

**IN THE INDEPENDENT LEGAL SERVICES COMMISSION**  
**AT SUVA**

No. 010 of 2020

**BETWEEN:**           **CHIEF REGISTRAR**

Applicant

**AND:**               **SENJILYN NANDITA NAIDU**

Respondent

**Counsel:**           Ms. J.Sharma Prasad for the Applicant  
                          Mr. D.Sharma for the Respondent

**Date of Hearing:**       21<sup>st</sup> July 2022

**Written submissions:**   13<sup>th</sup> and 20<sup>th</sup> September 2022

**Date of Ruling:**       10<sup>st</sup> November 2022

---

**JUDGEMENT AND SANCTION RULING**

---

Introduction

1. The respondent practitioner was charged with one count of unsatisfactory professional conduct contrary to section 81 of the Legal Practitioners Act 2009 (LPA) as follows;

**UNSATISFACTORY PROFESSIONAL CONDUCT:** Contrary to Section 81 of the Legal Practitioners Act 2009.

**PARTICULARS**

**SENJILYN NANDITA NAIDU**, a legal practitioner, on the 12<sup>th</sup> day of November, 2019 witnessed the practising certificate of **SHIVANI NATASHNA NARAYAN** by affixing her Commissioner for Oaths stamp on the statutory declaration without first having to witness the signature of **SHIVANI NATASHNA NARAYAN** which

conduct is a failure to ensure the compliance of her duties as a Commissioner for Oaths competently and diligently, and is an act of unsatisfactory professional conduct.

**Factual matrix**

2. According to the particulars on the 12<sup>th</sup> November 2019 in her capacity as a Commissioner for Oath whilst being a legal practitioner she had purported to attest the statutory declaration of the practicing certificate [PC] application form of Ms. Shivani Natashna Narayan when the declarant has in fact not signed the same. The respondent has signed and placed her seal of "*Barrister & Solicitor Commissioner for Oaths*" but the signature of the declarant Ms. Narayan does not appear and has not been placed. This application for a PC had been submitted to the Chief Registrar and it transpired that the declarant has not signed but the Commissioner for Oaths the respondent practitioner has placed her seal and signature [exhibit AE2].
3. The Applicant called just one witness that was Ms. Shivani Narayan. Ms. Narayan admits that she was working under the supervision of the respondent and that her application of the PC was witnessed by the respondent. She did say that she was not informed that she should sign the particular document. She had on the 12<sup>th</sup> of November 2019 lodged the application with the CR.
4. Then the respondent gave evidence on her behalf and admitted that she did signed the application and that Ms. Narayan was working under her at the Legal Aid office and in the midst of attending to another client she had as a personal favour witnessed the said declaration. It is her position that after signing and placing the seal she had specifically instructed Ms. Narayan to place her signature and handed over the said application to her.
5. It is common ground that the incomplete application signed by the respondent as the witness Commissioner for Oaths without the declarant's signature was submitted. The respondent admits that she signs and sealed the statutory declaration and hand it over to Ms. Narayan instructing her to sign before submitting. As a Commissioner for Oaths it is the duty of the respondent to first obtain the declarant's signature and then sign and

witness the same. She had clearly not followed this procedure and is remiss in the performance of the function as a Commissioner for Oaths.

**Is it unsatisfactory professional conduct?**

6. The respondent in her submission argues that her negligence in performing the functions of Commissioner for Oaths is different and distinct from her functions as a legal practitioner and that action if so, should be taken under section 144 of the LPA. Thereby, argues that disciplinary proceedings is not the proper remedy but an application under section 144 should be preferred to the High Court. It is her submission that as she had acted *in good faith* and thus she is covered by the protection provided for by section 144.
7. The starting point is that the Respondent legal practitioner performed the functions of a Commissioner for Oaths by virtue of her Practising certificate as enabled by section 144(3) of the LPA. Commissioners for Oaths are appointed by the Chief Justice pursuant to section 144(1) of the Act. The functions of the Commissioners for Oaths are also provided by that section as follows:

*144. — (1) The Chief Justice may appoint, under his or her signature and the seal of the High Court from time to time, such and so many legal practitioners and other persons as may be requisite to be Commissioners for taking affidavits and declarations and receiving production of documents or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceedings in any court, and any order of a court for the attendance and examination of witnesses or production of documents before any such Commissioner within the jurisdiction of the Court shall be enforced in the same manner as an order to attend or be examined or produce documents before the Court.*

*(2) No action shall be brought against any Commissioner in respect of any act or order performed or made by him or her in good faith in the execution or supposed execution of the powers or jurisdiction vested in him or her, but every such act or order, if in excess of such powers and jurisdiction, shall be liable to be revised, altered, amended or set aside upon application to the Court.*

*(3) A practitioner, not being the holder of an appointment under subsection (1), who is the holder of a practising certificate that is in force, shall, notwithstanding the absence of such an appointment, be deemed, for the*

*purposes of this Act and any other written law, to be a Commissioner appointed under subsection (1)*

*(4) The signature of a person, when placed on a document in the exercise by that person of the powers of a Commissioner under this Section, shall be followed by the description "Commissioner for Oaths".*

8. Under section 144 (1) the Chief Justice is empowered to appoint a legal practitioner and other persons that may be required as Commissioners for Oaths. Sub Section (2) provides for protection for acts done in good faith by a Commissioners for Oaths in the performance of the duties and functions as such Commissioner.
9. Section 144 (3) is a deeming provision by which a legal practitioner who is a holder of a practising certificate by virtue of the same is deemed to be a Commissioner for Oaths appointed under section 144(1). Ms. Naidu was a Commissioners for Oaths because she was a holder of a practising certificate. This provision thus allows a practitioner who holds a practising certificate to perform the functions of a Commissioner for Oaths despite not being appointed by the Chief Justice under section 144(1). A practising certificate is issued to a practitioner by virtue of section 42(1) of the Act.
10. The respondent as per her evidence and the seal, clearly appears to be a Commissioner for oaths by virtue of section 144(3) qua holder of a practising certificate. Her conduct in the performance of the duties of Commissioner for oaths is therefore by virtue of her practising certificate qua holder of practicing certificate and is conduct of a legal practitioner occurring in connection with the practice of law to that extent.
11. It is settled law that the conduct of a legal practitioner in whatever form and capacity if found to be wanting clearly and directly affects the public confidence reposed on the legal practitioner and the profession. Acting in good faith necessarily will mean acting with due care and attention in accordance with the rules and guidelines prescribed for Commissioners for oaths. As such the submission of the respondent is totally misconceived.
12. On the consideration of the totality of the evidence there is no doubt that the respondent has been remiss. Her conduct as Commissioner qua legal practitioner has certainly fallen below the standard of competence and diligence that a member of the public is

entitled to expect. The respondent has acted in violation of the Chief Justice's directive number 1 of 2013 on the duties of the Commissioners for Oaths. According to the said directives at paragraph 8 and 9 it provides that:

*Avoiding conflicts of interest*

*8. Do not witness a family member's statutory declaration form or affidavit as this may involve a conflict of interest for you as a Commissioner where you are not independent of the purpose or issues involved.*

*At Workplace*

*9. Avoid witnessing or signing documents or originating from your work place if it may also lead to a conflict of interest in the future.*

13. Further the *Commissioner for Oaths General Guidelines on Roles and Responsibilities* dated 14<sup>th</sup> November, 2012 lays down the following guidelines:

*Roles and Responsibilities*

*3.2 After attesting the execution of a document, a Commissioner For Oaths must:*

- a) Sign the document;*
- b) Write his or her:*
  - i. Full name;*
  - ii. Address or telephone number and;*
- c) Follow the execution by the description "Commissioner for Oaths"*

*Attesting Documents*

*5.2 "Commissioner should inform themselves generally of the nature of the document which is being attested. They should not witness a document which has been left blank to be filed in or completed later or which contains illegal material."*

*5.10 "After seeing the person sign the document, a Commissioner should personally sign her or his name where indicated indicating the place and date of execution. The signature should not be stamped." (emphasis added)*

14. Ms. Narayan was the subordinate officer at the DPP's office to that extent this is a document that had originated from her workplace which may lead to a conflict of interest in future that is exactly what had happened. Undoubtedly the respondent had placed her signature on the said statutory declaration without obtaining this signature of

the declarant. The respondent did say that she had instructed Ms. Narayan to sign it. If Ms. Narayan was there before her when it was sealed and signed by the Respondent then what was the necessity to instruct her to sign it later? The respondent could have simply put the document in front of Ms. Narayan and asked her to sign the same before witnessing and placing her seal and signature

15. If in fact this declaration was signed by the respondent in the presence of Ms. Narayan I see no earthly reason, logically or otherwise, why this was not done so. Therefore, it is more probable than not that the respondent has signed it in the absence of Ms. Narayan in the hope that it will be signed by Ms. Narayan before submitting.
16. Accordingly, the version of Ms. Narayan that the respondent did sign and left the signed document on a cabinet in the office room occupied by Ms. Narayan appears to be more probable. Accordingly, the respondent has clearly acted in violation of the prescribed and accepted procedure in testing or witnessing such a declaration. Further, the respondent has acted in violation of this CJ's directive of Number 1 of 2016.
17. The allegation against the Respondent is one of unsatisfactory professional conduct under section 81 of the LPA. Section 83(2) of the LPA prescribes that 'unsatisfactory professional conduct' includes "*unprofessional practice or conduct*". However, unprofessional practice or conduct is not defined.
18. In **Chief Registrar V. Adish Kumar Narayan** [ILSC No. 009 / 2013] (25<sup>th</sup> September 2013), the scope of sections 81-83 was considered and it was expounded that;  
  
*"31. These submissions again ignore the very wide terms of sections 81, 82 and 83. Section 82 plainly provides that professional misconduct includes the conduct stated thereon which assume that other conduct might will be misconduct if the Commission finds it to be so. Section 83 with its 8 examples of misconduct (subsections (a) to (h)) specifically says that they do not limit the definitions in s.82. All three sections provide very wide parameters within which the Commission could find any particular conduct to be either unsatisfactory professional conduct or to be professional misconduct. Such conduct need not be confined to competence, fitness to practise, nor to any of the examples set out in section 83"*
19. In **Chief Registrar V. Adish Kumar Narayan** ILSC No. 009/2013

(2<sup>nd</sup> October 2014) the scope of sections 82 and 83 were farther expanded and it was held that that the statutory definition of professional misconduct does not exclude the common law definition thus;

*“9. As a preliminary point the Practitioner by his Counsel argues that that the mischief complained of does not come within the purview of either section 82 or 83 of the Decree. In effect he submits that the particulars of the complaint against him do not state any offence.*

*10. This argument was dealt with in some detail by the Commission in a ruling on the practitioner's Application for Stay, (Ruling 009 of 2013 dated 25 September 2013) in which it was held that the examples of misconduct listed in section 83 of the Decree are not exhaustive and in any event any conduct undertaken by the Practitioner need not necessarily be confined to competence or fitness to practice but it may include any conduct that the Commission might find to be professionally blameworthy, dishonourable or unethical.*

In the case of *Law Society of N.S.W. v Marando* [2013]NSWADT267, it was said:

*"However it is well settled that the statutory definition of professional misconduct does not exclude the common law definition emerging from the oft-cited case of Allison v Gen Council of Medical Education and Registration [1894] 1KB 750; that is "conduct which would reasonably be regarded as disgraceful or dishonorable by professional [colleagues] of good repute and competency"*

20. Thus, applying this principle, the statutory definition of unsatisfactory professional conduct will not exclude the common law definition to that extent too.
21. Thus, the Respondent's conduct comes within the meaning of unsatisfactory professional conduct. This evidence is sufficient on a balance of probabilities to satisfy this Commission that the charge preferred under Section 81 of the LPA to have been proved. Accordingly, this Commission finds the allegation as preferred is proved on a balance of probabilities.

### **Sanction Ruling**

22. The unsatisfactory professional conduct as alleged is thus well founded and proved. The legal practitioner was an employee of the Office of the Legal Aid Commission. On

or about 12<sup>th</sup> November 2019, the practitioner qua legal Practitioner holding a practising certificate acted as a Commissioner for Oaths by witnessing a statutory declaration of Ms. Narayan's practising certificate application and certifying the accompanying documents as being true copies of the originals and affixing her "*Barrister & Solicitor, Commissioner for oaths*" stamp, without the declarant first having signed the said declaration.

23. I find that unsatisfactory professional conduct as it reflects a marked departure from the standard of competence and diligence that the public expects of a legal practitioner. Affixing a signature as a witness on a document or attesting a declaration when the deponent has not in fact subscribed to that document is certainly unprofessional practice or conduct within the meaning of section 82(3) of the LPA. It is manifestly in the public interest that a practitioner's signature as witness to a legal document must be viable evidence of the fact that the member indeed witnessed the affixed signature. There can be no doubt that it is in the public interest that members of the public be able to confidently rely on a practitioner's written and oral word as being representative of the truth. Without that confidence, it would be difficult, if not impossible, to maintain the public's confidence in the legal profession generally or in legal Practitioners as individuals.
24. In this matter, by affixing her stamp and placing her signature purporting to have witness the signatures on the statutory declaration, and when the signature is in fact not there it will seriously affect the reliability and professional integrity of the Practitioner and also reflects adversely on the integrity of the legal profession as a whole.
25. When the Chief Registrar brought the alleged conduct to the attention of the practitioner, she immediately realized her mistake and accepted responsibility for her conduct. On 16<sup>th</sup> November 2019, she promptly responded to the Chief Registrar's notice and admitted that she witnessed the statutory declaration of the said application without the declarant's signature and that it was a mistake. The Respondent offered her apologies and an undertaking was given that she will not repeat this mistake.



26. It is submitted in mitigation that in view of this incident the Legal Aid Commission had internally reprimanded the Respondent and her services had been terminated too. She is 32-year-old at present and had been admitted to the legal profession in 2011.
27. It was submitted on behalf of the Respondent that she be dealt in the same manner as done in the matter of *CR v Niudamu* ILSC No. 005 of 2020 and this matter be dismissed. As the facts of these two matters are almost similar I am inclined to deal with Respondent in a similar manner and the comparable cases for sanctions are *Chief Registrar v Buatoka* [2013] FJILSC 26 (11 October 2013) and *Chief Registrar v Meru* [2020] FJILSC 1 (28 February 2020).
28. The practitioner is certainly remorseful for her unsatisfactory professional conduct. If not for this her professional conduct has been impeccable. In these circumstances, to my mind public reprimand would suffice and no further sanction is required.
29. The Respondent is thus publicly reprimanded.

Dated the 10<sup>th</sup> day of November, 2022.

  
  
**Justice Gihan Kulatunga**  
**Commissioner**