

NOTICE OF INTENTION TO MAKE PRELIMINARY SUBMISSIONS

Complaint No 146 of 2002

GENERAL LEGAL COUNCIL	
DATE	17.10.03
TIME	2:50 pm
PER	[Signature]

In the matter of Arlean Beckford,  
Attorney-at-law and Wilbern Wallace

AND

In the matter of the Legal profession Act  
1971

TAKE NOTICE that at the hearing of this matter on the 1<sup>st</sup> day of November 2003 and on any subsequent day to which the same may be adjourned, the Plaintiff intends to raise the preliminary submissions set out below:

1. THAT THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL HAS NO JURISDICTION TO HEAR THIS MATTER.

The jurisdiction of the Disciplinary Committee of the General Legal Council to adjudicate complaints involving an Attorney-at-law arises by virtue of *Section 12 (1)* of the *Legal Profession Act 1971*. This section provides:

Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person, and the Registrar or any member of the Council may make a like application to the Committee in respect of allegations concerning any of the following acts committed by an attorney, that is to say-

- (a) any misconduct in any professional respect (including any conduct which, in pursuance of rules made by the Council under this Part, is to be treated as misconduct in a professional respect):

- (b) any such criminal offence as may for the purposes of this provision be prescribed in rules made by the Council under this Part.

The statutory provision contemplates that complaints may be brought before the GLC in two different ways and advocates different legal standards for each.

Firstly, the complaint may be instituted by “any person alleging himself aggrieved” by “an act of professional misconduct” of the Attorney. For there to be an admissible complaint of this nature, the legal requirements are that there must in fact be an “aggrieved person” and there must have been alleged “professional misconduct”.

Secondly, the complaint may be instituted by the Registrar or a member of the Council of in which case no particular “grievance need be shown.” Undoubtedly, this follows from the legally recognizable status of the Registrar and members of the Council as persons responsible for acting in the public interests. (See *Attorney General for Gambia v. Pierre Sarr N’Jie [1961] A.C 617* where it was held that the Attorney General as guardian of the public interest in his capacity as the representative of the Crown had standing to appeal against the ruling of a Court clearing a member of the bar of a previous finding of misconduct.)

It follows from the clear words of the statutory provision, that in the case of what may be termed “private complaints”<sup>1</sup>, the Disciplinary Committee will only have jurisdiction if there is in fact (a) an aggrieved person and (b) an alleged act of professional misconduct. In so far as these mandate a factual enquiry, the necessary fact must be evident on the face of the complaint itself as it is this which logically demarcates meaningful from spurious complaints.

The inquiry as to whether the jurisdiction of the Disciplinary Committee has been lawfully invoked has to proceed in two stages.

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<sup>1</sup> Complaints instituted by persons alleging themselves aggrieved by an act of professional misconduct of the Attorney. Section 12 (1) LPA

- i) Has the Complainant on the face of the complaint and in light of the averments therein contained shown himself to be an “aggrieved person”?

In *Ex Parte Sidebotham (1880) 14 Ch. D 458*, James LJ in construing the term “person aggrieved” in a statutory provision, held that a “person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title to something.”

In *Attorney General for Gambia v. Pierre Sarr N’Jie [1961] A.C 617*, Lord Denning approved the dictum of Lord Esher MR in *Ex parte Official Receiver, In re Reed, Bowen & Co (1887) 19 Q.B.D 174* that :

The words “person aggrieved” are of wide import and should not be subjected to a restrictive interpretation. They do not include of course a busy body who is interfering in things which do not concern him, but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests.

In *Conti v. AIP Private Bank [2000] S.L.T 1015*, it was held that the expression “feels aggrieved” does not denote mere subjective dissatisfaction, but that there must be something which can fairly be regarded as an objective grievance.

On the strength of these authorities, it is submitted that the Complainant does not have an “objective grievance”. He has not been wrongfully deprived of anything, neither has his title to anything been wrongfully affected nor has there been any thing done which has prejudicially affected his interests.

This is because the Complainant by his very juridical nature is incapable of having any legitimate interests in the land, the conveyancing transaction concerning which has given rise to this complaint.

The Complaint has averred that the deceased Gladston Foster had no title to the land as it belonged to Clarabelle Foster and Eustace Wallace, the complainants grand aunt and father respectively. Even if these facts were true, the complainant has not in the complaint alleged any testamentary disposition of Clarabelle Foster's interest in the land to him and he would not be entitled to same in the event of an intestacy as he is not an eligible relative as specified by the *Intestates Estates and Property Charges Act, Section 4*. As regards his father's alleged share in the land, the complaint has not likewise alleged any testamentary disposition to him of said share but could nevertheless not rely upon his entitlement to same on intestacy as bringing him within the definition of an "aggrieved person". This is because a beneficiary has no legal or equitable interest in an unadministered estate. Full title vests in the executor / administrator and the complainant has not alleged that he has either qualification. (See *Commissioner of Stamp Duties (Queensland) v. Livingston [1965] A.C 694; Corbett v. Commissioners of Inland Revenue [1938] 1 K.B 567; Lall v.Lall [1965] 1 W.L.R 1249; Eastbourne Mutual Building Society v. Hastings Corporation [1965] 1 W.L.R 861; Thelma Grant v. Beatrice Barnes, Unreported judgement of the Jamaican Court of Appeal 2001*).

The same legal conclusion would arise if the land in fact belonged to Gladston Foster as the Complaint is not a qualified beneficiary or the administrator of his estate. The Complaint is incapable of being a person aggrieved ~~simply~~ because he has no legally recognizable interests which could have been prejudicially affected.

- ii) Even assuming that the Complaint is an "aggrieved person", has the complaint disclosed a prima facie case of professional misconduct?

The Act and the Canons of professional Conduct have given an expansive scope regarding what comprises professional misconduct. It is clear that negligence on the part of the Attorney in carrying out his / her duties may suffice. The Complaint has averred that professional misconduct was committed because the attorney has acted with inexcusable negligence.

The Complaint is only able to allege this if Miss Beckford owed a duty of care to him. The following principles are well supported by authority:

- In general, an attorney owes a duty of care to his client and no one else (*White v. Jones [1995] 2 A.C 207 per Sir Donald Nicholls V.C (CA)* ) N.B Miss Beckford was not retained by the Complainant.
- There may however be a duty of care owed to third parties in special cases such as when the attorney was aware of reliance by the third party on information or advice provided or where the attorney was aware that the third party was the contemplated beneficiary of the retainer contract. (See *Tait v. Brown and McRae [1997] S.L.T 63; White v. Jones [1995] 2 A.C 207*) See also *Law Society v. KPMG Peat Marwick [2000] E.C.C 456* where it was held that the duty to third parties arises only in cases where the injury to the third party would have been foreseeable as the third party was within the contemplation of the parties to the contract.
- When advising a client about a proposed dealing with his property in his lifetime, the attorney does not owe a duty of care to prospective beneficiary under the clients will who might be prejudiced by the dealing. (*Clarke v. Bruce Lane & Co. [1988] 1 W.L.R 881*) It follows a fortiori that no duty could be owed to a person who wrongfully believes himself to be a person having a legally enforceable interest in the property as the Complainant does.
- An attorney acting for a vendor of land does not generally owe a duty of care to the purchaser (*Mortgage Corporation v. Mitchells Robertson [1999] S.L.T 1305*). It logically follows that Miss Beckford acting for the purchaser owed a duty of care regarding issues such as verification of title to her client only and could not have been expected to owe such a duty to speculative persons such as the Complainant.

In *Caparo Industries plc. v. Dickman* [1990] 2 A.C 605, the House of Lords held that there were three criteria for the existence of a duty of care in cases of economic loss caused by negligence: (a) reasonable foreseeability of damage (b) relationship of sufficient proximity between the party owing the duty of care and the party to whom it was owed and (3) the imposition of the duty of care contended for should be just and reasonable in all the circumstances.

In all the circumstances outlined, neither of these requirements are met and the Complainant's averment of negligence is thus inadmissible on the face of the complaint.

As the requirements of section 12 of the LPA have not been met, the Disciplinary Committee has no jurisdiction in this matter.

**2. WITHOUT PREJUDICE TO THE ARGUMENTS UNDER ITEM 1, THE DISCIPLINARY COMMITTEE IS IN ANY EVENT A "FORUM NON CONVENIENS" FOR THE RESOLUTION OF THIS MATTER.**

Reliance will be made on the doctrine of Forum Non Conveniens at common law to indicate that the Supreme Court of Judicature of Jamaica is the proper forum to resolve the Complainant's issues, should he wish to pursue same there. In particular, the following matters will be relied upon:

- That the Complaint has put in issue the legitimacy of the signature of Gladston Foster as it appears upon the Instrument of Transfer evidencing the sale of the land and thus the validity of the sale itself.
- The Complainant has put the title of Gladston Foster in issue and thus the validity of the sale transaction.
- The matters put in issue can only be resolved after a complex hearing involving evidence of witnesses who can swear to the history of the


land and account for testamentary documents, appointed executors and administrators related to the estates of Annie Knight, Clarabelle Foster and Eustace Wallace and prove the contents and terms of all such documents and appointments.

- Expert evidence would be required proving or disproving as the case may be, the mental competence and or handwriting of the deceased Gladstone Foster.
- The Supreme Court of Jamaica has traditional and historical jurisdiction in matters of this nature and the Disciplinary Committee is by its very nature, powers and resources unable to adjudicate matters of this nature and legally cannot do as rights in rem are involved.

To: The Secretary  
Wallace General Legal Council  
78 Harbour Street  
Kingston

And to: Wilbern  
9 Riverside Drive  
Ensom City  
Saint Catherine

**DATED THE 15 DAY OF OCTOBER 2003**

  
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**AUDEL CUNNINGHAM**  
**ATTORNEY-AT-LAW FOR THE RESPONDENT**

Filed by Audel Cunningham, Attorney-at-law of No 78 Slipse Road, for and on behalf of the Respondent Arlean Beckford.