

**DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL**

Complaint No. 33 of 2010

IN THE MATTER of a complaint
by MR. TREVOR PORTER against
MR. EARL MELHADO, an
Attorney-at-Law

A N D

IN THE MATTER of the Legal
Profession Act

Panel: Margarette MaCaulay
 Charles Piper
 David Batts

1. This complaint was filed with the General Legal Council on the 26th February, 2010 and was supported by an Affidavit dated 20th February, 2010.
2. A letter dated 25th March, 2010 enclosing the complaint was sent to Mr. Earl Melhado and he was asked to respond to the allegations. No response was received from the attorney and so by letter dated 28th April, 2010 the Complainant was written to and advised that his complaint was considered at the general meeting of the 24th April, 2010 and a decision taken that the complaint should be set for trial.
3. The complaint was first listed for trial on the 18th September, 2010 at the Supreme Court, King Street, Kingston. On that date Mr. Leonard Green appeared for the

Complainant. The attorney, Mr. Earl Melhado did not attend nor was he represented. The matter was therefore fixed for the 6th November, 2010 at the hotel Comingle in Savanna-la-Mar, Westmoreland. A letter dated 27th September, 2010 was issued to the attorney addressed to him at 7 Eureka Crescent, Suite #11, Kingston 5 which advised him of the date and place of hearing.

4. The date of the 6th November, 2010 was vacated and the matter instead relisted for the 11th December, 2010 at the hotel Comingle in Savanna-la-Mar, Westmoreland. On the 10th November, 2010 a Notice of the Hearing dated 8th November, 2010 was posted to the attorney Mr. Earl Melhado at 7 Eureka Crescent, Suite #11, Kingston 5.
5. On the 11th December, 2010 the matter came on for hearing before this panel. Mr. Leonard Green appeared for the Complainant and indicated his readiness to proceed. Mr. Lambert Johnson, Attorney-at-Law appeared and informed the panel that he had received a call from Mr. Earl Melhado who indicated that he had received Notice of Hearing the day before. He also stated that he had transportation problems. Mr. Lambert Johnson on that basis applied for an adjournment, he also indicated that he was not properly instructed. It is noteworthy that by letter dated 10th December, 2010 received by the office on the 10th December, 2010 at 1:42 p.m. Mr. Earl Melhado wrote requesting that a new date be fixed as "he had not received formal notice of the hearing", and that some documents in relation to the matter had not been served on him. The letter also

indicated that Mr. Leonard Green had called and informed him of the date and place for hearing.

6. The panel carefully considered the application for adjournment. The panel also considered that the Notices had been properly served in the manner required by Schedule 4 Rule (5) to the Legal Profession Act. The panel decided to commence the matter and take the complainant's evidence in chief and thereafter to adjourn for another date at which time the attorney could attend to cross examine and present his defence.
7. The Complainant, Mr. Trevor Porter, was therefore sworn and gave evidence. He stated that he was a retired teacher and lived in Little London, Westmoreland. On the 15th November, 2006 he was involved in a motor vehicle accident. His motor vehicle was completely destroyed, he sustained a broken leg, 3 broken ribs, a punctured lung, a laceration to his tongue. He spent eight (8) days in hospital in the first instance but was later readmitted to insert metal pins to his leg. He tried to retain an attorney. His first choice was Mr. Erskine Brown but got no satisfaction there and so retained Mr. Earl Melhado. Mr. Melhado had been his school mate and they had known each other for over forty (40) years.
8. He stated that Mr. Melhado came to his house and it was then he sought his services. He did not visit Mr. Melhado's office but Mr. Melhado was often in the area and came to see him. They communicated by telephone. Mr. Melhado was retained on a contingency basis. He signed a document agreeing that Mr. Melhado could retain 33% of whatever was recovered. He was not given a copy of the retainer contract. He said that Mr. Melhado reported that he was in

negotiation with an insurance company. Eventually, he told the Complainant to attend on the insurance company which was Advantage General Insurance to sign a release. This the Complainant did. This was in February or April of 2008. The amount of the release was between \$1.56 Million to \$1.58 Million. He did not hear from Mr. Melhado and began calling to ask for his money. He got no response and eventually received a letter dated 30th November, 2009 from Mr. Melhado. That letter was tendered as Exhibit 2 and is as follows:

“November 30, 2009

**Mr. Trevor Porter
Old Hope
Little London P.O.
Westmoreland**

Dear Mr. Porter:

Re: Moneys Due and Owing

I refer to the captioned matter and express thanks that you are prepared to wait until January 30, 2010 for disbursement.

I really appreciate your forbearance at this time.

**Yours truly,
A. EARL MELHADO & ASSOCIATES
Per:**

A. Earl Melhado”

9. After receiving the letter the Complainant stated that he went to Advantage General’s office and they said everything was now up to his attorney. He had not been able to speak with Mr. Melhado and has received no money from the Insurance Company or from Mr. Melhado. He subsequently made this complaint and retained Mr. Leonard Green.

10. The following documents were tendered and admitted in evidence:

Exhibit 1 : Copy Police report.

Exhibit 2 : Letter dated 30th November, 2009 from Mr. Melhado to Complainant.

Exhibit 3 : Copy letter dated 16th June, 2010 – Leonard Green to Earl Melhado.

11. Upon the Complainant's evidence in chief being completed the matter was adjourned to the 12th March, 2011 for continuation. On that date no parties appeared and upon enquiry the panel was advised that the relevant notes of evidence and exhibits had not been sent to the parties. The matter was therefore further adjourned to the 16th April, 2011 and a direction given that the notes of evidence and exhibits were to be sent to the parties. On the 16th April, 2011 no parties appeared and the panel was informed that there may have been some confusion created because both Mr. Leonard Green and Mr. Lambert Johnson were advised of the intended adjournment of another matter scheduled for the same date. The matter was therefore further adjourned to the 18th June, 2011.

12. On the 18th June, 2011 the Complainant, Trevor Porter, was present. The attorney Mr. Earl Melhado was absent. The panel satisfied itself that Notice of the hearing was posted to Mr. Earl Melhado on the 18th May, 2011 to his address, 7 Eureka Crescent, Suite #11, Kingston 5. The panel also satisfied itself that a letter dated 7th March, 2011 containing the notes of evidence and copy exhibits was sent to Mr. Earl Melhado at his above referenced address with a copy also sent to Mr. Lambert Johnson. The attorney being absent the Complainant closed his case and

we adjourned to consider our decision. Notices were sent out to the parties indicating that we would deliver our judgment on November 5, 2015. However, there were indications from the record that judgment could not be delivered without hearing further from the parties. Accordingly, on November 5, 2011 the matter was further adjourned to November 12, 2011.

13. On November 12, 2011 two bits of information came to our attention. First we were advised that in complaint No 72 of 2007 C Dennis Morrison v. Audley Earl Melhado, in a decision dated 15th February 2011, the attorney the subject of this complaint had been disbarred. Secondly by letter dated 2nd November 2011 from Mr. Leonard Green, which was received by the Council on the 4th November 2011, the Complainant's attorney, advised that the attorney had paid the balance due of \$800,000.
14. Also, on the 12th November, 2011 the attorney attended and indicated that he wished to be heard in his defence. The matter was therefore adjourned to the 21st January 2012. On that date it was further adjourned to the 19th May 2012 and again to the 8th December 2012. On the latter date Mr. Donald Schardsmidt QC attended along with the attorney.
15. Queen's Counsel submitted that his client did not dispute the allegations. He described his client as suffering "postelection trauma" a reference we believe to the fact that his client may have been involved in an election campaign which affected his finances. Mr. Schardschmidt also stated that his client acknowledges a want of diligence and does not dispute the complainant's evidence. He noted however that there had now been full restitution of principal and interest. His

- client and the complainant had been friends for over 50 years. They are still close friends, he said. Queen's Counsel described the matter as an issue of "collection rather than sanction". His client, said he, had not deceived the complainant and had never denied receiving the money and made it clear he was having difficulty paying. In effect the complainant was seeking leniency from this committee.
16. The panel enquired as to the status of the other complaint and whether the attorney had been struck from the roll of attorneys entitled to practice. We were informed that that matter was on appeal and a stay of the Striking off was in place. We thereafter adjourned to consider our decision.
 17. It is a matter of some regret and for which we apologise that our decision has been so long in coming. This delay is not unconnected to the fact that one of our number accepted a position of high judicial office. This resulted in papers being filed away and the matter fell through the cracks. We unreservedly apologise to the complainant and the attorney.
 18. We bear in mind in coming to our decision the plea for leniency. We note also that there has been full restitution. On the other hand we remind ourselves that this committee is not a collection agency. Our remit is to uphold professional standards so as to maintain public confidence in this noble profession. To that extent this is not just a private matter between the complainant and the attorney. We do not consider the existence of a pending complaint which is on appeal to be a relevant matter.
 19. In considering this matter we bear in mind that notwithstanding the failure of the attorney Mr. Earl Melhado to contest the allegations and evidence of the

complainant, we still have a duty to consider the evidence and to satisfy ourselves beyond reasonable doubt that a complaint of professional misconduct has been made out. We bear in mind in particular the words of Lord Brown in *Campbell v Hamlet* [2005] UK PC 19 at para. 17-22:

“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.”

20. In this regard we were impressed by the demeanour of the Complainant. His evidence has been corroborated in some significant respects by correspondence from the attorney Mr. Earl Melhado. We therefore find the following facts established:-
- (a) The Complainant retained Mr. Earl Melhado to act on his behalf.
 - (b) The matter concerned a motor vehicle accident in which the Complainant sustained serious personal injuries.
 - (c) The attorney successfully negotiated a settlement with third party's insurers.
 - (d) The Complainant therefore executed a Release and Discharge in consideration of which a sum between \$1.56 Million and \$1.58 Million was disbursed to the attorney, Mr. Earl Melhado, on the Complainant's behalf.
 - (e) The attorney, Mr. Earl Melhado, failed, neglected and/or refused to account to the Complainant for the said money.
 - (f) The attorney collected the money in or about May 2008 and failed to pay it over to his client.

- (g) After several failed attempts to contact his attorney the complainant eventually received a letter dated 30th November 2009, promising to pay the money on or before the 30th January 2010.
- (h) The attorney reneged on that promise in consequence of which this complaint was brought.

21. We therefore find that the attorney is in breach of the following Canons of Professional Ethics:

- (a) Canon VII (b) (ii):

An attorney shall:

- (i) 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

- (b) Canon I (b):

An attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.

22. The breaches by Mr. Earl Melhado were particularly egregious inasmuch as he had collected money which was intended to compensate for losses already suffered by his client.

23. The panel is guided by previous decisions of the Disciplinary Committee of the General Legal Council in Complaint No. 23 of 2005 **Michael Hylton QC v Cynthia Levy Brown** delivered on the 20th May, 2006, Complaint No. 114 of 2005 **Dr. Lloyd Barnett v Michael Williams** delivered on the 12th December,

2009 and Complaint No. 28 of 2005 **Michael Hylton QC v Antonette Haughton Cardenas** delivered on the 25th September, 2010. The panel is also guided by the decision of the Court of Appeal in **Chandra Soares v The General Legal Council** [2103] JMCA Civ 8.

24. This Committee considers that it is not in the best interest of the public for members of this profession to be given the impression that they can use clients' funds provided that when called upon to account they can produce the money. Client's funds are sacrosanct. Members of the profession must be made aware that they face the most severe sanctions if they breach a client's trust in that manner. Clients who are fully refunded can be expected to ask for leniency. This Committee is obliged to look beyond the fact of a refund.
25. We are of the view that incidents of attorneys at law intermeddling with clients funds are becoming far too prevalent. The profession must be made aware that such conduct goes to the heart of the client lawyer relationship and will undermine public confidence in the profession. We bear in mind the words of Lord Bingham in *Bolton v Law Society* (1994) 2 All E. R. 486, 492:

"It is important that there should be a full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is in some of these orders a punitive element.....In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension. Plainly it is hoped that experience of

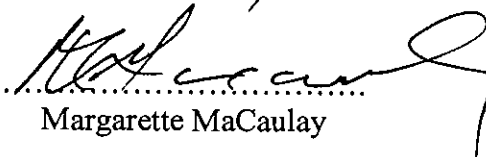
suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period and quite possibly indefinitely by an order of striking off. The second purpose is the most fundamental of all to maintain the reputation of the solicitors' profession as one in which every member of whatever standing may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not and never has been seriously in question. Otherwise, the whole profession and the public as a whole is injured. A profession's most valuable asset is its collective reputation and the confidence it inspires".

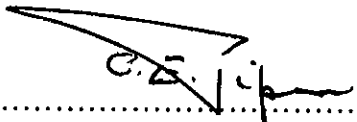
26. In the matter before us the attorney has committed himself in a manner that is more than just the "serious lapse" of which Lord Bingham spoke. He collected funds on his client's behalf. He used them for other purposes and hence was unable for approximately 4 years to hand those funds over to his client. There really can be no more serious breach of good faith by an attorney at law. This committee is of the view that if public confidence is to be maintained there really is only one appropriate sanction for such a breach.


27. It is therefore the Decision of this committee that, in these circumstances the panel makes the following order that:

- (a) The Attorney-at-Law, Mr. Earl Melhado's name be struck from the Roll of attorneys-at-law entitled to practise in Jamaica.
- (b) The Attorney-at-Law, Mr. Earl Melhado pay the sum of \$30,000 to the complainant for costs.
- (c) The Attorney-at-Law, Mr. Earl Melhado, pay the sum of \$100,000.00 as a contribution to its costs in relation to the complaint.

Dated the 24 day of July, 2015


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Margarete MaCaulay


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Charles Piper


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David Batts