

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO.004/2009

BETWEEN: CHIEF REGISTRAR APPLICANT

AND: SHEIK HUSSEIN SHAH RESPONDENT

**APPLICANT: Ms V Lidise
RESPONDENT: Mr G O'Driscoll**

**DATE OF HEARING: 15th June 2010
DATE OF JUDGMENT: 9th July 2010**

JUDGMENT – COMPLAINT NO 6

1. On 15th June 2010 judgment was delivered in this matter with respect to all other complaints leaving only complaint no 6 outstanding. This judgment deals with that complaint.

Complaint No 6

Allegation of Professional Misconduct/Unsatisfactory Professional Conduct: Professional Misconduct: Contrary to section 82(1)(a) of the Legal Practitioners Decree No 16 of 2009.

Particulars

Mr Sheik Hussein Shah received \$2,000 to act for the complainant, Mr Anesh Maharaj but failed to attend court proceedings on 2nd and 3rd July, 2009.

2. It is not in dispute that the sum of \$2,000 was paid to the Respondent on behalf of the Complainant. The sum of \$1,000 was paid by installments of \$500, \$300 and \$200. The sum of \$1,000 was paid by his sister.

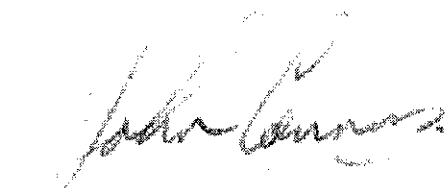
3. It is not in dispute that the Respondent was engaged to represent the Complainant in the Magistrate Court Labasa with respect to a criminal charge.
4. At the time the Respondent was instructed by the Complainant, in 2007, the Respondent was practicing in Labasa. The Respondent subsequently moved his practice to Suva.
5. In February or March 2009 the Complainant's matter was listed for trial in the Magistrate's Court Labasa on the 2nd and 3rd July 2009.
6. The Complainant in his evidence says the Respondent sought payment of his air fare to facilitate him attending the Labasa Magistrate's Court on 2nd and 3rd July 2009.
7. By letter dated 1st July 2009 [Ex R18] the Respondent advised "The Court Office – Criminal Magistrate's Court Labasa" that due to unavailability of seats on the plane he was unable to travel to Labasa for the hearing of the Complainant's matter.
8. The record of the Magistrate Court in criminal case 517/07 for the 2nd July 2009 [Ex A30] shows that the Respondent was not present and that no agent appeared on his behalf. The record states:-
"Prosecution – we also call Mr Shah – for accused 2 – he said his client has not paid his money."
9. Later the court record states:-
"Accused 2 – I rang on Monday. He said he has cases in Nasinu. Stood down for Registry to check with Nasinu Court re: Shah's commitment there."
10. The proceedings are yet unresolved and the Respondent says that he will willing to represent the Complainant however the Complainant says that he has engaged another lawyer due to his failure to appear on the allocated hearing date.
11. In *Giannarelli v Wraith* (1988) 165CLR 543 at 556 Mason CJ said: -
"the peculiar feature of counsel's responsibility is that he owes a duty to the court as well as to his client. His duty to the client is subject to his overriding duty to the court. In the performance of that overriding duty there is a strong element of public interest."
12. While no jeopardy followed to the Complainant as a result of the Respondent's failure to appear at the Magistrate's Court Labasa on the 2nd and 3rd July 2009, there is a breach of the Respondent's duty not only to his client but also to the court in his failure to be present in court or to have an agent present.

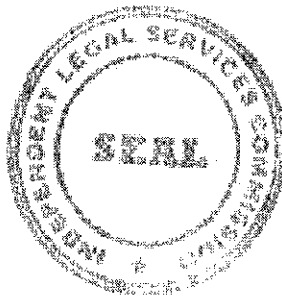
13. There is a culture that has developed in Fiji that it is acceptable to merely send a letter to the court advising of the practitioner's inability to attend for whatever reason. This is most inappropriate behavior which shows a lack of respect for the court and is a breach of practitioner's duty to the court.

14. The conduct of the Respondent is such as to amount to professional misconduct pursuant to section 82 of the Legal Practitioners Decree 2009.

ORDERS

1. The Respondent is found guilty of professional misconduct.
2. The Respondent is to pay to the Commission for the payment out to the Complainant the sum of \$1,000.
3. The Respondent is to pay to the Commission for the payment to the Applicant witness expenses in the sum of \$180.
4. The Respondent is to pay to the Commission a fine in the sum of \$500.
5. All payments are to be made within 28 days failing which the Respondent's practicing certificate is suspended without further order until payment is made.


JOHN CONNORS
COMMISSIONER



9 JULY 2010