

GENERAL LEGAL COUNCIL

IN THE MATTER OF THE LEGAL PROFESSION ACT

Complaint No. 2 of 2024

BETWEEN:

ALBERT McKOY

COMPLAINANT

and

EMMERTICE ANDERSON

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
Ms. Samantha Matute
Mr. Adler Waight

Date of Hearing: July 19, 2024

Appearances

Emmertice Anderson, Attorney-at-Law (In person)

DECISION ON SANCTIONS

Introduction

1. This is the General Legal Council's (**Council's**) decision on the sanctions to be levied against Attorney-at-law, Emmertice Anderson (**Ms. Anderson**) for professional misconduct. The facts leading to the Council's findings of professional misconduct against Ms. Anderson are fully set out in the Council's decision of June 28, 2024.
2. By that decision, the Council held that Ms. Anderson breached rules 28 and 69 of the Legal Profession (Code of Conduct) Rules (**Rules**) which constitute professional misconduct.
3. In accordance with Section 16 of the Legal Profession Act (**LPA**), Ms. Anderson was given 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.

The Purpose of Sanctions

7. 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** (applied in the Council's decision on sanctions in **Complaint No. 12 of 2023 – Dozie Ifaniyuake v. Orson J. Elrington** dated July 12, 2024):

‘...lawyers practicing 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

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

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 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)

¹ At paragraphs 13 – 14

² At paragraph 15

Mitigation by Ms. Anderson

9. Ms. Anderson tendered a written submission to the Council on July 18, 2024 in response to the Council asking her to show cause why sanctions should not be imposed on her in this matter. The “show cause” hearing was held on July 19, 2024 and when Ms. Anderson appeared, she advised that she would rely solely on her already filed written submission.
10. Ms. Anderson’s submission was primarily focused on why the Council’s findings of professional misconduct were flawed; but ultimately advanced, in mitigation, that (a) she secured the best possible sum in costs for Mr. McKoy (b) there was no prejudice suffered by Mr McKoy as a result of her agreement without his knowledge and (c) that Mr. McKoy is still able to bring his claim or pursue a settlement of this matter if he so chooses.
11. It is regrettable that Ms. Anderson did not, in anyway, address the gravamen of the finding of professional misconduct – that she did not discuss and obtain her client’s consent and authorization to agree to the quantum of costs and the implication of the non-payment of the same. Even when Ms. Anderson received an unqualified undertaking from Mr. Perera that he would not enforce the costs order, the import of this for Mr. McKoy’s case was not explained nor communicated to him.
12. The Council notes that Ms. Anderson regards this experience as one that has forced her “*to grow in [her] professional life as an Attorney-at-Law.*”

Selecting the Sanction

13. The Council bears in mind the guidance given in *Bolton* and the purpose that the Council must achieve in sanctioning Ms. Anderson.
14. The Council observed that there have been no previous findings of misconduct against Ms. Anderson; and that at the relevant time, inexperience may have contributed to the lapse.
15. The Council finds that in considering the range of options available for sanctions in these circumstances, the protection of the public and the reputation of the legal profession, a reprimand would be just.

Orders

16. Considering all the material placed before this Council, the Council hereby reprimands Ms. Anderson for breach of Rules 28 and 65 of the Legal Profession Rules.

Dated the 27th of September 2024

By the General Legal Council