

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

Case No. 005 of 2019

BETWEEN:

CHIEF REGISTRAR

AND:

KESAIA TINA RAVULO CAVUBATI

Applicant: Ms J Sharma for the Chief Registrar

Respondent: Mr F Vosarogo for the Respondent

Dates of Hearing: 5th & 11th June 2019

Date of Sanction: 13th June 2019

DISCIPLINARY SANCTION

[1] Kesaia Tina Ravulo Cavubati (the legal practitioner) has pleaded guilty to professional misconduct contrary to section 82(1) of the Legal Practitioners Act 2009 (the Act). The guilty plea was made at the first available opportunity.

[2] The relevant statutory provision of the Act states:

108.—(1) Where any legal practitioner or law firm fails to comply with any notice issued under section 105 or section 106, the Registrar may notify the legal practitioner or law firm in writing that if such failure continues for a period of fourteen days from the date of receipt of such notice, the legal practitioner or law firm will be liable to be dealt with for professional misconduct.

(2) If such failure referred to in subsection (1) continues for a period of fourteen days from the date of such notification to the practitioner, such failure shall be deemed to be professional misconduct, unless the legal practitioner or law firm

furnishes a reasonable explanation for such failure. In any proceedings before the Commission, the tendering of a communication or requirement from the Registrar with which the legal practitioner or law firm has failed to comply, together with proof of service of such communication or requirement, shall be prima facie evidence of the truth of the matters contained in such communication and any enclosures or annexures accompanying such communication.

[3] Professional misconduct has a statutory definition. 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.

[4] On 20 July 2018, one of the former clients of the legal practitioner lodged a complaint of professional misconduct against her to the Chief Registrar. The Complaint Form is dated 18 July 2018 but was received by the Chief Registrar on 20 July 2018.

[5] On 31 October 2018, the Chief Registrar notified the legal practitioner in writing regarding that complaint pursuant to section 104 of the Act. He also called for a response to that complaint from her within 21 days pursuant to section 105 of the Act. The legal practitioner did not respond.

[6] On 12 December 2018, the Chief Registrar served a second notice on the legal practitioner to respond to his initial notice of complaint within 14 days pursuant to section 108 of the Act. The legal practitioner did not respond.

[7] On 3 April 2019, the Chief Registrar instituted this disciplinary proceeding accusing the legal practitioner of professional misconduct for failing to respond to a notice of complaint despite a second reminder sent to her.

[8] The conduct that requires sanction is not the allegation contain in the notice of complaint. It is the failure to respond to the complaint within a prescribed period despite a reminder that requires sanction.

[9] 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 fulfils that purpose. (The Solicitors Disciplinary Tribunal of England and Wales approach set out in its ‘Guidance Note on Sanctions’)

[10] The Commission notes that professional misconduct arising from failure to respond to complaint notice within a prescribed period is prevalent in Fiji. Sanctions for this offence range from a public reprimand to a suspension of practising certificate for a period of time (*Chief Registrar v Bukarau* [2016] FJILSC 2 (7 June 2016)). The lower end of the range is appropriate in cases where the practitioners have taken responsibility for their actions and have responded to the complaints although late, while the upper end is reserved for those cases where the practitioners continue to act unreasonably to respond to complaints even after a finding of professional misconduct is made against them.

[11] **Seriousness of the misconduct**

In her mitigation, the legal practitioner blames her employee for her failure to respond to the notice of complaint. The practitioner contends that her employee was holding on the client’s file and preventing her to formulate a timely response. However, she also accepts the ultimate responsibility lies with her as the legal practitioner to timely respond to complaints of professional misconduct against her. I take into account that the legal practitioner has not responded to the notice of complaint by the time she presented her mitigation, but she has stated through her counsel that she was going to submit her response to the Chief Registrar shortly after presenting the mitigation. The misconduct is relatively serious.

[12] **Purpose of sanction**

It is in the public interest to see complaints against lawyers are resolved swiftly. Otherwise, the public will lose confidence in the mechanism designed to resolve complaints against lawyers and bring accountability. When complaints of professional misconduct remain unresolved the harm is to the reputation of the profession and the public who uses their services. The primary purpose of sanction is to deter the legal practitioners from acting unreasonably to resolve complaints of professional misconduct against them (*Chief Registrar v Singh - Disciplinary Sanction* [2019] FJLSC 1 (25 March 2019) at [10]).

[13] **Sanction**

I now consider the sanction which most appropriately fulfils that purpose.

The legal practitioner has presented the following in mitigation, which I take into account:

- i. She is 39 years of age and was admitted to the bar in Fiji in 2013 and has been operating her own law firm just over 2 years.
- ii. She has assisted the proceedings by pleading guilty on the first available opportunity.
- iii. She is remorseful for the delay in responding to the complaint.
- iv. This is the first occasion where she has appeared before the Commission.
- v. She operates a small firm as a sole practitioner.
- vi. She is a single parent with two young children.
- vii. She acknowledges that the ultimate responsibility lied with her as the legal practitioner to respond to the notice of complaint.

[14] There is no suggestion that the legal practitioner does not have means to comply with monetary sanctions.

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 legal practitioner's practising certificate is suspended until such time she pays the fine and costs in full.



Justice Daniel Goundar
COMMISSIONER