

**IN THE INDEPENDENT LEGAL SERVICE COMMISSION**

**Case No. 004 of 2019**

**BETWEEN :** CHIEF REGISTRAR

**AND :** IFTAKHAR IQBAL AHMAD KHAN

**Applicant :** Mr A Kumar for the Chief Registrar

**Respondent :** The Legal Practitioner in person

**Dates of Hearing:** 7<sup>th</sup> May & 7<sup>th</sup> June 2019

**Date of Sanction:** 13<sup>th</sup> September 2019

**DISCIPLINARY SANCTION**

- [1] The legal practitioner is a senior practitioner. He became a legal practitioner in the early eighties and in the mid-eighties he held a post of resident magistrate for four years. He is now in his early seventies and operating a law firm from 7 Yasawa Street, Lautoka.
- [2] Sometime in 2018, there was a complaint made against the practitioner to the Chief Registrar by one of his clients. On 26 July 2018, the Chief Registrar gave notice of that complaint to the practitioner and granted him 14 days to respond pursuant to sections 105(2) and 106 of the Legal Practitioners Act 2009 (the Act). The notice was emailed to the practitioner on the email address provided by him in his application to renew his practising certificate. The practitioner did not respond to the notice.
- [3] On 27 September 2018, the Chief Registrar sent a reminder notice to the practitioner to respond to the complaint within 14 days pursuant to section 108(2) of the Act. This

second notice was sent via the postal address provided by the practitioner in his application to renew his practising certificate. The practitioner did not respond to the second notice.

- [4] On 21 March 2019, the Chief Registrar brought this disciplinary proceeding, charging the practitioner with professional misconduct contrary to section 82(1) (a) of the Act. The professional misconduct is that the practitioner failed to respond to a complaint notice despite a reminder sent to him to respond within the statutory period of 14 days.
- [5] On 15 April 2019, the practitioner responded to the complaint notice. However, by that time, the practitioner was already in breach of a statutory requirement to timely respond to complaint notice.
- [6] On 7 May 2019, the practitioner appeared before the Commission and pleaded guilty to the charge at the first opportunity. The practitioner relies upon his written mitigation. The practitioner is 70 years old. He is married with six grown up children. Two of his children are lawyers. He has been in the legal practice since 1980. He is actively involved in many community projects and sports' clubs.
- [7] The offence the practitioner is accused of is professional misconduct. Section 82(1) (a) of the Act states:

For the purposes of this Act, 'professional misconduct' includes –  
(a) unsatisfactory professional conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.

- [8] The practitioner failed to comply with a statutory requirement to respond to a complaint notice after a reminder was served on him to respond within 14 days. By not complying with the statutory requirement the legal practitioner failed to maintain a reasonable standard of competence and diligence.

- [9] Section 121 (1) of the Act provides for a range of sanctions for disciplinary offences. For the offence of professional misconduct arising from a failure to respond to a complaint notice, sanctions range from a public reprimand to a suspension of practising certificate for a period of time. In *Chief Registrar v Bukarau* [2016] FJLSC 2 (7 June 2016), the Commission said at [151]:

In my view, a fine should normally be the starting point in such matters as a failure to respond to a notice from the investigating authority. This is the case in the states of New South Wales and Queensland in Australia, the province of Ontario in Canada, as well as in England and Wales. A period of suspension may also be appropriate depending upon the circumstances, including whether the practitioner has complied with the notice between the time of service of the application upon them and the first return date of it before the Commission. Practitioners should also expect that there may well be two orders for costs – one for putting the Registrar and his staff within the LPU through the time and expense of having to bring such an application and the other for the Commission having to deal with the practitioner for failing to comply with the practitioner’s statutory responsibility pursuant to s.108(1). (as per Commissioner Dr Hickie)

- [10] The approach to imposition of sanction involves the following steps:

1. An assessment on the seriousness of the misconduct.
2. Identification of the purpose for which the sanction is imposed.
3. Selection of the sanction which most appropriately fulfills that purpose. (The Solicitors Disciplinary Tribunal of England and Wales approach set out in its ‘Guidance Note on Sanctions’)

**Seriousness of the misconduct**

- [11] The complaint was brought to the practitioner’s notice in July 2018. Despite a reminder, he only responded in April 2019, after this disciplinary proceeding was initiated against him by the Chief Registrar. The practitioner’s explanation that he did not know about the complaint until 12 April 2019 is not justifiable. The notices were duly served on him through electronic and postal contacts that the practitioner provided in his application to renew his practising certificate. If the notices were not brought to his attention, then the practitioner is the author of that circumstance. It is his responsibility to ensure complaint notices are brought to his attention once they are duly served on him via contact



addresses provided by him to the Chief Registrar. The misconduct arising from deviation from that responsibility to respond to complaint notice is relatively serious.

### **Purpose of sanction**

- [12] The primary purpose of sanction is to deter the legal practitioners from unreasonably flouting the procedures for resolving complaints of professional misconduct against them. As I said recently in *Chief Registrar v Singh - Disciplinary Sanction* [2019] FJILSC 1 (25 March 2019) at [10]:

The notice of complaint and an opportunity to respond is an integral part of the dispute resolution mechanism mandated by legislation. The legal practitioners must strictly adhere to the statutory dispute resolution mechanism. If they fail to do so, the dispute resolution mechanism fails and the complaint against the legal practitioner remains unresolved. That has occurred in this case. The purpose of sanction that I identify is to deter both the legal practitioner and other lawyers from engaging in professional misconduct of this nature in the future. Such professional misconduct can potentially harm the reputation of the lawyers and bring the legal profession into disrepute. Bearing in mind deterrence as the primary purpose of sanction, I now consider the sanction which most appropriately fulfills that purpose.

- [13] In *Chief Registrar v Seruvatu* [2019] FJILSC 2 (4 June 2019), the Commission observed that the legal practitioners were too frequently ignoring their statutory obligation to respond to complaints of professional misconduct against them and that when the legal practitioners deviate from that responsibility, the purpose of sanction is to bring home the message that they will be made accountable.


### **Sanction**

- [14] I now consider the sanction which most appropriately fulfills that purpose. The legal practitioner has responded to the notice of complaint although late. Whether he will be subject of further disciplinary proceeding arising from his response is not relevant at this stage.
- [15] I have taken into account all that was presented in mitigation to the Commission on behalf of the practitioner. Recently, the Commission reprimanded a junior practitioner

and imposed a fine of \$1000.00 for similar misconduct committed under similar circumstances. (*Chief Registrar v Cavubati* [2019] FJILSC 3 (13 June 2019)). There is no suggestion that the practitioner does not have the means to comply with monetary sanctions.

[16] **Orders of the Commission are:**

1. The legal practitioner is publicly reprimanded.
2. The legal practitioner is fined \$1000.00.
3. The legal practitioner is to pay costs to the Chief Registrar, which I summarily assess in the sum of \$500.00.
4. The fine and costs must be paid within 7 days.
5. If the legal practitioner fails to pay the fine and costs within 7 days, the Chief Registrar is to suspend the practitioner's practising certificate until such time he pays the fine and costs in full.

  
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**Justice Daniel Goundar**  
**COMMISSIONER**

