

IN THE INDEPENDENT LEGAL SERVICE COMMISSION

SUVA

ILSC CASE NO: 010 OF 2019

BETWEEN : CHIEF REGISTRAR

AND : LEENA GOUNDAR

Applicant : Mr A Prasad for the Chief Registrar

Respondent : No appearance for the Respondent

Date of Hearing: 8 March 2020

Date of Judgment: 16 March 2020

Date of Sanction: 26 March 2021

DISCIPLINARY SANCTION

- [1] Following a hearing, the legal practitioner was found guilty of one count of professional misconduct.
- [2] The facts are as follows.
- [3] On 8 April 2019, the Chief Registrar received a complaint against the practitioner by one of her clients.
- [4] The Chief Registrar brought the complaint to the attention of the practitioner and gave her 21 days to respond. The practitioner did not respond.
- [5] The Chief Registrar then gave the practitioner a further 14 days to respond. The practitioner did not respond.
- [6] The consistent failure to respond to a complaint is deemed to be professional misconduct contrary to section 108 of the Legal Practitioners Act.

- [7] I first assess the seriousness of the misconduct.
- [8] The Legal Practitioners Act gives the Chief Registrar power to investigate and initiate disciplinary proceedings against the legal practitioners. There is a statutory obligation on the Chief Registrar to bring a complaint to the attention of the practitioner and provide him or her with an opportunity to furnish sufficient and satisfactory explanation to the complaint.
- [9] Upon receipt of an explanation from the legal practitioner, the Chief Registrar first assesses the merits of the complaint in light of the response from the practitioner and then decides whether or not to initiate a disciplinary proceeding before the Commission. The legal practitioner's response to a complaint is an integral part of the discipline procedure. Any conduct that undermines the effectiveness of the discipline procedure ought to be treated seriously.
- [10] The consistent failure to respond to a complaint within the statutory time frame by the legal practitioner is a serious misconduct. What makes the misconduct more serious is that the practitioner had been previously disciplined for a similar misconduct in 2015 (Application 13 of 2015). For that misconduct she was publicly reprimanded and fined \$1500.00. Her licence to practise was not suspended because Commissioner Madigan accepted her medical condition at that time was an exceptional circumstance.
- [11] In the present case, the practitioner tried again to blame her ill-health for her failure to respond to the complaint against her, but she was unable to support her claim with medical evidence despite given an opportunity to do so. Instead of defending the allegation the practitioner chose not to attend the hearings.
- [12] I note that when the practitioner applied for renewal of her practising certificate in 2019 she gave the following response to question on her fitness to practice law:

36(i) Have you a medical condition [mental or physical] which might affect your ability to give full or sufficient attention to your work as a practitioner or which might lead to being absent from work?

Practitioner: Currently fit for work however I will notify LPU should any health complication arise due to my current pregnancy.

- [13] In 2019, the practitioner did not notify the Chief Registrar of any medical condition affecting her fitness to practice law. At all material times she was medically fit to practice law. Her claim that she was unable to respond to the complaint due to ill-health was based on thin ground.
- [14] I also note from the past cases that professional misconduct arising from a consistent failure to respond to complaints is the most prevalent misconduct committed by the lawyers in Fiji.
- [15] Any sanction that is imposed on the practitioner must therefore reflect the principle of deterrence, both special and general.
- [16] The practitioner has expressed little remorse for her misconduct. Her subjective circumstances have little mitigating value. The need for accountability outweighs the practitioner's family and personal circumstances.
- [17] I do not think monetary sanctions will adequately reflect the principle of deterrence in the circumstances of this case. In any event I am unable to assess the practitioner's means to comply with monetary sanctions due to lack of information about her financial status.
- [18] The Commission was informed by the Chief Registrar that the practitioner did not seek to renew her practising certificate after it expired last year. Hence, she does not hold a current practising certificate.
- [19] In these circumstances, I order that the practitioner must not apply for a practising certificate for one year from the date of this sanction and pay costs in the sum of \$1000.00 to the Commission for the proceedings within 3 months.

[20] Any renewal of the practitioner's practising certificate after one shall be subject of any other conditions for renewal imposed by the Chief Registrar.



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Justice Daniel Goundar
COMMISSIONER