

JUDGEMENT OF THE DISCIPLINARY COMMITTEE

COMPLAINT NO. 163/2006

EILEEN BOXILL

COMPLAINANT

AND

LLOYD SHECKLEFORD

RESPONDENT

PANEL

PAMELA E BENKA-COKER Q.C.

CHARLES PIPER

DAVID BATTS

HEARING DATES: 7TH July 2007, 13th September 2007, 17th May 2008, 4th October 2008, 13th November 2008.

THE COMPLAINT.

By Form of Complaint and Affidavit in Support dated the 27th July 2006 of Eileen Boxill (hereinafter referred to as the complainant) initiated a complaint against Attorney-at-law Lloyd Sheckleford (hereinafter referred to as the attorney) alleging that “ the matters of fact stated in the said affidavit constitute conduct unbecoming his profession on the part of the said LLOYD SHECKLEFORD in his capacity as an attorney-at-law”

In her affidavit in support of the complaint, the complainant states as follows:

1. I am an attorney-at-law and member of the General Legal Council (hereinafter referred to as the Council) and my address for the purpose of the application is in care of the Council at 78 Harbour Street in the city and parish of Kingston.
2. I am authorized to make this application by virtue of the provisions of section 12(1) of the Legal Profession Act.
3. The Respondent Lloyd Sheckleford was admitted to practice as an attorney-at-law of the Supreme Court on the 5th day of October 1977.
4. It has come to my attention, as a member of Council, that Lloyd Sheckleford has been in practice as an Attorney-at-Law from 1977 and has neglected or refused to pay any practicing certificate fees for the years from 1984 to the present and without being issued with a Practicing Certificate thereunder

contrary to the provisions of section 5(2) of the Legal Profession Act and in breach of canon 11(j) canon 111(f) and canon V(s) of the Legal Profession (Canons of Professional Ethics) Rules.

- 5 I do believe that Lloyd Sheckleford is not authorized to practise without a practising certificate by virtue of section 7 of the Legal Profession Act as he is not a law officer of the Crown or legal officer of the Government.
- 6 In making this application reliance is being placed on section 5(2) of the Legal Profession Act and on canons 11(j), 111(f) and V(s) of the Legal Profession (Canons of Professional Ethics) Rules.

THE EVIDENCE: On the 7th July 2007, the attorney did not appear nor was he represented. At 1.45 p.m. the panel satisfied itself that the attorney had been properly served with the Notice of Hearing in keeping with Regulations 5 and 21 of the Fourth Schedule to the Legal Profession Act.

The panel determined to proceed with the hearing of the complaint in the absence of the parties and rely on affidavit evidence filed in the complaint. The panel is permitted to do so pursuant to Regulations 8 and 10 of the said Fourth Schedule

The panel admitted in evidence the Form of Application dated the 27th July 2006 and the affidavit in support of the same date signed by the complainant as exhibits 1 and 1A respectively.

On the 13th September 2007, the complaint again came up for hearing. The complaint was called at 2.30 p.m. The attorney did not appear when called. The panel again satisfied itself that the attorney had been properly served with the Notice of Hearing dated the 2nd August 2007 and posted on the 8th August 2007. This service was in keeping with regulations 5 and 21 of the Fourth Schedule to the Legal Profession Act.

The panel proceeded with the hearing of the complaint and admitted in evidence as exhibit 2 the amended affidavit of Althea Richards dated the 17th August 2007. The panel closed the evidence and reserved judgment. This was the second occasion on which the respondent attorney failed to appear although he had been properly served with the Notice of Hearing of the complaint. There was no explanation for his absence.

The panel scheduled delivery of the judgment for the 1st day of December 2007. On the 1st December 2007, the attorney appeared before the panel. He advised the panel that he had not received the Notices of Hearing sent to him. The panel was shown a copy of letter dated the 15th October 2007 written by the attorney to the Secretary of the General Legal Council in which he alleged that he had not received the Notices of the Hearing of the complaint.

The attorney also advised the panel that he was represented by Paul Beswick, attorney-at-law. The panel instead of delivering judgment decided to treat the complaint as part heard. The panel ordered that the Form of Complaint, the Affidavit in support, the notes

of evidence and the exhibits, be sent to the attorney by way of hand delivery and by registered post.

The complaint remained part heard and was adjourned for continuation on the 19th April 2008.

On the 19th April 2008, the attorney appeared but not his counsel Mr. Paul Beswick. The attorney advised the panel that his counsel was unable to be present as he had a part heard matter pursuing in court. The complaint was adjourned to the 17th May 2008 for continuation.

On the 17th May 2008, the attorney appears represented by Mr. Paul Beswick. On this occasion Mr. Beswick asks the panel to order that he be provided with the following:

- (a) receipts for the amount of monies which have been paid by the attorney in relation to his practice
- (b) Register which shows the attorney's address

The complaint was adjourned to the 21st June 2008 for completion. On the 21st June 2008 when the complaint was called, the attorney appeared but his counsel Mr. Paul Beswick did not. The attorney explained that he was feeling ill. In any event, his counsel was also unable to attend and had indicated by this by letter dated the 20th June 2008.

On application of the attorney, the complaint was adjourned to the 4th October 2008 for continuation.

On the 4th October 2008, the secretary of the General Legal Council Althea Richards gave evidence under cross examination by counsel for the attorney. The secretary denied that the attorney had paid practice fees for the year 1977, the secretary did not remember the date of the first affidavit to which she swore,

She said that the omission of the date was an oversight. When asked about the payment of \$130,000.00 made by the attorney, the secretary said that there was more than one payment.

She stated that on the 10th November 2006, the attorney paid \$80,000.00, 29th January 2007 the attorney paid the practice fees for 2007, this was in the sum of \$15,000.00. On the 7th February 2007, the attorney paid the sum of \$40,000.00.

The Secretary says that she had no discussions with Dr. Boxill prior to the complaint being laid on the 27th October 2006 about the attorney's non payment of fees. The secretary did not recall if she had had any discussions with Dr. Boxill after the complaint commenced but conceded that she may have.

The Secretary confirmed and stood by her evidence that since the year 1984 the attorney had failed to pay his practice fees.

The complaint was then adjourned to the 15th November 2008 for continuation.

On the 15th November 2008 all parties were present including Dr.Eileen Boxill. The panel continued the hearing of the complaint.

The secretary produced the receipts she had been asked to bring representing the payments made by the attorney towards liquidating the outstanding practice fees owed to the General Legal Council.

These receipts were shown to Mr. Beswick and he asked that copies of the receipts be sent to him. Mr. Beswick was also shown the register which reflected the address of the attorney and he expressed satisfaction with it.

Dr. Eileen Boxill then gave evidence. The attorney identified herself as being an attorney-at-law employed to the Ministry of Justice and a member of the General Legal Council. She confirmed that she had sworn to the Form of Application and Affidavit in Support dated the 27th July 2006.

She was cross examined by Mr. Beswick. It is not important to recount the cross examination in its entirety save to say the material aspects on which counsel for the attorney based his "no case submission".

She was referred to her affidavit and asked to read paragraphs 3 and 4 of the said affidavit. She admitted that she relied on the information provided by the secretary in making those assertions in her affidavit.

She agreed that she had none of the information of her own knowledge prior to being informed.

The witness was asked to read paragraph 5 which reads as follows:

- 5 "I do verily believe that Lloyd Sheckleford is not authorized to practise without a practising certificate by virtue of section 7 of the Legal Profession Act, as he is not a law officer of the Crown or a legal officer of the Government."

The witness said that the alleged facts in paragraph 5 were from information supplied and from her own knowledge.

She further stated that she knew some law officers of the Crown. She did not know if the respondent attorney was a law officer of the Crown. The attorney said that she believed that the respondent attorney was not an officer of the Crown based on information provided.

The complainant said that she had no discussion with Ms. Richards prior to filing the complaint. Sometime after the filing of the complaints and before one of the hearing dates, it did come to her attention that payments had been made.

She confirmed that she was an attorney of 32-33 years of practice and she was asked if she was not aware that if hearsay evidence was being given the source of the information should also be given.

She replied that the affidavit which she signed was in the usual form and it was used in repeatedly in matters such as this one. She was not aware that for the purposes of these proceedings she had to give the source of hearsay evidence.

The complainant did not agree that there was not one single fact from paragraphs 3 onward of her affidavit in support of the complaint can be personally attested to by her.

She said that she was personally aware that Mr. Sheckleford was in fact practicing. She had not known Mr. Sheckleford before personally but she put a face to the name. Without putting a name to the face she did swear to her affidavit

Counsel for the respondent closed his cross examination of the complainant. He then withdrew his application to see the receipts that he had requested.

Counsel for the respondent attorney then submitted as follows:

“There is no evidence that the attorney has been practicing. The witness clearly stated time and time again in her evidence. Her statements are hearsay and simply do not suffice to carry the complaint any further. There is no case to answer.

Contrary to the submissions of counsel for the attorney, it is our considered opinion that on the totality of the evidence adduced for and on behalf of the complainant, a prima facie case of professional misconduct has been made out against the attorney. The panel sets out its reasons below.

THE LAW: The legal burden of proof remains on the complainant throughout the presentation of the evidence in this complaint. The evidential burden shifts during the presentation of the case.

There is an evidential burden on the complainant to adduce facts in support of the salient issues in the complaint, sufficient to establish to the tribunal that it **may be entitled** to find the respondent attorney guilty of professional misconduct, but it need not do so. This is what in law is meant by the phrase that a “prima facie” case has been established. See the text **A Practical Approach to Evidence, Second Edition, by Peter Murphy p75 paragraph 3.2.2.**

It is instructive to quote from the said paragraph “Successful discharge of the evidential burden, therefore requires no more than proving evidential facts sufficient to justify the

tribunal of fact in making a favourable finding as to the facts in issue, while not requiring it to do so. This involves adducing evidence on the basis of which the tribunal of fact, would, as a matter of law, be entitled (but not obliged to) find in favour of the party adducing the evidence as to the facts in issue with which the evidence was concerned.

This prevents the possibility of the charge, claim or defence being defeated by a submission of no case to answer, or on the basis that there is no issue to leave to the tribunal of fact. A party who achieves this with respect to any fact in issue is said to have established a "prima facie case" with respect to that fact in issue.

Establishing a prima facie case as to any fact in issue creates an evidential burden on the opponent, since the opponent's failure to adduce evidence may result in an unfavourable finding to him."

THE FACTUAL ISSUES IN THIS COMPLAINT:

- 1 Is the respondent Mr. Lloyd Sheckleford an attorney-at-law?
- 2 Was the attorney admitted to practice as an attorney –at-law on the 5th October 1977 ?
- 3 Is the attorney in private practice?
- 4 Did the attorney fail to pay any practicing certificate fees from 1984 to the date of the filing of the complaint on the 26th July 2006?
- 5 Is the person Lloyd Sheckleford before the panel one and the same person as the person named in the complaint?

In determining the answers to the above issues the panel is obliged to take into account all the evidence before it including that of the secretary to the General Legal Council Althea Richards

RESOLUTION OF THE ISSUES LISTED AT 1 -5 ABOVE.

- 1 It is not contested that Mr. Lloyd Sheckleford is an attorney at law
- 2 The person before the panel came before it representing himself to be Lloyd Sheckelford thereby responding to the complaint. It is reasonable for the panel to conclude that the person named in the complaint is the person before this panel.
- 3 It is the evidence of Althea Richards that she has custody and control of the records of the General Legal Council and that the attorney was admitted to practise as an attorney on the 5th October 1977.
- 4 It is the evidence of Althea Richards that the attorney failed to pay practise fees from the year 1984 to the date of the filing of the complaint. The secretary also gave evidence of various payments made by the attorney to the General Legal Council towards the liquidation of the sums due for practise fees, subsequent to the filing of the complaint.
- 5 The complainant herself said that she knew that the attorney is in private practice.

Based on the evidence adduced so far and an application of the law cited, the panel is of the considered opinion that as a matter of law, there is a prima facie case of professional misconduct made out against the attorney and that he should be called on to answer to the complaint.

There is sufficient evidence before the panel on which it may not must find the attorney guilty of professional misconduct.

The panel is of the view that the scheme of the legislation as contained in section 12(1) is designed to permit proper regulation of the profession by giving the authority to any member of the General Legal Council to swear to a complaint in the appropriate circumstances. That is to say where there is no allegation that the complainant is a person "alleging himself aggrieved".

There is no evidential requirement that the member of the General Legal Council has first hand knowledge of every fact alleged in the complaint or that the source of the knowledge should be stated.

It would not be expected that the Registrar of the Supreme Court in swearing to a complaint should either.

The ruling that there was a prima facie case to answer was made by way of the majority members of the panel. This ruling was made on the 28th July 2012.

The records disclose that the attorney was present on that date but his attorney-at-law Mr. Paul Beswick was not. In light of the fact that the panel by majority ruled that there is a case to answer, the case was scheduled for continuation on the 25th August 2012.

On the 25th August 2012, no parties appeared before the Committee. All parties had been properly notified of the continuation of the proceedings on the 25th August 2012. On that date, the panel was advised of and shown a letter dated the 21st August 2012 from the attorney-at-law appearing for the attorney Lloyd Sheckelford. This letter is dated the 21st August 20102 and is addressed to the Secretary of the General Legal Council.

In this letter, Mr. Paul Beswick states that neither the attorney nor the respondent attorney would be appearing before the panel as there was an Appeal in train. The panel was not advised of any stay of its proceedings by the Appellate Court and proceeded with the hearing of the complaint.

As a consequence of the attorney's premature departure from the proceedings, the panel closed the evidence and determined to deliver the judgment.

STANDARD OF PROOF: it is accepted law that the standard of proof in cases alleging professional misconduct is "beyond reasonable doubt." This has been confirmed in the Privy Council decision of **Campbell v Hamlet** {2005}3 All ER 1116, In any event, this

is the standard that has been consistently applied in disciplinary proceedings in Jamaica. This is the standard that will be applied in evaluating the evidence.

EVALUATION OF THE EVIDENCE. The only evidence relative to the complaint is that provided by the complainant. This is the evidence that will be evaluated. It is the opinion of the majority of the panel that the complaint has been made out to a standard of proof beyond reasonable doubt. Both witnesses spoke the truth. Their credibility has not been shaken. Every fact material to the establishment of the complaint has been proven.

Indeed the substance of the no case submission was a technical one concerning the evidence of the complainant which we are of the view took no account of the material evidence of Ms. Richards, which directly impacted the complaint. We are of the considered opinion that the complaint has been proven to the standard of proof of beyond reasonable doubt.

The majority members of the panel make the following findings as they are required to do pursuant to section 15 of the Legal Profession Act

- 1 The attorney Lloyd Sheckelford is in private practice.
- 2 He was admitted to practice in 1977.
- 3 The attorney failed to pay the practice fees from 1984 up until the time that the complaint was initiated in July 2006
- 4 Up until July 2006 the attorney had failed to pay 22 years of practice fees
- 5 Subsequent to the initiation of the complaint the attorney made the following payments for practice fees.
- 6 On the 10th November 2006 the attorney paid the sum of \$80,000.00 for practice fees, on the 29th January 2007, \$15,000.00 representing practice fees for the year 2007, on the 7th February 2007 the attorney paid the sum of \$40,000.00.
- 7 Between November 2006 and February 2007, the attorney paid the sum of \$120,000.00 for practice fees in addition to the sum of \$15,000.00 for practice fees for February 2007.
- 8 The payment of these sums by the attorney amounts to an admission by the attorney that he had not paid the required fees at the time that they should have been paid
- 9 The payment of these sums by the attorney confirms that he was in practice during the period that these fees were not paid.
- 10 There is no evidence that the attorney was a law officer of the Crown and was therefore not required to pay practising certificate fees.

CONCLUSIONS: In light of the above findings the majority finds that:

- 1 the attorney breached section 5(2) of the Legal Profession Act which says "Subject to section 7, a person shall not practice as a lawyer except and in accordance with a practising certificate which shall be issued by the Council, on payment

to the Secretary of the Council of the prescribed fee, in the appropriate form in the Second Schedule.”

- 2 The attorney breached canon 11(j) of the Legal Profession (Canons of Professional Ethics) Rules which reads “ Save as provided by section 7 of the Principal Act, an attorney shall not practise as a lawyer unless he has paid the prescribed fee in accordance with section 5(2) of the Principal Act and has been issued with a Practising Certificate by the General Legal Council”
- 3 The Attorney breached canon 11(f) of the Legal Profession(Canons of Professional Ethics) Rules which states “ An Attorney shall not act contrary to the laws of the land, or aid, counsel or assist any man to break those laws”
- 4 The Attorney breached canon V(s) of the Legal Profession (Canons of Professional Ethics) Rules which states “ Subject to the provisions of subsection 2 of section 5 of the Principal Act , an attorney shall not practise as a lawyer except by virtue of and in accordance with the practising certificate issued to him by the General Legal Council .

It is clear from the above canons and the section 5 (2) of the Principal Act that the attorney ought not to have been practising without a practise certificate issued to him by the General Legal Council. The practise certificate will only be issued to the attorney on the payment of the practise fee . The attorney failed to pay the required practise fee for 22 years. The Attorney continued to practise during the 22 years that he failed to pay the fees mandated by law.

The attorney conducted himself in a manner that “failed to maintain the honour and dignity of the profession and which conduct tended to discredit the profession” contrary to canon 1(b) of the Legal Profession (Canons of Professional Ethics)Rules.

The Attorney is guilty of very serious professional misconduct. It is difficult to understand how he found it acceptable to have practised all those years without paying for his practise certificate.

SANCTION:

It is now for the panel to impose the sanction that is appropriate in all the circumstances of the case. In the ordinary course of the evidence of this complaint and the professional misconduct proven, a sanction of suspending the attorney from practise would be reasonable and appropriate.

Attorneys should never be under the misconception that it is permissible to practise without the practise certificate mandated by the law and to deliberately breach the law in pursuit of the practise of the law. Such conduct is inconsistent with the ethics of the profession.


The panel takes into account the fact that the attorney was permitted to practise for so many years without his practise certificate and before these proceedings were commenced.

We also take into account the fact that since the laying of the complaint the attorney has made payments in respect of the practicing certificate fees which are the subject of the complaint.

As a consequence, having given consideration to all the circumstances, the panel imposes a fine of \$350,000.00 and costs of \$100,000.00 to be paid to the General Legal Council.

Dated the 26th day of April 2014


PAMELA E BENKA-COKER Q.C.


CHARLES PIPER