

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
DISCIPLINARY TRIBUNAL**

IN THE MATTER OF MOSES ULUDONG,

Respondent.

Cite as: 2017 Palau 26
Disciplinary Proceeding No. 17-003

Decided: August 7, 2017

Disciplinary CounselKevin Kirk
Counsel for Respondent.....Pro se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
KATHLEEN M. SALII, Associate Justice

DECISION AND ORDER

PER CURIAM:

[¶ 1] This is a disciplinary proceeding in which Respondent Moses Uludong, a trial counselor licensed to practice law in the Republic of Palau, is charged with violations of this Court’s Disciplinary Rules, the American Bar Association Model Rules of Professional Conduct,¹ and the Rules of Admission to Practice Law and Limitations on the Practice of Law for Trial Counselors (“Trial Counselor Rules”). Specifically, Respondent is charged with violating Disciplinary Rule 2(h) and ABA Model Rules 1.3 and 1.7(a) by representing multiple clients with concurrent conflicts of interest; violating Trial Counselor Rule 2(a) by signing Court filings as an “Attorney”; violating Trial Counselor Rule 2(c) by representing parties where the matter at issue exceeded \$10,000; and violating Disciplinary Rule 2(b) by violating prior Court direction to comply with the \$10,000 limit.

¹ The ABA Model Rules have been incorporated into the Disciplinary Rules by Disciplinary Rule 2(h).

BACKGROUND

[¶ 2] On May 26, 2017, the Chief Justice appointed Disciplinary Counsel to investigate allegations that Respondent was, among other things, representing clients with concurrent conflicts of interest. Disciplinary Counsel informed Respondent of the substance of the allegations and requested any evidence or argument Respondent might have regarding the allegations, but did not receive any communication from Respondent. On June 27, Disciplinary Counsel submitted his recommendation to the Disciplinary Tribunal, finding that the allegations had merit. After reviewing the recommendation, the Tribunal ordered Disciplinary Counsel to file a formal complaint in the matter.

[¶ 3] Counsel filed the formal complaint on June 30 and a summons issued to Respondent to answer the complaint within 20 days. On July 4 the Tribunal issued an order setting a hearing on the matter for July 31.

[¶ 4] The complaint first alleged that in pending Civil Appeal No. 16-016 Respondent was representing three different clients with direct conflicts of interest in violation of Disciplinary Rule 2(h) and ABA Model Rules 1.3 and 1.7. The complaint also alleged that amount at issue in that appeal exceeds the \$10,000 limit on trial counselor representation and that Respondent had previously been warned by the Court about undertaking representation in excess of the limit, making Respondent's representation a violation of Trial Counselor Rule 2(c) and Disciplinary Rule 2(b). The complaint further alleged that Respondent signed all three opening briefs in the appeal as "Attorney for Appellant" in violation of Trial Counselor Rule 2(a).

[¶ 5] The complaint then alleged that Respondent was also representing clients with concurrent conflicts of interest in another pending appeal, this time Civil Appeal No. 16-010, in violation of Disciplinary Rule 2(h) and ABA Model Rules 1.3 and 1.7. As with pending Civil Appeal No. 16-016, the complaint also alleged that Respondent's representation in Civil Appeal No. 16-010 exceeded the \$10,000 limit about which Respondent had previously been warned, making this representation also a violation of Trial Counselor Rule 2(c) and Disciplinary Rule 2(b).

[¶ 6] The complaint finally alleged that in Civil Appeal No. 16-005 Respondent signed the opening brief for his client as “Attorney for Appellant” in violation of Trial Counselor Rule 2(a).

[¶ 7] Respondent did not file any answer to the complaint within the 20 day time limit. On July 21, Disciplinary Counsel filed a Motion for Judgment by Default. Respondent did not communicate with either Disciplinary Counsel or the Tribunal until 4:30 p.m. on July 28, the last business day before the scheduled hearing. At that time, Respondent moved for additional time to answer the complaint and to postpone the hearing.

[¶ 8] The scheduled hearing commenced on July 31, with both Disciplinary Counsel and Respondent present. The Tribunal denied Respondent’s motion for an extension and denied the motion for a default judgment.² The Tribunal afforded Respondent an opportunity to explain his failure to answer or otherwise communicate with Disciplinary Counsel or the Tribunal. Respondent stated that he believed he had secured representation and believed his attorney would timely file an answer. Respondent offered no further details or explanation for why, when it was clear no answer would be timely filed, he did not move for an extension at the appropriate time.

DISCUSSION

[¶ 9] Respondent does not dispute that he did not file an answer to the complaint filed by Disciplinary Counsel. Based on the record, the Tribunal finds that Respondent was served with the complaint on June 30, 2017, and did not timely answer. “Failure to file a timely answer shall constitute an admission that the complaint is true.” Disciplinary Rule 5(c). Thus the sole remaining issue for this Tribunal is to decide what sanctions are appropriate.

[¶ 10] Various legal rules prohibit counsel from representing clients who have directly adverse interests. *See, e.g.*, ABA Model Rule 1.7. The reason

² Disciplinary Rule 5(c) provides that failure to answer a complaint “shall constitute an admission that the complaint is true.” At the hearing, Disciplinary Counsel indicated that he filed the motion for default judgment to formalize the effect of Respondent’s failure to timely answer. As this motion is not strictly necessary to the operation of Rule 5(c), the Tribunal denied the motion to simplify the procedural posture of this proceeding.

for such rules is apparent. Counsel must always “act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.” ABA Model Rule 1.3, cmt. 1. An advocate who attempts to represent two clients with adverse interests will undermine the interest of at least one—and likely both—of those clients.

[¶ 11] For example, one of the civil appeals underlying this disciplinary complaint involves claims for the return of public land. An essential element of such a claim is that the claimant is the original owner of the land (or the proper heir). *See, e.g., KSPLA v. Giraked*, 20 ROP 248, 250-51 (2013). In order to prevail on a claim, each competing claimant would need to argue and prove that they were the original owner. In order to provide competent—let alone dedicated, committed, and zealous—representation to a claimant, counsel would have to argue that her or his client was the original owner. If counsel then attempts to represent a second competing claimant to the same land, counsel would have to deny that his first client is the original owner and argue that in fact his second client is. Such actions undermine both clients’ claims and are wholly unacceptable practice for a counselor.

[¶ 12] The record is clear, and Respondent has admitted by failing to answer, that Respondent was representing three separate clients with directly adverse interests in each of Civil Appeal No. 16-016 and Civil Appeal No. 16-010. There is no plausible way that Respondent could provide the minimum standard of dedicated representation to those clients when he was necessarily advocating against their interests on behalf of other adverse claimants.

[¶ 13] The other allegations in the disciplinary complaint primarily involve violations of the rules governing legal practice by trial counselors. Trial counselors are not attorneys, but rather individuals, who because they have acquired “some legal skills and knowledge of the law,” are permitted to engage in a limited practice of law. *See* Trial Counselor Rule 1. The limits trial counselors must observe are clearly stated in the Rules and not difficult to follow. For example, “a trial counselor shall use only the designation ‘trial counselor’ in the performance of his or her functions, and may not identify himself or herself in writing, orally, or otherwise as an attorney.” Trial Counselor Rule 2(a). Notwithstanding this clear rule, in both Civil Appeal

No. 16-016 and Civil Appeal No. 16-005, Respondent signed and filed multiple briefs with the Court as “Attorney for Appellant.”

[¶ 14] Another rule provides that “a trial counselor shall not represent any party in a civil suit where the matter at issue is of a value of \$10,000 or more, absent a knowing and voluntary waiver of this rule by the client and with the approval of the judge who is presiding over the case.” Trial Counselor Rule 2(c). As alleged in the complaint, Respondent represented parties in both Civil Appeal No. 16-016 and Civil Appeal No. 16-010, where the matters at issue were valued in excess of \$10,000, without obtaining a client waiver or approval of the Court.

[¶ 15] Troublingly, Respondent has been warned by the Court on more than one occasion against representing clients in matters exceeding this limit and directed to comply with the Rules. *See, e.g., Hanpa Indus. Corp. v. Black Micro Corp.*, 12 ROP 29, 35 (2004) (“The original complaint, filed by Mr. Uludong, sought a judgment of over \$80,000 . . . but as a Trial Counselor, Mr. Uludong is not authorized to ‘represent any party in a civil suit where the matter at issue is of a value of \$10,000.00 or more, absent a knowing and voluntary waiver of this rule by the client and with the approval of the judge who is presiding in the case.’ . . . We remind trial counselors of their duty to be informed about the rules applicable to their practice before this Court.”) (internal citations omitted); *Rechirei v. Diaz*, 11 ROP 252, 252 n.1 (Tr. Div. 2004) (“Mr. Moses Uludong filed a complaint on behalf of the plaintiff . . . ask[ing] for relief in the amount of \$151,000 One of the limitations on a trial counselor’s scope of practice is that he or she shall not represent a party in a civil suit with a value over \$10,000 absent a waiver from his client and an approval by the Court. The Court, by its order of May 20, 2002, asked Mr. Uludong . . . to comply with the limitations on a trial counselor’s practice.”) (internal citations omitted). Despite these warnings by the Court, Respondent has failed to observe the clear limits on the scope of his practice of law.

SANCTIONS

[¶ 16] In determining a proper sanction, this Tribunal must seek “to impose the discipline that is necessary to protect the public, the legal profession, and the Courts.” *In re Toribiong*, 15 ROP 107, 110-111 (2008) (quoting *In re Tarkong*, 4 ROP Intrm. 121, 132 (1994)).

[¶ 17] Respondent's actions undermined the legal interests of those members of the public who came to him for legal representation. The public should be able to expect committed and dedicated representation from a counselor admitted to practice law. His clients paid for—but did not receive—such representation. Accordingly, this Tribunal orders Respondent to reimburse all fees or costs he charged to all parties he represented at any stage in Civil Appeal No. 16-016 and Civil Appeal No. 16-010. *See* Disciplinary Rule 3(e), (f); *see also, e.g., In re Uludong*, 9 ROP 4 (2001). Within 30 days of this order, Respondent shall reimburse such monies to those parties and file an accounting of the same with the Tribunal.

[¶ 18] Respondent's actions demonstrate a lack of understanding of certain core professional and ethical obligations that a counselor owes his clients. Accordingly, Respondent is ordered to take and pass the Multistate Professional Responsibility Exam (MPRE) within one year of this order as a service to the public and any future clients. *See* Disciplinary Rule 3(f). The MPRE is offered several times a year and a scaled score of 75 is considered passing. If Respondent does not file with the Clerk of Courts proof of his passing score within one year, further sanctions may be imposed. *See, e.g., In re Oilouch*, 13 ROP 31, 34 (2006) (ordering Respondent to pass the MPRE); *In re Shadel*, 6 ROP Intrm. 252, 257 (1997) (same).

[¶ 19] In considering the scope of appropriate sanctions, the Tribunal also considers mitigating or aggravating circumstances surrounding Respondent's actions, in particular “any prior disciplinary actions involving the respondent.” Disciplinary Rule 5(g). Respondent has previously been sanctioned in disciplinary proceedings. *See In re Uludong*, 9 ROP 4 (2001). Respondent has been warned separately multiple times concerning his failure to abide by the rules governing trial counselors. *See, e.g., Hanpa Indus. Corp.*, 12 ROP at 35; *Rechirei v. Diaz*, 11 ROP at 252 n.1. The Appellate Division recently issued an extensive warning to Respondent for filing documents with the Court that “contain numerous affirmative misrepresentations” and fall “far below the appropriate professional standard.” *See Minor v. Rechucher*, 22 ROP 102, 113-14 (2015). The Appellate Division expressly admonished Respondent that a “counsel who fails to seriously appreciate” the obligations of the legal profession “exposes himself to both disciplinary action and malpractice litigation.” *Id.* at 114.

[¶ 20] Respondent has not heeded these warnings. His conduct in this disciplinary proceeding is further evidence of his failure “to seriously appreciate” the responsibilities inherent to the practice of law. Despite being served with a formal complaint—a complaint serious on its face—and despite being contacted by Disciplinary Counsel, Respondent declined to provide any answer or mitigating information. At the hearing, given an opportunity to explain his failure to answer these allegations, Respondent offered no serious explanation that might mitigate his inaction. The Tribunal can only conclude that Respondent has not taken this matter seriously.

[¶ 21] Pursuant to Disciplinary Rule 3(b), Respondent is hereby suspended from the practice of law for a period of one year. Pursuant to Rule 12(c), this suspension takes effect 30 days from this order. The Disciplinary Rules impose obligations on counselors subject to a suspension order. *See, e.g.*, Disciplinary Rule 12(a) (requiring counselors to promptly notify any current clients of the impending suspension). This Tribunal urges Respondent to review and comply with applicable Disciplinary Rules as failure to do so may expose him to further disciplinary action.

[¶ 22] Finally, pursuant to Disciplinary Rule 3, Respondent is ordered to pay the costs of prosecuting this matter. Disciplinary Counsel shall submit an accounting of his costs and time to this Tribunal within 30 days of this order and shall serve a copy on Respondent. Respondent shall have ten days to file a written objection to Disciplinary Counsel’s accounting. Absent an objection, Respondent is directed to pay the amount no later than 30 days after service upon him of Disciplinary Counsel’s submission. If an objection is filed, a single member of this Tribunal shall resolve the fee dispute. *See, e.g., In re Toribiong*, 15 ROP at 110.

[¶ 23] The Tribunal thanks Disciplinary Counsel for his efforts.

SO ORDERED, this 7th day of August, 2017.