

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
DISCIPLINARY TRIBUNAL

FILED 44

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IN THE MATTER OF ATTORNEY
JOHNSON TORIBIONG,
Respondent.

SUPREME COURT
OF THE
REPUBLIC OF PALAU

Cite as: 2024 Palau 26
Disciplinary Proceeding No. 24-002

Decided: September 24, 2024

Disciplinary Counsel Raynold B. Oilouch
Counsel for Respondent Pro Se

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
HONORA E. REMENGESAU RUDIMCH, Associate Justice

DECISION AND ORDER

PER CURIAM:

[¶ 1] This matter comes to us following a disciplinary complaint against Johnson Toribiong, alleging he violated ethical rules regarding conflicts of interest, honesty, competence, privileged communications, and unreasonable fees.

[¶ 2] For the reasons set forth below, we find, by clear and convincing evidence, that Respondent engaged in attorney misconduct, and we sanction him accordingly.

BACKGROUND

[¶ 3] On February 27, 2024, the Office of the Chief Justice received a disciplinary complaint against Respondent for his alleged attorney misconduct in several cases. The complaint asserts that Respondent violated the following Rules: ABA Model Rule 1.9(a) (Duties to Former Clients) in *In the Matter of*

Petition to Quiet Title Cadastral Lot No. 068 R 012, Civil Action No. 18-124; ABA Model Rule 1.18(c) (Duties to Prospective Client) in *Sowei Clan v. Donald Haruo and Peleliu State Government*, Civil Action No. 21-062; ABA Model Rule 1.4(a)–(b) (Communications) in *Paula Kumangai and Tarita Holm v. Samuel Ngerchokebai*, Civil Action No. 23-080; and ABA Model Rules 1.5(a) (Fees) and 1.16(d) (Terminating Representation) in *Benjamin Adelbai and Ellen Adelbai v. Ucheliou Clan*, Civil Appeal No. 22-022.¹

[¶ 4] The first alleged violation involves Civil Action No. 18-124. In this matter, two identically named clans, Edaruchei Clan of Ngerdelolk Hamlet and Edaruchei Clan of Ngerkeyukl Hamlet, claim an island in Peleliu State, which is known as *Ngercheu*. In the 1990s, Respondent represented the Ngerkeyukl-based clan in the first case claiming ownership of *Ngercheu*. The Ngerdelolk-based clan sought to recuse Respondent over a conflict of interest because Respondent previously represented the chiefs of Ngerdelolk Village in a case involving a claim to *Ngercheu*. We determined that Respondent indeed was conflicted and could not represent the Ngerkeyukl clan. See *Edaruchei Clan of Ngerdelolk v. Edaruchei Clan of Ngerkeyukl*, 4 ROP Intrm. 63, 66 (1993). In 2018, Respondent filed a case to quiet title to *Ngercheu* on behalf of the Ngerkeyukl-based clan. Several claimants opposed, including Ngerdelolk Village, which also pursued the Ngerdelolk-based clan’s ownership claim. Even so, Respondent continued representing the Ngerkeyukl-based clan.

[¶ 5] The second alleged violation stems from Civil Action No. 21-062. In early 2021, members of the Sowei Clan met with Respondent, seeking representation in a claim against Donald Haruo. During the meeting, the Clan members shared information to determine whether Respondent could represent them. After their discussion, Respondent informed the Clan members that he could not represent them because he previously represented Donald in a case involving the Sowei Clan. After the Clan members retained a different attorney, Respondent entered his appearance as counsel for Donald.

[¶ 6] The third alleged violation involves Civil Action No. 23-080. On January 5, 2024, the plaintiffs in that case moved for summary judgment

¹ Rule 2(h) of Palau’s Disciplinary Rules & Procedures for Attorneys provides that an attorney may be subject to disciplinary action for “[a]ny act or omission which violates the American Bar Association Model Rules of Professional Conduct and the amendments thereto.”

against defendant Samuel Ngirchokebai. Samuel sought to retain Respondent's legal services, paid him \$500.00, and left his records at Respondent's law office. Respondent subsequently reviewed Samuel's records and learned that he had a conflict of interest in representing Samuel. Even so, Respondent assisted Samuel by preparing a document entitled "Defendant's Motion To Continue Trial and To Submit the Matter To Mediation." Respondent then arranged for Samuel to sign and file the document. However, Respondent did not file a response to the motion for summary judgment, and the court granted plaintiffs' motion. The court also sanctioned Respondent, ordering him to return the \$500.00 retainer fee to Samuel and pay the court \$1,000.00.

[¶ 7] The final alleged violation relates to Civil Appeal No. 22-022. In late 2022, the trial court issued a decision and judgment against Benjamin Adelbai and his sister, Ellen Adelbai. Unhappy with their trial court lawyer, the Adelbais asked Respondent to represent them in appealing their case. Respondent agreed, and the Adelbais paid his Law Office a retainer fee in the amount of \$2,000.00. On November 30, 2022, Respondent prepared and filed a notice of appeal on behalf of the Adelbais. Aside from the legal services rendered in that appeal, Respondent also drafted letters for the Adelbais. The appeal was dismissed because the Adelbais could not pay the cost of the transcript. Following the dismissal, Respondent terminated his representation of the Adelbais. However, Respondent failed to provide the Adelbais with an accounting for the retainer fee they paid him.

[¶ 8] After reviewing the complaint against Respondent and determining further action was justified for each of these allegations, Chief Justice Oldiais Ngiraikelau filed this matter as Disciplinary Proceeding No. 24-002, appointed Raynold B. Oilouch as Disciplinary Counsel, and appointed a Disciplinary Tribunal. Disciplinary Counsel investigated the allegations and submitted a Report and Recommendation, recommending that a formal complaint be filed against Respondent. After considering the Report, the Disciplinary Tribunal directed Disciplinary Counsel to file a formal complaint and permit Respondent to answer. Disciplinary Counsel filed the formal complaint, and Respondent answered. The Disciplinary Tribunal held a public, formal hearing on September 4, 2024.

APPLICABLE STANDARD

[¶ 9] “As officers of the Court, lawyers must, at a minimum, maintain a high caliber of integrity, competence, and diligence.” *In re Kennedy*, 2024 Palau 25 ¶ 18. Allegations of attorney misconduct must be proven by clear and convincing evidence. ROP Discp. R. 5(e). Under this standard, which falls short of proof beyond a reasonable doubt, the disciplinary counsel must convince the Tribunal that the alleged violations are highly probable or reasonably certain. *In re Shadel (Shadel II)*, 22 ROP 154, 157 (Disc. Proc. 2015). When a respondent admits to violating a rule or fails to answer a complaint, Disciplinary Counsel’s burden is automatically satisfied. *In re Doe*, 2021 Palau 12 ¶¶ 5–6; *In re Kalscheur*, 12 ROP 164, 165 (2005).

[¶ 10] “[I]t is the responsibility of the Disciplinary Tribunal, as the supervisors of the Palau Bar, to ensure that its members remain competent to practice law before the courts.” *In re Kalscheur*, 12 ROP at 168. If the Tribunal finds by clear and convincing evidence that a respondent violated an ethical rule, it must impose an appropriate sanction or a combination of sanctions. ROP Discp. R. 5(g). To establish a good-faith belief as a mitigating factor, the respondent must show that his beliefs were both subjectively sincere and objectively reasonable. *In re Kennedy*, 2024 Palau ¶ 17. The decision of the Tribunal is final. ROP Discp. R. 5(h).

DISCUSSION

[¶ 11] The formal complaint alleges Respondent violated ABA Model Rules of Professional Conduct 1.9(a) (Duties to Former Clients), 1.18(c) (Duties to Prospective Client), 1.4(a)–(b) (Communications), 1.5(a) (Fees), and 1.16(d) (Terminating Representation). We consider these in turn.

A. Civil Action No. 18-124

[¶ 12] The complaint alleges Respondent violated Rule 1.9(a) in *In the Matter of Petition to Quiet Title Cadastral Lot No. 068 R 012*, Civil Action No. 18-124. This Rule provides:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related

matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

[¶ 13] Respondent twice represented a clan in a case against a village. That village was representing the claim of a clan that Respondent previously represented. The issue in the most recent case involved a claim to land that was at issue in the previous cases. Hence, the interests were materially adverse. Respondent knew or should have known of this conflict because the Appellate Division previously determined Respondent had a conflict of interest in representing the clan against the village with regard to this claim. Yet, Respondent failed to recuse himself. Therefore, Respondent violated Rule 1.9(a).

B. Civil Action No. 21-062

[¶ 14] The complaint alleges Respondent violated Rule 1.18(c) in *Sowei Clan v. Donald Haruo and Peleliu State Government*, Civil Action No. 21-062. This Rule provides:

A lawyer . . . shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d).

[¶ 15] Respondent consulted with clan members regarding their pending case but determined that he was conflicted from representing them. Respondent properly informed the clan members that he could not represent them and subsequently entered an appearance on behalf of the opposing party in the pending matter. The extent of information shared during that consultation meeting is unclear because, although Disciplinary Counsel referenced affidavits during the formal hearing, he did not present them as evidence. The only evidence for this allegation was the court order finding conflict, and that determination did not include specific details that could serve as evidence in this proceeding. This minimal evidence could show a violation by a preponderance of the evidence; however, it does not rise to the applicable clear

and convincing standard. Therefore, the evidence does not show that Respondent violated Rule 1.18(c).

C. Civil Action No. 23-080

[¶ 16] The complaint alleges Respondent violated Rule 1.4(a)–(b) in *Paula Kumangai and Tarita Holm v. Samuel Ngirchokebai*, Civil Action No. 23-080. This Rule provides:

(a) A lawyer shall:

...

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

[¶ 17] Respondent met with Samuel Ngirchokebai regarding a pending case, accepted a \$500.00 retainer fee, and kept Samuel's records. Respondent later determined that he was conflicted from representing Samuel, but he nevertheless drafted a motion continuing trial and offered to mediate the matter. He did not, however, respond to the motion for summary judgment or consult with Samuel about limitations resulting from his conflict of interest. Therefore, Respondent violated Rule 1.4(a)–(b).

D. Civil Appeal No. 22-022

[¶ 18] The complaint alleges Respondent violated Rules 1.5(a) and 1.16(d) in *Benjamin Adelbai and Ellen Adelbai v. Ucheliou Clan*, Civil Appeal No. 22-022. Rule 1.5(a) provides:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions

involved, and the skill requisite to perform the legal service properly

Rule 1.16(d) provides:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

[¶ 19] The record shows Respondent filed a notice of appeal and drafted letters for the Adelbais. Respondent then terminated his services and failed to submit an accounting to show how he earned or incurred the full \$2,000.00 retainer fee. Filing a notice of appeal and drafting a few letters requires only minimal time and basic skills. In fact, Respondent could have provided these services by using templates and making minor modifications. Hence, Respondent charged the Adelbais an unreasonable amount for basic services and failed to account for the legal services he provided. Therefore, Respondent violated Rules 1.5(a) and 1.16(d).

CONCLUSION

[¶ 20] We find, by clear and convincing evidence, that Respondent violated ABA Model Rules of Professional Conduct 1.9(a) (Duties to Former Clients), 1.4(a)–(b) (Communications), 1.5(a) (Fees), and 1.16(d) (Terminating Representation), and therefore Disciplinary Rule 2(h).

[¶ 21] In light of these findings, the Disciplinary Tribunal **SANCTIONS** Respondent as follows:

1. Respondent is hereby censured.

2. Respondent shall compile a list of all his pending cases and identify the status of each case. Respondent shall certify to the Tribunal by December 31, 2024, that he complied with this requirement.
3. Respondent shall—if he has not already done so—return to Samuel Ngirchokebai the full retainer funds, in the amount of \$500.00, and he shall submit to the Tribunal proof of payment by November 15, 2024.
4. Respondent shall return to the Adelbais the full retainer funds, in the amount of \$2,000.00, and he shall submit to the Tribunal proof of payment by November 15, 2024.
5. Respondent shall reduce his workload as necessary to ensure that he can fulfill his duty to provide each client with adequate representation.
6. Respondent shall pay Disciplinary Counsel’s reasonable costs and fees.²

[¶ 22] Disciplinary Counsel shall submit his statement of fees and costs to Respondent and the Tribunal within five (5) days of this Decision and Order.³ Costs associated with those allegations for which Respondent was found liable should be separate from those where the allegations were dismissed on the merits. Respondent shall have seven (7) days to file any objections to Disciplinary Counsel’s submissions. Upon reviewing Disciplinary Counsel’s submissions and any objections lodged by Respondent, the Tribunal will issue a separate order fixing the total costs and fees to be paid by Respondent. Absent any objection or challenge from Respondent or order from the Tribunal modifying the total amount of costs and fees, Respondent shall tender payment within five (5) days from the Tribunal’s order fixing costs and fees.

² Pursuant to the February 4, 2022 Order re In the Matter of Compensation for Court-Appointed Disciplinary Counsel, the allowable hourly rate for Disciplinary Proceedings is \$75.00.

³ See ROP Civ. Pro. R. 6 on computing time.

In re Johnson Toribiong, 2024 Palau 26

SO ORDERED, this 24th day of September 2024.



OLDIAS NGIRAIKELAU
Chief Justice



FRED M. ISAACS
Associate Justice



HONORA E. REMENGESAU RUDIMCH
Associate Justice