

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

**COMPLAINT NO 176 /2022**

IN THE Matter of TRICIA WRIGHT STEELE  
and STEVEN POWELL an Attorney-at-Law  
AND  
IN THE MATTER OF THE LEGAL  
PROFESSION ACT 1971

PANEL: Daniella Gentles- Silvera K.C

Ursula Khan

Delrose Campbell

Hearing: April 23, May 2, July 6, July 20 and November 28, 2024.

Appearance: Complainant in person. Respondent and his Attorney Davon Vassell in person.

**COMPLAINT**

- 1) The complaint was laid on November 22, 2022 against Attorney Steven Powell (the Respondent), and the Complainant listed her complaints as follows:
  1. That fees charged were not fair and reasonable in breach of Canon iv (1);
  2. That she was not provided with all information as to the progress of her business with due expedition contrary to Canon iv (r);
  3. That he did not deal with her business with due expedition in breach of Canon iv (r);
  4. That he acted with inexcusable or deplorable negligence in the performance of his duties contrary to Canon iv(s);
  5. That he has not accounted for all the monies in his hands in accordance with Canon vii (b) & (c);
  6. That he breached his Professional Undertaking contrary to Canon vi(d);

7. That he failed to obtain specific approval and acted in a manner where his professional duties and personal interests conflicted in breach of Canon iv (j); and
8. That he breached Canon 1 (b) by failing to maintain the honour and dignity of the profession.

- 2) We have considered all the evidence of the Complainant and the Respondent but mean no disrespect by not referring to every bit of the evidence. The Complainant gave evidence and called no witness. Four (4) exhibits were tendered in evidence on her behalf.

### **COMPLAINANT'S EVIDENCE**

- 3) She said she was a renovator of buildings and in a case filed against her in the Supreme Court by Just Finance Ltd and Janet Drecketts in 2016 (Claim No. 2016 HCV 00292), she was sued for a loan of \$4.3 Million Dollars. She retained the firm of Musgrave Legal to defend her case and paid the required fee. She was having a baby at the time and her Defence was filed on the last due date, a day on which she was being married and she was told that her Counterclaim could be filed later.
- 4) That sometime after she was informed by Musgrave Legal that they were leaving the island and handed over her file to the Respondent. They advised her that all monies paid by her were transferred to the Respondent. They had not consulted her before doing so. That she first saw and met the Respondent on the first hearing day in Court. She said this was about 2016. That she saw him over the years and discussed with him the facts for a Defence and Counterclaim. That she had explained to the Respondent that she never had a loan from the Claimants and that the money paid to her was for certain renovation work to be done on a three storey house. That she did additional work for which she was owed a total of \$6 Million Dollars by the Claimants for the renovation work done. That was her Defence to the claim and she also wanted the money they owed her. This work was done in 2014.
- 5) Further, she said that she had a dealership contract with a Chinese firm to import decorative panels and distribute same, and that the Claimants committed to investing \$1.6 Million Dollars in this business and paid same, which the claimants subsequently asked her to apply to the 50% deposit

payable by the Claimants for the renovation work to the house, together with a payment of \$500,000.00, which totaled \$2.1 Million Dollars.

- 6) She expected the Respondent to file a claim on her behalf for her losses, but up to the time of trial in 2022 none was filed. That in January 2022, when the case was first listed for a hearing the Respondent told her that a Counterclaim was statute barred. He asked for more money and in March 2022 wrote her a letter to inform her that the Counterclaim can be filed, however after she paid the money, no Counterclaim was filed and the case proceeded to trial. She got judgment on the Claim with costs. Then the Respondent sent her a draft Bill of Costs for taxation in the sum of \$3.1 Million Dollars and he asked her to sign that the taxed costs would be his, she refused and this last episode led to her referring the matter to the Disciplinary Committee of the General Legal Council.

### **CROSS EXAMINATION**

- 7) In cross examination the Complainant insisted that the Respondent was doing her case from 2016 and that she did not know if he filed a Notice of Change of Attorney in 2017. She insisted that all information for a Counterclaim was in his possession since 2016. That he had got incremental additional information from her over the seven (7) years he had the case. He had told her he was doing it. She said she also told him that she had a contract with a Chinese firm for decorative panels that would yield 60 to 100 Million Dollars in earnings to her in the first year. That she had agreed to allow one of the Claimants (Steve McDonald), to invest \$1.6 Million Dollars in this enterprise and when she was ill for a long period, he had access to pertinent information, stole this business and sold it to fifteen (NHT) employees, thereby depriving her of this business and that was also to be part of her claim against one of the plaintiffs. That the plaintiffs still owed her money for the renovation work done.
- 8) She further said that the Respondent had all the information for the filing of a Counterclaim in his possession since 2016, which is when she first spoke to the Attorney about a Counterclaim after the initial hearing at Court, yet he did not file a Counterclaim, nor tell her why he was not doing so, or that if not done within a certain time, it would be statute barred. She said she did not specifically tell him to file a Counterclaim. She said that she paid over \$1.1 Million Dollars in fees and denied that she had only paid \$425,000.00 or that the largest amount paid was

\$260,000.00. She said she gave him her receipts for taxation and did not now have them. This was denied by the Respondent. She called no witness and closed her case.

### **NO CASE SUBMISSION**

9) The Respondent made no case submissions, and the Complainant replied. After consideration, the Panel ruled on the submissions on July 6, 2024.

### **RULING**

1. The Complainant has not made out a prima facie case that the fees are not fair and reasonable.
2. No prima facie case was made out in respect of the Attorney failing to provide her with all information as to the progress of her business with due expedition.
3. No prima facie case has been made out that he has not accounted for monies in his hand.
4. There was no evidence of a professional undertaking given.
5. There was no evidence of professional and private interests conflict on the part of the Respondent.

10) The Panel further ruled that there was a case for the Respondent to answer for breaches of:

- a) Canon iv (r) - he has not dealt with her business with due expedition
- b) Canon iv(s) - inexcusable and deplorable negligence
- c) Canon 1(b) which deals with behaviour which may tend to discredit the profession.

11) The Respondent was called upon to answer these three (3) allegations at the continuation on July 20, 2024.

### **DEFENCE**

12) The Respondent had submitted an affidavit in response to the complaint sworn to on May 24, 2023, and this was put in evidence as Exhibit 5 together with the nineteen (19) exhibits attached thereto.

- 13) However, in view of the ruling on the submissions made, the Panel only considered his response to what he was called upon to answer, that is, his response to breaches of Canon iv (r), Canon iv (s) and Canon 1 (b).
- 14) The Respondent stated that he was instructed by Musgrave Legal to act as Counsel and he thus appeared in Court proceedings until 2017 when he took over the case and filed a Notice of Change of Attorney. That at Case Management Conference whilst he was still so instructed, the Judge disallowed affidavits by two (2) witnesses to stand as witness statements. These were by Lindo and another person whom she claimed he had wrongly abandoned.
- 15) That in her conferences with him the Complainant had complained about how she was treated by the Claimants and how she lost a lot of money, but when asked by him what she wanted to do, she said she was leaving them to God. He said that she told him that more than once.
- 16) He further said that information for a successful Defence was in his possession since 2016 and this information could also be used for a Counterclaim, but she gave him no instructions to file one. She succeeded in her Defence with costs. She had said that the Judge had remarked that she would have granted a Counterclaim. The Respondent said that the Judge had made no such observation but later in an answer to a question from the Panel, he said the issue of a counterclaim only became alive after the trial had ended and the Judge giving her verdict said that if a Counterclaim had been filed, she would have given it. He further said that, when the case first came for trial in January 2022, the Judge had asked if a Counterclaim was filed, and he answered no. That it was after that the Complainant asked what was a Counterclaim and he explained it to her. The Respondent further said that he had listened to her complaints and heard her reference to God since 2017, but she never instructed him to file a Counterclaim.

#### **OBSERVATIONS OF THE PANEL**

- 17) The Panel notes that the Respondent never said that he advised her to file a Counterclaim, or that he had sufficient or insufficient facts to ground a Counterclaim, nor did he record in writing her unwillingness to file one. It seems he also never discussed the limitation period with her during the many years before trial. He never said whether or not he had done so before 2022.

18) The Panel takes note of the fact that the Complainant does not know the law and sought the help of an Attorney at law for that reason and wonders why he did not explain to her the efficacy and advantages of filing a Counterclaim in the circumstances. He had said it would have caused her to pay more fees, and she did not have the money, but the Panel is at a loss to understand such reasoning as all the information for a Counterclaim was with him and used to defend the claim. The filing fee could not be a deterrent, and professional fees could be accommodated in the victory within his grasp. According to him, he continued the case despite her not paying all his fees.

19) The Panel never saw her written instructions to him when he took over the case, nor any instructions to file a Notice of Change of Attorney. He insisted that she never orally or in writing instructed him to file a Counterclaim. His Counsel, Mr. Vassell, stated that Attorneys are creatures of instructions. It would have been prudent of him to have recorded in writing for his own protection, her unwillingness to file a Counterclaim. This was not done, and in this complaint Mrs. Wright Steele has focused on the lack of a Counterclaim and his general response was he was not given instructions to file same.

#### **ISSUES FOR THE DETERMINATION OF THE PANEL**

20) The main issues for the Panel are:

- a) Did the Respondent have a duty to the Complainant to inform her of her right to file a Counterclaim, the limitation period and the efficacy of filing a Counterclaim.?
- b) Did the Respondent's failure to do the things specified in (a) above contravene Canons iv(r), iv (s) and 1(b) making the Respondent Attorney guilty of professional misconduct?

#### **LAW ON THE SCOPE OF DUTY IN A CLIENT /ATTORNEY AT LAW RELATIONSHIP**

##### **Assumption of Liability – implied retainer and close nexus**

21) The notion of assumption of liability in this type of relationship was dealt with long ago in **Hedley Byrne & Co Ltd v Hellers & Partners Ltd [1964] AC 465** and even today this case is regarded

as the modern foundation of this assumption in the English authorities from which we in Jamaica still take guidance.

22) The English case of **Minkin v Landsberg [2015] EWCA Ch 1152** laid down propositions for the consideration of advisors on the nature of a lawyer's duty:

*"he was to carry out the instructions he had agreed to do, to offer advice reasonably incidental to the work instructed and agreed to do, and what was reasonably incidental would be determined considering all the circumstances."*

23) These propositions were cited with approval and the propositions were further extended in the fairly recent case of **Spire Property Developments LLC v Withers LLC [2022] EWCA Ch 970**. In this case the Appeal Court acknowledged that the propositions were always fact specific. Another recent case **Miller v Irvin Mitchell [2024] EWCA Ch 51** also confirmed this view.

#### **APPLICATION OF THIS PRINCIPLE TO THE INSTANT FACTS**

24) The substantive scope of an Attorney's duty is usually determined by the contents of the retainer document; however, the Panel did not have the benefit of perusing such a document as it was not tendered in evidence. Further, the Panel did not see any instructions from the Complainant to file a Notice of Change of Attorney, as until 2016/2017, the Respondent had been acting as Counsel instructed by Musgrave Legal. What exactly the Respondent was instructed by the Complainant to do is an unknown and on this score, all that is before the Panel is the Respondent's alleged comments that Complainant complained many times about how the Claimants robbed her, but that she said she was leaving them to God.

25) Since the Respondent had all the information about what the Claimants owed the Defendant, (Complainant) there was enough information to ground a Counterclaim for money owing for work done, and he ought to have sought her instructions to file a Counterclaim with respect to money still owing to her. In these circumstances, the notion of an implied retainer could succeed, because of the close nexus to the prevailing facts.

26) On the question of the decorative panels and the loss of the contract with the Chinese firm from which she claimed would have resulted in 60 -100 Million Dollars earnings to her in the first

year, he would have needed additional information, which she did not say she offered him, so he would have needed to have written instructions to file a Counterclaim on this aspect of the allegations, as this matter could not fall within the notion of implied retainer, or close nexus giving rise to an assumption of liability.

### **DUTY OF THE PANEL ON THIS ASPECT OF THE LAW**

27) The Panel has to consider whether or not a contractual relationship can properly be implied from the facts and whether or not the Respondent had a duty to advise the complainant to file a Counterclaim for outstanding money owing and whether leaving the matter to God would absolve him of professional liability. Did he have a duty to advise on reasonably incidental matters? Did he have a duty to explain the probability of loss re the decorative panels venture?

### **THE LIMITATION PERIOD AND ITS EFFECT ON CLAIMS**

28) In **Fletcher and Son v Jubb, Booth and Helliwell [1920] K B 175**, the Court dealt with the Attorney's duty to inform his client of the limitation period, and the consequences of not filing a claim before the expiration of the limitation period. In the judgment given in that case at page 281 the Court said:

*“ What is the duty of a Solicitor who is retained to institute an action which will be barred by statute if not commenced in six months? His first duty is to be aware of the statute. His next duty is to inform his client of the position “.*

29) In **Kitchen v Royal Air Force Association [1958] 1 WLR 563** the Court said that it is negligent for an Attorney to allow the limitation period to run out without filing action or informing the client to file. In Jamaica the limitation period ends six (6) years after the cause of action arose.

### **APPLICATION OF THIS PRINCIPLE TO THE INSTANT FACTS**

30) There is no evidence that the Attorney/Respondent fulfilled his duty on this aspect of the law. The Canons of Professional Ethics in the Legal Profession Rules 1983 as amended in 2014. Canon iv (s) deals with the duty of an Attorney in case of deplorable negligence or neglect. Carey JA in

considering this Canon, in the undermentioned case, said that though some level of negligence may be expected in a busy practice.

*“ there is a level which may be acceptable, or to be expected, and beyond which no reasonable competent Attorney would be expected to venture . That level is characterized as inexcusable or deplorable” – (page 133 of the judgment.)*

31) In the Jamaican case of **Earl Witter v Roy Forbes 1989 JLR 129** a more stringent test was prescribed on the degree of neglect or negligence that would constitute professional negligence. This case was about the payment of an outstanding balance of money payable on the sale of land. The Attorney had received a letter that if the said payment was not received by a certain deadline, there was the intention to forfeit. He did not communicate this to his client who was overseas, though the client had written several letters to him enquiring about the progress of the sale before the deadline had expired. Carey JA in the Court of Appeal said inter alia:

*“ it is not mere delay or carelessness that is being made punishable that constitutes the breach but failure to deal with client’s business in a business-like manner.”*

### **STANDARD OF PROOF REQUIRED IN DISCIPLINARY MATTERS**

32) Disciplinary Proceedings are neither Civil nor Criminal as they are sui generis, but the standard of proof required is the criminal standard that is beyond all reasonable doubt. The Panel’s duty is to carefully examine the evidence adduced to ascertain whether or not the evidence rises to that level in breach of the Canons. The case of **Campbell v Hamlet [2005] UKPC 19** affirms this. We have therefore carefully examined the evidence bearing this in mind.

### **DISCUSSION AND ANALYSIS**

33) The Panel has carefully considered the evidence adduced and the prevailing law as to whether or not the Respondent has adduced satisfactory evidence to the required standard in answer to the charges he must answer.

34) In his answer on a failure to file a Counterclaim he said the original brief handed to him by Musgrave Legal contained no counterclaim so when he first started appearing in court it was simply a Defence to the claim and that he acquired over the years material to defend same. That the Complainant often complained about loss of money with the plaintiffs and when he asked her what she wanted to do she told him she was leaving them to God. That this happened more than once so he concluded that was what she wanted to do and continued the Defence only. He never wrote to her explaining her rights and confirming that she said, she was not interested in pursuing her losses, as according to him *“there was no ambiguity in the discussion we had, it was very clear”*. He said he had several discussions with her about her losses, the first being in 2016. The following bit of evidence in chief from the Respondent sums up the Respondent’s communication with the Complainant on the Counterclaim.

*“Vassell: Did you ever suggest to her that she should file a counterclaim?”*

*Powell: I spoke to her about what she wanted to do, I may not have used the word counterclaim, but I spoke to her about what she wanted to do and like I said she said she was going to leave them to God.*

*Panel: You are not sure you used a ‘counterclaim’, what did you suggest that she do?*

*Powell: About filing or some such thing.*

*Panel: No, what is some such thing? I don’t know what that means.*

*Powell: It would have been in essence a counterclaim, but I have never used that word.*

*Panel: So, what did you tell her?*

*Powell: That she could file against them.*

*Panel: What was her response?*

*Powell: The same thing. Like I said we spoke about it a few times, and last time why I stopped asking is because she wasn't interested, just would just leave them to God, and I didn't ask about it again."*

35) He admitted that he had the material for a successful Defence, which could substantiate a Counterclaim, but he was without instructions to do so, and Attorneys are creatures of instruction. That she obtained judgment against the Claimants and only in January 2022 she started to enquire about a Counterclaim, and this intensified after the Judge allegedly made some comments. That he told her that a Counterclaim was then statute-barred as her cause of action started in 2014. The question of a letter written to her by him in March 2022 about a Counterclaim was not properly explained to the Panel.

36) The main question for the panel to consider is what his duty in the presenting circumstances was. She of course has urged that she wanted a Counterclaim, he said she complained but gave no instructions either orally or in writing. What was he to do to protect himself? He never told the Panel that he had explained to her the efficacy of filing a Counterclaim or the hazards of not doing so. He also had a duty to advise her of the limitation period within which she should file her Counterclaim. As the seasoned practitioner, which he claimed to be, why did he not consider it prudent to record in writing that she did not want to file a Counterclaim? The question of increased fees for filing a Counterclaim was lightly raised, but not pressed, however, the filing fee could not be a deterrent when he had continued to do her case with what he claimed to be insufficient fees.

37) All the material required to file a Counterclaim was in his possession since 2016. She was not someone learned in law, that is why she went to an Attorney-at-Law for help, and he ought to have advised her on the efficacy of filing a Counterclaim when he had relevant information for the defence, which was also what was required for a Counterclaim for money owing to her for renovation work done. We cannot hold that the filing fee or his fee was a deterrent.

38) The Panel considers that it was gross neglect of duty not to file a Counterclaim in the circumstances and that if she refused to give him instructions to do so, he ought to have recorded that in writing. He said she complained but gave him no instructions either orally or in writing, and his Counsel urged that Attorneys are creatures of instruction. Then why did he not record her unwillingness to file a Counterclaim. He never said to the Panel that it was his considered opinion

that a Counterclaim would fail. So, the question lingers, why did she need an Attorney at law, was it not for help? He never told the Panel that he gave her advice on the filing or non-filing of a Counterclaim, his evidence was "*what she wanted to do ?*". The evidence before the panel is not helpful to him and his answer to non-filing of a Counterclaim on her behalf is not acceptable.

### **FINDINGS OF FACT**

1. The Respondent was instructed by Musgrave Legal to represent the Complainant.
2. That the Respondent had been representing the Complainant since 2016 and in 2017 when he filed a Notice of Change of Attorney, the nature of his representation changed and with that more responsibility in law and to her.
3. That the facts giving rise to a Counterclaim occurred in 2014, and therefore any claim on those facts expired in 2020.
4. That he did not explain to her while she kept complaining that any claim by her on those facts would be statute barred, if not pursued before the expiration of the limitation period.
5. That he never advised her on the efficacy of filing a Counterclaim.
6. That he took no instructions in writing from her that she did not wish to file a Counterclaim.
7. That he had enough facts in his possession to file a Counterclaim for money owing to her for restoration work done.
8. That he needed specific instructions to file a claim in respect of her loss of business with the Chinese firm and her consequent loss of earnings as this claim was not closely connected to the claim he was defending.
9. That her lack of money to pay his fees did not prevent him from attending Court to represent her.
10. That he was neglectful in his duty to her as client.

### **DECISION**

39) The Respondent is guilty of professional misconduct in that:

- 1) He failed to deal with the Complainant's business with due expedition contrary to Canon iv(r).
- 2) He is guilty of inexcusable neglect and deplorable negligence contrary to Canon iv (s).

- 3) He has failed to maintain the honour and dignity of the profession and to abstain from behaviour which may tend to discredit the legal profession contrary to Canon 1 (b).

**SANCTION HEARING**

- 40) In keeping with the decision in Owen Clunie v GLC Appeal No 3 of 2013 a date will be set for a sanction hearing.

Dated the 28 day of November 2024

*DC Averis*

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**DANIELLA GENTLES SILVERA KC**

*Ursula Khan*

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**URSULA KHAN**

*Delrose Campbell*

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**DELROSE CAMPBELL**