

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

Case No. 004 of 2018

BETWEEN:

CHIEF REGISTRAR

AND:

ALOFA AIVA SERUVATU

Applicant: Ms J Sharma for the Chief Registrar

Respondent: The legal practitioner in person

Dates of Hearing: 1st May 2019

Date of Sanction: 4th June 2019

DISCIPLINARY SANCTION

[1] Ms Alofa Aiva Seruvatu (the legal practitioner) appeared before the Commission on a charge of professional misconduct contrary to section 82(1) (a) of the Legal Practitioners Act 2009 (the Act). The particulars alleged that the legal practitioner failed to respond to a complaint notice despite a subsequent reminder sent to her by the Chief Registrar pursuant to section 108(2) of the Act. On 24 October 2018, the Chief Registrar filed the charge against the legal practitioner. On 2 November 2018, the legal practitioner appeared before the Commission and pleaded guilty to the charge. This is the sanction for the offence.

[2] The offence is professional misconduct. 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.

- [3] On 17 December 2017, one of the former clients of the legal practitioner lodged a complaint against her with the Chief Registrar pursuant to section 99 of the Act. In that complaint, the client raised issues of delay, negligence, overcharging, incompetence and action without instructions, but the main dispute was over the fee that the legal practitioner charged.
- [4] On 16 May 2018, the Chief Registrar informed the legal practitioner in writing about the complaint as required by section 104 of the Act. She was also given a notice to respond to the complaint by giving sufficient and satisfactory explanation in writing within 21 days pursuant to section 105 of the Act. She was advised that her response was due on 7 June 2018. The legal practitioner acknowledged receipt of the notice the next day (17 May 2018) via email. She wrote on her email that she was going to respond to the complaint.
- [5] The legal practitioner did not respond by the due date of 7 June 2018. On 12 June 2018, she wrote to the Chief Registrar seeking a further 30 days to respond. Her reasons for seeking an extension were as follows:
1. She needed time to go through the several allegations made against her by her former client.
 2. She was operating her practice from her home and without any administrative staff to assist her.
 3. She was sick for the past 2 weeks with a boil.
- [6] On 12 June 2018, the Chief Registrar wrote to the legal practitioner granting her an extension of 3 weeks to respond. The legal practitioner did not respond within the extension period.

- [7] On 18 July 2018, the legal practitioner wrote to the Chief Registrar seeking a further extension until 23 July 2018 to respond to the complaint on the ground that her ability to work was affected by her medical condition, osteoarthritis of hips. On the same date, the Chief Registrar gave the legal practitioner a further extension until 25 July 2018 to respond.
- [8] Despite numerous extensions, the legal practitioner did not respond. On 24 October 2018, the Chief Registrar initiated this disciplinary proceeding for professional misconduct. On 2 November 2018, the legal practitioner pleaded guilty to the charge before Commissioner Dr Hickie. Before Dr Hickie could impose sanction his term in the office expired.
- [9] I was appointed Commissioner in January 2019. The legal practitioner maintained her guilty plea before me. However, imposition of sanction was delayed due to the legal practitioner's unavailability on medical grounds.
- [10] Section 121(1) of the Act provides for a range of sanctions for disciplinary offences. For the offence of professional misconduct arising from a failure to respond to a complaint notice, sanctions range from a public reprimand to a suspension of practising certificate for a period of time. In *Chief Registrar v Bukarau* [2016] FJLSC 2 (7 June 2016), the Commission 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). (as per Commissioner Dr Hickie)

[11] 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')

[12] **Seriousness of the misconduct**

The conduct that is subject of sanction is the failure to respond to the notice of complaint within a stipulated period. In the present case, the legal practitioner admitted she did not respond to the complaint as required by the Act that regulates the duties and responsibilities of legal practitioners. She also prolonged the process to respond. She gave numerous excuses, the main being ill-health.

[13] However, ill-health did not impair her from practising law. She continued practising while her response to the complaint of professional misconduct was pending. She only responded to the notice of complaint on 15 February 2019, nearly nine months after she was first notified of the complaint. The misconduct is relatively serious.

[14] **Purpose of sanction**

The primary purpose of sanction is to deter legal practitioners from unreasonably flouting the procedures for resolving complaints of professional misconduct against them. As I said recently in *Chief Registrar v Singh - Disciplinary Sanction* [2019] FJLSC 1 (25 March 2019) at [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.

[15] I am also mindful that failing to respond to complaints of professional misconduct is a prevalent disciplinary offence in Fiji. The concern here is that the legal practitioners provide an essential service to the public. The public expect the legal practitioners to maintain a reasonable standard of competence and diligence by timely responding to complaints of professional misconduct against them. When the legal practitioners deviate from that responsibility, the purpose of sanction is to bring home the message that they will be held accountable.

[16] **Sanction**

I now consider the sanction which most appropriately fulfils that purpose. The legal practitioner has responded to the notice of complaint although late. She has also disclosed her response to the Commission. Whether or not she will be subject of further disciplinary offences is not relevant for the imposition of sanction in this case.

[17] The legal practitioner is 61 years of age. She was married but now divorced. She has five children. She is originally from Papua New Guinea but became Fiji citizen in 2003. She was first admitted to the bar in Papua New Guinea in 1991. She joined the Fiji bar in 1996. From 2007 till 2012, she served as a judicial officer in Fiji. She returned to private practice after leaving the bench in 2012. She had an unblemished professional record until this case. Her unblemished record is a strong mitigating factor. She attributes her professional misconduct to her matrimonial problems and failing health. She has informed the Commission that she is now in the process of closing down her law practice. She said she is genuinely remorseful.

[18] The legal practitioner has not disclosed to the Commission her current financial status. She has not suggested that she does not have the means to comply with monetary sanctions. The legal practitioner could have obviated the expenses incurred

by the Chief Registrar and the Commission only if she timely complied with her statutory obligation to respond to a complaint notice. She responded but only have the expenses had incurred.

Orders of the Commission are:

Taking all these matters into account, I make the following orders:

1. The legal practitioner is publicly reprimanded.
2. The legal practitioner is to pay costs, which I summarily assess as follows:
 - (a) To the Commission in the sum of \$2000.00.
 - (b) To the Chief Registrar in the sum of \$1000.00.
3. The legal practitioner's practising certificate is suspended until such time she pays the costs in full.



Justice Daniel Goundar
COMMISSIONER