

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**NO. 001 OF 2013**

**BETWEEN:**

**CHIEF REGISTRAR  
Applicant**

**AND:**

**ROBINSON KAMAL PRASAD  
Respondent**

**Applicant : Ms. L. Vateitei  
Respondent : Mr. S. Ram**

**Dates of Hearing: 20th June, 12th August and 13th September 2013  
Date of Judgment: 1st October 2013**

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**RULING**

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1. The Applicant has made the following allegation against the Respondent;

*"Mr. Robinson Prasad a legal practitioner, between the 30th of January 2013 to the 13th of May, 2013, failed to respond to a complaint lodged by one Anaseini Navue within the time stipulated in the notice issued by the Chief Registrar pursuant to Section 105 of the Legal Practitioners Decree and thereafter failed to respond to a subsequent reminder notice issued by the Chief Registrar pursuant to Section 108(2) of the Legal Practitioners Decree which conduct was a contravention of Section 108(2) of the Legal Practitioners Decree 2009 and was an act of professional misconduct."*

2. In response to that charge, the Respondent ("the practitioner") has by his Counsel made application by way of Notice of Motion and accompanying Affidavit to dismiss the charge on the basis that the requisite notices under the Legal Practitioners' Decree ("the Decree") were invalid as to form and therefore could not satisfy the necessary conditions precedent to the laying of the charge.

3. Mr. Ram submits that a proper complaint was not made to the Registrar, pursuant to the terms of section 99 of the Decree because the original complaint never alleged professional misconduct nor unsatisfactory professional conduct. Counsel submits that this is a requirement mandated by the section and was not satisfied.

Section 99 reads:

*(1) Any person or entity may make a complaint to the Registrar regarding any alleged professional misconduct or unsatisfactory professional conduct by any practitioner or law firm, or any employee or agent of any practitioner or any law firm"*

(2)

(3) *Irrelevant to the submission*

(4)

(5)

4. Counsel then goes on to submit that having received the complaint under section 99, the Registrar, in writing to the Practitioner and asking for an explanation, is not fulfilling the requirements of section 104 of the Decree, but the Registrar is in fact purporting to engage the provisions of section 105 of the Decree requiring an explanation of the Complaint.

Those sections (104, 105) read:

***"s.104. Upon receipt of a complaint under s.99.... the Registrar shall refer the substance of the complaint or the investigation -***

***(a) in the case of a complaint or investigation against a legal practitioner - to the legal practitioner***

***(b) irrelevant***

***(c) irrelevant"***

***"s.105 -(1) Upon receipt of a complaint under s.99 or commencement of an investigation under s.100, the registrar may require that the legal practitioner.....by written notice to furnish to the Registrar within the time specified in that notice a sufficient and satisfactory explanation in writing of the matters referred to in the complaint.***

***(2) The Registrar may by notice in writing require a legal practitioner.....to provide to the Registrar a sufficient and satisfactory explanation of any matter relating to that practitioner's... conduct or practice. Such explanation shall be provided in writing to the Registrar within the time specified in the notice."***

5. In what was a very rambling and unfocused oral argument, Counsel's next submission appeared to be that the notice sent to the Practitioner requiring explanation was not a proper section 105 notice which would then later invoke a section 108 notice if unanswered. He says that the Registrar must investigate and decide whether it is unsatisfactory professional conduct or professional misconduct before asking the Practitioner for an explanation.

6. Mr. Ram then proceeds to argue that because of this invalid notice sent to the practitioner, a subsequent letter dated 19th of March 2013 which purports to be a section 108 letter (and the foundation for the charge) is of no effect. It is also invalid, he claims, because the letter does not tell the practitioner that if he fails to offer an explanation, he will face an allegation of professional misconduct.

Section 108 of the Decree reads:

***"108-(1) Where any legal practitioner....fails to comply with any notice issued under s.105....., the Registrar may notify the legal practitioner ... in writing that if such failure***

*continues for a period of fourteen days from the date of receipt of such notice, the legal practitioner .....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 practitioner.... 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 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 annexes accompanying such communication."*

7. Counsel's final submission after these semantic peregrinations is that because the notices are invalid the charge itself is invalid. As a consequence the charge is not properly within the purview of the Decree and as a result, the section that prohibits the Commission awarding costs against the Registrar (section 124(2)) is of no effect. He applies for costs against the Registrar.

8. Counsel for the Registrar addressed the Commission orally in reply, strenuously opposing the application and stressing that the Practitioner being presumed to be learned in the law and presumed to be very aware of the provisions of the Decree, would have had no difficulty in understanding the true import of the Registrar's various communications. She submitted that by not answering them in writing he had offended against the provisions relating to Complaints and Investigations contained in Division 3 of the Decree.

9. By way more as an aside to his main arguments, Mr Ram referred to the two affidavits of a staff member of the Legal Practitioners' Unit "(LPU)" of the Chief Registrar's Office, in which she gives differing accounts of a telephone call to the LPU Office on 7th of May 2013.

10. The Respondent claims that he had called the LPU Office on 7th of May 2013 and had spoken to a lady called "Ema". The Practitioner claims that in speaking to her he got the impression that an extension of time could be given for him to make a reply to the Registrar. The staff member had initially deposed that she had never spoken to the Respondent about his failure to respond to the section 108 notice but in a subsequent affidavit she "remembered" after going through her records that she had spoken once to the Practitioner about his failure to respond. Although speaking to him she did not tell him that she was giving him more time to respond.

11. Mr Ram submits that these contradictory affidavits are evidence of the lack of proper procedures taken in the Registrar's Office to investigate complaints, apart from evidencing a lack of good faith. Ms Vateitei submits in reply that **not** to make the amendment would have been unethical on the part of her Office.

## **DISCUSSION**

12. Section 99 of the Decree provides for a complaint to be made to the Registrar against any practitioner or law firm. The section says that complaints can be made regarding "*any alleged professional misconduct or unsatisfactory professional conduct.*" This section does not stipulate that the complainant has to state whether his complaint is one alleging professional misconduct or unsatisfactory professional conduct, as Mr Ram would have it. The lay client wouldn't really know but he does know if he has been improperly treated by his legal advisor be it by means of poor service, unavailability, delay or non-performance. Every complaint made by a member of the public

under the Decree will be in regard to the conduct of his lawyer and it would then be for the Registrar to investigate the matter (with the assistance of the Practitioner) and assess whether it is the more serious professional misconduct or less serious unsatisfactory professional conduct and charge the practitioner accordingly. The Commission will then, after hearing, decide if the allegation is established or not.

13. The ground relied on by Counsel in regard to section 99 has no merit and is dismissed.

14. Once a complaint is received, the decree directs the Registrar to refer the substance of the complaint to the Practitioner (section 104) and if he wishes, he **may** (my emphasis) write to the Practitioner and ask him or her to provide an explanation of the matters **in writing** within a given time period. Should the Practitioner not co-operate by providing that explanation, then the Registrar has the option of reminding the practitioner (again in writing) to comply within 14 days and that failure to reply will leave the practitioner open to a charge of professional misconduct.

15. The Registrar originally wrote to the practitioner in the following terms:

*"30th January 013*

*Mr Robinson Kamal Prasad  
Patel & Sharma Lawyers  
P O Box 202  
SIGATOKA*

*Fax: 6501228*

*Dear Mr Prasad*

*Re: Complaint by Anaseini Navue - Ref. No 176/12*

*I have received a complaint from the above-mentioned which I enclose. I require a written explanation from your office in relation to the allegations raised in this complaint.*

*Please send your written response within twenty one (21) days from the receipt of this letter by 12pm with a copy to the complainant. This matter is being handled under the provision of Legal Practitioners' Decree 2009 - Part 9.*

*All correspondences to be addressed to the Chief Registrar, c/o Legal Practitioners Unit, P.O. Box 2215 Government Buildings Suva.*

*Yours faithfully,*

*(signed)*

*Mohammed Saneem [Mr]  
Acting Chief registrar, Judicial Department"*

16. This letter does not state whether it is a notice under section 104 or section 105 and nor does it have to. A perusal of its content shows that it fulfills the requirements of both section 104 and section 105.

17. The complaint has been referred to the Practitioner and he has been asked to give an explanation within a fixed time frame (21 days).

18. Mr Ram submits that the letter should state whether the allegation is one of unsatisfactory professional conduct or professional misconduct but it doesn't and by not doing so, it is a letter inviting the practitioner to "*say something that might amount to a breach*".

19. Nowhere in the Decree is there support for this ground that the letter must disclose the seriousness of the allegation (unsatisfactory professional conduct or professional misconduct). Those findings are for this Commission alone, after a proper hearing into the allegation. Of course the Registrar will make his own assessment of the seriousness of the complaint and that will be reflected in the charge that he lays. But that will only be done after and if the practitioner co-operates by giving his explanation of the matters complained of. The notice of 30 January being both a 104 notice **and** a 105 notice is perfectly in order: it satisfies the requirements of both sections of the Decree.

20. There being no response to the Registrar's letter of 30th of January 2013, another letter was sent to the Practitioner and was worded:

*"19th March 2013*

*Mr Robinson Kamal Prasad  
Patel & Sharma Lawyers  
P O Box 202  
SIGATOKA*

*Fax: 6501228*

*Dear Ms (sic) Prasad*

*Re: Notice - Section 108 of the Legal Practitioners' Decree of 2009  
Complaint by Anaseini Navue - Ref. No 176/12*

*We refer to our section 104 Notice dated 30th January 2013 and served on 6th February 2013. Further, we enclose a copy of our Section 104 Notice.*

*We have not received as written explanation or response from you as required under **section 105** of the **Legal Practitioners' Decree** of 2009.*

*The Chief Registrar's office grants you a further period of fourteen (14) days from the date of receipt of this notice to furnish the Chief Registrar's office with a response.*

*We bring to your attention **Section 108(2)** of the **Legal Practitioners' Decree** of 2009 for your perusal and further necessary action.*

*All correspondences are to be addressed to the Acting Chief Registrar, c/- Legal Practitioners' Unit, P.O. Box 2215 Government Buildings, Suva. Fax no.3313385.*

*Yours sincerely,*

(signed)

.....  
Ms Archana Sharan [DR Legal]  
for: Acting Chief Registrar, Judicial Department

(emphases in the original)

21. It is the position of the Practitioner by his Counsel that this "*section108*" notice has no validity for two reasons:

- the section 104 notice that it refers to was invalid which in turn invalidates this notice, and;
- it does not inform the practitioner that if he fails to reply within 14 days he will be liable to be dealt with for professional misconduct.

22. Having already found that the 104/105 notice was valid, the first objection falls away. To insist that all of the words in section108 be put to the Practitioner in writing, namely "if such failure continues for a period of 14 days after receipt of this notice, then you will be liable to be dealt with for professional misconduct" would appear to be pedantic and unnecessary; especially given that the Practitioner in the fourth paragraph of the letter is referred to section 108(2) which explicitly sets out the consequences of failure to respond; that failure being deemed to be professional misconduct. This coupled with the fact that the Registrar **may** (emphasis added) so advise the practitioner, then there is nothing invalid about this notice that might entitle the practitioner to ignore it. Perhaps the only criticism that could attach to this letter of 19th of March 2013 (apart from addressing a male practitioner as "Ms") is that the writer has referred to the earlier letter of 30th of January 2013 as a section 104 notice when in fact it can be seen to be a notice satisfying both section104 and section.105. That error cannot be to the prejudice of the Practitioner however, particularly where both letters place the required information before the practitioner in satisfaction of all three sections: 104,105 and 108.

23. The grounds of objection relating to the notices have no merit and the application to dismiss the charge on the grounds that the requisite notices were invalid is itself dismissed.

24. Before leaving the matter, the Commission wishes to address the concern raised by Counsel for the Practitioner with regard to the contradictory affidavits of the Legal Practitioners Unit ("LPU") staff member Ms Ema Takayawa. It is also a matter of concern to this Commission.

25. When the Practitioner first appeared in person before the Commission on the 20th of June 2013 at which time he was appearing in person, he told me that he had responded to the Registrar the day before, literally on the "*eve of the trial*". He had done this because on the 6th May 2013 he had received a telephone call from an officer of the LPU reminding him that his reply to the Registrar was overdue. He said that the next day (7th of May) he called Ema and explained to her that he was awaiting documents before he could reply. He said that he was under the impression from the two phone calls that his response to the Registrar could be deferred.

26. There was a further hearing before this Commission on the 12th of August 2013. At that hearing Counsel for the Registrar produced an affidavit from Ema who deposed that she had called the practitioner's office on 12th of June and had spoken to one of his staff about his failure to reply to the 108 notice. She never talked about allowing the Practitioner an extension of time, nor had she ever spoken to the practitioner himself.

27. At this hearing (12th of August) the Practitioner took issue with this affidavit and insisted that he did speak to Ema but it was in May and not June. On the 9th of September, Ema filed a further affidavit in which she deposed that after perusing her records she was desirous of amending her original affidavit. She then recalled that the practitioner had indeed called her but he had never requested an extension of time. He told her that he was having difficulties in getting documents from the iTLTB. She deposed that she had no authority to grant extension of time.

28. The Commission is concerned that the Registrar felt that it was necessary to file an affidavit to answer the Practitioner's claim that he had spoken to a member of his staff. It would appear to be a "knee jerk" response, and the fact that it was ill-considered and incorrect supports that view. In the light of the Practitioner's insistence, more research was made into the matter and the "Supplementary Affidavit" was filed, in which telephone contact was admitted. The affidavits do not do credit to the Legal Practitioner's Unit.

29. It is highly relevant, and a fact that the Registrar perhaps should have considered before filing the first affidavit denying the Practitioner's claims, that the phone calls the Practitioner refers to and which were eventually admitted by the lady staff member Ema were made some 5 weeks **after** the expiry of the time given to the practitioner by the section108 notice to respond in writing. This raises two issues of concern:

- Contacting a Practitioner well after the expiry of a time limit given to him/her seriously attenuates the authority of the legislative provisions in the Decree and calls into question the bona fides of the Legal Practitioners' Unit in relying on those provisions.
- By the 7th of May, the Practitioner was already in breach of section108 and was therefore deemed to have professionally misconducted himself and no amount of phone calls or affidavits could rescue the Practitioner from this legislative breach. By filing not one but two affidavits by the LPU was a waste of their time and the Commission's time and brought unnecessary embarrassment upon themselves.

30. Unfortunate though these affidavits may be, they do not assist the practitioner in his submission that he was given enlargement of time to make his explanation of matters to the Registrar. He was in breach of section 108 well before the phone calls and well before the affidavits.

31. There being no merit in the practitioner's application to summarily dismiss the charge, the application for costs has no foundation. In any event the Decree explicitly provides in section 124(2) that no order for costs can be made against the Registrar or the Attorney General.

32. However, given that the grounds relied upon by the Applicant in dismissal of the charges are for the most part frivolous, the Commission will invite submissions on costs against the Applicant from both parties at the conclusion of the hearing.

33. The matter will now be called before the Commission at 4.30pm on Monday 14th of October 2013 to set a date for completion of the hearing.

**JUSTICE PAUL MADIGAN 1 OCTOBER 2013  
COMMISSIONER**