

JUDGEMENT OF THE DISCIPLINARY COMMITTEE

COMPLAINT NO.

BETWEEN **IELA JOYCE STUART** **COMPLAINANT**
AND
HUMPHREY MCPHERSON **RESPONDENT**

PANEL

PAMELA BENKA-COKER Q.C.

LILIETH DEACON

PETER CHAMPAGNIE

HEARING DATES: 16th February 2013, 20th February 2013, 18th April 2013, 30th April 2014, 29th May 2013

The complainant was represented at the hearing by Ms. Audre Reynolds and the attorney-at-law represented himself

BACKGROUND TO THE COMPLAINT. The complainant Mrs. Iela Joyce Stuart, (hereinafter referred to as the “complainant”) was an elderly retired lady who at the time of the hearing of the complaint commenced was living in Canada, having migrated there.

She had come to Jamaica to give evidence. In her youth, and while she was resident in Jamaica, the complainant was employed as an assistant bank manager to the Bank of Nova Scotia. Unfortunately, since the completion of the evidence in this complaint she has died.

The fact that she has died does not affect the jurisdiction of the panel of the Disciplinary Committee to assess the evidence and deliver the judgment. The respondent Attorney-at-law is still in practice and still subject to the possible orders that may be made, which range from dismissing the complaint to finding him guilty of professional misconduct.

The attorney at law Humphrey McPherson (hereinafter referred as “the attorney”) is in private practice in Jamaica. The history of the relationship between the complainant and the attorney commenced in 1997 when the complainant retained the services of the attorney to secure Letters of Administration in the estate of her late husband Charles Joseph Stuart.

In April 1998, a Will signed by Mr. Stuart was located and this Will was sent to the attorney to obtain a Grant of Probate and to perform other professional services. The affidavit sets out in great detail the history of the relationship between the complainant and the attorney.

THE COMPLAINT:

By way of Form of Application dated the 13th May 2004, the complainant initiated this complaint against the attorney. She swore to an affidavit in support of the complaint dated the 13th May 2004. In this affidavit, the complainant details the facts on which she relies and on which she bases this complaint. The allegations will not be replicated here, only a brief synopsis will be given as the affidavit forms part of the evidence in this complaint as exhibit 2a. The Form of Application is exhibit 2 and is referred. This is the formal document which initiates the complaint.

A summary of allegations is as follows: Having retained the attorney in October 1997 to obtain Letters of Administration of her late husband's estate, and having subsequently located a Will for which Probate was sought, the attorney eventually secured Probate in or around January 2002. In any event, this information was given to the complainant by the attorney when she contacted the attorney.

Prior to this, the attorney had to correct a number of errors he had made in the documents in support of the application for Probate. The complainant had paid the sums necessary to effect the Probate of the Will. The complainant expresses the opinion that the attorney's carelessness was responsible for the errors in the documentation and the delay in securing Probate. The complainant was anxious about the progress of her business and made frequent efforts to contact the attorney and to get information from him but to no avail.

In spite of his delays, the complainant alleges that the attorney billed for work which was necessary because of the errors that he had made. In addition to this, the attorney's services were retained by the complainant to resolve an encroachment by a person on land belonging to the estate. The attorney was paid fees to address this problem. Nothing was done by the attorney and the degree of the encroachment worsened.

The attorney acted for the estate in relation to sale of land and lease of land. The attorney was directed to cancel the sale, he failed to act on the directive of the complainant to terminate the agreements, and he did not carry out the instructions of the complainant. On an occasion that he was to attend court he sent a non lawyer to represent the interests of the complainant and failed to attend himself.

In the context outlined, the complainant says that the attorney submitted bills for payment of fees which were excessive. When the complainant challenged the sums charged, the attorney admitted that he had made errors in the bills presented to her. He was asked to and failed to validate his bills with invoices, and he duplicated bills. The attorney was never able to resolve his accounts.

The attorney discussed confidential information on the estate with persons who had no right to this information, and divulged confidences reposed in him by the complainant. This conduct by the attorney was deemed unprofessional by the complainant. For the past three to four years the attorney has been in possession of negotiable dividend cheques payable to her late husband and stock and share certificates, and he has done nothing to transfer them into the name of the complainant thereby causing her financial loss.

The complainant directed the attorney to release certain certificates of title to her daughter, he has refused to do so in spite of the fact that the Probate has been secured and these titles were no longer needed. In fact the complainant avers that the attorney told her son Dean That "I do not agree with your mother and I will not heed her request."

The complainant says that as a consequence of the conduct of the attorney she has lost all confidence in him to effectively represent her interests and those of the estate. He never fulfills his promises to do anything. In the year 2000, the attorney acting on behalf of the estate, entered into an agreement of sale to sell land to one Ms. Lillian Sewell. The attorney acting for the purchaser, Mr. Winston Young paid to the attorney the sum of \$500,000.00 as a deposit on the sale. The attorney put the purchaser in possession of the land the subject of the sale. The complainant was also advised by Mr. Young that an additional sum of \$250,000.00 was paid over to the attorney on the sale.

Mr. Young advised the complainant that he was unable to contact the attorney to complete the transaction. The attorney has failed to provide the information to the complainant of the progress of the sale, any additional money paid, nor had that possession been granted to the purchaser.

At the time that the complaint was sworn to, the attorney was holding funds in excess of \$1, 150,000.00 as deposits on pending sales in relation to three properties, he has not responded to the numerous requests from the complainant for this information. The complainant then questions the integrity of the legal profession in Jamaica and laments that such an unscrupulous individual as the attorney could be permitted to practise in Jamaica.

She further complained that she had gone to Canada to reside with her children and sincerely wished to resolve the vexed question of her late husband's estate. She expressed the opinion that the attorney is milking her and the estate for what he can get and is not representing her interests. She says the attorney had admitted to her that he had never handled a file like this and that he was learning as he went along.

The attorney told her that he was being sabotaged by members of the legal profession due to his stance against a member of the Supreme Court. The complainant wants an audit done of the attorney's billings on the probate and a resolution to her affairs.

The above is a fair summary of the allegations included in the affidavit on which the complainant bases her complaint. The actual grounds of the complaint are comprehensive

and will be replicated verbatim in this judgment as the grounds of the complaint along with the evidence will have to be evaluated by this panel to resolve this complaint on the law and on the facts.

THE GROUNDS OF THE COMPLAINT AGAINST THE ATTORNEY:

- 1 He has charged me fees that are not fair and reasonable for the services rendered. He has refused to substantiate the billing with the proper invoicing as requested by myself in writing.
- 2 He withdrew from my employment without taking reasonable steps to avoid foreseeable prejudice or injury to my position and rights as his client.
- 3 He has not provided me with all the information as to the progress of my business with due expedition although I have reasonably required him to do so.
- 4 He has not dealt with my business with due expedition which could compromise my rental and lease agreement on the properties but could result in excessive penalties being levied on the estate in the form of interest payments in relation to the Probate and payment of Stamp Duties being owed.
- 5 He has acted with inexcusable and deplorable negligence in the performance of his duties not exercising due diligence in reviewing the accuracy of his paper work and legal documents being filed.
- 6 He has not accounted to me for all the monies in his hands for my account or credit although I have reasonably required him to do so.
- 7 Having withdrawn from my employment he has not promptly refunded such part of the fees paid in advance as may be fair and reasonable
- 8 He has failed to carry out my directions and or instructions given verbally and in writing, misrepresenting me in dealing with tenants and not representing the interests of the estate.
- 9 He has superseded the boundary of a normal- lawyer client relationship by proceeding negotiations without providing full knowledge to the client and obtaining neither authority nor consent with regards to the property development.

Considerable time elapsed before evidence in this complaint was heard. This was partially due to the fact that copious correspondence was generated in this complaint, the complaint came on for hearing before various panels and was not heard, and because the complainant was elderly, at times suffered from ill health, and was unable to travel from Canada to Jamaica to give evidence. This situation persisted up until early 2013 when the hearing in the complaint commenced.

On the 16th February 2013, the complaint came up for hearing before this panel. The complainant was sworn and the panel commenced the hearing of the complaint. At this hearing, counsel for the complainant produced an affidavit from the complainant dated the 5th July 2012. She wished to exhibit this affidavit and rely on it as the examination in chief of the complainant. This affidavit was produced as exhibit 1.

On examining this affidavit, the panel concluded that there were procedural deficiencies in the affidavit which made it difficult for the panel to relate the purported exhibits to the substantive paragraphs in the affidavit. In the interests of justice to both parties the panel advised counsel as to the appropriate way in which the affidavit should be compiled and adjourned the hearing of the complaint to the 20th February to permit this to be done.

On the 20th February 2013 the hearing of the complaint continued, the affidavit was satisfactorily re-ordered and was now dated the 18th February 2013. The original affidavit produced in evidence on the 5th July 2012 was withdrawn. The affidavit withdrawn was the same as that of the affidavit of the 18th February 2013.

This affidavit was produced to the complainant and she confirmed that the signature on the affidavit was her signature. This affidavit was produced in evidence as exhibit 1. There was no objection by the attorney to the production of this affidavit in evidence, The Form of Application was produced in evidence as exhibit 2 and the affidavit in support of the Application as exhibit 2a.

The panel permits exhibit 1 to stand as the examination in chief of the complainant and she is cross examined by the attorney. The panel reviews this affidavit and will then address the oral evidence in this complaint. The panel has already summarized the affidavit in support of the complaint dated the 13th May 2015.

In evaluating the evidence in its totality, the panel will refer to that affidavit and relate it to the affidavit produced as exhibit 1.

THE AFFIDAVIT EVIDENCE-EXHIBIT 1 -In the recitals to this affidavit, the complainant confirms that she is the widow of Charles Joseph Stuart and the executrix of his estate. In paragraph 2 she refers to her affidavit in support of the complaint and indicates that the affidavit under review will amplify the allegations contained in her affidavit in support of the complaint, exhibit 2.

In paragraph 3 the complainant says that in October 1997 she retained the services of the attorney to obtain Letters of Administration in the estate of her deceased husband. She paid the attorney the sum of \$130,000.00 at his request. He represented this sum as being his retainer.

In or around April 14th 1998, a Will of her deceased husband was found, and sent to the attorney for a Grant of Probate. He was advised to review the application for Letters of Administration and make the adjustments where necessary. These instructions are confirmed by exhibit 1 to this affidavit which is a handwritten letter dated the 14th April 1998 from the complainant to the attorney.

In paragraph 5 of this affidavit the complainant lists additional instructions that she gave to the attorney. These were:

(a) Engage the services of a Commissioned Land Surveyor to prepare a subdivision plan for 43 Bryans Crescent, May Pen, Clarendon in order to address the boundary dispute with the adjoining owner.

(b) Correct encroachments caused by Shirley Weathers and Ionie Donaldson.

© Prepare Notices to Quit to the following persons namely-Homer Miller, Carmen Taylor, Ionie Donaldson, Carie Mcleod, Omar Roberts, and Stanley Lewis.

(d) File recovery of possession, recovery of rental, and recovery of damages for waste against the following persons namely Ionie Donaldson, Stanley Lewis, Omar Roberts, Shirley Weathers, and Louise Donaldson.

(e) Prepare Power of Attorney from Iela Joyce Stewart to Dean Collin Stuart.

The complainant confirmed this conversation with the attorney as evidenced by exhibit 2. This letter is instructive in that it lists in detail the work to be done by the attorney and the fees agreed on, and in fact is a detailed account of work done and to be done, fees paid and fees due to the attorney.

Exhibit 3 is another handwritten letter by the complainant to the attorney dated the 24th October 1999. In this letter the complainant expresses great concern that the Probate of her husband's estate has not been secured and implores the attorney to attend to this issue. She is also worried about the estate, that it is not being resolved, and that she was an elderly lady who wishes to have them resolved.

Paragraph 8 exhibits as 4 a further letter written by the complainant to the attorney. "inter alia" instructing him not to sell anymore lots and to proceed with the Application for Probate. This letter contained detailed instructions to the attorney as to how to proceed with the handling of the estate.

In paragraph 9 she sets out the lots that had already been sold and their sale prices. She alleges that three lots had been sold. Paragraph 10 relates an occasion when she visited Jamaica in May 2000 and waited at the offices of the attorney to sign a document which he said had to be signed. They were unable to have the meeting with the attorney as he advised that he could not enter his office as he did not have his keys. She had to return to Canada and then the attorney charged the complainant for having had to send the documents to her in Canada for her signature, when in fact the attorney had failed to have her sign the document when she was in Jamaica. The complaint is of the opinion that this charge was unfair.

After this affidavit had been signed the attorney subsequently advised the complainant that the affidavit was unnecessary.

In paragraph 12 the complainant exhibits as 5 an invoice dated the 15th June 2000 that the attorney sent to her This bill is alleged to relate to the period October 1997- May 2000.

The complainant sets out her concerns about this bill with several of the items challenged listed in paragraph 13 of the said affidavit. The Complainant on receipt of this bill writes to the attorney by letter exhibited as 6. She expresses her dismay at the exorbitant charges submitted by the attorney and that she did not believe that these charges were in keeping with his level of learning.

Exhibit 7 is letter from the complainant to the attorney dated the 5th July 2000, which letter again raises her disagreements with the invoice submitted by the attorney and the issue of duplication of charges by the attorney. In particular, she could not understand the charges in relation to the alleged aborted Application for Letters of Administration as the attorney did not produce any supporting documentation to demonstrate that an Application had in fact been made. The complaint found the bill in its totality excessive.

By letter dated the 7th February 2001, exhibit 8, the complainant instructs the attorney to end the estates relationship with Faith Ministry due to its persistent delay in fulfilling its legal obligations. She also enclosed a sum of \$100,000.00 towards payment of the Attorney's fees. The complainant expressed the wish to have some of the properties sold in order to pay estate duties.

Exhibit 9 is letter dated the 16th April 2001 from the complainant to the attorney. This letter is referred in paragraph 19 of her said affidavit. She encloses a signed affidavit in relation to the estate and she expresses the hope that there will be some positive developments soon.

In paragraph 20 the complainant refers to an incident where she says her son Dean who was assisting her with the process told her that the attorney advised him that he had not terminated the relationship with Faith Ministry as he had been instructed but that he had made arrangements to give it another plot of land. This, the complainant alleges was the attorney disobeying her specific instructions.

At one point the attorney told Dean that he had a developer for the property for the lands at Bryan's Crescent. Dean told the complainant of this conversation with the attorney. The attorney refused to provide any details about this proposed project. The complainant, through her son Dean, immediately wrote to the attorney instructing him not to pursue any such arrangement with any such developer and that he should focus on securing the Probate of the Estate. The letter expressed the length of time the process was taking. See **exhibit 11**. This letter is dated the 12th March 2002.

In paragraph 22 of the affidavit the complainant, subsequent to a conversation with the attorney where he had assured them that Probate had been granted, and that the documents would be forwarded soon, wrote to him on the 21st May 2002 requesting proof of payment of taxes and providing them with a copy of the original Probate granted. See exhibit 12

On an examination of this letter it also reveals that the complainant directed the attorney to " deliver to my daughter Mrs. Hillary Alexander all my titles to my properties, and

other documents, also personal items you have in your possession.” She lists the items to which she refers and which she is directing the attorney to deliver to her daughter Mrs. Alexander.

The attorney did not comply with the instructions of his client and sent a letter to complainant by courier enquiring if she was terminating his services. The complainant again wrote to the attorney remonstrating with him about the delays in having her work done and his general unprofessional approach to her interests. She again directed him to deliver the items to her daughter. This letter is exhibit 13 to paragraph 23 of her affidavit.

In paragraph 24, the complainant says that one year elapsed and she still had not received a copy of the Grant of Probate from the attorney despite several efforts by her and promises made by the attorney, all of which were unfulfilled. She also says that at one stage the attorney told her that “he was unfamiliar with the process for application for Probate in that type of estate.” And on another occasion the attorney told her son Dean that he the attorney was being “victimized by staff and officers at the Supreme Court who were out to get him”

The complainant continued to be dissatisfied with the attorney’s performance and by way of letter dated November 3rd 2002 she wrote to the secretary of the General Legal Council expressing her dissatisfaction with the performance or lack thereof of the attorney. This is exhibit 14 to paragraph 25.

In this letter she alleged “gross incompetence, negligence and lack of professionalism in administering the services she retained him to do. This letter comprehensively traces the history of the relationship between the attorney and the complainant and reiterates her complaints that have already been narrated in this judgement.

The attorney responded to this letter, this response is exhibit 15 to paragraph 26. In this letter dated the 23rd January 2003 addressed to the secretary of the General Legal Council, the attorney vehemently denies that he is guilty of conduct amounting to gross incompetence, negligence and lack of professionalism.

The attorney then lists the services that he was retained by the complainant to do. They are;

- 1 to administer the estate of Charles Joseph Stuart deceased, intestate/testate;
- 2 to resolve Moweletia Francis’ ownership and control of land at 2 Fernleigh Avenue, May Pen, Clarendon in relation to the sale of land at 2 Fernleigh Avenue, May Pen, Clarendon.
- 3 To complete the Subdivision Development of land at 43 Bryans Crescent , May Pen, Clarendon initiated by Charles Joseph Stuart.
- 4 To resolve the boundary dispute regarding 22 Sharpe Avenue, May Pen Clarendon;
- 5 Recovery of possession/rent proceedings regarding 2 Fernleigh Avenue, May Pen, Clarendon.

The attorney says that prior to the death of Mr. Charles Joseph Stuart, the complainant and her husband had been separated for years and there had been serious legal disputes between them. Ms. Moweletia Francis was introduced to him by the complainant as the caregiver of Mr. Stuart, and as a person who could assist him.

The attorney admitted that the duties to stamp the Probate had not yet been paid although the Probate had been granted. The attorney says that the complainant knew why these sums had not been paid. He says that a number of purchasers were interested in purchasing 2 Fernleigh Avenue, but there was a problem as Ms. Francis had been given a part of this land by Mr. Charles Joseph Stuart and the purchasers were interested in purchasing all the parcels of land. There was also a problem with the physical situation of the land.

The complainant and her son Dean expressed the opinion that Ms. Francis did not own the land as she had no papers to prove this ownership. The attorney says that he was of the opinion that Ms. Francis owned the land and told the complainant and her son that Ms. Francis owned the land.

Eventually the complainant accepted that Ms. Francis owned the land and she asked the attorney to make an offer to Ms. Francis to purchase the land. Ms. Francis refused to sell the land. The attorney alleges that Ms. Francis did not trust the complainant, her son Dean, and her daughter Hillary. Ms. Francis, the attorney says, came to trust him over the years

The attorney seeks to explain why the Probate was delayed; he alleges that the complainant knew that if the probate were granted the land Ms. Francis owned would have to be transferred to her immediately and Ms. Francis was "on his case" to transfer the land to her.

At one point when it appeared that Ms. Francis would sell her land, the complainant started writing to the attorney telling him to deliver her titles to her daughter, he refused to deliver the titles to either the complainant or her daughter as he was owed fees of 2-3 million dollars for assembling the 2 Fernleigh Avenue land into one parcel of land.

According to the attorney, the subdivision at 43 Byrans Crescent May Pen was well advanced. He had a meeting with the proposed developer Mr. Irvine,. The subdivision was initiated by the deceased. The proposed units and the survey to develop the units have been essentially completed requiring only plans to diagram the units. "The project would have a total projected value \$149,300,000.00 with projected gross income of \$93,000,000.00 to the estate.

The plans stalled and the commissioned land surveyor became uncooperative and work stopped on the development plans before the Parish Council. The attorney says he informed the complainant about this. He says that the complainant has not mentioned

anything to him about his fees for the development which amount to 2.5- 3.5 million dollars.

The attorney then says that he was informed by sources that the signatures of the deceased on the land titles allegedly jointly owned by the deceased and the complainant were false. He checked the signature and came to the conclusion that the deceased's signatures did not appear to be genuine. The Attorney advised the complainant of his discoveries and told her that the Probate could not go forward unless she filed supplemental affidavit to confirm the genuineness of the signatures on the land titles. He says that the complainant did swear to such an affidavit.

The attorney admits that the complainant did pay him \$77,000.00 to address the encroachment issue. He did file suit in the May Pen Resident Magistrate's Court to deal with this matter. He even secured a default judgement but when he sought to receive the files from the Court House he was told that the file was destroyed in a fire when the Court House burnt down. Prior to that, the court had ordered a survey of the land to be done with which survey the parties to the suit were to abide.

He then explains the situation with the Faith Produce Ministry. He then addresses the advice that he gave to the complainant to sign a power of attorney in favour of Ms. Francis to permit her to represent the complainant in court but the complainant refused to sign the power of attorney as she said that it was too wide.

The attorney repeatedly insisted that his fees had to be paid. He stood by his initial billing of \$372,000.00 and his subsequent bill for \$957,478.00 and he was in the process of preparing his final bill. He denied that he had divulged any confidential information to anybody and challenged the complainant to prove it.

The attorney insisted that the complainant was well aware, among other things of the money he had in hand for her and she knew how he disbursed those sums. The attorney denied the allegations made by the complainant that he had acted unprofessionally, that she had been taken for a ride by an unscrupulous individual and who was milking the estate for what he could get.

He never told the complainant that he was being sabotaged by the members of the legal profession in Jamaica. He did not tell the complainant that he had never handled a file like this and that he was learning as he went along.

The panel saw the need to summarise exhibit 15 in detail, as the attorney did not give evidence at the hearing of this complaint and so there is no evidence from the attorney in defence of the allegations made against him by the complainant. In this letter he essentially denies the allegations made by the complainant and seeks to explain the problems that he encountered in resolving the issues associated with the handling of the estate of the deceased.

The complainant says that there are blatant untruths made by the attorney in exhibit 15. In paragraph 27 the complainant exhibits a statement of account from the attorney dated the 4th February 2004, in which the attorney stated among other things that he had a sum of \$1,820,000.00 on account for the estate of the deceased. This statement of account is exhibited as 16.

In this statement of account, after listing work he alleges he has done and the charges for such work, the attorney states that he is due a sum of \$4,725,315.00. It is not clear whether this sum represents fees as well as disbursements made or to be made.

As exhibit 17 the complainant responds to this statement of account by letter dated the 12th March 2003 addressed to Ms. Richards the Secretary to the General Legal Council. The complainant says that she is appalled at the falsities and misrepresentations of the attorney in exhibit 16. Further, she does not see what bearing the relationship between herself and the deceased, her late husband has on the business for which the attorney was retained. She again lists the specific business the attorney was retained to conduct on her behalf.

She specifically denies that the attorney was instructed by her to undertake any negotiations with Ms. Francis to whom it is alleged the deceased had given a portion of 2 Fernleigh Avenue. He was advised of the situation but that this would be resolved by the family. This letter goes on to deny the allegations of the attorney seriatim, in detail and in material particulars. She does not agree that she knows what monies the attorney has on account for the estate. As he has never accounted to her for monies collected from rentals or down payments, nor did she give him any instructions as how this money was to be spent.

She does not know about any amalgamation of the Fernleigh Avenue property and had never heard of such an exercise. She saw this as another of the attorneys' trumped up charges. She expresses her distrust of the attorney and she only wants to end the relationship with the attorney.

It is at this period, that the complainant secures the services of attorney at law Mrs. Audrey Allen to assess the work done and to be done to resolve the myriad issues besetting the estate. A chart was prepared by Ms. Allen and is exhibited as 18 to the said affidavit. This chart is instructive.

It is dated the 30th June 2006 and directed to Patrick Bailey attorney-at-law. This assessment was conducted by Mrs. Allen after it appears a review by her of 6 files sent to her by Mr. Patrick Bailey. She lists the work that was to be done by the attorney, the work that was in fact done by him, and draws her conclusions as a consequence of her review.

Exhibited as 19 to paragraph 30 is a report from Thomas Ramsay Attorney-at law This report is dated the 20th March 2008. Apparently Mr. Ramsay perused and assessed the

same files that had been submitted to Mrs. Allen plus one additional file. He corroborates the conclusions of Mrs. Allen as to the status of the work that the attorney ought to have done in relation to those files and the work that he actually did.

These attorneys did not give evidence at the hearing of this complaint and were therefore not cross examined by the respondent attorney. In these circumstances, the panel has the right in law to attach what weight it sees fit to these reports and draw its own conclusions.

The attorney did not agree with the findings of these attorneys-at-law certainly as they related to the fees to which he said he was entitled as a result of work he did on the estate. As a consequence the attorney filed a Notice of Application For Court Orders seeking taxation of his bill of costs. The sum claimed in the bill is said to be \$4, 875,195.00. The bill presented to the Registrar of the Supreme Court is not exhibited.

Points of Dispute were submitted by the attorneys for the complainant. See exhibit 20. The hearing of the taxation took place over many days and on the 25th March 2010; the Registrar ruled that the attorney was owed the sum of \$44,750.00. Pursuant to the ruling by the Registrar the complainant, acting on the advice of her attorneys, sent a cheque in that amount under cover of letter dated the 30th April 2010 to her attorney-t-law, Patrick Bailey. The cheque is payable to the attorney. The copy letter and copy cheque are exhibited as 21.

Exhibited as 22 is copy letter dated the 23rd April 2010 from Patrick Bailey to the attorney enclosing the cheque in the amount of \$44,750.00 payable to the Attorney and sent by the complainant. The complainant states that she was advised by her attorney-at-law that the attorney had returned the cheque and was pursuing an appeal against the ruling of the Registrar of the Supreme Court. A Counter Notice of Appeal was filed on behalf of the complainant. These were pursued in the Supreme Court.

Mr. Justice Glen Brown heard the Appeals and dismissed them on the 20th May 2011. Having failed in this Appeal, the attorney decided to pursue an Appeal against decision of Mr. Justice Brown. There is no evidence before the panel as to what became of this Appeal. The complainant expresses her frustration at these various legal processes. She stated that she is now ninety three(93) years old and that she was very concerned about the length of time it was taking for the complaint to be heard.

In Paragraph 43 the complainant alleges that while the attorney was working for estate, the attorney started working for Moweletia Francis whose interests conflicted directly with those of the estate.

The last exhibit in this affidavit is No. 23 which is a copy of the Grant of Probate in the estate of Charles Joseph Stuart dated the 9th day of May 2001. It appears on the evidence that it is Patrick Vailey & Co. who actually obtained the Grant of Probate. In concluding the affidavit, the complainant repeats the charges against the attorney contained in her original affidavit in support of the complaint dated the 13th May 2004. The within

judgement actually replicates verbatim the alleged charges. The panel now reviews the oral evidence of the complainant.

THE ORAL EVIDENCE OF THE COMPLAINANT. This cross examination commences on the 20th February 2013. The witness is asked about an agreement between the parties allegedly contained in a minute order of January 2006. This minute order was made by a panel which was constituted of 2 members and not 3.

The minute order reveals that on that date the complainant and her daughter Hillary Stuart Alexander were present and represented by Mr. Patrick Bailey and the attorney represented himself. The order states:

- (1) Mr. McPherson will hand over all documentation in his possession including duplicate certificates of titles to Patrick Bailey before the 3rd February 2006.
- (2) On completion of (1) above Mr. Bailey will withdraw the amended complaints against Mr. McPherson.
- (3) Mr. McPherson and Mr. Bailey agree to negotiate in good faith an agreement on costs due to Mr. McPherson by the 11th March 2006. for which date the matter is adjourned for mention
- (4) Failing agreement original complaint will be set down for hearing.

The questions directed to the complainant by the attorney relative to this agreement, are we presume, in an effort to show that in light of this alleged agreement the complainant should not be pursuing the complaint before the Disciplinary Committee.

The panel is of the opinion that neither the complainant nor her attorney-at-law has the authority to withdraw any complaint before the Committee without the leave of the Committee. See rule 15 of the Fourth Schedule to the Legal Profession Act. There is no evidence that the complainant ever applied to the Committee for leave to withdraw the complaint.

At this stage of the proceedings, this line of questioning by the attorney is not really relevant, as it is now the duty of the panel to hear the evidence and rule on the law and on the evidence. The attorney at law then continued his cross examination of the complainant.

The complainant said that the attorney had all the titles. She denied that the attorney had ever turned over the titles to her. The complainant said she knew Fernleigh Avenue and she knew that a small part of it has been sold but she did not remember to whom. After additional questions were asked about titles, the complainant denies that Mr. Bailey handed over any titles to her.

The attorney then suggested to the complainant that it is not true that he charged her fees that were not fair and reasonable and that he did not present proper billing. The complainant said that she was speaking the truth and that all the statements she made in her affidavit are true. She insisted that the attorney had not done what he was paid to do.

It has been years since she put her business in the hands of the attorney and nothing had been accomplished.

The complainant says that she knew Ms. Francis. Ms. Francis was the household helper of her late husband. She did not remember for how long. She said that she terminated the services of the attorney because he had done no work and had been paid hundreds of thousands of dollars.

The attorney suggested to the complainant that the complainant terminated his retainer because the attorney did not turn over Ms. Francis' land to her. The complainant denied this and said that the essence of the complaint is because the attorney did not do the work.

The complainant admitted, having been shown a letter written by her to the attorney, that she did tell Ms. Francis that if she paid the transfer she could have the land. She said there was no land called Ms. Francis' land, but she did promise to give her a piece of land because she appreciated that she had worked for Mr. Stewart. The complainant says that there is no evidence that her late husband gave land to Ms. Francis.

The attorney then produces copy title registered at volume 1042 folio 478 of the Register Book of Titles. This title is still in the name of Charles Joseph Stuart. This title had survey diagram attached to it. The complainant denied that she had ever seen that document.

There were other questions put by the attorney to the witness which really did not impact on the issues of the complaint. The panel does not consider that those questions were of any moment and will not recount them here. They are referred in the notes of evidence.

In response to questions, she reiterates that she was not happy with his services. She was dissatisfied with what was being done. She did say that when he was her attorney-at-law they did not have any disputes.

The cross examination of the complainant ended.

The hearing of this complaint continued on the 18th April 2013. The case of the complainant was closed and the attorney submitted that there was no prima facie case to answer. Counsel for the complainant responded to these submissions and countered that there was indeed a case for the attorney to answer.

The panel reminded itself that at this stage of the proceedings, it was the duty of the panel to consider whether or not there was sufficient evidence on which the panel may find the attorney guilty of professional misconduct on the evidence as adduced so far. The panel now cites the following authority for the stated legal principle.

“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 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 p 75 paragraph 3.2.2.**

The panel quotes from the said referred paragraph:

“Successful discharge of the evidential burden , therefore requires no more than proving evidential facts sufficient to justify the tribunal of fact making a favourable finding as to the facts in issue while not requiring it to do so. This involves adducing evidence on 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 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”

In light of the law and the facts in this complaint , the panel ruled that there was a prima facie case of professional misconduct and called on the attorney to answer to the charges and evidence adduced on the complaint. The ruling of the panel was as follows:

- 1 The panel has given due consideration to the submissions made by the attorney that there is no prima facie case of professional misconduct. We have listened to the submissions made by counsel for the complainant.
- 2 The attorney bases his submissions on the alleged procedural, evidential, and substantive deficiencies.
- 3 The panel sees no merit in any of the submissions made by the attorney as to any alleged procedural deficiencies.
- 4 There is sufficient evidence as adduced on behalf of the complainant Mrs. Iela Stuart raising a prima facie case of professional misconduct against the attorney.

After this ruling, the attorney declined to give evidence on his own behalf. He called as a witness Ms. Francis the former household helper of the deceased Mr. Charles Joseph Stuart. Her affidavit dated the 9th of September 2011 and produced in **Claim No. HCV 56644/2011 Moweletia Francis v Iela Joyce Stuart (executrix of the estate of Charles Joseph Stuart)** was admitted in evidence as exhibit 3,

The affidavit was filed by the attorney on behalf of Ms. Francis against the complainant as executrix of the estate of Charles Joseph Stewart. In this affidavit, Ms. Francis alleges that she is the beneficial owner of certain lands part of 2 Fernleigh Avenue May Pen in the parish of Clarendon.

She exhibits as "MF 1" a copy of a duplicate certificate of title registered at Volume 1042 Folio 478 of the Register Book of Titles with surveyor's diagram attached. She alleges that the deceased had given her this land because of her 36 years of service to him.

She further alleges that the complainant knows that she is the beneficial owner of the said land, and her attorney-at-law Mr. Humphrey McPherson had written to the complainant requesting that she execute an agreement for sale into which she had entered for the sale of the said land.

She alleges that the complainant did not sign the agreement in spite of being requested to do so by the attorney/nor her attorney. There were other allegations contained in this affidavit but the panel takes particular note of the allegations by the witness in paragraphs 9, 11, 12, 13, 14, and 15 of the said affidavit.

In paragraph 9 she accuses the complainant of "fraudulently and unlawfully selling her piece of land to a Mr. Chang. In paragraph 11 she says that she was" disturbed by the conduct of the defendant/complainant who abandoned her husband, the deceased, for 36 years and during that period she took care of the deceased and now the defendant/complainant has done things to try to deprive her of her land.

In paragraph 12 she says that she is aware that the complainant/defendant took the attorney to the General Legal Council because he "refused to settle my land to the defendant's benefit, also defendant does not want to pay Mr. McPherson right fees for his work he did on the estate as reflected in letter dated the 5th November 1999 from the defendant to Mr. McPherson and discussed by all parties as the defendant had no clue about her husband's estate and I had to thoroughly brief her about her husband's affairs during her 36 years absence, She attaches to this paragraph letter marked MF3.

This is a letter from the complainant to the attorney, during the period when the attorney is still acting for the complainant, the executrix of the estate of Charles Joseph Stuart and in which she discusses with him the issues affecting the estate.

Paragraphs 14 and 15 contain legal assertions and arguments which could not possibly have been within the knowledge of the witness.

In evaluating and ruling on this complaint, the panel will also address the salient issues factual and legal as they impact the complaint before us.

Counsel for the complainant did not cross examine the witness Ms. Francis. The hearing of this complaint was adjourned for continuation to the 30th April 2013.

On that date the attorney closed his case having called the single witness, the attorney declining to give evidence himself.

Written Closing Submissions were agreed to be presented to the panel on behalf of the complainant and the attorney. The complainant's submissions were filed on the 8th May 2013. The Written Submissions referred to as Respondents' 2nd Written Submissions were filed on the 27th May 2013.

The panel gave the parties the opportunity to speak to their submissions on the 29th May 2013. On the 29th May 2013, the attorney spoke to his submissions. Mr. Patrick Bailey who on that date appeared for the complainant, chose to rely on the written submissions.

On a perusal of the attorney's submissions, it is not easy to understand them, as respectfully, they do appear confused and unstructured at times, but the panel will endeavour to analyse and address seriatim the issues raised.

THE NO CASE SUBMISSION

The first issue raised by the attorney is that the no case submission should have been allowed by the panel. The panel has already given the reasons for its dismissal of the attorney's submission and sees no need to repeat them, save to say that there is sufficient evidence adduced to permit the panel to have called on the attorney to respond to the evidence.

The attorney then made reference to an Appeal that he had filed in the Court of Appeal and which Appeal was served on the General Legal Council. There was no stay of the disciplinary proceedings by the Court of Appeal, indeed the panel has no information that such an application was made by the attorney. In these circumstances, any reference to the Appeal is irrelevant and need not be considered by the panel.

THE ALLEGED AGREEMENT AND THE MINUTE ORDER OF THE 30TH JANUARY 2006.

The attorney again refers to the above referred Minute Order which terms are enumerated at p 13 of this judgment. He submits that in light of the fact that the panel indicated that if the orders made in paragraphs 1, 2, and 3 failed and there was no agreement, the original complaint will be set down for hearing, the panel had proceeded on the wrong complaint and should have proceeded on the 2002 complaint and not the 2004 complaint.

The panel rejects this submission and is of the considered opinion that it had the legal authority to proceed on the complaint and affidavit in support dated the 13th May 2004. It says this for the following reasons.

- 1 The panel making this order was in law improperly constituted as it consisted of two and not three members.
- 2 The validity of its orders is therefore questioned.
- 3 The present panel would have had to hear evidence to determine whether or not the order had been complied with by the parties and to decide what to do in the circumstances.

- 4 This panel is not bound by any order made by another panel in the sense that each panel enjoys concurrent jurisdiction with the other,
- 5 This panel is not obliged in law to interpret the order of the other panel and enforce that order.
- 6 Further, it is not clear to what complaint the panel referred when it said that failing agreement the hearing should proceed on the original complaint..

The panel concludes that the complaint and affidavit in support dated the 13th May 2004 and signed by the complainant are properly before us as their legitimacy cannot be challenged.

There was no other complaint and affidavit in support to be considered by the panel as this is the complaint that was put in evidence and in relation to which the evidence was adduced.

The attorney also argued that he acted on the terms of the said minute order and had been prejudiced thereby. He alleges "inter alia" that the complainant, Patrick Bailey, Audre Reynolds and the firm of Bailey Terrelonge and Allen had not negotiated with him in good faith and had not paid his fees.

The complainant had been absent from hearings more than 20 times and no orders for costs had been made against her. She has committed other crimes and been aided and abetted by the General Legal Council which have been biased prejudiced and obstructed and perverted the course of justice.

The attorney then lists the following remedies sought:

- A that the matter be adjourned to facilitate Mrs. Benka-Coker and Ms. Lilieth Deacon recusing themselves from any further participation in the proceedings.
- B That the matter be adjourned pending hearing of any and all appeals filed herein.
- C that the matter be dismissed with costs to the respondent
- D that the witness and/or Complainant pays \$1,000,000.00 plus interest for each and every year of harassment of respondent
- E that the matter be referred to the Disciplinary Committee
- F that the matter be referred to the Police /and or Director of Public Prosecutions.

The attorney then refers to the issues to be decided, he purports to analyse the law, he says that the Committee is estopped from hearing the complaint because of paragraph 4 of the minute order and then repeats his arguments in relation to the minute order and what he says is its effect.

The panel finds some of these submissions irrelevant to these proceedings, others are incomprehensible and do not really challenge the evidence adduced by the complainant against the attorney, and do not address the allegations of professional misconduct made against him in great and graphic detail.

The attorney has not put forward any factual or legal basis for either Lilieth Deacon or Pamela Benka-Coker to recuse herself from hearing this complaint. In short his submissions, in total appear to be a long complaint against the Complainant, her attorneys, the General Legal Council and members of this panel wherein he the attorney casts himself as the victim.

The attorney even submits that the complainant Iela Joyce Stewart is not the complainant but her son Dean is. The panel has made every effort to deal with the submissions of the respondent attorney but of necessity and because of the diffuse and unstructured pattern of these submissions, the panel is disabled from finding coherence when there is none.

The panel has done its best to review the material before it according to law and will evaluate same when it is evaluating the evidence and makes its findings. The panel did not find it necessary to address the authorities cited by the attorney as it is of the view that they were not of any assistance in resolving the relevant issues in the complaint.

In response the Written Submissions of counsel for the complainant headed Complainant's Submissions were relied on. The panel has read these submissions. It is not necessary to review them in the same detail that the submissions of the attorney were reviewed.

The substance of these submissions is that the evidence as adduced by the complainant has proven the allegations against the attorney as they relate to professional misconduct and that the attorney has not really challenged the substance of the evidence. Counsel for the complainant lists the exhibits produced in the complainant, lists the grounds of complaint and then asserts that the evidence would amount to the breach of the following Legal Profession (Canons of Professional Ethics) Rules 1978.

They are canons 1V(f), 1V(o), 1V(r), 1V(s), V11(b), 1V(p), and 111(b). Counsel for the complainant relates the evidence to the specific canon she says has been breached by the attorney and in concluding she seeks that certain orders be made by the panel against the attorney.

THE BURDEN OF PROOF: the panel reminds itself that in disciplinary complaints the burden of proof is on the complainant to prove her case to the standard of proof required in law. The evidential burden may shift during the hearing of the complaint but the legal burden of proof remains on the complainant throughout the proceedings.

THE STANDARD OF PROOF; it is accepted that it is the law that the standard of proof in cases of disciplinary complaints is that of the criminal standard of proof, that is

to say “beyond reasonable doubt”. This is because of the very serious consequences that may flow from a finding of professional misconduct against the attorney.

The panel will therefore be obliged in law to evaluate the evidence and make its findings according to law. In conducting such an evaluation the panel has to measure the credibility of the witnesses. This will include examining their demeanour, the manner in which the evidence was given, was there prevarication, hesitance or a refusal to respond to legitimate questions or untruths disclosed?

Or on the other hand was the witness truthful, and credible, and one on whom this tribunal may rely.

Then of course the quality of the evidence given has to be assessed as well.

THE Demeanour of IELA JOYCE STUART. This was a lady, 93 years old, who had all her intellectual faculties intact. She was responsive, calm and sought to speak to the facts as she knew them. Her evidence was in no way impugned, and it was supported by the documentary evidence she produced. The panel finds that the witness was a witness of truth and that it may rely on her evidence in proof of this complaint.

THE Demeanour of MOWELITIA FRANCIS. This witness was not cross examined by counsel for the complainant. She did seem to be a respectable lady but the panel really did not have an opportunity to assess her credibility. However the panel will be obliged to look at the content of her affidavit and weigh its effect if any on the issues raised in the complaint.

HEARSAY EVIDENCE: it is important to note that in disciplinary proceedings which are adjudicated on by quasi judicial tribunals such as this, the hearsay rule of evidence is not strictly applied. In other words, hearsay evidence is admissible in these proceedings and forms part of the evidence on which this panel will adjudicate.

The panel cites the cases of **R v Deputy Industrial Injuries Commissioner ex p Moore [1965] 1 QB 456** and **R v Hull Prison Board of visitors, ex parte St.Germain{1979} 3 ALL ER 545.**

In the **Moore** case Lord Diplock said The “These technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising quasi judicial functions must base his decision on evidence means no more than it must be based on material which tends to logically show the existence or non existence of facts relevant to the issue to be determined or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means he must not spin a coin or consult an astrologer; but he may take into account any material, which as a matter of reason has some probative value in the sense mentioned above. If it is capable of having any probative value the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The Supervisory jurisdiction of the of the High Court does not entitle it to usurp this responsibility and to substitute his own view for his”

The panel thought it important to refer to this very important principle of law, as there are many documents attached to affidavit evidence of the witnesses which normally would be considered hearsay evidence but which in this instance the panel has the right in law to consider their content and attach what weight to the allegations contained therein as the panel deems fit.

EVALUATION OF THE EVIDENCE: The evidence in this complaint will be evaluated taking into account all the relevant principles of law outlined above.

As has been already stated, it is the considered opinion of the panel that the complainant was a credible and compelling witness. She produced copious documentary evidence in support of her complaint and the allegations contained therein. The panel accepts her evidence as being truthful in all material respects.

In contrast, the attorney did not give evidence. There is no evidence from the attorney responding to the charges made by the complainant. There is no evidence from the attorney to weigh against that given by the complainant. The witness of the attorney produced an affidavit in these proceedings which forms part of her civil suit against the complainant as executrix of the estate of Charles Joseph Stuart.

This affidavit is largely irrelevant to the complaint as it relates to the client/lawyer relationship between the complainant and the attorney. Further, much of her affidavit is so posited as to lead the panel to conclude that much of what she said were in fact the words of the attorney incorporated into an affidavit sworn to by his witness Ms. Francis.

She could not possibly have made some of the assertions she made unless they were told to her by the attorney and incorporated into her affidavit by the attorney.

It is the opinion of the panel that the evidence of this witness is of no help in determining the issues as raised between the complainant and the attorney as they relate to this complaint

When one weighs the evidence as adduced, the panel finds that the complainant has made out her complaint against the attorney that he is guilty of professional misconduct in the handling of the business which she retained him to do, and the manner in which he conducted the affairs of the complainant. The panel is of the considered opinion that the evidence rises to the standard of proof of "beyond reasonable doubt"

The panel makes the following findings as it is obliged to do pursuant to section 15 of the Legal Profession Act.

FINDINGS:

- 1 The Attorney –at- Law Humphrey Mcpherson is in private practice with offices at 651/2 Half- Way- Tree Road Kingston 10 in the parish of St. Andrew.
- 2 The complainant Iela Joyce Stuart, now deceased, was the widow of Charles Joseph Stuart who died on the 23rd August 1997.

- 3 The complainant was the executrix of the estate of Charles Joseph Stuart.
4 Prior to the Will of Charles Joseph Stuart being discovered the complainant
had retained the services of the attorney to obtain Letters of Administration
for the estate of Charles Joseph Stuart. This retainer was effected in or around
October 1997. The attorney was paid a retainer fee of \$130,000.00.
- 5 Subsequent to the attorney being retained to obtain Letters of Administration
of the estate, it was discovered that Charles Joseph Stuart had left a Will. This
Will was found in or around April 14th 1998.
- 6 This Will was sent to the attorney. He was instructed by the complainant to
discontinue the application for Letters of Administration and pursue an
application for the Grant of Probate of the Will.
- 7 In addition to obtaining Probate of the Will the attorney was instructed by the
complainant to re-survey the land at 43 Bryans Crescent at May Pen in
Clarendon, correct certain encroachments, prepare Notices to Quit, file
recovery of possession, recovery of rental and recovery of damages for waste,
prepare power of attorney in favour of Dean Collin Stuart.
- 8 The attorney was also instructed to sell lots of land at Bryan's Crescent.
9 The attorney failed to carry to completion any of the instructions that were
given to him by the complainant save and except the instructions to prepare
the power of attorney to Dean Collin Stuart.
- 10 The handling of the legal issues relevant to the various aspects of the estate
demanded a degree of expertise that the attorney demonstrated that he did not
have.
- 11 The attorney did not make the effort to improve his legal knowledge and do
the research that would permit him to address the work that he was retained to
do.
- 12 He did not bring the industry and dedication that were needed to resolve the
problems of the estate.
- 13 In preparing documentation to be submitted to the court to secure the Letters
of Administration , and Grant of Probate, he committed errors that would have
required 'substantial amendments" prior to the documents being accepted by
the court.
- 14 These errors increased the costs of obtaining the Letters of Administration and
the Grant of Probate.
- 15 The errors and the attorney's lack of competence in the area contributed to the
delays in the completion of the work he was retained to do.
- 16 Only one Agreement for Sale was stamped, the sale failed, and the costs of
stamping were refunded by the Stamp Commissioner.
- 17 No subdivision plan or any attached conditions were in the files produced by
the attorney to Patrick Bailey who submitted these files to Audrey Allen for
her review and report.
- 18 The attorney never secured the Grant of Probate although he did file for same
as he did not pay the duties due to secure same.
- 19 The Grant of Probate was secured by Patrick Bailey & Co. in the year 2011.
20 The attorney charged fees that were not fair and reasonable and which were
not commensurate with the work that he did do.

- 21 Exhibit 16, to the affidavit of the complainant, exhibit 1, a statement of
account sent by the attorney to the complainant demonstrates the findings of
this tribunal.
- 22 The attorney fails to substantiate any of the charges with documentary
evidence.
- 23 He fails to support the sums he says he received from 3rd parties with any
documentary evidence such as receipts, letters, or invoices which could
corroborate his claims.
- 24 He produced no accounts to this tribunal to show that he had kept the sums
paid for the account of the complainant in keeping with the requirements of
the Legal Profession(Accounts and Records)Regulations 1999.
- 25 In this Invoice, the attorney claims that the balance due to him by the
complainant is \$4,725,315.00.
- 26 In this same Invoice the attorney admits that he has a balance on account for
the complainant in the amount of \$1,820,000.00.
- 27 The attorney did tax his bill of costs between the years 2009-2010. The
Registrar of the Supreme Court found that the attorney was owed \$44,750.00.
- 28 The complainant did send a cheque to the attorney in the amount of
\$44,750.00 in fulfillment of her obligations pursuant to the taxed bill of costs.
- 29 The attorney appealed to a judge of the Supreme Court, His Appeal was
dismissed on the 20th May 2011 and the ruling of the Registrar upheld.
- 30 The attorney has never accounted to the complainant for any sums due to the
estate and which he collected on behalf of the complainant.
- 31 The attorney has never paid over to the complainant any sums of money due
to the estate.
- 32 The attorney did not keep the complainant informed of the conduct of her
business and its progress.
- 33 The complainant had great difficulty contacting the attorney and getting
information from him.
- 34 The attorney failed and refused to carry out instructions given to him by the
complainant relative to his handling of the estate.
- 35 He refused to deliver duplicate certificates of title to the complainant's
daughter Hillary Alexander when directed to do so by the complainant.
- 36 He continued to pursue activities relative to the sale of lands of the estate
when instructed not to do so by the complainant.
- 37 The attorney, in failing to carry out the instructions of the complainant,
inserted himself into the affairs of the estate, and wrongfully arrogated unto
himself the authority to make decisions on behalf of the estate and contrary to
the specific directions of the complainant.
- 38 The attorney acted as the attorney-at-law for Ms. Mowelitia Francis and
against the complainant as the executrix of the estate of Charles Joseph Stuart
in Claim No. HCV/5644 Moweletia Francis v Iela Joyce Stuart (executrix of
the estate of Charles Joseph Stuart).
- 39 In doing so, the attorney acted against the interests of the estate and the
complainant by pursuing a suit for and on behalf of a complainant whose

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- interests and claims were in direct conflict to those of the complainant and the estate.
- 40 Prior to the institution of the suit for and on behalf of Ms. Francis, the attorney had assumed a posture in favour of Ms. Francis and against the complainant wherein he overtly displayed that he favoured Ms. Francis and her interests, over and above those of then client the complainant.
- 41 The attorney, having acted for the complainant, was in possession of confidential information conveyed to him by the complainant during the currency of the client/ lawyer relationship.
- 42 The attorney should never have acted for Ms. Francis in light of the circumstances outlined above.
- 43 The attorney should never have compromised the interests of the complainant by doing so and thereby opened the possibility of him breaching the client lawyer privilege by divulging confidences which had been given to him by the complainant.
- 44 In fact, the attorney did refer to intimate and private details of the relationship between the complainant and her deceased husband in his response to the complaint of the complainant to the Disciplinary Committee.
- 45 The inclusion of this information was not necessary to the attorney's efforts to defend himself against the allegations of professional misconduct by the complainant.
- 46 Further, in exhibit 3, the affidavit of Ms. Francis, the witness of the attorney, the attorney uses the witness as a proxy to make allegations against the complainant which are clearly designed to benefit him and to serve his interests.
- 47 The conduct of the attorney in acting for Ms. Francis when the complainant had been his client is improper and unprofessional.
- 48 The complainant was the one who determined the retainer of the attorney.

CONCLUSIONS: In light of the above findings, the panel finds that the following breaches of the Canons of Professional Ethics have been committed by the attorney to a standard of proof of "beyond reasonable doubt".

- 1 The attorney –at-law Humphrey McPherson charged the complainant fees that were not fair and reasonable contrary to Canon 1V(f)
- 2 The attorney failed to deal with the complainant's business with due expedition and failed to provide her with all information as to the progress of her business with due expedition when reasonably required to do so contrary to Canon 1V (r)
- 3 In the performance of his duties the attorney acted with inexcusable and deplorable negligence and neglect contrary to Canon 1V(s).
- 4 The attorney has failed to account to the complainant for all the monies in the hands of the attorney for the account or credit of the complainant contrary to Canon V11(b).
- 5 The attorney knowingly revealed confidences of the complainant contrary to Canon 1V t (i)


- 6 The attorney used confidences of the complainant to her disadvantage
contrary to Canon 1V t (ii)
- 7 The attorney used confidences of the complainant to his own advantage
contrary to Canon 1V t (ii)
- 8 The attorney used confidences of the complainant to the advantage of Ms.
Mowelitia Francis contrary to Canon 1V t (3).
- 9 The attorney acted for Ms. Francis as her attorney and against the interests of
the complainant in a situation where the complainant's interests were in clear
conflict with those of Ms. M Francis and thereby prejudiced the interests of
the complainant.
- 10 The attorney has failed to maintain the honour and dignity of the profession
and has indulged in conduct which tends to discredit the profession contrary to
Canon 1(b).
- 11 The panel dismisses the charge of the complainant that the attorney withdrew
from her employment as it appears on the evidence that the complainant
terminated the retainer of the attorney.

The panel having found the attorney-at-law Humphrey McPherson guilty of professional misconduct, now gives the attorney the opportunity to address us in mitigation of the sanction that should be imposed.

This is in keeping with the decision of the Court of Appeal in Owen K Clunie v the General Legal Council, Miscellaneous Appeal No 3/ 2013

Dated the 25th day of November, 2015


PAMELA E BENKA-COKER Q.C.


LILIETH DEACON


PETER CHAMPAGNIE

- 6 The attorney used confidences of the complainant to her disadvantage contrary to Canon 1V t (ii)
- 7 The attorney used confidences of the complainant to his own advantage contrary to Canon 1V t (ii)
- 8 The attorney used confidences of the complainant to the advantage of Ms. Mowelitia Francis contrary to Canon 1V t (3).
- 9 The attorney acted for Ms. Francis as her attorney and against the interests of the complainant in a situation where the complainant's interests were in clear conflict with those of Ms. M Francis and thereby prejudiced the interests of the complainant.
- 10 The attorney has failed to maintain the honour and dignity of the profession and has indulged in conduct which tends to discredit the profession contrary to Canon 1(b).
- 11 The panel dismisses the charge of the complainant that the attorney withdrew from her employment as it appears on the evidence that the complainant terminated the retainer of the attorney.

The panel having found the attorney-at-law Humphrey McPherson guilty of professional misconduct, now gives the attorney the opportunity to address us in mitigation of the sanction that should be imposed.

This is in keeping with the decision of the Court of Appeal in *Owen K Clunie v the General Legal Council*, Miscellaneous Appeal No 3/ 2013

THE SANCTION PHASE OF THIS HEARING:

The panel gave the attorney ample opportunity to address it in mitigation of any sanction the panel may impose as a consequence of the panel having found the attorney guilty of professional misconduct. It is important, for the record, to set out the many steps the panel took to ensure that it complied with the imperatives of the Court of Appeal decision **Owen Clunie v the General Legal Council**.

Prior to the judgment being delivered on the 25th November 2015, the secretary of the Disciplinary Committee ensured that the following was done. A Written Notice indicating that the judgement in the within complaint would be delivered by the panel on the 25th November 2015 at 10a.m. at the offices of the General Legal Council at 78 Harbour Street was hand delivered to the offices of Mr McPherson at 651/2 Half-Way Tree Road. Kingston 10 on the 20th November 2015.

The said notice was also faxed to Mr. McPherson on the same date, the 20th November 2015.

On the 24th November 2015 at about 11. a.m. the secretary to the Disciplinary Committee telephoned the offices of Mr. McPherson. Mr McPherson himself answered the telephone and he confirmed that he had received the Notice.

On the 25th November 2015 at 10.am. the attorney did not appear before the panel and the panel received no explanation for his absence.

The panel waited until 11.30 a. m. and then delivered the judgment in the absence of the attorney.

The panel then adjourned the hearing of the plea in mitigation to the 3rd December 2015 at the offices of the General Legal Council at 10 a.m. . A Notice of the adjourned hearing was hand delivered to Mr. McPherson at his offices on the 27th November 2015 by an agent of the General Legal Council. Receipt of this Notice was acknowledged by a person whose signature was represented as being that of the attorney-at -law Mr. McPherson.

The Hearing of the 3rd December 2015 was adjourned from 10a.m. – 2.30 p.m .The Attorney was advised of the change by Notice of Hearing dated the 2nd December 2015 and hand delivered to the offices of the attorney at 65 ½ Half-Way-Tree Road. The attorney himself acknowledged receipt of the Notice, as there is his signature indicating the time and place of his receipt of the Notice on the copy kept by the offices of the Disciplinary Committee.

On the 3rd December 2015 at 2.30 P.M at the offices of the General Legal Council, the attorney failed to appear. Mrs. Janet Wright, an employee of the Disciplinary Committee, acting on the instructions of the panel, .telephoned Mr. McPherson and advised him that the panel had convened and was awaiting his arrival.

The panel was advised that the attorney said he could not attend at that time but he would be able to attend before the panel at 3 p.m. on Monday the 7th December 2015. The panel agreed to the request of the attorney, and adjourned the hearing to the time and date suggested by the attorney, would be convenient to him.

In addition, a Notice dated the 4th December 2015 confirming the adjournment of the hearing from the 3rd December 2015 to the 7th December 2015 was hand delivered to the attorney at his offices, The attorney acknowledged receipt of the Notice.

On the 7th December 2015 the attorney did not appear at the rescheduled hearing of the complaint. There was no communication from the attorney explaining his absence. The panel waited until 3.38 p.m. and then closed this phase of the hearing of the complaint and determined to address the sanction to be imposed on the attorney in light of its findings that the attorney is guilty of professional misconduct.

The panel is of the considered opinion that the panel gave the attorney every opportunity to address it on the issue of the sanction. to be imposed in the circumstances. The panel is of the view that it scrupulously complied with the imperative of the Court of Appeal as decided in **Clunie v The General Legal Council**. cit:d above.

The panel now gives its reasons for the imposition of the sanctions it imposes on the attorney Humphrey McPherson. It is important to remind ourselves of the legal principles which have been recognized as applicable in situations such as these.

The panel cites the English Court of Appeal case of **Bolton v Law Society reported at 1994 2 ALL-ER 486**. This case is so important in so many respects as it not only addresses the professional and ethical responsibilities of solicitors/ attorneys-at-law but it deals with the approach of the tribunal to the appropriate sanctions to be imposed when ethical breaches have been committed by the solicitors/ attorney-at-laws

The “ratio decidendi” is partially replicated “ A solicitor who discharged his duties with anything less than complete integrity, probity, and trustworthiness had to expect severe sanctions to be imposed upon him by the Solicitors’ Disciplinary Tribunal, and except in a very strong case, an appellate court should not interfere with the sentence imposed by the tribunal. The decision whether to strike off or to suspend involved a difficult exercise of judgment made by the tribunal as an informed and expert body on all the facts of the case, and only in a very unusual or venial case would the tribunal be likely to regard as appropriate an order less severe than one of suspension. Furthermore, because orders made by the tribunal were not primarily punitive but were directed to ensuring that the offender did not have the opportunity to repeat the offence and to maintaining the reputation of the solicitor’s profession and sustaining public confidence in its integrity, considerations which would ordinarily weigh in mitigation of punishment had less effect than in criminal cases and so it would never be an objection to an order for suspension in an appropriate case that the solicitor might be unable to re-establish his practice when the period of suspension was over.”

The facts of the cited authority are instructive in so far as the solicitor Mr. Bolton, was found guilty by the Solicitors Disciplinary Tribunal of misusing client’s funds although the Tribunal found that he had not acted dishonestly and had made good the shortfall in his clients’ account.

The Disciplinary Tribunal imposed on Mr. Bolton a sanction of two years suspension from practice. Mr. Bolton appealed to the Divisional Court against the order made by the Disciplinary Tribunal.. The Divisional Court allowed the appeal in imposing a sanction of a fine instead of a suspension.

The Law Society appealed to the Court of Appeal against the decision of the Divisional Court. It is the judgment of the Court of Appeal that re- states the principles applicable when the Solicitors Disciplinary Tribunal is adjudicating allegations of professional misconduct against a solicitor.

In the judgment of the Court of Appeal Sir Thomas Bingham MR says the following at 491 commencing at paragraph f-j.

“ It is required of lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. That requirement applies to barristers as it does to solicitors. If I make no further reference to

barristers it is because this appeal concerns a solicitor, and where client's moneys have been misappropriated, the complaint is inevitably made against a solicitor as, since solicitors receive and clients, moneys and barristers do not.

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may of course take different forms and be of varying degrees. The most serious involves proven dishonesty whether or not leading to criminal proceedings and criminal penalties. In such cases, the tribunal has almost invariably no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors."

At p 492 of the said case at paragraph b the learned judge says this " it is important that there should be full understanding of the reasons why the tribunal makes orders that may otherwise seem harsh. There is in some of these orders, a punitive element; a penalty may be visited on a solicitor who has fallen below the standard required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need and would be unjust to punish him again. In most cases the order of the tribunal will 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. -----The second purpose is 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 readmission."

This is the legal background against which this panel weighs the findings of professional misconduct and the appropriate sanction. Mr. Humphrey Mcherson has been found guilty of breaches of 10 canons of the Legal Profession(Canons of Professional Ethics) Rules.

These breaches together and separately form very serious incidents of professional misconduct. and the sanction imposed must be commensurate with the gravity of the said professional misconduct. The panel finds it difficult to understand what could possibly have impelled the attorney to behave in the unprofessional manner that he did in so many areas where such conduct is proscribed.

SANCTIONS. The panel imposes the following sanctions in keeping with section 12(4) of the Legal Profession Act as amended

- (1) the panel orders that the attorney Humphrey McPherson pay to the complainant's estate the sum of \$1,820,000.00 with interest at the rate of 6% from February 2004 the date of the statement of account sent by the attorney to the complainant until payment.


- (2) That the attorney be struck from the Roll of Attorneys-at-law entitled to practise in Jamaica.
- (3) That the attorney pays costs of \$750,000.00 to the attorneys-at-law for the complainant Bailey Terrelonge Allen.

Dated the 25th day of Nov. 2015

Dated the 30th day of ~~June~~ ^{July} 2016


PAMELA E BENKA-COKER Q.C.


LILIE TH DEACON

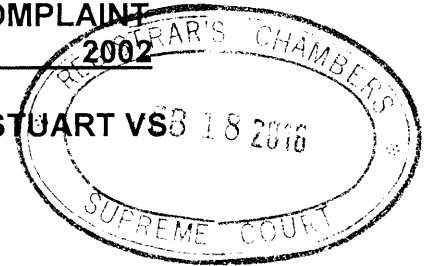

PETER CHAMPAGNIE

**FORMAL ORDER OF THE DISCIPLINARY COMMITTEE OF
THE GENERAL LEGAL COUNCIL MADE ON COMPLAINT
NO. 206**

**IN THE MATTER OF IELA JOYCE STUART VS
HUMPHREY MCPHERSON**

AND

**IN THE MATTER OF THE LEGAL PROFESSION
ACT 1971**



**PANEL: MRS. PAMELA BENKA-COKER, Q.C
MISS LILIETH DEACON
MR. PETER CHAMPAGNIE**

DECISION DELIVERED ON THE 30TH JANUARY, 2016

UPON THE APPLICATION dated 13th May, 2004 made under section 12(1) (a) of the Legal Profession Act and coming on for hearing before the Disciplinary Committee on the 16th February 2013, 20th February, 2013, 18th April, 2013, 30th April, 2013, 29th May 2013

AND UPON the Complainant Iela Joyce Stuart appearing in person with her attorney-at-law Audre Reynolds and having given evidence on oath

AND UPON the attorney-at-law Humphrey McPherson appearing along with his witness Mowelitia Francis and the attorney declining to give evidence

AND UPON DUE CONSIDERATION of the sworn evidence of the Iela Joyce Stuart and Mowelitia Francis and the submissions of Counsel .

THE COMMITTEE FINDS THAT:

The Attorney Humphrey McPherson is guilty of professional misconduct as:

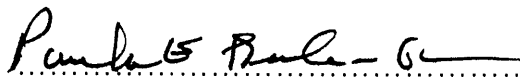
1. The attorney-at-law Humphrey McPherson charged the complainant fees that were not fair and reasonable contrary to Canon IV (f)
2. The attorney failed to deal with the complainant's business with due expedition and failed to provide her with all information as to the progress of her business with due expedition when reasonably required to do so contrary to Canon IV(r)
3. In the performance of his duties the attorney acted with inexcusable and deplorable negligence and neglect contrary to Canon IV(s)
4. The attorney has failed to account to the complainant for all the monies in the hands of the attorney for the account or credit of the complainant contrary to Canon VII(b)

5. The attorney knowingly revealed confidences of the complainant contrary to Canon IV t (i)
6. The attorney used confidences of the complainant to her disadvantage contrary to Canon IV t (ii)
7. The attorney used confidences of the complainant to his advantage contrary to Canon IV t (ii)
8. The attorney used confidences of the complainant to the advantage of Ms. Mowelitia Francis contrary to Canon IV t (3).
9. The attorney acted for Ms. Mowelitia Francis as her attorney and against the interest of the complainant in a situation where the complainant's interest were in clear conflict with those of Ms. Mowelitia Francis and thereby prejudiced the interests of the complainant.
10. The attorney has failed to maintain the honour and dignity of the profession and had indulged in conduct which tends to discredit the profession contrary to Canon 1 (b).
11. The panel dismissed the charge of the complainant that the attorney withdrew from her employment as it appears on the evidence that the complainant terminated the retainer of the attorney.

PURSUANT TO THE FOREGOING FINDINGS THE COMMITTEE UNANIMOUSLY HEREBY ORDERED THAT:-

Pursuant to s 12 (4) of the Legal Profession Act as amended:

- (a) The attorney Humphrey McPherson pay to the complainant's estate the sum of \$1, 820,000.00 with interest at the rate of 6% from February 2004 the date of the statement of account sent by the attorney to the Complainant until payment.
- (b) The attorney be struck form the Rolls of Attorneys-at-law entitled to practise in Jamaica.
- (c) The attorney pays costs of \$750,000.00 to the attorneys-at-law for the complainant Bailey Terrelonge Allen.


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CHAIRMAN OF PANEL

Dated 3rd February, 2016