

DECISION OF THE DISCIPLINARY COMMITTEE

Complaint No. 148 of 2012

In the matter of a complaint by JOHN G.LEIBA a  
member of the General Legal Council

AND

In the matter of MARIE JUDY-ANN CHAMBERS,  
Attorney-at-Law

AND

In the matter of the Legal Profession Act

Panel: Pamela Benka-Coker Q.C., Gloria Langrin and Charles Piper

**THE RECORD**

1. By Form of application against an Attorney-at-Law dated September 10, 2012 supported by Affidavit of the Applicant sworn to on the said date, Mr. John G. Leiba initiated this complaint against Ms. Marie Judy Ann Chambers, Attorney-at-Law (hereafter referred to as "the Respondent"). The application was also supported by the Affidavit of Althea Richards sworn to on September 10, 2012.
2. The complaint first came on for hearing before a panel of the Committee on July 13, 2013. The Respondent did not attend. The hearing was adjourned to September 21, 2013. Pursuant to a direction from the panel, by letter dated July 18, 2013 the Secretary to the Committee wrote to the Respondent advising of the date of the adjourned hearing and of the fact that she must be present on that occasion, as the complaint may be heard in her absence.
3. On September 21, 2013 when the complaint came before this panel the Respondent did not attend. Again the hearing was adjourned. The date fixed was November 2, 2013 and on that occasion, on the direction of the panel, by letter dated September 26, 2013 the

Secretary advised the Respondent that failing her attendance on November 2, 2013 the complaint would be dealt with in her absence.

4. When the complaint came before this panel on November 2, 2013 the Respondent was again absent. As was the case on all previous dates fixed for the hearing Mr. Leiba was represented but was not present. The hearing was adjourned to January 11, 2014. Mr. Leiba's Attorney, Ms. Sabrina Cross, was asked to advise Mr. Leiba to be present on January 11, 2014 to give evidence.
5. On no occasion when the complaint was before any panel of the Committee for hearing was there any explanation for the Respondent's absence.
6. It is to be noted that on each occasion that the complaint was fixed for hearing, in addition to the letters referred to above, Notice of Hearing was served on the parties in keeping with regulations 5 and 21 of the Fourth Schedule to the Legal Profession Act.
7. On January 11, 2014 the Respondent did not attend. Indeed no parties attended or were represented. Accordingly, this panel decided to proceed with the hearing in the absence of the Respondent and admitted in evidence the Form of Application Against an Attorney-at-Law dated September 10, 2012 as Exhibit 1A, the Affidavit of Mr. John G. Leiba sworn to on September 10, 2012 in Support of the Application as Exhibit 1B, and the Affidavit of Miss Althea Richards sworn to on September 10, 2012 as Exhibit 2. In so doing the panel exercised the powers given by regulations 8 and 10 of the Fourth Schedule to the Legal Profession Act.

### **THE EVIDENCE**

8. The Form of Complaint Against an Attorney-at-Law, Exhibit 1A, seeks to have the Respondent of 22 Campdon Crescent, Kingston 20 answer the allegations contained in Mr. Leiba's Affidavit, Exhibit 1B.
9. Exhibit 1B attests to the fact that Mr. Leiba is an Attorney-at-Law and a member of the General Legal Council (the Council). It states that the Respondent was admitted to

practice on July 29, 2004 and that for each of the years 2004, 2005, 2006, 2007, 2008, 2009 and 2010 the Respondent applied for and was granted practising certificates pursuant to the Legal Profession Act but that she has failed to deliver to the Secretary of the Council accountant reports in respect of those financial years.

10. In those circumstances, Mr. Leiba asserts that the Respondent may be in breach of the Legal Profession (Canons of Professional Ethics) Rules and the Legal Profession (Accounts and Records) Regulations, 1999 (the Accounting Regulations). Accordingly, he states, the Respondent's failure may amount to professional misconduct or misconduct in a professional respect having regard to regulations 16 and 17 of the Legal Profession (Accounts and Records) Regulations, 1999.
11. The Affidavit of Miss Athea Richards, Exhibit 2, attests to her being the Secretary to the Council, and describes her as having the responsibility of keeping the records of the Council and receiving Accountant Reports which are required by the Accounting Regulations to be delivered to her. By her Affidavit Miss Richards states that the Respondent has not delivered to her any Accountant Reports, or Declarations in the Form of the First Schedule to the Accounting Regulations, for the years 2004, 2005, 2006, 2007, 2008, 2009 and 2010.

### **FINDINGS OF FACT**

12. We find that:
  - i) The Respondent is an Attorney-at-Law who is entitled to practise in Jamaica.
  - ii) Having applied for and received practising certificates for each of the years 2004, 2005, 2006, 2007, 2008, 2009 and 2010, the Respondent was entitled to and has engage in practise in Jamaica for those years.
  - iii) The Respondent has failed, neglected or refused to file any Accountant Reports for any of the years in question.

- iv) The Respondent has failed, neglected or refused to file any Declaration pursuant to the First Schedule to the Accounting Regulations for the years in question.
- v) The Respondent is required to comply with the provisions of the Legal Profession (Canons of Professional Ethics) Rules and the Legal Profession (Accounts and Records) Regulations, 1999 both being regulations passed pursuant to the provisions of the Legal Profession Act.

### The Law

13. Regulation 16(1) of the Legal Profession (Accounts and Records) Regulations, 1999 requires that:

“Every attorney shall not later than six months after commencement of any financial year (unless he or she files a declaration in the form of the First Schedule which satisfies the Council that owing to the circumstances of his or her case it is necessary or impractical for him or her to do so) deliver to the Secretary of the Council an accountant’s report in respect of the financial year next preceding that year.”
14. By Regulation 17 of the Legal Profession (Accounts and Records) Regulations, 1999:

“Failure by an attorney to comply with any of the provisions of these Regulations shall constitute misconduct in a professional respect for the purposes of section 12 of the Legal Profession Act.”
15. The case of **Winston Campbell v Davida Hamlet (as executrix of Simon Alexander) Privy Council Appeal No. 73 of 2001, delivered on April 25, 2005**, makes it clear that the criminal standard of proof is applicable in these proceedings.

**THE ISSUES**

16. Having regard to the evidence and the facts as found, the issues are simple. They are:
- i) Whether the Respondent has complied with the provisions of regulation 16(1) of the Legal Profession (Accounts and Records) Regulations, 1999.
  - ii) If the Respondent has failed to comply with those regulations whether there has been any explanation of this conduct.
  - iii) If there has been no compliance and no explanation, how should this Committee view her conduct?
  - iv) What steps, if any, may be taken to address the conduct that arises in the circumstances at items (ii) and (iii) of this paragraph.

**DETERMINATION OF THE ISSUES**

17. On the facts as found the panel is satisfied, beyond reasonable doubt, that the Respondent has breached the provisions of Regulation 16(1) of The Legal Profession (Accounts and Records) Regulations, 1999.
18. The history of the matter demonstrates that the Respondent has failed to take advantage of the several opportunities that were given to her to proffer an explanation for her conduct or to remedy same. Neither has she shown any intention to seek to comply with the Accounting Regulations.
19. Consistently with the provisions of Regulation 17 of the Accounting Regulations the Respondent is guilty of misconduct in a professional respect and is liable to be sanctioned as provided by section 12(4) of the Legal Profession Act as amended by the Legal Profession (Amendment) Act, 2007.
20. As we have said before in similar circumstances, the breaches committed for each year of default are considered to be serious misconduct. The Legal Profession Act and the Legal Profession (Accounts and Records) Regulations constitute statutory implementation of a common law requirement that attorneys manage their clients' funds consistently with

accounting principles which ensure protection of those funds. Those are trust funds and the Act and regulations add to the common law by imposing reporting and monitoring requirements which are designed to assist the Council in its efforts to protect the public in relation to attorneys' management of such funds.

21. Failure by an attorney to satisfy the Council that he or she is complying with the Accounting Regulations, places the Council in the invidious position of being unable to provide the public with any reasonable assurance that the funds in the hands of that attorney are being properly held in trust for the attorney's clients, and potentially jeopardizes the resources of all clients who may entrust funds to the attorney.
22. For these reasons, the panel is satisfied beyond reasonable doubt, that an attorney who fails, neglects or refuses to file accounting reports or appropriate declarations as required by Regulation 16(1) of the Legal Profession (Accounts and Records) Regulations, 1999, is guilty of grave misconduct.
23. The panel is therefore of the view that the Respondent, Marie Judy-Ann Chambers is guilty of grave professional misconduct in having breached the provisions of Regulation 16(1) of the Legal Profession (Accounts and Records) Regulations, in having failed to file Accountants Reports for the years 2004, 2005, 2006, 2007, 2008, 2009 and 2010 and for failing or refusing to advance any explanation of this conduct. Her misconduct extends also to her neglect or refusal to display any intention that she intends to take steps to remedy the breaches despite having had many opportunities to do so.

### **THE SANCTION**

24. The panel is satisfied that where such conduct exists and remains un-rectified at the date or dates of the hearing, where nothing is said by way of explanation for the neglect or refusal to comply and where no efforts are made to correct the default, as in the instant case, the attorney ought to be precluded from continuing in practice. This is necessary for the protection of the public.

25. In these circumstances, the panel imposes the following sanction under section 12(4) of the Legal Profession Act as amended, that is that:
- a) the name of Marie Judy-Ann Chambers be struck from the Roll of Attorneys-at-Law entitled to practice in the several courts of the Island;  
and
  - b) Ms. Chambers is to pay the sum of \$100,000.00 to the General Legal Council as a contribution towards its costs.
26. This is the order which we accordingly make on the complaint against the Attorney-at-Law, Marie Judy-Ann Chambers, with immediate effect.

Dated the 26<sup>th</sup> day of April, 2014

.. Pamela S. Benka-Coker  
Pamela Benka-Coker Q.C.

.....  
Gloria Langrin

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Charles E. Piper