

GENERAL LEGAL COUNCIL

IN THE MATTER OF THE LEGAL PROFESSION ACT

Complaint No. 6 of 2017

BETWEEN:

BRUCE CHO

COMPLAINANT

and

HUBERT ELRINGTON SC

ATTORNEY-AT-LAW

PANEL:

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

Date of Hearing: June 21st, 2024

Appearances

Bruce Cho (In person and unrepresented)
Hubert Elrington, SC Attorney-at-Law (In person)

DECISION

Introduction

1. This is the General Legal Council's (**Council** or **GLC**) decision on a complaint brought by Mr. Bruce Cho (**Mr. Cho**) against Attorney-at-Law, Hubert Elrington SC (**Mr. Elrington**).
2. Mr. Cho initiated this complaint by submitting the Form of Application against an Attorney and affidavit in support dated November 1st, 2017. Mr. Cho also submitted unsigned and undated draft affidavits of Jimmy Boucher and himself.
3. Briefly stated, Mr. Cho complains that Mr. Elrington, who was representing him in a suit before the then Supreme Court, failed to comply with case management orders, and refused to, despite Mr. Cho's instructions, put forward evidence before the then Supreme Court.
4. The hearing of this matter took place on June 21st, 2024, with both parties giving oral evidence in support of their respective positions.
5. At the close of the hearing, the Council ordered the parties to obtain and submit the underlying Supreme Court documents.
6. Mr. Cho forwarded some of the court documents. Mr. Elrington for his part failed to produce any material to assist the Council. Mr. Elrington also failed to file written submissions despite asking the Council for an opportunity to do so.

Evidence

7. The Council allowed Mr. Cho to rely upon his complaint and affidavit in addition to his oral evidence. Mr. Cho, in complying with the GLC's order of June 21st, 2024, submitted electronic copies of:
 - a. his affidavit dated September 29th, 2016;
 - b. order dated November 4th, 2016;
 - c. Claim Form and Statement of Claim dated November 17th, 2016;
 - d. Submission on behalf of the Claimant dated November 17th, 2016;
 - e. his further affidavit dated November 16th, 2016;
 - f. Submissions on behalf of the Claimant dated May 3rd, 2017; and
 - g. Decision of Young J. dated June 2nd, 2017.
8. Mr. Elrington gave oral evidence at the hearing of this complaint.
9. A review of the transcript of the hearing of June 21st, 2024, and submitted documents assured the Council that the underlying facts were not seriously disputed. The documentation obtained by Mr. Cho confirmed his evidence in material respects.

10. The salient facts can be stated as follows:

- a. On September 16th, 2016, Mr. Cho, then a resident of Crique Jute Village, Toledo District (**Crique Jute**), was embroiled in a dispute with the Alcalde and Deputy Alcalde of Crique Jute concerning the boundaries of property he occupied. On that day, he was arrested, detained, and released by the Alcalde and Deputy Alcalde.
- b. Mr. Cho retained Mr. Elrington to bring suit against the Alcalde and Deputy Alcalde (collectively **Defendants**) for assault and false imprisonment [**initiated**] Claim No. 552 of 2016 Bruce Cho v S. Paquiul & E. Chiac (**Claim No. 552**).
- c. Mr. Cho sought an injunction against the Defendants.
- d. On November 4th, 2016, Mr. Elrington was allowed to withdraw as counsel for Mr. Cho and Mr. Cho was ordered to make various filings by November 17th, 2016. Costs of \$700.00 was also awarded against Mr. Cho.
- e. Mr. Elrington however, continued to represent Mr. Cho and Mr. Cho, through Mr. Elrington, filed his claim form and statement of claim dated November 17th, 2016, and complied with the order of November 4th, 2016.
- f. On February 8th, 2017, the matter came before Young J., for a case management conference. The case management conference included directions for filing of witness statements/affidavits.
- g. Mr. Cho received instructions from Mr. Elrington, via Mr. Elrington's agent, to prepare draft affidavits in support of his claim. Mr. Cho submitted the affidavits to Mr. Elrington for use at trial and requested their use at trial.
- h. Mr. Elrington did not submit the evidence to the Court and did not comply with any of the case management orders made by Young J. As a result of Mr. Elrington not filing any witness statements on behalf of Mr Cho, despite Mr. Cho providing Mr. Elrington's office with the drafts requested, there was no evidence that Mr. Cho could rely on at the trial.
- i. Mr. Elrington filed a written submission on May 3rd, 2017, positing that the Defendants "*admitted all the allegations of fact contained in the Statement of Claim*" with the effect that the admission compromised Mr. Cho's ability to controvert the evidence therein.

- j. The case was dismissed after the Defendants' no case submission in June 2017 on the basis that the claimant, Mr. Cho, had failed to prove his case, with costs of \$12,500.00 being awarded against Mr. Cho.
- k. Mr. Elrington thereafter advised Mr. Cho to appeal the decision of Young J., and gave him a letter stating that decision was wrong in law and that Mr. Elrington would be willing to take the matter on appeal "*on the basis that...[Mr. Elrington]...[would]...only be paid if we win the appeal*".
- l. Mr. Cho paid some of the judgment debt but has not been able to discharge the debt despite being the subject of enforcement action.
- m. Mr. Cho and Mr. Elrington have not been in contact since.

Law

- 11. This Council has affirmed in its previous decisions *Complaint No. 10 of 2023 Young v Neal* and *Complaint No. 12 of 2023 Dozie v Elrington*, that Attorneys-at-Law (**Attorneys**) hold a special position in society. It is for this reason that Attorneys must adhere to high professional and ethical standards.
- 12. Though Attorneys enjoy wide latitude in the conduct of matters, Attorneys are expected to adhere to and comply with her/his client's lawful and reasonable instructions and directions and conduct matters with reasonable care, skill, and prudence; and importantly, with orders made by the Court such as case management orders.
- 13. The question for the Council is whether Mr. Elrington's admitted **[conduct as an attorney]** transgressed any of the following rules of the Legal Profession (Code of Conduct) Rules:
 - a. Rule 4(2):
"An attorney shall maintain his integrity and the honour and dignity of the legal profession and...shall refrain from conduct which is detrimental to the profession, or which may tend to discredit it"
 - b. Rule 22(1) :
An attorney shall always act in the best interest of his client, represent him honestly, competently and zealously and endeavour by all fair and honourable means to obtain, for him the benefit of any and every remedy and defence which is authorised by law, steadfastly bearing in mind that the duties and responsibilities of the attorney are to be carried out within the bounds of the law.

c. Rule 28(1):

An attorney shall deal with his client's business with all due expedition and shall, whenever reasonably so required by the client, provide him with full information as to the progress of the client's business.

d. Rule 69:

In the performance of his duties an attorney shall not act with inexcusable or undue delay, negligence or neglect.

Mr. Elrington's Conduct During Cross-Examination

14. Before addressing the Council's findings, the Council must note its great displeasure with Mr. Elrington's cross-examination of Mr. Cho. Mr. Elrington conducted himself in a manner that is unbecoming of any Attorney, much less one of the rank of Senior Counsel. Cross-examination is not an opportunity to harangue or demean a witness, a matter this Council has already opined upon in *Complaint No. 12 of 2023 Dozie v Elrington*¹. Mr. Elrington in this case addressed Mr. Cho as being 'uneducated', which this Council finds unbecoming of an Attorney.

Discussion and Analysis

15. The Council, relying on the documents submitted by the Complainant, was able to adequately consider Mr. Cho's evidence though the Council would have preferred to review all the material before the then Supreme Court. Mr. Elrington was unhelpful to the Council by not providing any material in regard to the record of the proceedings of court.

16. The Council reminds itself that Mr. Cho's evidence was not contested. In view of that fact, the Council finds the fact as recounted by Mr. Cho above.

17. The Council is tasked with determining whether Mr. Elrington's admitted conduct in not filing evidence on behalf of Mr. Cho and taking up the position that he did not do so because he was going to rely solely on the law, engages this Council's jurisdiction. Mr. Elrington's explanation and or justification for his actions must be closely considered.

Decision to Ignore Case Management Conference Orders

¹ At Paragraph 14(4)

18. Mr. Elrington informed the Council that he had decided that he **did** not comply with any of Young's J case management conference orders as he had decided to rest Mr. Cho's case on a legal point of his (Mr. Elrington's) choosing viz. the "admissions".
19. Mr. Elrington informed the Council that he had not informed his client nor the Court of his decision to do so.
20. Mr. Elrington simply did not comply with any of Young J.'s orders, and rested Mr. Cho's case on a legal gambit that failed. The Defendants made a no case submission which Young J. granted. As a matter of public record, the Council takes note of Young J.'s chronology of her dismissal of Claim No. 552 on account of the limited information before the Council. The Council also recalls that Mr. Elrington did not suggest that the decision contained any factual inaccuracies. Rather, Mr. Elrington thought that the decision was wrong in law.
21. The pleading of Mr. Cho's claim in that case by Mr. Elrington left much to be desired. The claim form consisted of orders and declarations only and informed little, if any, of the facts underlying his claim. The statement **of** claim was pleaded no better than the claim form but gave the gist of Mr. Cho's claim.
22. In summary, Mr. Cho recounted that on September 16th, 2016, he was detained and arrested by the Defendants for failing to heed their orders to remove some posts on property within Crique Jute. Mr. Cho's pleaded case was that "I know Crique Jute had not been declared an Alcalde Jurisdiction and I knew that their claim to be Alcalde and Deputy Alcalde of Crique Jute was false. All appointments of Alcaldes must be made by the Attorney General by publication in the Gazette and no such appointment has ever been made in respect of the Defendants".
23. Young J. found that the Defendants had, after conceding that their appointments were not gazetted, filed a full defence.
24. Young J had this to say of the Defendants' position:

Mr. Paquil and Mr. Chiac (sued in their private capacity) say they are protected by the Crown Proceedings Act which prohibits the prosecution of judicial officers for acts carried out in the execution of their duties. They maintain that they are the Alcalde and Deputy Alcalde of Crique Jute but they are silent as to whether their names have in fact been gazette by the Attorney General. What they do say is that if this was proven to be a fact, that they at all times acted under the color of right as de facto judicial officers. They have admitted that Mr. Cho was detained as he described but they deny handcuffing him and said they were supported in that detention by the Belize Police Department. They also admit that he had been convicted of a breach of the peace and fined. His conviction had nothing to do with the removal of any posts. When that fine was not paid a warrant for further imprisonment was issued. Most importantly, they strenuously deny that they falsely

*imprisoned, assaulted, or committed any other unlawful acts against Mr. Cho as he claimed.
[emphasis added]*

25. Unsurprisingly, the Court found against Mr. Cho as he had produced no evidence at trial.
26. Mr. Elrington's justification before the Council was that the Defendants' concession (viz. that their appointments were not gazetted) was sufficient to foreclose the Defence and that Young J. was wrong to have found as she did.
27. Having considered the material before placed before this Council , the Council finds that Mr. Elrington's conduct in prosecuting Mr. Cho's claim is one **that** no member of **the legal profession** who is reasonably well-informed and competent and diligent would have followed.
28. Mr. Elrington did not seek a judgment on admissions, assuming that he was so entitled to do; **he also** did not seek any orders to test his case theory as a preliminary issue (a matter which may have saved his client's costs). Mr. Elrington did nothing after filing the claim form and statement of claim except to make submissions before the Court upon a tenuous basis. Mr. Elrington may have been forced to take up the legal argument as he did because he had been in default of the case management orders; had not filed any evidence; and with passage of time was only left with the alternative of pressing on with a legal argument to salvage the matter. Mr. Elrington failed, it seems to us, to address any of the factual and other legal contentions made in the Defence or to address any issue beyond the admitted failure to gazette the Defendants' appointment. More than that, Mr. Elrington **was intentionally in default of** Court orders and treated the case management orders of court without any sense of seriousness.
29. The Council finds that Mr. Elrington has conducted Mr. Cho's matter with neglect or negligence in breach of Rule 69 (In the performance of his duties an Attorney shall not act with inexcusable or undue delay, negligence or neglect). Mr. Elrington also breached Rules 22 (1) (An Attorney shall always act in the best interest of his client...) and Rule 28(1) (An Attorney shall deal with a client's business with all due expedition...) by failing to comply with any of the Case Management Conference Orders.
30. To compound this error, Mr. Elrington also failed to heed Mr. Cho's instructions.

Failure to Heed Mr. Cho's Instructions In Filing Submitted Material

31. Mr. Cho's complaint under this head is that Mr. Elrington refused to file/submit evidence that Mr. Cho had prepared.
32. An Attorney is engaged to use his best efforts to advance his Client's interest. Mr. Elrington had suggested that Mr. Cho's additional evidence would not have made a difference to the outcome. Whether Mr. Elrington's compliance with Mr. Cho's direction would have affected the outcome of the case is a matter for speculation. What remains is that Mr. Elrington failed to heed Mr. Cho's instructions. The information that Mr. Cho sought to introduce was not without relevance. Mr. Cho wished to include the history of his occupation of the plot and evidence from the previous occupier of the disputed property in *Crique Jute*.
33. Mr. Elrington's failure to heed Mr. Cho's instructions has breached Rules 4(2), Rule 22(1) and Rule 28(1).
34. Mr. Elrington's asserted that there is "*only one attorney*", when asked as to why he ignored Mr. Cho's instructions. **This assertion** cannot stand **against an** Attorney's duty to act as an advocate for his client. Attorneys may have conduct of a matter, but they must inform clients at every stage of a matter and must advance clients' cases on their clients' lawful and reasonable **instructions**. This is evident as clients bear the consequences of litigation.
35. Mr. Cho's request to Mr. Elrington fits easily within that which is required by Attorneys *viz.* adherence to reasonable directions.
36. An attorney cannot, as Mr. Elrington seems to suggest, take on a case and thereafter fail to inform and or seek his client's **instructions**. Mr. Elrington boldly admitted that he took Mr. Cho's case and thereafter acted entirely **at his discretion without** Mr. Cho's input. **It is an Attorney's duty to advise his client of the consequences of his actions, but an Attorney cannot act unilaterally ignoring his client's instructions. As such Mr. Elrington's conduct** cannot be countenanced.

Conclusion

37. Considering all the material placed before this Council, the Council is satisfied and is unanimous in finding that Mr. Elrington is guilty of professional misconduct in respect of his representation of Mr. Cho; and **consequently** that Mr. Elrington is in breach of Rules, 4(2), 22(1), 28(1), and 69.

38. Mr. Elrington is required to show cause in writing to this Council on or before 4:00 pm October 25th 2024 as to why any of the sanctions set out in section 16(2) of the Legal Profession Act should not be imposed on him on.

Dated the 27th of September 2024

By the General Legal Council