

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 017 OF 2013

BETWEEN:

**CHIEF REGISTRAR
Applicant**

AND:

**RAM CHAND
Respondent**

**Applicant : Ms. L. Vateitei
Respondent : In Person**

**Dates of Hearing : 12th, 13th August, 20th & 24th September 2013
Date of Judgment : 3rd October 2013**

JUDGMENT

1. Consequent to a complaint from a disaffected respondent in a High Court Probate case (HPP 23 of 2006), the Chief Registrar proffered the following complaint (as amended) against the Respondent ("the Practitioner");

"Ram Chand, a legal practitioner, on the 27th of October, 2011 in the matter HPA 32755 and 32086 knowingly deceived and or misled the High Court by way of his letter dated 17th of October, 2011 where he sought an adjournment due to his medical condition stating that he had undergone an eye operation and had been advised not to stress his eyes for at least three months when on the same day which was the 27th of October, 2011 he appeared for and conducted a full hearing in the Tailevu Magistrate Court in the matter State v Jaspal Singh Criminal Case No 64 of 2011, which conduct was a contravention of Rule 3.1 of the Rules of Professional Conduct and Practice and was an act of professional misconduct."

2. The practitioner admits the factual elements of the allegation but disputes that he was misleading or deceiving the High Court when advising that Court by letter of the 17th October 2011 that he was medically unfit to appear in Court on 1st and 2nd November 2013.

3. It is not in dispute that the practitioner had undergone eye procedures (cataract removal) in Auckland, NZ in the year 2011 - the exact time is not disclosed. The practitioner produces optometrist certificates for the years 2012 and 2013 to say that he has irritation in the right eye and has chronic conjunctivitis without the prospect of cure.

4. Unfortunately for the practitioner, amongst the three medical certificates and three "Auckland Eye" Invoices that he produces in evidence, the only relevant documents are two Invoices dated 15th September and 20th September 2011 for the removal of right and left cataracts. He has produced two identical copies of the 15th September Invoices: whether that be by mistake or an attempt to "pad out" his medical exhibits is another issue. The three certificates from eye

specialists are all dated subsequent to the misconduct alleged and do not assist the practitioner.

5. Although the practitioner says that he was not trying to deceive the Court and was trying to "rest his eyes"; the fact that he was appearing in a contested hearing in the Magistrates Court on the same day he wrote to the Court leads to a strong inference that he was being selective as to which tribunal he should appear before.

6. At the hearing of this matter on 24th September 2013, the practitioner told the Commission that he had accepted the brief in the Magistrates Court "a long time before" writing the letter to the High Court. Obviously therefore the practitioner knew that he had this clash of hearing dates to reconcile and therefore his letter to the High Court is misleading and deceitful. The medical advice to "avoid strains and eye pains" that he relies on is contained in a medical report dated 2nd October 2012, some 12 months **after** the misconduct he is charged with.

7. The Commission finds that the allegation is **established**.

8. If a practitioner has conflicting fixtures in different Courts, (and there is **no** reason why he/she should (except for a change of date without consultation)), then the High Court must **always** take precedence in hearing and any letter be it genuine or not must be written to the lower court. In this case the practitioner "chose" to appear in the lower court, thereby abandoning a High Court matter that had been proceeding over a long period and a matter where overseas witnesses had been summoned to appear on the date in question. For the practitioner to avoid this fixture by deceit is serious professional misconduct indeed.

9. Practitioners should henceforth be put on notice that if "double booking" themselves for appearances in both the High Court and the Magistrates Court and to then abandon the High Court without leave; they will be in breach of Section 3.2 of the Rules of Professional Conduct and will be regarded by this Commission as having professionally misconducted themselves.

PENALTY

10. The practitioner had written to the High Court asking to be excused from appearing on a date previously fixed because after having had eye cataracts removed he had been medically advised to "rest his eyes". On the day he wrote the letter he attended at the Tailevu Magistrates Court and appeared for an accused in a defended hearing for at least three hours, reportedly reading and writing without spectacles.

11. His letter to the High Court was obviously deceitful and the practitioner's claim of genuine hardship is not borne out by the documents he produces.

12. As the Commission says in paragraph 9 (supra) to abandon the High Court in favour of a contemporaneous brief in a Magistrate's Court without leave is professional misconduct and to do so by deceit is serious misconduct.

In respect of this practitioner, the following orders are made:

ORDERS

1. The practitioner is publicly reprimanded.

2. His practising certificate is suspended from the date of this judgment until 1st of March

2014.

3. He is to pay a fine of \$5,000 to this Commission by the 31st October 2013, and in default his practising certificate will be suspended for a further three months .

3 OCTOBER 2013

**JUSTICE PAUL MADIGAN
COMMISSIONER**