

10 Dec 96
DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL

Complaint No. 181/96
Alvin Warren vs. Carlton Campbell

PANEL MR. CHRISTOPHER BOVELL - CHAIRMAN
 MR DERRICK MCKOY
 MR BERT SAMUELS

Mr. Alvin Warren, a teacher, now residing in Carisbrooke District, in the parish of St. Elizabeth, complains to the Disciplinary Committee of the General Legal Council against the attorney, Carlton Campbell, esq., of Main Street, Santa Cruz, also in the parish of St. Elizabeth, of professional misconduct.

In his accompanying affidavit dated the 28th day of September 1996 Mr. Warren said that he had retained the attorney in a series of matters and the attorney had charged fees which were not fair and reasonable. Mr. Warren also complains that the attorney had not provided him with all the information as to the progress of his ~~business all the information as to the progress of the~~ case although he had reasonably requested of him to do so. Finally, Mr. Warren complained that Mr. Campbell had acted with inexcusable or deplorable negligence or neglect in the performance of his duties.

The complaint was set for hearing several times before various panels of the Disciplinary Committee, but our colleague, Mr. Campbell, has never appeared. We should say that Mr. Campbell chose not to appear because we are quite satisfied that he has had adequate, ample and proper notice of these proceedings. Most recently, the General Legal Council wrote to Mr. Campbell on 8th March 1999 regarding these hearings. We are further satisfied from the affidavit of Miss Mervalyn Walker, dated 22nd April 1999, that she had posted a notice of the hearing for 19th March 1999 by registered post to Mr. Carlton Campbell at Main Street, Santa Cruz P.O. This address is the one published by the attorney quite prominently on his professional letterhead. Regarding today's proceedings, we

are again seized of another Affidavit of Service filed by Miss Walker and dated 28th May, 1999 stating that on Monday, 3rd May, 1999 she posted a notice dated 29th April, 1999 in this matter to Mr. Carlton Campbell at his address in Santa Cruz. In the circumstances, and being satisfied that Mr. Campbell has always had notice of these proceedings and that he should not deny Mr. Warren a hearing by merely keeping away, we have proceeded to hear the complaint in Mr. Campbell's absence. So that Mr. Campbell should suffer no undue prejudice, and although he had offered no excuse for his absence, we have also directed that the notes of evidence should be forwarded to him.

On 24th April 1999 we heard the testimony of Alvin Warren. On that day he told us that he had approached Mr. Carlton Campbell some years ago in a matter against Charles Peart. Warren said he was claiming against Peart for possession of land and for damages to property. He said that for a long time Mr. Campbell did nothing although he went to him on a number of different occasions. Warren further said that he paid the attorney ten thousand dollars and produced a receipt from Mr. Campbell for that amount, dated 6th November 1995. We admitted this in evidence as Exhibit No. 1.

Mr. Warren said that he subsequently reported the matter to the Disciplinary Committee because the attorney had not discharged the duties for which he was retained. Warren said that his complaint was called up three or four times before panels of the Disciplinary Committee but on only one of those occasions did Mr. Campbell appear. Moreover, although costs had been awarded, Mr. Campbell had never paid that either.

The matter between Warren and Peart eventually came up before the Resident Magistrate in Balaclava and His Honour, Mr. C. D. Seaton gave judgement for Warren (the plaintiff) for damages, costs and the injunction against Peart as prayed. Notwithstanding this order, however, Peart is still on Warren's land. Although the attorney had obtained the order on behalf of Warren, he had done nothing to have the order enforced. Warren makes it clear that it was his understanding that the nature of his retainer of Mr. Campbell required that the

attorney not only obtain the Court's order but should also take such steps as are necessary to see that the terms of the injunction are obeyed.

Having heard the un-contradicted evidence of Mr. Warren, we are satisfied that Mr. Carlton Campbell has indeed acted in this matter with inexcusable or deplorable negligence or neglect in the performance of his duties. As such this item of the complaint against the attorney is fully made-out.

We find that the Attorney was in fact retained by the complainant and that the terms of that retainer required that the attorney take such steps to remove one Charles Peart from property owned by the complainant and situated in St. Elizabeth. It was the client's clear and unambiguous understanding that this retainer was not only to get judgement but also to see the judgement fully carried out. Although judgement was obtained in Plaintiff No. 480/97 in the Resident Magistrate's court in the Parish of St. Elizabeth on 16th June, 1998 for damages, costs and an injunction, the necessary steps to see that the order obeyed has not been taken by the attorney. Nor is any explanation offered as to what might have impeded the attorney in discharging his duty under the retainer.

We do not feel that the complainant's expectation of service from the attorney is unreasonable and there is no evidence before us to challenge that expectation. We have made several efforts to have the attorney appear before us, all of which have been unsuccessful. So although given ample opportunity to challenge the testimony of the complainant, the attorney has not done so. The only evidence we have before us from which we can construct the terms of the professional retainer is the testimony of the complainant and he was quite clear as to how he understood the responsibilities of the attorney.

Having found that the attorney has acted with inexcusable or deplorable negligence or neglect in the performance of his duties, we believe the appropriate order is one that will allow the complainant to see the terms of the retainer effectively carried out. As such, this Panel orders a fine of \$15,000.00 against the attorney. This fine is to be applied as follows:

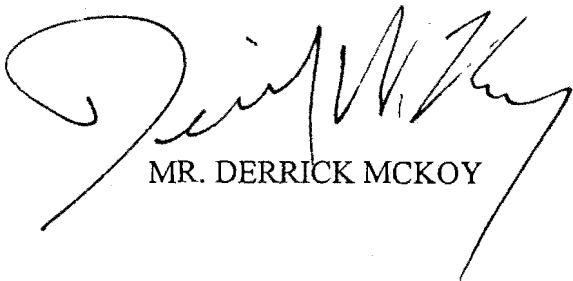
1. \$10,000.00 to be paid to Mr. Alvin Warren, the person making the application; and
2. \$5,000.00 to be paid to the General Legal Council.

This panel further orders the payment of cost in the sum of \$2,000.00 to be paid by the attorney to the complainant.

Dated the 29th day of May, 1999



MR. CHRISTOPHER BOVELL, CHAIRMAN



MR. DERRICK MCKOY



MR. BERT SAMUELS