

JUDGEMENT OF THE DISCIPLINARY COMMITTEE

COMPLAINT NO. 143/2017

BETWEEN ALLAN WOOD QC. COMPLAINANT
AND PAULETTE WARREN SMITH RESPONDENT

PANEL

PAMELA BENKA-COKER Q.C.

DELROSE CAMPBELL

PETER CHAMPAGNIE

PERSONS PRESENT

ALLAN WOOD Q.C.

CANDICE WILLIAMS – COUNSEL FOR THE COMPLAINANT

ALTHEA RICHARDS – SECRETARY TO THE GENERAL LEGAL COUNCIL

JEANNIE MCLEOD – RECORDING SECRETARY

Hearing date -3rd February 2018

The respondent attorney was called at 12.50 p.m. on the 3rd February 2018. There was no response from the respondent nor was there any explanation for her absence. The panel examined the records and confirmed that the respondent attorney was properly served with the Notice of Hearing at the address advised by the respondent attorney in keeping with regulations 5 and 21 of the Fourth Schedule to the Legal Profession Act.

The panel decided to hear the complaint in the absence of the attorney as it has the legal authority to do pursuant to regulation 8 of the said Fourth Schedule..

The panel also determined to hear the complaint on oral and affidavit evidence pursuant to regulation 10 of the Fourth Schedule to the Principal Act.

THE COMPLAINT: By Form of Complaint dated the 19th July 2017 and affidavit in support of the same date, Allan Wood Q.C. (hereinafter referred to as the Complainant) instituted this complaint against Paulette Warren Smith(hereinafter referred to as the respondent) The complainant is a member of the General Legal Council and authorized in law to initiate this complaint.

THE EVIDENCE The complainant Allan Wood was sworn and gave evidence. He confirmed that he is the Chairman of the General Legal Council and a member of the General Legal Council

The complainant stated that he laid a complaint against the respondent. He identified a copy of the complaint dated the 19th July 2017. This complaint was admitted in evidence as **exhibit 1** The complainant's affidavit in support of the complaint dated the 19th July 2018 was admitted in evidence as **exhibit 1A**. His amended affidavit of the 3rd August 2017 was admitted in evidence as exhibit 2

The complainant said that the second affidavit became necessary when he discovered that after laying the initial complaint, that a prior complaint of May 10th 2005 had been laid against the respondent for failure to file accountant's reports for the years 1999-2003.

This complaint was laid for the years 2001-2016. The first complaint laid against the respondent related to the years 1999-2003. That complaint included the years 2001 – 2003 and has already been addressed. At that time the attorney filed declarations alleging that she did not receive any trust money. She was reprimanded and fined a sum of \$10,000.00 by the panel of the Disciplinary Committee having conduct of the complaint.

By filing the Amended affidavit, **exhibit 2**, the complainant said that he is seeking leave of the panel to amend his complaint to omit those years. The witness confirmed that the present complaint before this panel relates to breaches for the years: "2004,2005,2006,2007,2008,2009,2010,2011,2012,2013,2104,2015 and 2016" the respondent remained non-compliant.

The panel permitted the amendment sought and proceeded on the complaint as amended. The complainant said that on examining the records he observed that the respondent has handled trust money, as during the period in question it was the subject of an appeal by the respondent to the Court of Appeal against a decision of the Disciplinary Committee. The witness also observed that this respondent has never voluntarily complied with the Accounts Regulations.

The panel admitted as **exhibit 3** a copy of the Formal Order of the Court of Appeal dated the 13th January 2015. This formal order relates to Miscellaneous Appeal No 4 of 2014. This order discloses that the complaint was remitted by the Court of Appeal for re-hearing before a different panel. The panel will refer to these decisions when evaluating this complaint.

THE EVIDENCE OF ALTHEA RICHARDS: This witness was sworn. She stated that she is the Secretary of the General Legal Council with responsibility to receive Accountant's Reports and Declarations from Attorneys pursuant to the Accounts Regulations

She identified her first affidavit dated the 20th July 2017 and confirmed its contents. . This affidavit was admitted in evidence as **exhibit 4**. In paragraph 2 of this affidavit she said that the respondent Paulette Amelia Warren Smith had failed to deliver to the General Legal Council any Accountant's Reports for the years, 2001,2002,2003,2004,2005,2006,2007,2008,2009,2010,2011,2012,2013,2014,2015, and 2016

She further stated that the respondent had not filed any Declarations in the form of the First Schedule to the said Regulations for the named years.

The witness then identified her second affidavit filed in this complaint and dated the 3rd August 2017. This was admitted in evidence as **exhibit 5**. In this affidavit she corroborates the evidence of the complainant where she says in paragraph 2 that the records of the General legal Council reflect that the respondent “did deliver Declarations to the offices of the General Legal Council for the years 1999, 2000, 2001, 2001, and 2003”

In paragraph 4 she confirms the breaches for the years 2004, 2005, 2006, 2007, 2008, 2009, 2011, 2012, 2013, 2014, 2015, and 2016. This witness omits the year 2010 in this affidavit although she includes this year in her first affidavit. **exhibit 4** In this respect she departs from the evidence given by the complainant.

The evidence adduced on behalf of the complainant was then closed

Judgement was reserved.

THE BURDEN OF PROOF: it is irresistible law that in these matters the burden of proof is on the complainant to establish the allegations in the complaint and the affidavit in support. In spite of the fact that the respondent failed to appear in response to the Notice of Hearing and consequently did not give any response to this affidavit the burden of proof remains on the complainant to prove this complaint to the required standard of proof.

THE STANDARD OF PROOF. The standard of proof in these Disciplinary Proceedings is that of “beyond reasonable doubt”

EVALUATION OF THE EVIDENCE The only evidence before the Committee is that adduced in support of the complaint. The panel is satisfied that the complaint against the respondent is proved to a standard of beyond reasonable doubt. The issues raised in the complaint are not complex.. The respondent either complied with the relevant provisions of the regulations or she did not. She has provided no evidence that she did.

THE LAW: Regulation 16(1) of the Legal Profession(Accounts and Records) Regulations states “ Every attorney, not later than six months after the commencement of any financial year (unless he or she files a declaration in the form of the First Schedule which satisfied the Council that owing to the circumstances of his or her case, it is unnecessary or impractical for him or her to do so) deliver to the Secretary of the Council an accountant’s report in respect of the financial year next preceding that year”

Regulation 17 reads “ Failure by any attorney to comply with the provisions of these Regulations shall constitute misconduct in a professional respect for the purposes of section 12 of the principal Act”

The complainant did refer to the decision of a panel of the Disciplinary Committee of the General Legal Council, which decision was delivered on the 31st May 2014. At the

hearing of this complaint on the 1st February 2014 the respondent attorney Paulette Warren , the same respondent in the within complaint did not appear at the hearing. The panel heard the complaint in the absence of the attorney and the complainants who also did not appear at the hearing The written decision by the panel is referred and is available. .

The attorney was found guilty of professional misconduct and was ordered to make restitution to the complainants of the sum she allegedly failed to account for and struck from the Roll of attorneys entitled to practice in Jamaica. The attorney appealed against the decision of the Committee. The attorney was successful in securing a stay of the judgment of the Disciplinary Committee pending her Appeal.

This ruling is contained in Miscellaneous Appeal No. 4 of 2014, the judgement of Mangatal JA (Ag). A research of the progress of the substantive Appeal through the Court of Appeal reveals that there was no hearing of the substantive Appeal, consequently there is no judgement of the Court of Appeal The Formal Order, exhibit 3 was generated based on an oral order made by the Court of Appeal.

There is no evidence before the panel as to what happened to the complaint after it was remitted to the Disciplinary Committee for re-hearing before a different panel.

In these circumstances, the panel does not think that either the judgement of the Disciplinary Committee or the formal order of the Court of Appeal is relevant to the consideration of the facts in these proceedings and will not be considered in arriving at its conclusion.

FINDINGS :Pursuant to section 15 of the Legal Profession the panel makes the following findings:

- 1 The complainant is a member of the General Legal Council and authorised in law to bring this complaint.
- 2 The respondent is an attorney -at-law in private practice with offices at 178 Spanish Town Road, Kingston, in the parish of St. Andrew.
- 3 The respondent attorney has failed to file either accountant's reports or declarations with the Secretary of the General Legal Council in keeping with regulations 16(1) of the Legal Profession(Accounts and Records) Regulations 1999 for the years 2004,2005,2006,2007, 2008, 2009, 2010, 2011, 2012,2013,2014,2015 and 2016.
- 4 This means that for 13 consecutive years the attorney has not complied with the Accounts Regulations.
- 5 The respondent attorney has never voluntarily complied with the subject regulations.
- 6 This failure is in breach of regulations 16(1) and 17 of the Legal Profession (Accounts and Records) Regulations 1999.
- 7 The respondent Attorney-at-law Paulette Warren Smith is guilty of professional misconduct.

CONCLUSIONS: The Legal Profession (Accounts and Records) Regulations 1999 were made law with the specific object of protecting the financial and other interests of clients and third parties which are handled by attorneys-at-law in their professional capacity

The ethics of the Profession., developed over many years, are designed to protect the interests of the public and the general reputation of the profession. With that in mind, it is not open to attorneys-at-law to whom these ethical rules apply, to disobey these regulations for sustained and prolonged periods and to conduct their practices as if these rules and requirements are non existent and bear no relationship to the conduct of their practices.

The evidence discloses that the respondent attorney Paulette Warren Smith is guilty of egregious and unacceptable breaches of the Legal Profession (Accounts and Records) Regulations 1999.

In spite of the fact that the respondent attorney-at-law failed to appear at the hearing of this complaint, having been required to do so, the panel. before imposing the appropriate sanction in this case, is giving the attorney another opportunity to appear before the panel and address it in mitigation of any sanction the panel may impose pursuant to section 12(4) of the Legal Profession Act. .

The hearing of this complaint is adjourned for the hearing of these submissions.

Dated the 14th day of April 2018


PAMELA E BENKA-COKER Q.C.


DELROSE CAMPBELL


PETER CHAMPAGNIE