[2020] JMCA Civ 61

JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO 3/2018

BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA

BETWEEN	**LAUREL WASHINGTON-TURNER**	**APPELLANT**
AND	**THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL**	**RESPONDENT**

The appellant in person

Ms Carlene Larmond instructed by Patterson Mair Hamilton for the respondent

21, 22 January and 27 November 2020

MORRISON P

[1] I have had the great advantage of reading in draft the judgment prepared by F Williams JA in this matter. I entirely agree with his reasoning and conclusions and there is nothing that I can usefully add.

F WILLIAMS JA

[2] On 3 April 2018, the appellant (hereafter called "Mrs Washington-Turner") appealed against the decision of the respondent (hereafter called "the Disciplinary

Committee") dated 27 January 2018. By that decision, the Disciplinary Committee had dismissed Mrs Washington-Turner's complaint against the law firm of Brown, Godfrey, and Morgan (hereafter referred to as "the firm") on the basis that the facts that formed that complaint were insufficient to establish a *prima facie* case.

[3] Mrs Washington-Turner's notice of appeal having been filed outside the stipulated 28-day period from the date of delivery of the decision of the Disciplinary Committee (as stipulated by rule 5(1) of the Disciplinary Committee (Appeal Rules) 1972), it became necessary for her to obtain an extension of time to regularise her late filing. When the matters came before us, Miss Larmond, counsel for the Disciplinary Committee, indicated that the application for an extension of time to file the notice of appeal was not being opposed but that the substantive appeal was being challenged.

[4] Further, due to certain exigencies indicated by Mrs Washington-Turner, which included concerns regarding her age, health status and the inconvenience and expense of travelling from overseas for each hearing, the parties consented for the court to hear the application for extension of time and the appeal together.

Proceedings before the Disciplinary Committee

[5] Mrs Washington-Turner's complaint against the firm was initiated by a form of application and affidavit, both dated 22 August 2017. These are the originating documents for the making of a complaint that are prescribed by rule 3 of the fourth schedule to the Legal Profession Act ("the LPA Rules"). Other documents were given to the Disciplinary Committee by Mrs Washington-Turner. These other documents before

the Disciplinary Committee include several emails and letters that Mrs Washington-Turner had sent to Miss Dahlia Davis, Secretary of the Disciplinary Committee of the General Legal Council ("the GLC"). Reference will subsequently be made to those items of correspondence. From a perusal of them, it is apparent that Mrs Washington-Turner chose to name the firm of attorneys rather than any individual attorney on the basis that it was the firm that she had retained.

[6] Mrs Washington-Turner's complaint came on for hearing on 27 January 2018. At that time the Disciplinary Committee considered whether a *prima facie* case had been established. In its formal order dated 6 February 2018, the Disciplinary Committee stated that, in its deliberation, having considered the form of application, affidavit evidence and the documentary evidence, *prima facie*, the complaint had not been made out against the firm.

The Disciplinary Committee's reasons for decision

[7] These were the four findings proffered by the Disciplinary Committee for its decision:

> "1. No facts were stated with respect to what the Attorneys, Brown Godfrey & Morgan, were retained to do.
>
> 2. The facts stated in the Form of Affidavit by the Applicant sworn to by the Complainant on 22nd August, 2017 does not support any of the grounds of complaint specifically:
>
> (i) They withdrew from my employment without taking reasonable steps to avoid foreseeable prejudice or injury to my position and rights as their client.

(ii) Having withdrawn from my employment they have not promptly refunded such part of the fees paid in advance as may be fair and reasonable.

(iii) They have not provided me with information as to the progress of my business with due expedition, although I have reasonably required them to do so.

(iv) They have not dealt with my business with all due expedition.

(v) They have acted with my [sic] inexcusable or deplorable negligence in the performance of their duties.

3. There is no correlation between facts set out and the complaints made against the Attorneys.

4. The facts stated are inadequate to permit the Disciplinary Committee to make a finding that there is a prima facie case."

[8] It was Mrs Washington-Turner's dis-satisfaction with those findings which led to the filing of this appeal.

The appeal

[9] Mrs Washington-Turner, who is self-represented, filed very expansive grounds of appeal. To a significant extent the grounds of appeal recited the factual background to her claim in the Supreme Court where she had been represented by the firm. The grounds of appeal, when assessed, in essence raise two issues regarding her contention that: (i) there was no denial by the firm of the matters set out in her affidavit; and (ii) the Disciplinary Committee had sufficient information to have concluded that a *prima facie* case had been established.

Submissions of Mrs Washington-Turner

[10] Mrs Washington-Turner advanced concerns regarding issues of alleged bias and prejudice on the part of the Disciplinary Committee. She complained that the Disciplinary Committee had sided with the firm in respect of the firm's conduct. In further presenting her case, she submitted that she had retained the firm to lodge a caveat, but maintained that, while the firm had been paid in full, it had failed to complete the task it was retained to do. She argued that the failure of the firm to complete the job had caused her pain and suffering and had delayed the progression of her matter in the Supreme Court.

[11] Mrs Washington-Turner further submitted that counsel that had been engaged subsequent to the firm's withdrawal from the matter had been absent from a pre-trial review held on 3 October 2019. She argued that that absence caused the pre-trial review to be re-scheduled to 11 December 2019, and the trial date of January 2020 to be pushed back further to the year 2025. She stated that she was again forced to obtain new legal representation.

Submissions for the Disciplinary Committee

[12] Ms Larmond, in her economical style of submitting, condensed the grounds of appeal into two questions, as follows:

> (i) Was the Committee bound to find that a *prima facie* case had been made out against the respondent attorneys in

circumstances where the said attorneys did not deny the allegations?

(ii) On the material before it, was the Disciplinary Committee correct in its finding that the complaint against the attorneys was not made out?

[13] In relation to the first issue, counsel submitted that the Disciplinary Committee had considered the application, affidavit and documentary evidence (representing pieces of correspondence between Mrs Washington–Turner and the GLC prior to the complaint being filed), in accordance with the rules, at its meeting held on 27 January 2018. Counsel explained that there had been no response received from the firm, and as such, none was considered by the Disciplinary Committee at its hearing.

[14] Counsel advanced the position that the Disciplinary Committee's decision was not invalidated by the lack of response by the firm, as rule 4(3) of the LPA Rules states that: "the Committee shall consider the application and the response thereto (**if any**)" (emphasis added). That wording, it was submitted, clearly contemplated circumstances in which there is a lack of response from an attorney. Accordingly, where no response was provided by an attorney, at the stage of determining whether a *prima facie* case existed, that factor alone could not invalidate the decision of the Disciplinary Committee or automatically result in a finding that there is a *prima facie* case to answer.

[15] In relation to the second issue, counsel submitted that the affidavit contained no statement of what the firm was retained to do. Counsel contended that, even if the

reference in emails dated 9 and 10 May 2017, sent from Mrs Washington-Turner to the General Legal Council (that the firm was retained to represent her in court) could be gleaned as an indication of what the firm was retained to do, the information before the Disciplinary Committee demonstrated that the firm had in fact represented Mrs Washington–Turner in court proceedings. Counsel submitted that, from the correspondence sent to Miss Dahlia Davis, it was evident that the firm had filed claim no 2014 HCV 05631 on behalf of Mrs Washington-Turner, which claim had proceeded to mediation at which Mrs Washington-Turner was represented by Mr Canute Brown of the firm.

[16] In relation to Mrs Washington-Turner's allegation that the firm had been retained to lodge a caveat, counsel submitted that there had been no such allegation before the Disciplinary Committee.

[17] Counsel argued that it would have been reasonable for the Disciplinary Committee to have found that the facts did not support Mrs Washington-Turner's allegation that she was entitled to a refund. Counsel further submitted that there was no evidence of payment made in advance.

[18] Counsel further submitted that, whereas Mrs Washington-Turner contended that the attorneys had ignored her letters requesting them to file the mediation report, the facts disclosed that the mediation report was filed within a year and the matter put back before the court. Counsel submitted that there was no evidence in her affidavit of those alleged enquires by her of the firm, as the documentation showed letters sent

directly to the mediator. Furthermore, she submitted, the blame for the delay in the matter rested with the mediator for not having filed the mediation report.

[19] Counsel submitted that no issue had been taken with Mrs Washington-Turner's allegation that the firm had withdrawn from her employment on 30 June 2017 as, according to her, other counsel had been retained by 3 July 2017. Further, it was contended, the complaint made by Mrs Washington-Turner might have had some bearing on the firm's withdrawal from her employment, in circumstances where there had been no evidence of any prejudice suffered by Mrs Washington-Turner as a result of the termination of the retainer.

Preliminary point

[20] Counsel for the Disciplinary Committee indicated that the documents contained in the supplemental bundle filed by Mrs Washington-Turner had not been before the Disciplinary Committee for its consideration. Mrs Washington-Tuner took no objection to that position. Accordingly, in keeping with well-established rules that govern our review of a matter of this nature, the court's adjudication upon this matter is limited to the documentary evidence that was placed before the Disciplinary Committee.

The approach of this court

[21] In respect of what this court's approach ought to be in considering an appeal of this nature, there are a number of guiding principles to which we must have regard. First, this being an appeal against the exercise of a discretion vested in the Disciplinary Committee, there are several hurdles which the appellant must overcome. These have

been set out, for example, in the case of **The Attorney General v John MacKay** [2012] JMCA App 1, per Morrison JA (as he then was) at paragraphs [19] and [20] as follows:

> "[19] It is common ground that the proposed appeal in this case will be an appeal from Anderson J's exercise of the discretion given to him by rule 13.3(1) of the CPR to set aside a default judgment in the circumstances set out in the rule. It follows from this that the proposed appeal will naturally attract Lord Diplock's well-known caution in **Hadmor Productions Ltd v Hamilton** [1982] 1 All ER 1042, 1046 (which, although originally given in the context of an appeal from the grant of an interlocutory injunction, has since been taken to be of general application):
>
> > '[The appellate court] must defer to the judge's exercise of his discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently.'
>
> [20] This court will therefore only set aside the exercise of a discretion by a judge on an interlocutory application on the ground that it was based on a misunderstanding by the judge of the law or of the evidence before him, or on an inference - that particular facts existed or did not exist - which can be shown to be demonstrably wrong, or where the judge's decision 'is so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it'." (Emphasis added).

[22] Another consideration of at least equal importance has to do with the approach of courts to appeals from a disciplinary committee composed of experienced members of a particular profession. In the case of **Re: A Solicitor** [1974] 3 All ER 853, at page 859, it was put thus by Lord Widgery CJ:

> "It has been laid down over and over again that the decision as to what is professional misconduct is primarily a matter

> for the profession expressed through its own channels, including the disciplinary committee. I do not, therefore, for one moment question that if a properly constituted disciplinary committee says that this is the standard now required of solicitors that this court ought to accept that that is so and not endeavour to substitute any views of its own on the subject."

Issues

[23] In our view, this appeal may be fairly disposed of by the resolution of the following two issues:

(i) Was the decision of the Disciplinary Committee invalidated by the lack of response from the attorneys?

(ii) Was the Disciplinary Committee correct in its finding that there were insufficient facts to establish a *prima facie* case, having regard to the form of affidavit and the documentary evidence?

Issue (i) was the decision of the Disciplinary Committee invalidated by a lack of response from the attorneys?

[24] Rule 4 of the LPA Rules sets out the procedure for treating with the hearing of an application made pursuant to section 12 of the Legal Profession Act. It provides that:

> "4.-(1) Before fixing a day for the hearing of any application under rule 3, the Committee—
>
> (a) may require the applicant to supply such further documents or information relating to the allegations as the Committee thinks fit; and
>
> (b) shall serve on the attorney against whom the application is made a copy of the application and the affidavit in support thereof, together with all other relevant documents and information.

> (2) An attorney who is served under paragraph (1)(b) shall, within forty-two days of such service, respond, in the form of an affidavit, to the application.
>
> (3) Upon the expiration of the period mentioned in paragraph (2), the Committee shall consider the application and the response thereto (if any), and if the Committee is of the opinion that-
>
> (a) a prima facie case is shown, the Committee shall proceed in accordance with rule 5;
>
> (b) no prima facie case is shown, the Committee may dismiss the application without requiring the attorney to answer the allegation."

[25] Phillips JA, in the case of **Oswest Senior Smith v General Legal Council and Lisa Palmer Hamilton** [2018] JMCA Civ 26, sought to shed light on the proper construction to be placed on the above-stated provision. The learned judge of appeal therein stated that:

> "[59] Subsequent to the amendment, the Committee may still require further information from the applicant, but the next step is to serve the attorney against whom the application was made with a copy of the application and affidavit in support, together with all other relevant documentation or information. The attorney must then, within 42 days of such service, respond to the allegations made through material/documentation and must do so in the form of an affidavit. On the expiration of the said 42 days the Committee must consider the application and the response of the attorney (if any). If in the Committee's opinion a prima facie case has been shown, then it must fix a date for the hearing of the matter, and serve notice of that date on the appellant and the attorney at least 21 days before the hearing pursuant to rule 5 of the Rules. If, however, in the opinion of the Committee a prima facie case has not been shown, then the Committee shall dismiss the application."

[26] What is clear is that the rules contemplate that an attorney against whom an application is made ought to be served with the documents constituting the application. Further, a response via affidavit is required from the attorney within 42 days of his or her being served with the application. Rule 4(3), however, empowers the Disciplinary Committee to consider the application, along with a response, "if any", at the expiration of the 42-day period. What must be inferred from the inclusion of the phrase "if any" is, therefore, that the Disciplinary Committee can decide whether a *prima facie* case exists, even in the event of a lack of response from the attorney. Accordingly, the lack of response from an attorney (thus creating a situation where the allegations are not denied), could not, by itself, be the sole or primary basis on which a *prima facie* case is found to exist. Regard must be had to the complainant's allegations themselves and to the material submitted in support thereof.

[27] The appellant, therefore, fails on this issue.

Issue (ii): was the Disciplinary Committee correct in its finding that there were insufficient facts to establish a prima facie case, having regard to the form of affidavit and the documentary evidence?

[28] Section 12 of the Legal Profession Act permits an aggrieved person to file a complaint against an attorney on the basis of conduct which amounts to professional misconduct. It makes the following provision:

> "Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney **to answer allegations contained in an affidavit** made by such person…" (Emphasis supplied)

[29] Additionally, rule 3 of the LPA Rules requires that:

> "An application to the Committee to require an attorney **to answer allegations contained in an affidavit** shall be in writing under the hand of the applicant in Form 1 of the Schedule to these Rules and shall be sent to the secretary, together with **an affidavit by the applicant in Form 2 of the Schedule to these Rules stating the matters of fact on which he relies in support of his application**." (Emphasis supplied)

[30] The essence of these two provisions is that the allegations an attorney is called upon to answer ought to be contained in an affidavit in the prescribed form. Further, the affidavit in question ought to state the facts being relied upon to ground the allegations.

[31] Rule 4(1)(a) of the LPA Rules, which has previously been cited, makes provision for the Committee to require further information relating to the allegations as the Committee thinks fit. Further, rule 17 goes on to make provision for amendments and additions to an affidavit. Rule 17 states that:

> "If upon the hearing it appears to the Committee that the allegations in the affidavit require to be amended or added to, the Committee may permit such amendment or addition, and may require the same to be embodied in a further affidavit, if in the judgment of the Committee such amendment or addition is not within the scope of the original affidavit, so, however, that if such amendment or addition be such as to take the attorney by surprise or prejudice the conduct of his case, the Committee shall grant an adjournment of the hearing upon such terms as to costs or otherwise as to the Committee may appear just."

[32] Pursuant to rule 4(1)(a), therefore, the Disciplinary Committee has power to require additional information prior to the hearing; and pursuant to rule 17, upon the

hearing the Disciplinary Committee is at liberty to exercise its discretion to allow for an amendment, addition or further affidavit where the circumstances so require. Consideration may also be given to the position of the attorney by the grant of an appropriate adjournment to prevent prejudice. Rule 17 omits mentioning whether this avenue is available at the stage of the consideration of whether a *prima facie* case exists or whether the complaint has been proven. It is important to note, however, that the question of whether a request is made for a further or additional affidavit is a matter that falls entirely within the discretion of the Disciplinary Committee. There is no allegation here that that particular discretion was improperly exercised. Additionally, there is no proof otherwise of an improper exercise of that discretion. It is therefore necessary to keep firmly in mind the guidance in the case of **The Attorney General v John MacKay**, in considering this issue.

[33] Our analysis of the matter also leads to a consideration of the question of what constitutes a *prima facie* case. The decision of this court in **McCalla v Disciplinary Committee of the General Legal Council** (1994) 49 WIR 213 explores this issue. While the facts of this case are irrelevant for the purposes of this appeal, Rattray P, at page 230, in discussing rule 4 of the LPA Rules, enunciated the following relevant principle:

> "In my view, all this rule provides is that before a date for hearing is fixed a decision must be taken by the Disciplinary Committee based, not on evidence (since none is before it at this stage), but upon the nature of the allegations as to whether this is a matter on which the committee should proceed. If the matter is trivial or frivolous there does not

> exist 'a prima facie case' for the committee to proceed to trial. Frivolous allegations may be made against attorneys at law, the frivolity of which is evident and this provides for the committee a process by which it can weed out insubstantial complaints and clear the list of matters unmeritorious." (Emphasis added)

[34] In the same judgment, Wright JA, at page 249, opined that:

> "In my judgment, the provision...for the dismissal of the complaint where no prima facie case is shown simply indicates the meaning in the rule which is a case serious enough to require a response from the attorney. It would be ridiculous to summon an attorney to answer charges which are frivolous or misconceived. In such cases the prima facie case required by the rule would not have been shown."

[35] Accepting the above dicta, it seems to the court that the Disciplinary Committee, at the stage of "the prima facie test" is tasked with determining whether, on the one hand, the complaint is a frivolous and vexatious one, or whether, on the other hand, the complaint is of such a nature so as to either (a) require a response from the attorney; or, more importantly, (b) whether or not such a response is requested or received, to warrant further consideration.

[36] Accordingly, the Disciplinary Committee was required to consider the form of affidavit containing the facts supporting the allegations, in addition to the other documents presented in coming to its decision.

A. *The form of application and affidavit*

[37] The form of application relied on the grounds of complaint set out in the affidavit. These grounds allege conduct unbecoming of an attorney on the part of the

firm. The affidavit contains the averments of Mrs Washington-Turner and is set out below omitting only her personal information. The following are its contents:

"FORM OF AFFIDAVIT BY APPLICANT

….

(2) That (g) I employed Brown, Godfrey & Morgan, 2 Murray Street, Savanna La Mar, Westmoreland, Jamaica, W.I on December 2, 2013 as stated hereunder

I paid money to Brown, Godfrey & Morgan:

(3)(h) 12/2/13=$70,000(J);01/13/14=$85,000(J); 12/17/14=$80,000; 6/22/16=$45,000; 6/22/16=$12,000

(g) Set out facts complained of

1. December, 3, 2013 Defendant & gang attacked me in my house at Cave, Westmoreland, knocked me unconscious. I suffered a concussion. Reported to attorneys December 5, 2013. Attorneys expressed threats they received from defendant and gang.

2. 11/14 attys said 'Come prepared to settle your affairs in 12/14'. December 2014- no settlement

3. 01/15/ to 12/15 – 'Mediation to be schedule' – no mediation scheduled. Made several inquiries and requests – they planned to informed me.

4. 6/23/16 Mediation-no agreement made; no report filed. Numerous inquiries by email and phone calls-was told court was on recess. Suggested consulting the Mediator. They ignored me countless times.

5. June 29, 2016-pictures taken of my house revealed destruction and deplorable condition of house and yard. Attorneys shocked and asked what has my caretaker been doing. Told them defendant and gang threatened my caretaker if he does anything to maintain my property.

6. May 2, 2017 attorney requested proof of payment. I provided evidence & got no response. May 2017, I complained to Jamaica Legal Council against Brown Godfrey and Morgan. At the Supreme Court on June 30, 2017 the firm served me papers withdrawing from my employment and left me devastated.

(1) Set out shortly the ground of complaint

(4) The complaint I made against the Attorney-at-law is that he (i)

(i) They withdrew from my employment without taking reasonable steps to avoid foreseeable prejudice or injury to my position and rights as their client.

(ii) Having withdrawn from my employment they have not promptly refunded such part of the fees paid in advance as may be fair and reasonable.

(iii) They have not provided me with all information as to the progress of my business with due expedition, although I have reasonably required them to do so.

(iv) They have not dealt with my business with due expedition.

(v) They have acted with inexcusable or deplorable negligence in the performance of their duties."

[38] From an examination of the affidavit, the facts complained of in relation to the grounds of complaint are essentially that:

i) In November 2014, Mrs Washington-Turner's attorneys told her that she should come prepared to settle her affairs in December 2014 but that at that time they remained unsettled.

ii) Between January to December 2015 the scheduling of the mediation was delayed.

iii) On 23 June 2016 mediation was held, however no agreement was made and the mediation report was not filed. Mrs Washington-Turner made several enquires but was ignored.

iv) On 2 May 2017, the attorneys requested proof of payment which was provided but no response was received.

v) In May 2017, a complaint was made to the Disciplinary Committee of the General Legal Council.

vi) On 30 June 2017, Mrs Washington-Turner was served with papers of the attorneys' withdrawal from her matter.

[39] The above statements do not provide much of an explanation of the surrounding circumstances. For example, while Mrs Washington-Turner stated that she had retained the attorneys, there is in fact no statement in the affidavit of what they were retained to do. Accordingly, based on the affidavit evidence, the Disciplinary Committee could not be faulted for having found that there was no such statement as to the terms of the retainer. That omission would also have materially affected the evaluation of the grounds of complaints. In my view, the issues arising from the facts would not have been sufficiently and clearly outlined and so, on the basis of the affidavit, the

Disciplinary Committee cannot fairly be faulted for finding that there were insufficient facts to ground a *prima facie* case.

[40] Depending on one's view of the relevant rule, it might have been open to the Committee to have invited the provision of further information prior to arriving at its decision. Additionally, had deemed it fit, it could possibly have allowed for the filing of a further affidavit to provide additional information. In this case, that was not done. As previously observed, however, the making of those decisions fell within the sole discretion of the Disciplinary Committee and no error of principle can be discerned on their part to form a basis on which I could fairly say that it acted incorrectly.

B. *The documentary evidence*

[41] I will now endeavour to set out some of the information that can be gleaned from the documents which were before the Disciplinary Committee in relation to the specific grounds of complaint.

Complaint i: they withdrew from my employment without taking reasonable steps to avoid foreseeable prejudice or injury to my position and rights as their client.

[42] Apart from the very sparse facts set out in the affidavit, there is no additional information contained in the several letters and documents which speak to the termination of the firm's retainer. In light of this fact, it was not unreasonable for the Disciplinary Committee to have found that a *prima facie* case had not been made out on this compliant on the basis of insufficient facts. There were also insufficient facts to determine what, if any, prejudice had been suffered by Mrs Washington-Turner.

[43] Ms Larmond submitted that the withdrawal of the firm could be deemed to be linked to Mrs Washington-Turner's making a complaint against it. The direct linking of the two facts was not information that was before the Disciplinary Committee but rather might be an inference which could be drawn based on the timeline within which the complaint was filed and the retainer terminated. It is not an unreasonable inference. Further, we cannot say that a termination of a retainer as a consequence of the filing of a disciplinary complaint would be unreasonable on the part of an attorney, such a complaint being tantamount to an expression of no confidence in or distrust of the attorney, which would go to the heart of the attorney/client relationship. Orders are regularly granted by this court and the Supreme Court for attorneys to remove their names from the record on this very basis. A new attorney was retained by 3 July 2017 and no prejudice to Mrs Washington-Turner has been demonstrated.

Complaint ii: having withdrawn from my employment they have not promptly refunded such fees paid in advance as may be fair and reasonable.

[44] In an email dated 9 May 2017, sent from Mrs Washington Turner to Miss Dahlia Davis, the following averment is contained:

> "I am bringing this urgent matter to your attention. I retained **Brown, Godfrey and Morgan, Attorneys-at-law** since **December 2013**, to represent me in court and they have not done their job. They have taken my money as evidenced in the most recent **email** exchanged below, dated May 3, 2017."

[45] Also attached to the above email thread, is an email dated 2 May 2017, from Mr Canute Brown to Mrs Washington-Turner inviting information in regards to payments made. It states:

> "Please provide us with details of all payments of fees for dealing with your case in the Parish Court (Resident Magistrate's) Court and the Supreme Court, including Mediation as soon as possible."

[46] Mrs Washington-Turner replies to that email on 3 May 2017, by outlining the payments made to the attorneys. She states that her record indicated a total of five payments and itemizes them: (i) The sum of $70,000.00 paid as retainer fee on 2 December 2013. There is stated to be a balance of $80,000.00. (ii) The sum of $95,000.00 receipt dated 13 January 2014. No balance is indicated. (iii) The sum of $80,000.00 receipt dated 17 December 2014. No balance is indicated. (iv) The sum of $45,000.00 receipt dated 22 June 2016. No balance is indicated, however the receipt contains the following notation, "[i]n Kingston, re Supreme Court/ & Court/ Mediation". And; (v) The sum of $12,500.00 receipt dated 22 June 2016, which indicates "paid in full". This receipt contains the notation "[i]n Kingston, re Supreme Court / Mediation & Supreme Court".

[47] There is also an email dated 10 May 2017 that was sent by Mrs Washington-Turner to Miss Dahlia Davis. It commences with the following complaint:

> "I am forwarding to you the following letter I sent to the Supreme Court as my lawyers have been negligent in carrying out their duties and responsibilities to represent me in court. **I pay them very well and in full**. They have allegedly been obstructing justice by preventing my case from going through the Supreme Court. After I made nine (9) trips to and from the States and Jamaica to settle the family matter of house and land in Westmoreland, it is still not settled…
>
> After I made seven (7) trips to attend court and pay taxes on the land and oversee repairs to my house and

> developments I make on the property, there are no tangible accomplishments on the part of my lawyers. Each time I come to Jamaica since the tragic incident in December 2013, I have to stay at hotels for fear of my life.
>
> In February 2015, Attorney Brown realised another court session was going to be scheduled during that month. He acknowledged that all those court dates were being set as a trap for me to spend all my money, and he informed me there was no need for me to be there." (Emphasis supplied)

[48] The above information and circumstances, in my view, leave uncertain the issue of whether Mrs Washington-Turner was entitled to a refund. They fail to set out explicitly what were the attorney's fees charged and any other miscellaneous charges, if any, in relation to the services rendered. While it could be reasonably inferred from the documents that Mrs Washington-Turner retained the attorneys to represent her, broadly speaking, in court proceedings, there are no facts as to the ambit of the retainer. Further, while there seem to have been several court hearings, it is unclear how many there were. The Disciplinary Committee, in these circumstances, and against the background of this inconclusive information, could not reasonably be faulted for having found the facts before them insufficient to make out a *prima facie* case, as that conclusion has clearly been demonstrated in relation to this ground.

Complaint iii: they have not provided me with information as to the progress of my business with due expedition, although I have reasonably required them to do so.

Complaint iv: they have not dealt with my business with all due expedition.

[49] There is an email thread sent from Mrs Washington-Turner making enquiry of and providing information to Mr Canute Brown. In the email dated 6 July 2016 the following is stated:

> "Good morning. I am forwarding pertinent information you will need in order to expedite my case in the Supreme Court

Also in the email dated 25 July 2016:

> "Please let me know at what point we are in the process of resolving my case in the Supreme Court? Also, let me know if you need any additional information from me."

[50] Following these email messages is a letter dated 12 April 2017, which Mrs Washington-Turner addressed to the mediator. In the ultimate paragraph of the letter she requested of Mr Canute Brown that her case be expedited and expressed the sentiment that she had suffered "far too long and hard". She invited the attorney to respond by 24 April 2017. At the end of the letter, it is indicated that Mr Canute Brown was copied on that email.

[51] In another email dated 20 April 2017 sent from Mrs Washington-Turner to Mr Canute Brown, she states:

> "Kindly make note of the letters I sent you April 12 and 19, 2017. Be reminded they require your response to **Matters regarding my case with the Supreme Court**, no later than **Monday, April 24, 2017**.
>
> Awaiting a prompt reply." (Emphasis as in original)

[52] Subsequently, in another email dated 3 May 2017, Mrs Washington-Turner enquires of Mr Canute Brown and informs him of matters as follows:

> "Did you receive my letter dated May 1, 2017 requesting information regarding my Case in the Supreme Court? I am awaiting your response to said letter.
>
> However, I will briefly respond to your letter dated May 2, 2017. I will not avoid, neither will I ignore your request for

> information regarding payments I have made to your firm since the day I retained you to represent me in the courts."

[53] In an email dated 10 May 2017 from Mrs Washington-Turner to Miss Dahlia Davis, the averment contained therein stated:

> "Mediation was held on June 23, 2016. I made numerous requests, by email and telephone, for Mr. Brown and Mr Morgan to provide me with information with regards to my case in court. File the Mediation Report, I keep telling them and they always come back with a phony excuse."

[54] In a further email dated 22 May 2017 Mrs Washington-Turner forwarded to Miss Dahlia Davis a letter that she sent to the Supreme Court. It reads as stated below:

> "I retained Attorney Canute Brown and his team of lawyers Brown, Godfrey and Morgan and have paid them in full. However, I would greatly appreciate the update from you, as it is taking my team of lawyers some time to get an update on my case."

[55] In an email dated 17 May 2017 that Mrs Washington-Turner sent to Dahlia Davis on 22 May 2017 it is stated:

> "1. I will be very thankful to have my Court Date of June 30, 2017 at 11:30 AM in writing (email) with courtroom number, etc. A representative of the Court, instrumental in getting me this date suggested I have my attorneys obtain additional information concerning my case/date and forward me an email. I followed directions and have not yet heard from the attorneys."

[56] On the other hand, however, there is communication from the firm which calls into question the accuracy of the alleged lack of communication. I will consider these in terms of the year in which they were written.

2014

[57] In 2014 there is a letter written to the Superintendent of Police for the Westmoreland, dated 17 December 2014, that is copied to Mrs Washington-Turner.

2015

[58] In the year 2015, there is an email from the firm dated 26 August 2015 that gives the following details:

> "Dear Mrs Washington-Turner
>
> Re: Laurel Washington-Turner vs Albert Washington
>
> The Defendant in the matter at caption has filed a Defence to the Claim.
>
> The next step is for the Court to refer the matter to Mediation.
>
> Mediation must be held within three months after the matter has been referred. That is in accordance with… the Civil Procedure Rules of 2002.
>
> We anticipate that the Mediation will not be held before December 2015. The Court is on vacation from July to September 16, 2015. The referral to Mediation will not be done until a date until after the 16th of September, 2015…"

2016

[59] The year 2016 showed similar correspondence as letters from the firm dated 28 April, 9 and 16 May 2016 (set out seriatim) indicate:

> "Dear Mrs Washington-Turner.
>
> Attached, please see Referral to Mediation Form.

Even though June is the stipulated deadline, we can extend the time. Pleas [sic] indicate to us a convenient time after June, July or September as Court is on legal holiday in August.

We will confer with the Attorneys on the other side to agree on a Mediator and a date.

We look forward to hearing from you soon and will keep you updated as time progresses…"

"Good day Miss. Washington,

Please see attached a referral to mediation form.

We ask that you suggest a date for the mediation between now and the 27th of June 2016 as the deadline to agree on a date is the 27th of June (which is indicated on the attached form). Please indicate to us as soon as possible a convenient date for you to come to Jamaica for the mediation…"

"Good day Ms. Washington

I have consulted with the Defendant's Attorney and it appears that the 6th of June 2016 will not be a convenient date for them.

However [I] would suggest that you book your flight for the second to last week in June.

Please keep in mind that the deadline for the mediation is the 27th of June 2016.

I sincerely apologize for any inconvenience this may have caused you…"

[60] To give a fuller picture about the correspondence and information passing between the firm and Mrs Washington-Turner in 2016, it is necessary to make

reference to her email messages to the firm of 28 March and 2 May 2016, which read as follows:

> "Attorney Brown,
>
> Good morning, and **thank you** for the progress being made in my case.
>
> **Mediation date is Tuesday, May 3, 2016**.
>
> Ms. Woolery, please note the revision made in Mediation date and see if that works for Attorney Brown.
>
> **Thank you** very much, and please let me hear from you as soon as possible…" (Emphasis as in original).

[61] In her email dated 2 May 2016, to the firm, Mrs Washington-Turner ended with the following words:

> "…Thank you very much Atty. Brown. Please let us get this matter settled as soon as possible.
>
> Kindly let me hear from you as soon as possible, and best wishes, Sir…"

2017

[62] By way of email dated 13 February 2017, the firm wrote to Mrs Washington-Turner as follows:

> "Good day Mrs Washington-Turner,
>
> We are still awaiting a court date in your matter. As soon as we obtain same you will be informed."

[63] Similarly, on 29 March 2017 the firm emailed Mrs Washington-Turner as follows:

> "Good morning Ms Washington Turner
>
> We will put your files together for the 4 April.
>
> The mediation report must be filed by the mediator…"

[64] She also acknowledges receipt of an email from the firm dated 2 May 2017 among other things, querying payment of fees. Mrs Washington-Turner complained to the GLC about the firm that same month.

[65] In her submissions to this court concerning the question of whether the firm had dealt with the court matter with due expedition, Ms Larmond had asked the court to consider that litigation is conducted in accordance with a framework stipulated by the Civil Procedure Rules. It is, in my view, also important to bear that framework in mind in considering the issue of the provision of information on the progress of the client's business. That framework incorporates certain timelines and places different responsibilities on claimant, defendant, mediator and court administration. The Disciplinary Committee, whose members consist of senior, experienced attorneys-at-law, would be well aware of this. On the material which was before the Committee, there was nothing to indicate any negligence or want of care on the part of the firm.

[66] However, these facts are gleaned from the various pieces of correspondence when they ought properly to have been grounded in the affidavit. The Disciplinary Committee was therefore not bound to have considered them. Having done so, however, the Committee must have discerned the pattern of communicating with the

client by the firm over the years and so it cannot fairly be faulted for having come to the conclusion that it did.

Compliant (v): they have acted with inexcusable or deplorable negligence in the performance of their duties.

[67] There are several emails in which Mrs Washington-Turner avers that the attorneys have failed to do their job. She states that she retained the firm since December 2013, to provide legal representation in court and that, although they have been paid, they have failed to do what they were employed to do. That reference is made in the letter dated 9 May 2017 from Mrs Washington Turner to Miss Dahlia Davis. In the letter dated 10 May 2017 sent via email from Mrs Washington Turner to Miss Dahlia Davis she reiterates that there has been no progress in her matter. Further, in the email dated 15 May 2017, sent from Mrs Washington–Turner to Miss Dahlia Davis, Mrs Washington-Turner avers that her attorney had failed to represent her at the mediation. From a perusal of the correspondence, this clearly was not so, her apparent dissatisfaction with the outcome notwithstanding.

[68] The problem posed in relation to the information required to support this ground of complaint, is that there are no facts stated in the affidavit as to what specifically the attorneys had failed to do, or in what respect they had been inexcusably or deplorably negligent in the performance of their duties. In fact, some of the correspondence previously reviewed would seem to raise serious question as the accuracy of that contention. In those circumstances, the Disciplinary Committee could not reasonably be

faulted in its finding and decision that the facts were insufficient to establish a *prima facie* case with regard to this ground of the complaint.

[69] Additionally, some of the matters alleged by Mrs Washington-Turner seem, with respect, to raise the question of whether some of her allegations do not arise from her misunderstanding of various processes. Take, for example her contention (in paragraph [11] of this judgment) that the firm had been absent from a pre-trial review held on 3 October 2019. The fact of the matter is that, on her own case, the firm withdrew from representing her in June 2017.

[70] It should be mentioned as well that some of the documents referred to by both sides in this appeal were not put by Mrs Washington-Turner before the Disciplinary Committee. However, they were put before the court by her, with no objection taken by Ms Larmond, who, in fact, also referred to them. However, even if we were to disregard all the correspondence, the central finding of the Disciplinary Committee remains – that is, that the "facts" put forward do not support the allegations. One glaring example of this can be seen in the "facts" at paragraphs 1 and 5 of her affidavit in support of her complaint against the firm (previously set out at paragraph [37] of this judgment. These facts, as can clearly be seen, could have no bearing on a complaint of misconduct on the part of the firm. Rather, the difficulty observed in the documents put forward by Mrs Washington Turner before the Disciplinary Committee is that there is a misdirected focus on the factual background to her case in the Supreme Court instead

of on the issues which would properly give rise to an allegation of professional misconduct.

Disposition

[71] From the foregoing review, it is clear that the facts in the form of affidavit were and today remain insufficient to establish a *prima facie* case against the firm. The allegations are not supported by the averments in the affidavit which largely speak to the unfortunate circumstances that led to the need for the commencement of litigation in two courts below. The Disciplinary Committee arrived at the correct decision in all the circumstances. The appeal, therefore, ought, in my view, to be dismissed with costs to the respondent to be agreed or taxed.

EDWARDS JA

[72] I have read in draft the judgment of F Williams JA and agree with his reasoning and conclusion.

MORRISON P

ORDER

(i) The application for extension of time to file the appeal is granted.

(ii) The appeal is dismissed.

(iii) Costs to the respondent to be agreed or taxed.