

IN THE INDEPENDENT LEGAL SERVICE COMMISSION
AT SUVA

ILSC CASE NO. 011 OF 2020

BETWEEN : CHIEF REGISTRAR

APPLICANT

AND : SHIVANI NATASHNA NARAYAN

RESPONDENT

Counsel: Ms J Sharma for the Applicant
Ms S Narayan for the Respondent

Date of Hearing: 4th September & 5th October 2020

Date of Decision: 16 March 2021

DECISION

- [1] The legal practitioner is charged with one count of unsatisfactory professional conduct contrary to section 81 of the Legal Practitioners Act. She pleaded guilty to the charge at the first opportunity.

- [2] The facts are as follows. Following her admission as a legal practitioner, the practitioner applied to the Chief Registrar for a practising certificate on 12 November 2019. At the time the practitioner was doing voluntary work at the Legal Aid Commission. As part of her application, she submitted a statutory declaration witnessed by a solicitor from the Legal Aid Commission who was also her immediate supervisor, without first signing the document as a declarant in the

presence of the witnessing solicitor. The witnessing solicitor has been also charged with an unsatisfactory professional conduct.

[3] On 15 November 2019, the Chief Registrar informed the practitioner that his Office had instituted an investigation against her regarding the anomaly in her statutory declaration.

[4] On 21 November 2019, the practitioner responded to the allegation in writing as follows:

"I am currently doing volunteer work at Legal Aid Nasinu.

On the 12th November 2019, I had requested Ms Naidu at Legal Aid Nasinu to witness my statutory declaration. It was a very busy Monday morning and she was attending to a very frustrated client for an adoption matter however, I requested if she could witness my documents because I had apply for my Practising Certificate.

I had written my Statutory Declaration and she read it to me and asked me to sign on the side however I missed to do the same and I signed on the passport size photo which was on the form which also required my signature.

I understand I failed to follow a stringent procedure and I will ensure the same is not repeated.

I would like to apologise for the mistake that I had made"

[5] On 6 August 2020, the Chief Registrar charged the practitioner with unsatisfactory professional conduct.

[6] Section 81 of the Legal Practitioners Act defines unsatisfactory professional conduct as conduct of a legal practitioner occurring in connection with the practice of law that falls short of the standards of competence and diligence that

member of the public is entitled to expect of a reasonably competent or professional legal practitioner.

- [7] The first limb of the definition requires proof that the alleged conduct occurred in connection with the practice of law. The second limb requires proof that the conduct fell short of the standards of competence and diligence that the public is entitled to expect of a reasonably competent or professional legal practitioner.
- [8] A legal practitioner is a person admitted to practice as a legal practitioner under the Legal Practitioners Act (section 2). The procedure for admission of legal practitioners are set out in Part 4 of the Act. A person is entitled to practice as a legal practitioner if that person's name is enrolled in the Roll of the Court upon admission by the Chief Justice under section 38 of the Act.
- [9] Before commencing practice, a practitioner must apply and obtain from the Chief Registrar practising certificate pursuant to section 42 of the Act. Section 42 (1) defines 'practice' to include employment as a legal practitioner, whether in private practice or otherwise'. There is a prohibition placed by section 42 (2) (3) and (4) to practice as a legal practitioner without a practising certificate.
- [10] The issue is whether the alleged conduct of the practitioner occurred in connection with the practice of law.
- [11] The facts are that the practitioner submitted a statutory declaration that was not executed according to the law to obtain a practising certificate from the Chief Registrar pursuant to section 42 of the Act. The execution of the statutory declaration was not connected with her employment as a legal practitioner. At the relevant time she was prohibited to practice as a legal practitioner. The alleged conduct occurred in the course of obtaining a licence to practice as a legal practitioner.

- [12] The facts of the case does not support the allegation of unsatisfactory professional conduct contrary to section 81 of the Legal Practitioners Act.
- [13] The practitioner may be guilty of some other disciplinary charge but that is a matter for the Chief Registrar to decide. The current charge is dismissed without prejudice.



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Justice Daniel Goundar ★
COMMISSIONER