd March 2007. The attorney did pay the entire sum as he had agreed to do, and at the time specified.

The hearing of the complaint was then adjourned to the 19th April 2007 at 10.a.m. for completion. On the 19th of April 2007 the attorney did not appear, but Mr. Vincent Chen attorney-at-law represented him. Mr.

Chen advised the panel that the respondent attorney was ill and unable to attend the hearing. On the application of Mr. Chen the hearing of the complaint was adjourned for continuation to the 11th June 2007 at 3.p.m at the offices of the G.L.C.

On the 14th day of May 2007, a Notice of Hearing dated the 8th day of May 2007 was hand-delivered to the offices of the attorney at 64 East Street in the parish of Kingston. This Notice advised him of the date for the hearing of the complaint as being the 11th June 2007 at 3p.m. at the offices of the General Legal Council.

On Monday the 11th June 2007 at 3.24 p.m. the attorney was absent and there was no word from the attorney explaining his absence. The panel determined to proceed with the hearing of the complaint in the absence of the attorney in pursuance of regulation 8 of the Fourth Schedule to the Principal Act, having satisfied itself that the attorney had been properly served with the Notice of Hearing.

The panel reviewed the evidence before it and arrived at the unanimous conclusion that the allegations of professional misconduct in the complaint, against the attorney, had been proven to a standard of proof beyond reasonable doubt.

FINDINGS

The panel finds that the attorney had failed to pay his practice fees as alleged for thirteen years, 1986,1987, 1988,1989, 1990,1991,1992, 1993,1994,1995,1996, 2005 and 2006.

The panel also finds that the attorney has failed to supply the General Legal Council with an accountant's report for each of the following years, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 as required by Rule 16 (1) of the Legal Profession Accounts and Records Regulations 1999 and is guilty of professional misconduct under the provisions of Rule 17 of the aforesaid Regulations.

The panel finds that the attorney was in breach of Canon 11(j) and V(s) in that he practiced as attorney without having paid the prescribed fee as required by section 5(2) of the Legal Profession Act.

He also acted contrary to canon 11(f) which states that "an attorney shall not act contrary to the laws of the land."

In the interests of justice, the panel did not then impose the sanctions, but adjourned the hearing to the 5th July 2007 to permit submissions from the attorney, in relation to any sanction that the panel may impose.

By Notice dated the 11th June 2007 and hand delivered to the offices of the attorney at 64 East Street on the 13th June 2007, the attorney was advised of the next hearing date scheduled for the 5th July 2007 at 2 p.m. at the offices of the General Legal Council at 78 Harbour street in the parish of Kingston.

On the 5th July 2007, the attorney did not appear before the panel, he was not represented and there was no explanation for his absence. The panel determined that in this instance also, the attorney was properly served with the Notice of Hearing.

The panel was of the view that it had been extremely generous in giving the attorney time to comply with the provisions of The Legal Profession(Accounts and Records) Regulations 1999.

SANCTIONS

The history of the complaint discloses that the hearing of the complaint had been adjourned on a number of occasions at the request of the attorney and at the instance of the panel. The panel determined that in the circumstances it should now complete the hearing of the complaint.

In considering the appropriate sanction to impose as far as the attorney's failure to pay the required practice fee for a period of 13 years, the panel is of the view that this was a sustained and continued breach of one of the most basic legal obligations of an attorney in practice, which was inexcusable and very grave indeed.

However, in light of the fact that the attorney admitted the breaches and paid the total sum then due in the amount of \$119,700.00 the panel imposes a fine of \$50,000.00 for the attorney's breaches of canons 11 (j), and V(s) of the Legal Profession(Canons of Professional Ethics) Rules and section 5(2) of the Legal Profession Act.

The breaches by the attorney of the Legal Profession (Accounts and Records) Regulations 1999 are even more grave and to date have not been remedied. These Regulations were introduced with the specific intent of protecting the interests of the members of public in their relationships with attorneys-at-law. They are vital to the effective regulation of attorneys and the protection of the public.


In a situation such as this, where the attorney has failed to comply with the Regulations for each of the seven years stated and proved, and has failed to comply even when given the opportunity to do so, the panel cannot permit the attorney to continue to practice in continued non-compliance.

The panel therefore strikes the name of the attorney-at-law Michael Williams from the Roll of attorneys-at-law entitled to practice in the several courts of the Island of Jamaica.

The attorney is also ordered to pay costs of \$50,000.00 to the General legal Council.

Dated the 12th day of Dec. 2009


PAMELA E BENKA-COKER Q.C.


MERLIN BASSIE


DANIELLA GENTLES