

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

IN THE MATTER of **MILLICENT YOUNG** vs.
MAURICE SAUNDERS, An Attorney-at-Law

A N D

IN THE MATTER of the Legal Profession Act

Complaint No. 127/2005

Coram: Crafton Miller
 Jerome Lee
 David Batts

1. This Complaint was sworn on the 29th day of March, 2005 and in it the attorney, Mr. Maurice Saunders is alleged to have:-
 - (a) Withdrawn from the employment without taking reasonable steps to avoid foreseeable prejudice or injury to the complainant's position and rights as his client.
 - (b) Having withdrawn from the employment did not promptly refund such part of the fees paid in advance as may be fair and reasonable.
 - (c) Failed to provide the complainant with all information as to the progress of her business with due expedition, although she reasonably required him to do so.

- (d) Acted with inexcusable or deplorable negligence in the performance of his duties.
 - (e) Failed to account for all moneys in his hands for her account or credit.
2. The hearing of the matter commenced on the 21st October, 2006 and continued on the 9th December, 2006 and 19th May, 2007. Miss Millicent Young, the complainant appeared in person and the attorney Mr. Maurice Saunders attended and was represented by Anthony Gifford, Q.C.
 3. Miss Young gave sworn testimony. She stated that in 1997 herself and her husband separated. Her husband Oswald Young she said is now deceased. However, on the 24th February, 1997 he left the matrimonial home but returned on the 25th February, 1997 accompanied by a policeman and children of her husband. A total of eleven (11) persons she says came to the house.
 4. She stated further that the policeman assaulted her by holding her wrist and choking her on the neck. After the incident she went to the Commissioner of Police, the police in Spanish Town, and to the hospital. She thereafter went to see Mr. Saunders at the Legal Aid Clinic at UWI, Mona. She did not see him upon first going there. She said she did not see Mr. Saunders until four (4) years after the incident because every time she went she only saw students. She said when she first went there she paid \$1,000.00 but got no receipt for the payment.
 5. She stated that she later paid another \$1,000.00 and got no receipt for that either. When asked whether Mr. Saunders brought any action against the police or sued anybody on her behalf, she stated "I don't know". She stated that she made enquiries and was sent to Sutton Street court. This was four (4) years after 1997. When she went to court Mr. Saunders sent another lawyer who spoke to the judge. Then Mr. Saunders arrived and told the judge that it was six (6) years and that she should strike out the case because it is not in the book. She says another lawyer,

Dundeen Ferguson was there and heard this. She went outside and started to cry and Mr. Saunders said she must go to his office, but she did not go she went to the General Legal Council.

6. She put in evidence a medical report as **Exhibit 1** and indicated that the date on the medical report was not correct. The medical report is dated 26th June, 1997 and the doctor's report stated that Ms. Young was seen and treated at the Spanish Town Hospital on the 25th April, 1997 for injuries received on the 24th April, 1997.
7. Upon being cross-examined by Anthony Gifford, Q.C. she denied signing any paper on the 21st November, 2001 and denied asking the Norman Manley Legal Aid Clinic to sue her husband. She stated that the policeman boxed her eight (8) times. Her husband was present but did not stop the policeman doing this. She denied she wanted the Clinic to sue her husband. She stated that she wanted to claim for damages to her eye glasses, her denture and her body as well as for expenses in seeing a doctor and taxi fare. She denied being asked by the Clinic to provide receipts or for her husband's address. She denied that her husband brought the police there to beat her up.
8. She admitted that her injuries were sustained on the 24th April, 1997 and not in February as she had earlier stated. She denied going to the Family Court on 30th April but admitted making a complaint against her husband. A Protection Order dated 30th April, 1997 against her husband was admitted as **Exhibit 2**. She maintained that she did not instruct the Clinic to sue her husband as well as the police.
9. She did not admit that an action was filed in court on her behalf. She admitted that on the night of the incident her husband took up a bent pipe and the police whispered something in his ears and he put it back down. She denied giving a

signed statement in September. She however later admitted that she had signed a statement. A document was shown to her and she stated,

“It looks like my signature but I don’t know what it is saying. I don’t know if it is my signature, it look like my signature. I did not sign anything, only at the Commissioner’s office. Until the document is read I cannot say it is mine.”

10. A portion of the document was read to her and the following exchange occurred:

“Gifford: Was that what you said to the police?”

Young: Not all of that.

Gifford: You agree that he took up a bend?”

Young: Yes, but not to hit me.

Gifford: Did you tell the Police Complaint Office that your husband bought the police rum to beat you?”

Young: Maybe I told him that I don’t remember.”

11. She admitted attending court at Sutton Street but “not by Mr. Saunders sending me”. Initially, she stated that she went on two (2) occasions and then later insisted she had gone to Sutton Street only once.
12. She said that on the occasion she went to court Mr. Saunders was not there initially. A gentleman was present who stated that he acted for Mr. Saunders. She denied the suggestion that it was a lady lawyer who asked that the matter be struck out and stated that it was Mr. Saunders who stated that the case must be struck out.
13. She stated that Mr. Saunders told her to come to his office but she told him she was not going anywhere as he was a wicked man. She did not go to his office.

- 14.. The complainant then closed her case and Mr. Maurice Saunders gave sworn testimony. He began by stating that he is employed to the Council of Legal Education as an attorney at the Legal Aid Clinic. The system there is that clients are seen by students who assist the attorneys employed by the clinic. The students gather background information as to means, and the general nature of the case. The papers are put together in a file and referred to one of the attorneys. The attorney then takes a decision as to how to address the legal problem and from time to time will seek the assistance of students to gather information.
15. He stated that he first took on the responsibility of the complainant's file in late 2001. A letter of instruction from Miss Young dated 14th November, 2001 was tendered and admitted as **Exhibit 3**. The material portion of which read:
- “I want to instruct the clinic to sue the police officers for damages and personal injuries sustained on February 24, 1997.”**
16. A copy of Miss Young's statement to the Police Complaints Authority was admitted as **Exhibit 4**. When asked what did he understand it is she wanted the Clinic to do? Mr. Saunders responded:
- “A: I understand that her husband came on a particular day, brought policeman to the premises where she lived and they got in an altercation and he slapped her in her face.**
- Q: What was the basis for you suing her husband?**
- A: The case was an assault and he was responsible for bringing the police. There was more than this, she had several problems with her husband.”**

17. Mr. Saunders stated that he was not able to deal with her instructions immediately because the complainant did not have an address for her husband and the Resident Magistrate's Court requires an address for service. He stated also that a medical report was needed as well as a statement as to the particular incident because not everything in the statement to the police complaint's authority was relevant.
18. Mr. Saunders stated that a statement was obtained but she had not signed it, however, they never got an address for her husband. He noted also that a valuation of glasses and denture were not obtained.
19. Mr. Saunders stated that the limitation period for the cause of action was six (6) years and that a claim was filed. The claim was tendered as **Exhibit 5**. It shows that it was filed on the 16th April, 2003.
20. Mr. Saunders stated that on the 5th September, 2003 he went to court and the matter was adjourned to the 9th October, 2003. It was thereafter set for the 5th November, 2003. The Defendants attorney had by this time indicated that she intended to contend that the claim was barred by statute of limitation. Mr. Saunders stated that he disagreed with that position as in his view assault by a police officer carried a limitation period of six (6) years and not four (4).
21. He stated that on the 5th November he attended court and Ms. Catherine Denbow appeared for the Defendants. The preliminary point was taken and the Resident Magistrate, her Honour Ms. Dunbar Green, ruled that four (4) years was the limitation period. Mr. Saunders stated that he urged the court not to rule on that point as the date was merely for Mention. She nevertheless heard submissions and struck out the claim as being time barred.
22. Mr. Saunders denied asking the Magistrate to strike out the claim and stated that he opposed the application. He stated that outside of court he tried to speak to Ms. Young, however, she was shouting. He told her to come and see him at his

office but she refused to do so. He stated that he wished her to come to the office so he could take instructions to appeal and explain to her what had transpired. He expressed the view that the judge's decision was clearly wrong.

23. On the 19th May, 2007 Mr. Saunders was cross examined by the Complainant. This panel assisted the complainant, who was unrepresented, as best it could. She first asked Mr. Saunders why he did not see her on the 5th May, 1997 when she came to the clinic. He responded that he did not know of her then.

24. Mr. Saunders denied that he had sent anyone to collect money from her but that the records indicated a payment of money on the 2nd November, 1999, this receipt was admitted as **Exhibit #8**.

25. In explaining the reason why the complainant usually saw students and why he gave instructions to students, Mr. Saunders stated,

“The students are there to assist in a way, sometimes to take information that client bring in. It is a law school, legal aid clinic because it is there for students to assist to get social conscience as well as to learn and to aid with interviewing”.

26. Mr. Saunders denied telling the judge that by law the case must be thrown out. When asked whether he had advised his client in writing about the possibility of an appeal Mr. Saunders stated,

“No because it was clear she wanted nothing to do with me.”

27. When asked whether he had advised her to appeal, he said,

“This is what I was trying to do outside court and explain that she needed to appeal and the consequences.

Panel: You did that?

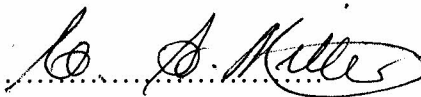
Saunders: Told her to come to my office to discuss appeal”.

28. In his submissions before us Queen's Counsel stated that it was a part of the Clinic's function to have students assist and it was therefore not evidence of negligence that students were involved in the taking of instructions. The crux of the matter was whether there has been a limitation breach.
29. On this issue he submitted that the limitation period in question was six (6) years and relied upon the Jamaican Court of Appeal's decision in *A-G v Leroy Johnson SCCA 125/2002*. Counsel also submitted that the main problem was an address for the husband and by the time this was ascertained in November 2001, four (4) years had already passed. The complainant's failure he submitted, to attend upon Mr. Saunders after the case was over meant that he never received instructions to appeal.
30. This Committee bears in mind that when considering allegations of professional misconduct a high standard of proof is required. We must on the evidence be satisfied beyond reasonable doubt in other words we must be sure, *Re A Solicitor [1992] 2 All. ER 335*.
31. We have carefully considered the evidence of the complainant and feel constrained to observe that she was inconsistent with dates and appeared unwilling to acknowledge documents she had signed. She also attempted to minimize her husband's role in the events which lead to her injury. It is beyond belief that, although she took out proceedings in Spanish Town to restrain him from violent conduct and made a report to the Police Public Complaints Authority which alleged that he had assisted in the assault, that upon attending the Clinic she would not also have sought to have him as a Defendant or at any rate that she would have objected to her husband also being sued. We did not accept the complainant as a witness of truth.
32. This Committee therefore prefers the evidence of Mr. Maurice Saunders to the evidence of the complainant. Our findings of Fact are as follows:-


- (i) The complainant attended the Norman Manley Law School Legal Aid Clinic in relation to an assault by police officers which had been aided and abetted by her husband.
 - (ii) She made repeated visits to the Clinic which tried to obtain from her information as to her husband's address and proof relating to certain items of special damage.
 - (iii) These were produced in or about November of 2001 which coincided with her first meeting with Mr. Maurice Saunders. The Clinic thereafter filed action on her behalf on the 16th April, 2003.
 - (iv) This action was therefore within six (6) years of the date of the offence.
 - (v) The Attorneys for the Defendant convinced the Resident Magistrate that the applicable period of limitation was four (4) years and not six (6) years as Mr. Saunders had urged the court to accept.
 - (vi) That the complainant would have had a fair chance of success on appeal and the authority cited of *Attorney General v Johnson SCCA 125/2002* is relevant in that regard.
 - (vii) The complainant willfully refused to attend before Mr. Saunders to discuss the prospects of an appeal notwithstanding his oral indication that she do so.
33. It is therefore our conclusion that the attorney has not been inexcusably and/or deplorably negligent. Nor has there been a failure to account, nor is there evidence of excessive fees being charged. We therefore dismiss the complaint.

34. We wish however to observe that although the Norman Manley Law School, Legal Aid Clinic will by its nature utilize students to assist in its operations, it must be a matter of some concern that a client could first have attended the Clinic but not had the opportunity to discuss the matter with an attorney for some years! This certainly cannot accord with best practices and, but for our findings in relation to the merits of the Appeal and the complainant's willful refusal to take advice, we may have taken another view of this matter.

Dated the 29th day of March 2008 ^{not}

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Crafton S. Miller

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Jerome Lee

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David G. Batts