IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
DISCIPLINARY TRIBUNAL

IN THE MATTER OF ATTORNEY CAROLINE BAIRD I,
Respondent.

Cite as: 2021 Palau 16
Disciplinary Proceeding No. 20-003

Decided: June 24, 2021

Disciplinary Counsel ..... Rachel A. Dimitruk
Counsel for Respondent ..... David C. Angyal

BEFORE: JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice
DANIEL R. FOLEY, Associate Justice

OPINION[1]

PER CURIAM:

[¶ 1] This matter comes to us following a disciplinary complaint against Respondent alleging that 1) in her application for admission to the Palau Bar she "misrepresent[ed] or conceal[ed] a material fact in h[er] application for admission to the bar or reinstatement," in violation of the Republic of Palau Disciplinary Rules ("Disciplinary Rules") Rule 2(e) and the American Bar Association Model Rules of Professional Conduct ("ABA Model Rules"), Rule 8.1[2]; 2) various statements on Respondent's website with respect to her

[1] In light of parties' stipulation as to the facts and the appropriate aggravating and mitigating factors, this matter was decided without a hearing.

[2] Violation of the ABA Rules is, in and of itself, a violation of Disciplinary Rules. *See* ROP Disc. R. 2(h).

education, experience, and expertise were false or misleading, in violation Disciplinary Rule 2(a) and ABA Model Rules 7.1 and 7.2; and 3) failed to "act with reasonable diligence and promptness in representing a client," and to uphold the duty of honesty and candor with the court during her representation of Mr. Ellender Ngirameketii in Civil Appeal No. 19-004, all in violation of ABA Model R. 1.3, 3.3, 4.1, and 8.4. The parties have stipulated to the relevant facts and have submitted their recommendation as to appropriate sanctions. We proceed on the basis of these submissions.

BACKGROUND

I.

[¶ 2] On June 29, 2020, the then-Acting Chief Justice received a complaint regarding Attorney Caroline Baird's conduct. Following the preliminary inquiry mandated by Disciplinary Rule 4, and the receipt of Disciplinary Counsel's Report, *see* ROP Disc. R. 5, the then-Acting Chief Justice determined that the complaint against Ms. Baird is not "plainly without merit" and warranted further action. *See* ROP Disc. R. 5(b). Accordingly, Disciplinary Counsel was directed to file a formal complaint against Respondent, which was eventually lodged with the Tribunal on December 4, 2020. On December 26, 2020, Respondent filed her answer.

[¶ 3] The Complaint alleged that the following statements on Respondent's website were false or misleading:

1) Respondent's claim that she "'studied for her Certificate in Ecology and Conservation at the University of London' and that she received that Certificate;"

2) Respondent's claim that she earned "three post-graduate degrees in Law, two from the United Kingdom where she studied to become a Solicitor" and a "Commendation" in "Legal Professional Certification" and "Common Professional Examination in Law;"

3) Respondent's claims that she "clerked for a Supreme Court Justice in the United States," "argued and won before the Supreme Court" and "drafted Supreme Court Opinions;"

4) Respondent's claim that she is an "experienced University level College Lecturer;"

5) Respondent's claim that she has "decades of experience practicing in both civil and criminal law;"

6) Respondent's claim that she "lived and practiced law in Micronesia since 2011;"

7) Respondent's claim that she "won 16 jury trials;"

8) Respondent's claim that she has "expertise is non-profit law;"

9) Respondent's claim that has experience in "traditional lineage and clan land claims;" and

10) Respondent's claim that her firm "offer[s] the best law practices and services," and that it is a "leading law firm."

[¶ 4] Disciplinary Counsel further alleged that Respondent's statement on her bar admission application that from September 2012 to November 2016 Respondent worked for Inspiration Work Ltd., located in the United Kingdom was false because no such corporation existed until October 2014.

[¶ 5] Finally, the Complaint alleged that in her representation of Mr. Ngirameketii, Respondent failed to inform her client that she was filing an interlocutory appeal on his behalf, thereafter failed to diligently prosecute that appeal, and misled the Appellate Division in response to a Show Cause Order which directed her to explain the delay in the filing of her opening brief.

II.

[¶ 6] Prior to the hearing on the complaint which was scheduled for June 8, 2021, the parties filed a document stipulating to a number of facts in the complaint. The Stipulation advised the Tribunal that a number of allegations concerning misleading statements on Respondent's website were being dismissed because Respondent proffered evidence to Disciplinary Counsel that verified the claims that were made on Respondent's website. Specifically, Respondent submitted evidence of her three post-graduate degrees in law.

Disciplinary Counsel also agreed that Respondent's claim that she has experience in "traditional lineage and clan land claims" is not misleading because *experience* is not the same thing as *expertise*, and Respondent only claimed the former rather than the latter. With respect to Respondent's claim that she "'studied for her Certificate in Ecology and Conservation at the University of London' and that she received that Certificate," the parties agreed to hold the matter in abeyance to permit Respondent to obtain proof of such a certificate from the University of London when that University's archive reopens following the lifting of COVID-19 caused restrictions on operations.

[¶ 7] Respondent admitted to the remaining allegations in the Complaint. Ms. Baird agreed that statements about her clerkship and litigation experience before "the Supreme Court" should have been made clearer to account for the fact that the Court referenced was the Supreme Court of the State of Arizona,[3] rather than the Supreme Court of the United States. For the same reason, Respondent conceded that the website's statement that she "won 16 jury trials" had to be clarified as it could have led the public to believe that she won these trials in Palau, when in fact she won them during her practice in Arizona.

[¶ 8] Respondent further agreed that although she has had some experience lecturing at the community college level, her claim to be an "experienced University level College Lecturer" was not accurate. Next, Respondent agreed that since her legal experience spans less than 20 years, her claims of having "decades of experience" and "over 20 years of Criminal Law experience" were inaccurate as well. Respondent conceded that the claim that she lived in Micronesia since 2011 was inaccurate because although she did begin her sojourn in the region in 2011, between 2013 and 2015 Respondent resided in the United Kingdom. Respondent also admitted that she does not have advanced training or hold a certificate in non-profit law and company formation and therefore should not have claimed that she has "expertise in non-profit law." Finally, Respondent agreed that she "should not have stated her firm 'offer[s] the best law practices and services' and that the firm was a "leading law firm" as there is no objective way to verify either claim."

[3] There is no dispute that Respondent clerked for the Arizona Supreme Court, helped draft opinions for that Court, and following her clerkship, litigated before that Court.

[¶ 9] With respect to the allegation that Respondent's application for admission to Palau Bar was untruthful, Respondent admitted that Inspiration Work Ltd. was not formed until 2014, but claimed that prior to the formation of the corporation "she was operating as a sole trader in the UK utilizing the 'dba Inspiration Works,' something allowed under the UK laws." Thus, the misstatement on her bar application consisted of failing to identify a particular corporate form of the entity that she worked for. Nevertheless, Respondent conceded that "she should have been clearer on her application as to the distinction between working as a sole trader and as a corporation, albeit under similar names."

[¶ 10] As to the allegations concerning Respondent's representations of Mr. Ellender Ngirameketii, Respondent admits failing to timely prosecute the appeal and failing to withdraw from representing Mr. Ngirameketii before the Appellate Division at the same time that she withdrew from representing him before the Trial Division. Although parties disagree as to the whether Ms. Baird informed her client of the appeal or whether she received a disc containing the record below so as to permit her to prosecute the appeal, the parties are in agreement that the responsibility for obtaining records, informing her client, and meeting the deadlines was solely Ms. Baird's and that she has failed in at least some of those responsibilities.

III.

[¶ 11] The parties have also stipulated as to factors relevant to the determination of the appropriate level of discipline. As to aggravating factors, the parties stipulated that "Respondent's conduct involved multiple violations of the rules regarding advertisement and her violations regarding client representation and withdrawal were fundamental in nature." On the other hand, parties agreed that Respondent "has no prior disciplinary record;" "has fully and freely disclosed information to Disciplinary Counsel and has participated fully in th[e investigative] process;" "immediately took remedial measures by removing the offending website;" "acted without dishonesty or a selfish motive;" has made substantial contributions to the Palauan community; and that as a result of "the death of Respondent's mother in 2019 while Respondent was in Palau and Respondent's inability to see her mother as she

was dying and the subsequent challenges her death brought has resulted in significant stress and issues for Respondent."

[¶ 12] Balancing the aggravating and mitigating factors, parties agree that private censure is an appropriate discipline. Parties further agree that Respondent should bear the cost of these proceedings (including Disciplinary Counsel fees) but disagree whether Respondent should be liable only for the fees incurred with respect to "those claims that came to be filed as a Complaint," or whether she should be liable "for all fees and costs of Disciplinary Counsel." Finally, the parties agree that "Respondent will within the next six months submit proof of 10 hours of CLE courses on practice management, attorney advertisement, communication with clients and obligations of counsel in withdrawing representation," and that these courses "will be in addition to those required to maintain membership in the Palau Bar Association."

APPLICABLE STANDARD

[¶ 13] Alleged violations of the Republic of Palau Disciplinary Rules must be proven by clear and convincing evidence. ROP Disc. R. 5(e).[4] "Clear and convincing evidence requires the Tribunal be convinced that the allegations are highly probable or reasonably certain, but falls short of proof beyond a reasonable doubt." *In re Shadel*, 22 ROP 154, 157 (Disc. Proc. 2015). "If the Tribunal finds that the allegations of misconduct are true, it shall impose an appropriate sanction . . . ." ROP Disc. R. 5(g).

> In imposing a sanction after a finding of lawyer misconduct, the court . . . shall consider the following factors . . . (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors.

ABA Model R. 10(c).

[4] The Tribunal applies the Rules as they were in effect at the time the complaint was filed.

DISCUSSION

I.

A.

[¶ 14] Because Respondent admitted to the violations as described above, *see supra* ¶¶ 7-10, we conclude that these allegations against Respondent were proven by clear and convincing evidence. In the exercise of our discretion, and to bring this matter to a close, we decline to hold the allegation that Respondent's claim that she "'studied for her Certificate in Ecology and Conservation at the University of London' and that she received that Certificate" in abeyance pending the reopening of University of London's archives. Instead, we dismiss that allegation outright.

[¶ 15] Our decision to do so is prompted not by the conclusion that the allegation, if true, is not worthy of discipline, but rather by our belief that even if true, this additional allegation would likely not have resulted in additional discipline over and above the one that is presently imposed. Furthermore, although attorneys must be scrupulous to ensure that their advertisement fully and honestly represents them and the nature of their services, *see* ABA Model R. 7.1, we do not believe that any putative client of Ms. Baird did or likely would have relied on her representation regarding the "Certificate in Ecology," because such a qualification is not particularly relevant to her law practice (even in such an ecologically conscious jurisdiction as Palau). In that sense, Respondent's claims about clerking for a "Supreme Court Justice" and practicing before the "Supreme Court" are much more likely to have induced detrimental reliance on the part of the perspective clients. It stands to reason then that whatever discipline would have been imposed on Respondent for misrepresenting her training in ecology would have been lower than the discipline that we impose for her claims about her legal practice and experience. We therefore see no need to prolong the pendency of this case if at the end of the day it would result, at most, in little more than the reaffirmation of a sanction already imposed.[5] We reemphasize that our decision to dismiss

[5] Of course, if a copy of the Certificate is provided, then no further proceedings would be in order. Nevertheless, we strongly encourage Attorney Baird to provide a copy of this

this charge should not be interpreted as condoning misleading attorney advertisement. We are merely stating that even if we were to conclude that Respondent's claim was misleading, the sanctions imposed by the present decision are sufficient to punish such behavior and protect the public against further violations.[6]

B.

[¶ 16] Other than our dismissal of the charge of misleading advertising in violation of ROP Disc. R. 2(a) and ABA Model R. 7.1 and 7.2, we accept parties' stipulation in their entirety. We only briefly pause to reemphasize (mostly for the benefit of other attorneys) that the public heavily relies on attorneys' statements as to their abilities and expertise and therefore attorneys should be exceedingly careful in ensuring that the information provided is accurate in every respect. A member of the public is likely to be deceived by a claim that an attorney clerked for "the Supreme Court" because nearly everyone knows how prestigious, exclusive, and difficult to obtain those positions are, and that the people who do obtain them usually represent the very pinnacle of academic achievement in law school. In contrast, clerkships for state Supreme Courts, though certainly prestigious and unquestionably worthwhile experience, do not have the same *cache* as clerkships for the Supreme Court of the United States. We say this not to in any way denigrate the work or quality of judges on state Supreme Courts, or to in any way negatively comment on the abilities of clerks who aid these judges in their duties. Nor should we be understood to suggest that merely by clerking for a U.S. Supreme Court justice an individual is *ipso facto* a better or more conscientious attorney than one who "merely" clerked for a judge on a state-level court. It goes without saying that there are extraordinarily talented attorneys who clerked on federal courts, state-level courts, or did not clerk at all. We merely point out the obvious — the competition for clerkships for the U.S. Supreme Court is stiffer and positions there are harder to obtain (if for no other reason than that there are fewer federal than state-level justices). Because

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Certificate, when available, to Disciplinary Counsel and/or Tribunal both as a show of good faith, and to protect herself against any future claims of lack of candor to the Tribunal.

[6] This dismissal is an exercise our discretion and is not an "on the merits" finding of no liability. *See infra*, ¶¶ 25, 27.

the public understands this, a claim that an attorney clerked for "the Supreme Court" is likely to induce the public to believe that such an attorney belongs to a particularly exclusive club, when in fact such a claim is not true. Whether or not membership in this "exclusive club" is a good measure of competence is another matter. What is important is that the public may *believe* that it is a good measure of competence. *See Nasdaq Stock Mkt., Inc. v. Archipelago Holdings, LLC*, 336 F. Supp. 2d 294, 305 (S.D.N.Y. 2004) ("[I]t is the perception of the relevant public, not the court, that determines whether an advertisement is misleading.").

[¶ 17] For the same reason Respondent's claim about having won jury trials is particularly problematic. In Palau, jury trials are reserved for the most serious criminal offenses. *See* 4 PNC § 602 (limiting jury trials to cases where "[a] criminal defendant [is] accused of a crime punishable by a sentence of imprisonment of twelve (12) years or more."). With so much on the line, anyone seeking legal representation would likely put a lot of weight on an attorney's experience with jury trials. And because "[i]t is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community," *Smith v. Texas*, 311 U.S. 128, 130 (1940), it follows that an attorney's familiarity with juries in the relevant community would be an important consideration for a client. Thus, Ms. Baird's failure to specify that she won jury trials in the United States rather than in Palau is likely to have misled the Palauan public.

[¶ 18] We dwell on these points not out of any desire to cause additional embarrassment to Respondent, nor even to further chastise her. Rather, we highlight Respondent's missteps as a warning to other members of the profession and in the hope that similar errors can be avoided in the future. As we have often said, the goal of the disciplinary process "is not punishment but the protection of the public and the courts from attorneys who are failing to either adhere to required standards of conduct or to discharge properly their professional duties." *In re Wolff*, 6 ROP Intrm. 205, 216 (1997). We hope that by explicitly identifying Respondent's errors in judgment, the public will be protected against other attorneys making the same mistake.

C.

[¶ 19] We next address Respondent's conduct as it relates to her representation of Mr. Ngirameketii. Respondent admitted to failing to prosecute the appeal on behalf of her client though she remained the attorney of record for the purposes of that appeal. According to Respondent, this failure stemmed from the breakdown of proper communication between herself and her client. Specifically, Respondent admits that "had [she] set forth the deadlines regarding the interlocutory appeal in a proper withdrawal letter to Mr. Ngirameketii, that confusion as to deadlines and the required actions in the appeal would have been avoided." We agree with Disciplinary Counsel that because "every lawyer, at some point in their career, misses a deadline due to inadvertence or miscalendaring or for some other reason" such one-off mistake "does not necessarily rise to the level of an ethical violation." What concerns us is that Respondent has exhibited a pattern of poor communications with her clients. *See In re Baird II*, 2021 Palau 17. Fortunately, in this case Mr. Ngirameketii's legal rights have not been adversely affected as a result of Respondent's shortcomings.[7] However, this case is a good reminder for all lawyers that attention to detail, proper records-keeping, and not taking on more cases that the attorney can reasonably expect to be able to handle, are all key to successful relationships with clients and the ability to represent their interests before the courts. We are hopeful that the CLE courses that Ms. Baird has agreed to undertake will aid her in living up to these norms in the future.

II.

[¶ 20] We now turn to the discussion of the appropriate sanctions in this case. Because parties have stipulated as to the relevant aggravating and mitigating factors, and have mostly agreed on the appropriate sanctions, *see supra* ¶¶ 11-12, we will only address the appropriateness of the sanction agreed upon and resolve the point of disagreement between the parties as to the amount of Disciplinary Counsel fees for which Respondent shall be liable.

[7] It is undisputed that even though Respondent may have missed the relevant deadlines to pursue the appeal on Mr. Ngirameketii's behalf, the Appellate Division granted extensions of time to file the brief and only dismissed the appeal when Mr. Ngirameketii (through his new counsel) indicated that he did not wish to pursue the matter. *See Ngirameketii v. ROP*, Order Striking Appellant's Filing, Crim. App. No. 19-004 (May 8, 2020) ("The only one who opposes proceeding with the appeal is, apparently, Appellant's current counsel.").

A.

[¶ 21] The parties have agreed that a private censure is an appropriate sanction in the present case. We take it as self-evident that "[t]he public should be able to rely on and have confidence in the truthfulness of an attorney's advertisement to the public." *The Fla. Bar v. Budish*, 421 So. 2d 501, 503 (Fla. 1982). As a general matter, we agree with the Florida Supreme Court that:

> False and deceptive advertising has a great potential for harm, and when an attorney publicly misleads or deceives the public, the public is entitled to be properly informed that such conduct is in violation of this Court's advertising rules and regulations, and that the offending attorney has in fact been disciplined. A private reprimand does not adequately apprise the public of these matters.

Id. Nevertheless, we endorse the parties' agreement that "private censure" is an appropriate sanction because the publication of the present opinion serves the same practical function that a public reprimand would have otherwise served. As a formal matter, private censure is a milder sanction than a public censure, *see* ROP Disc. R. 3, and given the balance of the aggravating and mitigating factors, together with the assurance that both the public and the bar will now be informed of the appropriate standard of behavior, we believe that this milder measure is a more appropriate sanction for Respondent's transgressions. *Cf. Wolff*, 6 ROP Intrm. at 216 ("The purpose of the disciplinary system is not punishment but the protection of the public and the courts from attorneys who are failing to either adhere to required standards of conduct or to discharge properly their professional duties.").

B.

[¶ 22] The parties agree that Respondent should be liable for Disciplinary Counsel's costs and fees, but disagree whether these should include the entirety of Disciplinary Counsel's expenses (as argued by Disciplinary Counsel) or only the expenses related to "those claims that came to be filed as a Complaint" (as Respondent maintains). We believe that Respondent has the better of the argument and is indeed being overly generous in her position.

[¶ 23] Our Rules of Disciplinary Procedure state that "[t]he cost of investigating and prosecuting the action may also be assessed against the

respondent attorney in cases which do not result in dismissal." ROP Disc. R. 3. On their face, the Rules do not permit taxing costs of cases that do result in a dismissal to the respondent attorney. The only question then is whether the word "cases" refers to the entire "case" or to each specific charge. If the former, then the Rules would appear to permit taxing the costs of the entire case to a respondent attorney even if only one, even fairly insignificant charge out of many, is proven. If the latter definition is correct, then we are permitted to tax only the costs of prosecuting proven charges against a respondent attorney.

[¶ 24] Fortunately, we have no need to resolve this question here, because the Rules do not mandate the taxing of costs to a respondent attorney, but merely permit us to do so. In our view it is more equitable to tax only the costs associated with proven charges rather than the entire case to a respondent attorney. This case is a good illustration of why that is so.

[¶ 25] In the present case, Respondent was accused, *inter alia*, of misleading and false advertisement because she claimed to have earned three post-graduate degrees in law. *See supra* ¶ 3(2). As it turned out, the allegation was without merit because Respondent did earn three post-graduate degrees in law.[8] Respondent was also accused of a fairly small and technical violation of misreporting the corporate name of her business during her residence in the United Kingdom. *See supra* ¶¶ 4, 9. If Disciplinary Counsel's view were to prevail, Respondent would be required to pay for the costs of prosecuting an ultimately meritless claim simply because she, without any intent to deceive, misreported her business's corporate structure during the 2012-14 years. On the same set of facts, an attorney who affirmatively lied about having had three post-graduate degrees and affirmatively sought to mislead the Court regarding the nature of prior employment would be required to pay the same fees. That hardly seems like an equitable outcome. We therefore hold that absent extraordinary circumstances not present here, a respondent attorney should only be taxed costs of investigating and prosecuting those claims that result in a finding of liability. We note one exception to this rule. Where parties agree

[8] This is not to say that at the time the allegation was made it was not made in good faith. We assign no blame to, and have nothing but appreciation for the diligent work Disciplinary Counsel has performed in investigating and prosecuting this matter.

to dismiss certain disciplinary claims not on the merits, but as part of a "plea bargain," taxing the entire cost of the disciplinary proceedings against the respondent attorney may be appropriate. It is for that reason than in the companion case, *In re Baird II*, 2021 Palau 17, we did require Respondent to reimburse Disciplinary Counsel for the entire costs of investigating and prosecuting that matter. Here, however, the dismissal of some of the claims was on the merits rather than as part of a "plea bargain." Consequently, taxing against Respondent the costs of investigating and prosecuting the allegations on which Respondent prevailed is inappropriate.

CONCLUSION

[¶ 26] Respondent Caroline Baird is **ADJUDGED RESPONSIBLE** for 1) submitting incomplete information on her application for admission to the bar, in violation of Disciplinary Rule 2(e) and ABA Model Rule 8.1; 2) publishing misleading advertising on her website, in violation of Disciplinary Rule 2(a) and ABA Model Rules 7.1 and 7.2; and 3) failing to actively and diligently process her client's appeal in violation of ABA Model Rule 1.3, and therefore Disciplinary Rule 2(h).

[¶ 27] In light of the above findings, the Tribunal **SANCTIONS** the Respondent as follows:

1) Respondent is hereby **PRIVATELY CENSURED**;

2) Respondent shall, prior to December 31, 2021, **FILE WITH THE COURT** proof of attending 10 hours of CLE courses on practice management, attorney advertisement, communication with clients and obligations of counsel in withdrawing representation.[9] This requirement shall be in addition to, and in excess of, the biannual CLE requirements established by the Palau Bar, *i.e.*, Appellant's Counsel may not use the attendance at a CLE program mandated by this order towards the satisfaction of Palau Bar's biannual CLE requirements.

[9] The Tribunal is not unmindful of the continued disruption to global operations, including in the area of legal education occasioned by the COVID-19 pandemic. To the extent that Respondent, despite good faith effort, is unable to fulfill these requirements by the deadline, the Tribunal will entertain a timely motion for an extension of time to comply.

3) Respondent **SHALL PAY THE COST** of investigating and prosecuting this action.

Disciplinary Counsel **IS INVITED** to submit her statement of fees and costs to Respondent and the Tribunal within 15 days of this opinion. Disciplinary Counsel is requested to separate out the costs associated with those allegations for which Respondent was found liable from those where the allegations were dismissed "on the merits." If Disciplinary Counsel is unable to do so, she should indicate that fact in her filings, and the Tribunal may, on its own accord prorate the fees as appropriate. Following the submission, Respondent shall have seven 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 borne by Respondent.