

Application No. 12 of 2014

PROFESSIONAL MISCONDUCT : contrary to section 42(2) and 83(1)(a) of the Legal Practitioners Decree 2009

Particulars

NITIJ DEVIKAR PAL, a legal practitioner, between the 1st March 2014 and the 2nd July 2014, operated in the practice of law, the law firm "PLN Lawyers Fiji" when he was not a holder of a valid Practising Certificate which conduct was in contravention of the provisions of section 42(2) and 83(1)(a) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.

Background

2. This charge, to which the practitioner entered an early plea of guilty, was one of three originally charging the practitioner. One of those charges was withdrawn by the Applicant and one was struck out by this Commission on the grounds of duplicity.

3. The underlying facts are rather complex and confusing.
 - (i) The practitioner, a Fijian citizen is the principal of PLN Lawyers which at one time did operate as a sole practitioner firm from June 2010 until June 2014.
 - (ii) Contemporaneously the practitioner was an employee of the entity "Rockwell Olivier" a legal practice incorporated in New South Wales in which State he held a valid practising certificate.
 - (iii) Rockwell Olivier applied to the Registrar of Companies in Fiji to register the name "Pacific Legal Network" in May 2014.
 - (iv) The Chief Registrar issued a Fiji practising certificate to the practitioner on 3 July 2014 but withdrew the Certificate later that day. No reason was given.

- (v) The Registrar had written to the practitioner outlining his concern over the use of similar names and acronyms being used by the practitioner in his practice here in Fiji and for the proposed registration of a foreign law firm in the jurisdiction.
- (vi) The period complained of was from 1st March 2014 until 1st July 2014 when PLN Lawyers was in practice under the "secondment" of a lady Irish lawyer at a time when the practitioner was not present and without a certificate to practice issued by the Chief Registrar.

Mitigation

- 4. The practitioner urges the Commission to issue a lenient penalty on the basis of his contravening the Decree through a badly timed attempt to have his Sydney firm registered as a foreign law firm. In his steps to effect that aim he allowed the local practising certificate to lapse.
- 5. He submits that PLN Lawyers Fiji had not undertaken specific legal work since its inception but existed merely as an entity to do "agency work" for Rockwell Olivier the Sydney firm. In the period cited, the 1st March to 3 July there were no invoices issued, no trust account movements, no files opened and by way of proving that claim the ANZ Bank statement was exhibited as an agreed fact. That statement does indeed disclose only a payment for accounting services and a payment of \$610 to the Chief Registrar. There are no deposits into the account apart from regular interest accruals.
- 6. Although personal circumstances can only in exceptional circumstances go to mitigation of penalty in a professional misconduct case, the practitioner in this case has not acted male fides but has fallen foul of bad timing and misunderstanding of the foreign practice registration regime in Fiji. He has from the very beginning cooperated with the authorities here and admitted his culpability as soon as the matter was before the Commission. It is remarkable that no client has been prejudiced by

his deeds, because there has been no client. He is a victim of his own lassitude and of his misunderstanding of the bureaucratic process.

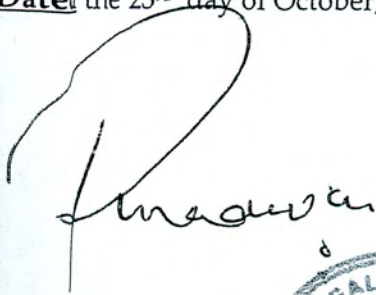
Conclusion

7. Operating a practice without a certificate to practice issued by the Chief Registrar is a serious offence. It creates a risk to the members of public who might seek legal advice from the firm at that time. For that reason it would not be appropriate to discharge the practitioner as suggested by his counsel. Despite that seriousness of offending, the actual culpability of the practitioner is low – he has co-operated throughout and is very remorseful. It was never contemplated that any potential client be deceived because there was no client. The risk to the consumer public was minimal.

8. Orders

1. The Commission orders that the practitioner be suspended for the remainder of this practising year and that he not be eligible to apply for a practising certificate until February/March 2016.
2. The practitioner is to pay a fine of \$2,000 to this Commission on or before the 30th November 2015.

Date the 23rd day of October, 2015.



Justice P. Madigan
Commissioner

