

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

Case No. 003 of 2018

BETWEEN:

CHIEF REGISTRAR

AND:

AMAN RAVINDRA SINGH

Applicant: Ms A Mataitoga, Ms V Prasad & Ms J Sharma for the Chief Registrar

Respondent: The legal practitioner in person

Dates of Hearing: 29th October 2018

Date of Judgment: 2nd November 2018

Date of Sanction: 25th March 2019

DISCIPLINARY SANCTION

[1] Following a hearing, the legal practitioner, Mr Aman Ravindra Singh was found guilty of professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Act 2009 (the Act) by the former Commissioner, Dr Hickie. After entering a formal order finding the legal practitioner guilty, on 2 November 2018, Dr Hickie adjourned the proceedings for mention before the new Commissioner as his term in the office was coming to an end. The legal practitioner was further directed to file written mitigation before sanctions were imposed. The legal practitioner did not comply with that directive until 22 March 2019.

[2] To maintain consistency in the approach to sanction, I use the guidelines used by The Solicitors Disciplinary Tribunal of England and Wales. Those guidelines were endorsed and applied by Dr Hickie in *Chief Registrar v Bukarau* [2016] FJILSC 2 (7 June 2016). The guidelines use three steps (*Bukarau*, [108]). They require the Commission to make an assessment on the seriousness of the misconduct, identify the

purpose for which the sanction is imposed and choose the sanction which most appropriately fulfils that purpose (*Bukarau*, [124]).

[3] In *Bukarau*, the Commission further 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). (per Dr Hickie)

Seriousness of the Misconduct

[4] I now assess the seriousness of the misconduct in this particular case.

[5] Professional misconduct includes conduct that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence. In the present case, the legal practitioner failed to respond to a notice of complaint against him that was sent to him by the Chief Registrar pursuant to section 108 (2) of the Act. The complaint was made by a client of the legal practitioner. The complaint was lodged with the Office of the Chief Registrar on 20 October 2017. The nature of that complaint is not relevant. It is the failure to respond to the notice of complaint that constitutes a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence. The Act mandates the Chief Registrar to call for an explanation to a complaint in order to resolve it. The procedure allows for notification and an opportunity to respond within a stipulated time.

- [6] The first written notice of the complaint was issued to the legal practitioner on 13 April 2018. The legal practitioner did not respond to that notice. When the legal practitioner failed to respond to the initial notice, the Chief Registrar on 16 May 2018 served the legal practitioner with a second written notice. The purpose of the second notice was to remind the legal practitioner that should he choose not to respond to the complaint within 14 days from the date of receipt of the second notice he will be liable to a potential disciplinary action for professional misconduct. The legal practitioner did not respond to the second notice within the stipulated statutory period of 14 days. Hence, the Chief Registrar brought this action for professional misconduct.
- [7] At the hearing, the legal practitioner did not take any responsibility for his conduct. Instead, he tried to justify his conduct saying he had reasonable excuses. His excuses were that he did not have a valid practising certificate to respond to the complaint against him and that he delegated the responsibility to respond to the complaint to one of his employees. The Commission did not find any of his explanations reasonable. The Commission found that the legal practitioner had a valid certificate during the period he was required to respond to the complaint, and that in the event he did not have a valid practising certificate, he was still obliged to respond to the complaint, and that it was his responsibility to respond which he could not have delegated to his employee.
- [8] When the Commission delivered the decision finding the legal practitioner guilty of professional misconduct on 2 November 2018, the Chief Registrar was still waiting for a response from the legal practitioner. As of to date, no response is forthcoming and therefore the misconduct is continuing and the complaint against the legal practitioner by a member of the public remains unresolved since it was filed with the Chief Registrar on 20 October 2017. The misconduct is significantly serious.

Purpose of sanction

- [9] I now identify the purpose for which sanction should be imposed. The primary purpose of disciplinary sanction for legal practitioners is general deterrence. Legal practitioners need to uphold the integrity and reputation of the legal profession at all

times. Any sanction that is imposed must send a clear message to the legal practitioners that should they fail to maintain the highest standards of integrity and reputation, they will be dealt with condign sanction. Soft sanctions will only encourage the legal practitioners to take a cavalier attitude to their responsibility to maintain a high standard of professionalism expected of them.

- [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 fulfils that purpose.

Sanction for deterrence

- [11] In the past, similar professional misconduct has attracted sanctions such as public reprimand, fine and suspension of practising certificate for a fixed period. The nature of sanction that is imposed will depend on the factors such as the seriousness of the actual conduct of the legal practitioner and the mitigating and aggravating circumstances of that conduct. I am mindful that the legal practitioner has been in the law practice for many years. The law firm employs two associates and a clerk. Suspension of practising certificate will not only affect the livelihood of the legal practitioner but also his three employees.
- [12] But I must also consider the gravity of the actual conduct of the legal practitioner. Here is a senior legal practitioner undermining the dispute resolution mechanism to resolve complaint made against him by one of his clients. The complaint against him remains unresolved and the professional misconduct is continuing. These are aggravating features of his conduct.

[13] The only expression of remorse from the legal practitioner came on the eve of the imposition of sanction. The remorse is not genuine. Otherwise, there is very little mitigating circumstances.

[14] Taking all these factors into account, I consider suspension of practicing certificate is the most appropriate sanction for the professional misconduct committed by the legal practitioner. I also think there should be costs awarded against the legal practitioner as well. There is no suggestion that the legal practitioner does not have means to comply with monetary penalties. The costs are summarily assessed.

Orders of the Commission are:

1. The legal practitioner is publicly reprimanded.
2. The legal practitioner's practicing certificate is suspended until he provides with a sufficient and satisfactory explanation in writing to the Chief Registrar regarding the complaint made against him by his client Mr Shailesh Kumar and complies with the costs order.
3. The legal practitioner is to pay costs to the Commission in the sum of \$3000.00 and to the Chief Registrar in the sum of \$2000.00.
4. The suspension of the practicing certificate will cease on the date the Chief Registrar confirms to the Commission in writing that the legal practitioner has fully complied with section 108 Notice and costs order in this case.



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Justice Daniel Goundar
COMMISSIONER