

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

AT SUVA

Application Nos. 13 & 14 of 2014

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

NIKOLAU NAWAIKULA

Respondent

Counsel: Ms. L. Vateitei for the Chief Registrar
The respondent in person

Dates of hearing: 4 & 16 December, 2014

Date of judgment: 16 February, 2015

JUDGMENT

1. The Chief Registrar has laid two allegations against the respondent ("the Practitioner") in Application Numbers 13 & 14 of 2014.

They read:

(Application 13 of 2014)

PROFESSIONAL MISCONDUCT contrary to section 83(1)g of the Legal Practitioners Decree 2009.

Particulars

NIKOLAU NAWAIKULA, a legal practitioner, between the 14th January 2014 to date, failed to respond to a complaint lodged by one Dir Singh within the time stipulated in the notice issued by the Chief Registrar pursuant to section 105 of the Legal Practitioners Decree and thereafter failed to respond to a subsequent reminder notice issued by the Chief Registrar pursuant to section 108(2) of the Legal Practitioners' Decree which conduct was a contravention of section 108(2) of the Legal Practitioners' Decree which conduct was an act of professional misconduct.

(Application 14 of 2014)

PROFESSIONAL MISCONDUCT: contrary to section 83(1)(g) of the Legal Practitioners Decree 2009.

Particulars

NIKOLAU NAWAIKULA, a legal practitioner, between the 25th July 2014 to date failed to respond to a complaint lodged by one Waisea Lalavasuva within the time stipulated in the notice issued by the Chief Registrar pursuant to section 105 of the Legal Practitioners Decree and thereafter failed to respond to a subsequent reminder notice issued by the Chief Registrar pursuant to section 108(2) of the Legal Practitioners' Decree which conduct was a contravention of section 108(2) of the Legal Practitioners' Decree which conduct was an act of professional misconduct.

2. The practitioner had at the very first hearing of the charges freely admitted that the two allegations were correct and therefore this Commission finds the two allegations established.

3. At the hearing of the 16th January 2015, the practitioner advanced mitigation in respect of the two allegations. He expressed remorse and submitted that he had left the matters for a clerk to deal with but that clerk had left him in May 2014 and had not notified him of the need to respond to the Registrar. He did admit however that the replies were his ultimate responsibility.
4. Most unfortunately this failure to respond on the part a practitioner comes before this Commission far too often, and previous cases have shown a penalty "tariff" of suspension of practice of between one to three months. One month's suspension has been the penalty in cases where the practitioner has saved time before the Commission by readily admitting his failure and by expressing remorse. This is indeed the situation in this case.
5. The Chief Registrar is the regulatory head of the legal profession. It is of course his function to ensure that the profession is competently and professionally conducted and if practitioners do not co-operate with him in that regard then his mission is frustrated. Failure to respond to the Registrar is therefore a serious breach of professional duty not only because it is a clear breach of statutory duty as provided for in the Legal Practitioners Decree 2009 but also because it is a professional courtesy which should be extended to the head of the profession. These sentiments were expressed in similar cases of Luseyane Ligabalavu (3 & 4 of 2012); Jone Rabuku (13 of 2013) and Sharma (14 of 2013).
6. This is not the first time that this practitioner has been before the Commission. He was found to have been guilty of professional misconduct in Allegation No. 09 of 2012 when he was fined \$2,000 and ordered to be publicly reprimanded. This previous determination can afford him no mercy from the Commission. The previous allegation was one of not being a responsible practitioner and these two allegations compound that finding.

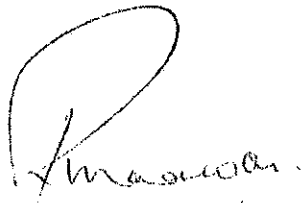
7. In assessing the penalty in these two instances the Commission is very aware that the practitioner has freely admitted his errors alleged. He will be sentenced to the minimum period of suspension within the accepted tariff for this offence.

8. **Orders**

- (i) The practitioner is to be again publicly reprimanded.
- (ii) He is to be suspended from practice for one month for each offence.
- (iii) He is to be fined \$1,000 for each offence.
- (iv) The practitioner is to remain suspended after the 2 months period until the \$2,000 fine is paid.

For clarification the practitioner is fined \$2,000 and suspended from practice for 2 months from today's date.

Dated the 16th day of February, 2015.



Justice P. Madigan
Commissioner