

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

IN THE MATTER OF MOSES ULUDONG,

Respondent.

Cite as: 2017 Palau 31
Disciplinary Proceeding No. 17-003

Decided: September 7, 2017

Disciplinary CounselKevin Kirk
Counsel for Respondent.....Johnson Toribiong

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

ORDER ON MOTION FOR RECONSIDERATION

PER CURIAM:

[¶ 1] Before the Tribunal is Respondent Moses Uludong’s “Motion for Reconsideration or in the alternative, an Extension of Time before Suspension.” On August 7, 2017 we found that Respondent had represented clients with direct conflicts of interest, in violation of Disciplinary Rule 2(h), ABA Model Rules 1.3 and 1.7(a), had signed Court filings as an “Attorney” in violation of Trial Counselor Rule 2(a), and had represented clients in an appeal where the amount at issue exceeds the \$10,000 limit on trial counselor representation in spite of prior Court direction to comply with the \$10,000 limit, in violation Trial Counselor Rule 2(c) and Disciplinary Rule 2(b). Respondent now asserts that he believed he had retained an attorney to represent him in this matter, was unaware that this unnamed attorney had failed to file an Answer to the Complaint, and was wholly unprepared for the July 31, 2017 disciplinary proceeding. Respondent characterizes his failure to answer and lack of preparedness for the July 31, 2017 hearing as a “procedural defect” and requests that the Tribunal re-open the hearing. In the alternative, Respondent asks the Tribunal to extend the time before his suspension order comes into effect to January 2018.

[¶ 2] Motions for Reconsideration in disciplinary proceedings are considered under the standard set forth in Rule of Civil Procedure 7(b)(5). Disciplinary Rule 5(a). This rule provides that these motions

shall point out with specificity the matters which the movant believes were overlooked or misapprehended by the Court, any new matters brought to the court's attention for the first time, and the particular modifications being sought in the court's prior ruling. Motions for reconsideration are disfavored and the court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to the court's attention earlier in the exercise of reasonable diligence.

ROP R. Civ. P. 7(b)(5). Respondent's motion also qualifies as a Motion to Alter or Amend the Judgment under Rule 59(e), and thus requires the Respondent to show "manifest errors of law apparent in the record" or "newly discovered evidence." ROP R. Civ. P. 59(a). Respondent's motion does not even come close to meeting either of these high standards.

[¶ 3] Respondent's conclusory assertions that he was not given the opportunity to present a defense, or that his failure to defend himself creates some kind of "procedural defect," is simply incorrect. After his appointment on May 26, 2017, Disciplinary Counsel was required to "forthwith notify [Respondent] of the substance of the complaint and permit him to submit evidence and argument relevant thereto." Disciplinary Rule 4(b). Respondent could have presented a defense to Disciplinary Counsel at that point, or could have filed a motion to request additional time to present his evidence and argument, but instead he chose to ignore Disciplinary Counsel's request. On June 27, 2017, having heard nothing from Respondent, Disciplinary Counsel recommended filing formal charges, and the Tribunal ordered Disciplinary Counsel to file a formal complaint. After the formal complaint was filed on June 30, 2017, Respondent was given 20 days to present his defense to the Tribunal by answering the complaint, but he did not file an answer. When asked at the July 31, 2017 disciplinary hearing to explain why he failed to take these opportunities to present a defense, or at least file a timely pro se motion requesting an extension of time to file an answer, he could not give a plausible explanation. Disciplinary Rule 5(c)

provides that the “[f]ailure to file a timely answer shall constitute an admission that the complaint is true,” and thus we deemed the allegations in the complaint to be admitted. Even if we were to excuse Respondent’s failure to file an answer (which Respondent has given us no reason to do), he has provided no argument for why the allegations in the complaint are incorrect. In short, Respondent has not pointed out any alleged errors by the Tribunal, and certainly has not identified any manifest errors which would warrant reconsideration.

[¶ 4] The only matter which Respondent’s motion claims was overlooked or misapprehended by the Court is “the breadth and extent of his heavy caseload.” He argues that the Tribunal should extend the time before his suspension comes into effect so that he will be able to “find replacement counsel or complete his clients’ cases.” But it is not Respondent’s responsibility to finish his pending cases or locate replacement counsel for each of his clients. Rather, Disciplinary Rule 12 requires Respondent to inform his clients of his suspension and his inability to represent them after the date of his suspension. With regards to ongoing litigation, Respondent is also required to (a) advise those clients in active litigation that they should promptly seek different counsel to represent them in that matter, and (b) move to withdraw from any pending proceedings in which his now former clients did not obtain subsequent counsel before the effective date of his suspension. Respondent can and should suggest replacement counsel where possible, but it is each client’s responsibility to ensure that his or her interests continue to be represented. Respondent’s responsibility was to promptly inform his clients of his suspension and promptly advise each client to search for alternative representation.

[¶ 5] We note that Disciplinary Counsel has filed an opposition to Respondent’s motion and that we also agree with the additional reasons for denial set out therein. We thank Disciplinary Counsel for his efforts. For the foregoing reasons, Respondent’s motion is **DENIED**.