

GENERAL LEGAL COUNCIL

IN THE MATTER OF THE LEGAL PROFESSION ACT

Complaint No. 12 of 2023

BETWEEN:

PASTOR DOZIE IFEANYICHINEKE

COMPLAINANT

and

ORSON J. ERLINGTON

ATTORNEY-AT-LAW

PANEL:

Mr. Justice Rajiv Goonetilleke (Chair)
Mrs. Magali Marin-Young SC
Mrs. Cheryl-Lynn Vidal SC
Mrs. Ashanti Arthurs Martin
Ms. Vanessa Retreage
Mr. Adler Waight

Date of Hearing: May 24 2024

Appearances

Orson J. Elrington, Attorney-at-Law (In person) who was represented by Wilfred P. Elrington,
SC

DECISION ON SANCTIONS

Introduction

1. This is the General Legal Council's (**Council's**) decision on the sanctions levied against Attorney-at-law, Orson J. Elrington (**Mr. Elrington**) for professional misconduct. The facts leading to the Council's findings of grave professional misconduct against Mr. Elrington are fully set out in the Council's decision of April 19, 2024.
2. By that decision, the Council held that Mr. Elrington breached rules 4, 14 and 22 of the Legal Profession (Code of Conduct) Rules (**Rules**) which constitute grave professional misconduct.
3. The Council, in keeping with Section 16 of the Legal Profession Act (**LPA**), gave Mr. Elrington an opportunity to address the Council before it deliberated over the sanctions to be imposed in this matter.
4. Before addressing the Council's sanctions, it is helpful to set out the applicable statutory framework and case law.

Statutory Framework

5. The Council is empowered under Section 16(2) of the **LPA** to:
 - a. remove an attorney's name from the Roll of Attorneys;
 - b. remove an attorney from practice on conditions;
 - c. fine an attorney;
 - d. reprimand an attorney;
 - e. make an order for restitution against an attorney;
 - f. order the payment of costs; and
 - g. make other orders as the Council deems fit.
6. The Council is further guided by section 85 of the Rules. That section makes plain that a breach of the Rules is a derogation from the high standards of conduct expected from an attorney and a matter that may lead to findings of professional misconduct. Indeed, the breach of Rules 4, 14 and 22 aided this Council in its deliberation.

The Purpose of Sanctions

7. It is worth mentioning that the Council is not precluded from issuing a combination of sanctions. The Council may also issue no sanction at all.

8. In issuing sanctions, the Council is guided by the now universally known guidance issued by Lord Bingham in **Bolton v Law Society [1994] 1 WLR 512**. It is helpful that practitioners in this jurisdiction become familiar with the following guidance:

‘....lawyers practising in this country....should discharge their professional duties with integrity, probity and complete trustworthiness....

‘Any...[Attorney]...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...[General Legal Council]. 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...[Attorney]...[should]...order... that he be struck off the Roll. If an...[Attorney]...is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose **reputation depends upon trust**. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.¹

9. Lord Bingham also offers guidance as to the objectives in issuing sanctions for professional misconduct:

It is important that there should be full understanding of the reasons why tribunal[s] make orders which might otherwise seem harsh. There is....a punitive element: a penalty may be visited on an...[Attorney] who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other...[Attorney]... tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. In most cases the order of the tribunal will be 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. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off.’

‘The second purpose is the **most fundamental of all**: to maintain the reputation

¹ At paragraphs 13 – 14

of the...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 re-admission. A member of the public... is ordinarily entitled to expect that the...[Attorney]...will be a person whose trustworthiness is not, and never has been, seriously in question. **Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.**² (emphasis added)

10. Lord Bingham went on to say that an Attorney's personal circumstances play a limited role when considering sanctions. He explained that:

'Because orders made by the...[General Legal Council]...are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment **have less effect on the exercise of this jurisdiction** than on the ordinary run of sentences imposed in criminal cases. It often happens that an...[Attorney]... appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former...[Attorney]... may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any...[Attorney]...whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. **Thus it can never be an objection to an order of suspension in an appropriate case that the...[Attorney]... may be unable to re-establish his practice when the period of suspension is past.**'

'If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. **The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.**³

11. The Council decided to set out long extracts of the *Bolton* so that Attorneys and the public understand the matters that weigh upon the Council when considering sanctions.

The Facts In Outline

² At paragraph 15

³ At paragraph 16

12. A brief reiteration of the facts which were set out in the Council's decision of April 19, 2024 is helpful for this decision on sanctions.
13. On May 17, 2022, Pastor Dozie Ifeanyichineke (**Pastor Dozie**) retained Mr. Elrington to institute a constitutional claim against the Social Security Board (**SSB**) to challenge certain provisions of *Social Security Act* dealing with the recovery of widower's pension under its provisions, which were alleged to be discriminatory.
14. Claim No 256. of 2023 was filed by Mr. Elrington on behalf of Pastor Dozie against the SSB. Subsequent to the filing of the said claim, there ensued settlement discussions between counsel for the SSB and Mr. Elrington, which culminated in the filing of a Consent Order dated September 29, 2023 (**Consent Order**).
15. Pastor Dozie complained that Mr. Elrington entered the Consent Order without his approval of the terms therein. Consequently, he filed this complaint with the Council. The Council having considered the evidence before it found Mr. Elrington to have entered the Consent Order without Pastor Dozie's approval and that Mr. Elrington was derelict in his duty in not securing the approval of Pastor Dozie as to the terms of the Consent Order.

Mitigation by Mr. Elrington

16. Mr. Elrington tendered a written submission and made oral submissions before the Council in response to the Council asking him to show cause why sanctions should not be imposed on him in this matter. Mr. Elrington also submitted letters from Marine Parade Chambers LLP (Mr. Godfrey P. Smith, SC) and from Mr. Richard "Dickie" Bradley, to attest to his character and the fact that he has undertaken *pro bono* legal work.
17. In summary, Mr. Elrington did not squarely dispute the Council's finding but did appear to read down the severity of the misconduct found. He also expressed contrition in his oral submissions for what he considered to be the misconduct. He asked the Council to exercise some leniency since he was fairly new to the practice (7 years in practice), that he had a lapse in judgment, that he has always been ready and willing to take on *pro-bono* work, and that since this Council's decision, he has lost a lot of clients. Mr. Elrington submitted that these circumstances had also put the employment of his staff at risk. He submitted that since the decision of the Council he has implemented communication protocols between his office and clients and put in place better record keeping of correspondence with clients in dealing with their files. He has also submitted that he is ready, willing and able to transfer the entirety

of the funds he collected under the Consent Order to Pastor Dozie but that he had not been able to do so as Pastor Dozie had not given him a bank account.

Considerations – Seriousness of Offence

18. In deciding upon the sanction, the Council will firstly consider the seriousness of the misconduct.
19. The Council finds Mr. Elrington conduct to be of serious concern to the profession which is grounded on trust with members of the public who rely on their professional services to carry out their legal representation. Attorneys-at-law are expected always to act with clients' instructions, and to be transparent in their dealing with clients and in particular in the conduct and settling of court matters, as in this case. Mr. Elrington conduct in not having obtained Pastor Dozie's approval before signing off on the Consent Order is improper and unprofessional and not acceptable to the profession. When appearing before any court or tribunal, clients expect that their counsel will always act on their instructions. Not having obtained Pastor Dozie's approval would inexorably cause clients and the public to have distrust in members of the legal profession and in himself as a member of this profession.
20. The Council observed that there have been no previous findings of misconduct against Mr. Elrington. The Council has also taken into consideration the following matters placed before it by Mr. Elrington: that he is willing to put in place better record keeping and communication protocols for his office to adhere to in managing clients files and matters, that since the finding of this Council in this complaint, he has lost a significant amount of clients and that consequently the employment of his staff has been put into jeopardy. Mr. Elrington also stated that he does undertake *pro bono* work in the profession, and that he is willing to pay over the sums collected from the Social Security Board to Pastor Dozie.
21. The Council has also considered Mr. Elrington's oral and written submissions and the letters in support. The Council finds that Mr. Elrington's personal pleas and circumstances should be given less weight in accordance with *Bolton* keeping in consideration the greater good of the legal profession and the trust that the public reposes in the profession. So too does the Council recall that Mr. Elrington's plea came after the Council's decision against him.

Selecting the Sanction

22. The Council bears in mind the guidance given in *Bolton* and the purpose that the Council must achieve in sanctioning Mr. Elrington.

23. The Council finds that in considering the range of options available for sanctions that Mr. Elrington's grave professional misconduct and culpability is sufficient to preclude the Council from making a decision of 'no order on sanctions'.
24. The Council also considers that in these circumstances, the protection of the public and the reputation of the legal profession requires a greater sanction than just a reprimand.
25. The type of grave professional misconduct which Mr. Elrington has been found to have committed by this Council would ordinarily warrant a suspension to serve as a deterrent both to him and others in the profession from acting on a frolic of their own instead of dutifully complying with clients' instructions. A suspension in such circumstances would allow an attorney time to reflect and to reform their mode of practice and would protect the public from exposure to such unprofessional conduct, during the time the attorney reforms him or herself.
26. Though Mr. Elrington's conduct constitutes grave professional misconduct, in this instance, the Council has taken into consideration the following factors in mitigation when arriving at its decision: Mr. Elrington's acceptance of the Council's finding, the fact that he has been unable to pay the money received on the settlement to Pastor Dozie because he was not given a bank account number by Pastor Dozie and the fact that he has been willing to take on *pro bono* work.
27. Having considered these factors pleaded in mitigation, this Council has decided not to suspend Mr. Elrington from practice, but instead to impose a fine sufficiently severe to act as a deterrent and to reflect the seriousness of the grave professional misconduct at hand.
28. In these circumstances, the Council considers that a fine of \$15,000.00 is just and appropriate both as a deterrent to future misconduct of similar nature by Mr. Elrington and others in the profession and also as a measure of vindication for the reputation of the profession.
29. Future conduct of this kind may warrant more severe punishment.

Orders

30. Considering all the material placed before this Council, the Council, unanimously, makes the following orders:
 - a. Mr. Elrington is fined the sum of \$15,000.00 payable to the Registrar and the Registrar is directed to pay a portion of this fine, namely \$5,000.00, to Pastor Dozie.

- b. Mr. Elrington is ordered to pay the sum of \$46,588.00 which is due to Pastor Dozie without any deductions to the Registrar on or before the close of business on July 19th, 2024. The Registrar is directed to pay the sum of \$46,588.00 received to Pastor Dozie.
- c. The fine is to be paid on or before 30th of August 2024.
- d. In the event that the fine of \$15,000.00, or the sum of \$46,588.00 due to Pastor Dozie, is not paid on the due dates as directed, Mr. Elrington will, from the date on which he has failed to make payment, be suspended from practising law until such time as the payment is made in full and confirmed to this Council by the Registrar.

Dated the 12th of July 2024

By the General Legal Council