

IN THE INDEPENDENT LEGAL SERVICE COMMISSION
AT SUVA

ILSC CASE NO. 008 OF 2020

BETWEEN : THE CHIEF REGISTRAR
APPLICANT

AND : SEMI TITOKO
RESPONDENT

Counsel : Mr A Prasad for the Applicant
Mr D Toganivalu for the Respondent

Date of Hearing : 3 August 2020

Date of Sanction : 24 December 2021

SANCTION

- [1] On 11 February 2019, a client of the practitioner complained to the Chief Registrar that the practitioner failed to represent her in an eviction case after taking legal fees. After receiving the complaint the Chief Registrar initiated an investigation against the practitioner. As part of the investigative process the Chief Registrar is required to bring the complaint to the attention of the practitioner and require him to provide a response in writing within 14 days. The complaint notice which is called Section 104 Notice by the Chief Registrar was sent to the practitioner on 4 November 2019.
- [2] When the practitioner did not respond to the complaint the Chief Registrar sent him a reminder notice which is called Section 108 Notice. The reminder notice was issued on 12 February 2020. Receipt of the reminder notice was acknowledged by the practitioner on 14 February 2020.

[3] On 3 August 2020, the Chief Registrar charged the practitioner with one count of professional misconduct contrary to section 82 (1) (a) of the Legal Practitioners Act, when the practitioner failed to respond to the complaint notified to him pursuant to sections 104, 105 and 106 of the Legal Practitioners Act.

[4] Section 82(1) (a) of the Legal Practitioners Act defines 'professional misconduct' as:

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.

[5] Section 108 of the Legal Practitioners Act states:

(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.

- [6] The practitioner pleaded guilty to the charge at the first opportunity. Section 121 of the Legal Practitioners Act sets out a range of sanctions that the Commission may impose on a practitioner guilty of professional misconduct.
- [7] The practitioner is 47 years old, single, but has a daughter. He has ceased practising law and is unemployed. He is doing subsistence farming for a living. Counsel for the practitioner submits that the practitioner does not have means to comply with monetary sanctions. Apart from presenting his unemployed status, the practitioner did not disclose his current assets and liabilities for me to make an assessment on means. Being unemployed does not mean that the practitioner has no means to comply with monetary sanctions.
- [8] The practitioner is a repeat offender. Previously the practitioner was publicly reprimanded and ordered not to apply for a renewal of his practising certificate until January 2021 for a similar professional misconduct (Chief Registrar v Titoko [2020] FJILSC 6 (19 June 2020)).
- [9] The misconduct in the present case arose at the same time as the earlier case. The conduct of the practitioner constitutes a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.
- [10] It is clear that the primary purpose of sanction for professional misconduct arising from the failure to respond to a complaint is deterrence.
- [11] In Chief Registrar v Ligabalavu [2012] FJILSC 3; Case 03,04.2012 (23 October 2012), Commissioner Madigan said at [2]:

As the Commission stated in the judgment on this matter, failure to respond to the Registrar is not only in direct contravention to the stipulation in Section 105 of the Legal Practitioners Decree but is also showing complete disdain and disregard for the authority of the head of the regulatory arm of the profession. Should such practice go unchecked then the profession

would become totally unmanageable with the public then being unprotected and the spirit of the legislation defeated.

[12] In *Chief Registrar v Singh - Disciplinary Sanction* [2019] FJILSC 1 (25 March 2019), the Commission said at [9]-[10]:

The primary purpose of disciplinary sanction for legal practitioners is general deterrence. Legal practitioners need to uphold the integrity and reputation of the legal profession at all times. Any sanction that is imposed must send a clear message to the legal practitioners that should they fail to maintain the highest standards of integrity and reputation, they will be dealt with condign sanction. Soft sanctions will only encourage the legal practitioners to take a cavalier attitude to their responsibility to maintain a high standard of professionalism expected of them.

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.

[13] By pleading guilty the practitioner has taken responsibility for his misconduct but he has said very little about being remorseful. He only responded to the complaint after the Chief Registrar charged him with professional misconduct. By that time the practitioner had brought his profession into disrepute. The delay in responding to the complaint is significant and is an aggravating factor.

- [14] In Chief Registrar v Bukarau [2016] FJILSC 2 (7 June 2016), Commissioner Dr Hickie said at [157]:

Let this judgment be a clear message to the profession that such professional misconduct will not be tolerated. If a practitioner comes before the Commission for a breach of s.108 notice, the starting point for any sanction to be imposed will be a fine in the vicinity of \$1,000-\$1,500. Practitioners may or may not be suspended (sometimes indefinitely), depending upon the circumstances, including whether they have replied to the Chief Registrar in the time period between the LPU filing the Application and serving it upon the Respondent and the first return date of it before the Commission.

- [15] After taking all these factors into account, I publicly reprimand the legal practitioner and order that he pay a fine of \$1000.00. I further order that the practitioner must not apply for a practising certificate until he pays his fine in full.



Hon. Mr Justice Daniel Goundar
COMMISSIONER

Solicitors:

Legal Practitioners Unit for the Applicant

Toganivalu Legal for the Respondent.