

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

**IN THE MATTER OF ATTORNEY JAMES KENNEDY,
*Respondent.***

Cite as: 2024 Palau 25
Disciplinary Proceeding Nos. 23-001 & 23-003

Decided: September 13, 2024

Disciplinary Counsel Lalii Chin Sakuma
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 disciplinary complaints against James Kennedy, alleging he violated Palau’s Disciplinary Rules & Procedures for Attorneys by failing to obey a trial court order and entering into an oral contingency fee agreement.

[¶ 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 May 8, 2023, in Civil Action No. 23-018, the Trial Division ordered James Kennedy (hereinafter, “Respondent”) to provide the Clerk of Courts with the funds awarded in Civil Action No. 16-053 while the plaintiff-association determined its rightful leaders. Respondent appealed that order; however, the appeal was dismissed due to Respondent’s failure to timely file

an opening brief. Respondent's petition for rehearing was also denied. Yet, Respondent continued to disregard the court order.

[¶ 4] On September 18, 2023, the trial court issued its Order to Show Cause, requiring Respondent to show cause why he should not be held in contempt and fined, and to submit an affidavit to account for his reasonable attorney's fees in Civil Action No. 16-053. The Order to Show Cause also warned Respondent that he was subject to fines, imprisonment, and disciplinary action for refusing to follow the court's orders without good cause.

[¶ 5] On October 9, 2023, the trial court held a hearing. Shortly before the hearing, Respondent filed his affidavit, attesting that he believed he could seek a maximum fee and cost reimbursement of \$304,274.52, which represents the awarded costs and fees plus ten percent (10%) of the remaining amounts collected. Respondent continued disregarding the court's order to remit the funds to the Clerk of Courts.

[¶ 6] On October 16, 2023, the trial court issued an order holding Respondent in contempt of court and imposing sanctions. This order fined Respondent \$1,000 per weekday, beginning two days after service and ending when he surrendered the funds to the Clerk of Courts. The following day, Respondent remitted the funds to the Clerk of Courts. He did not appeal the contempt order.

[¶ 7] On October 17, 2023, the Office of the Chief Justice received a disciplinary complaint by Presiding Justice Kathleen M. Salii against Respondent for his alleged attorney misconduct in Civil Action No. 23-018. The complaint asserted that Respondent violated Rule 2(b) of Palau's Disciplinary Rules & Procedures for Attorneys by failing to obey a Trial Division order and Rule 1.5(c) of the ABA Model Rules of Professional Conduct by entering into an oral contingency fee agreement.¹

[¶ 8] After determining further action was justified, Chief Justice Oldiais Ngiraikelau filed this matter as Disciplinary Proceeding No. 23-001, appointed Lalii Chin Sakuma as Disciplinary Counsel, and appointed a Disciplinary

¹ Rule 2(h) of Palau's Disciplinary Rules & Procedures for Attorney 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."

Tribunal. Disciplinary Counsel investigated the allegations and submitted a Report and Recommendation, recommending that a formal complaint be filed against Respondent for violating Rules 2(b) and 1.5(c). 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 on December 4, 2023, and Respondent answered on December 26, 2023.

[¶ 9] On December 11, 2023, the Office of the Chief Justice received another disciplinary complaint, asserting that in Civil Action Nos. 16-053 and 23-018, Respondent violated Rule 2(b) by failing to comply with a trial court order, Rule 1.5(c) by entering into an oral contingency fee agreement, and 1.7(a)(2) when he represented two clients despite a related personal interest. Chief Justice Ngiraikeleau, having determined further action was justified, filed this matter as Disciplinary Proceeding No. 23-003, appointed Lalii Chin Sakuma as Disciplinary Counsel, and appointed a Disciplinary Tribunal. Given the overlap, the Tribunal consolidated Disciplinary Proceeding Nos. 23-001 and 23-003.

[¶ 10] Disciplinary Counsel investigated the allegations and submitted a Report and Recommendation, recommending that a formal complaint be filed. Disciplinary Counsel further recommended dismissing Respondent's alleged violation of Rule 1.7(a)(2), finding there was no inherent conflict of interest. The Disciplinary Tribunal agreed and directed Disciplinary Counsel to file the formal complaint. Disciplinary Counsel filed the formal complaint on April 5, 2024, and Respondent answered on April 25, 2024. The Disciplinary Tribunal held a public hearing on August 19, 2024.²

APPLICABLE STANDARD

[¶ 11] Alleged violations of the Disciplinary Rules & Procedures for Attorneys 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, Disciplinary Counsel must convince the Tribunal that the allegations are

² Although the hearing was originally scheduled for an earlier date, the Tribunal granted Respondent's request for an extended delay after Respondent presented extraordinary circumstances.

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).

¶ 12 “[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). The decision of the Tribunal is final. *Id.* R. 5(h).

DISCUSSION

¶ 13] The formal complaints allege Respondent violated Rule 2(b) by willfully disregarding the trial court’s order until he was found to be in contempt of court. Rule 2(b) of Palau’s Disciplinary Rules & Procedures for Attorneys cautions that an attorney may be subject to disciplinary action for “[w]ilful disobedience or violation of a court order directing him to do or cease doing an act which he ought in good faith to do or forebear [sic].” The May 8th Order directed Respondent to transfer funds to the Clerk of Courts pending the resolution of a dispute over those funds. Respondent ignored that order and retained the funds.

¶ 14] Respondent explained that he disregarded the May 8th Order because he needed more time to research whether the order was valid. During his formal hearing before the Tribunal, Respondent stated that he is unsure where the boundary lies for an attorney’s right to disobey a court order, elaborating that an attorney cannot be forced by court order to “jump off a bridge.” This rudimentary explanation misses its mark. Court orders are presumed valid and must be obeyed until set aside. *See In re Perrin*, 10 ROP 169, 171 (2003) (“Our starting point is the collateral bar rule, which is ‘the bedrock principle that court orders, even those that are later ruled unconstitutional, must be complied with until amended or modified.’”). Respondent should have 1) complied with the court order to remit the funds; 2) filed a timely opening brief when appealing the order; and 3) appealed the

contempt order. Instead, he willfully disregarded the May 8th Order over a span of five months and failed to appeal the contempt order. Therefore, Respondent violated Rule 2(b).

[¶ 15] The complaint further alleges Respondent violated Rule 1.5(c) by entering into an oral contingency fee agreement with his client. Rule 1.5(c) of the ABA Model Rules of Professional Conduct provides, in pertinent part, that “[a] contingent fee agreement shall be in a writing signed by the client” Respondent stated that he had an oral agreement for costs and fees and admitted to not having a writing memorializing the entire agreement.

[¶ 16] Respondent denies intending to collect a contingency fee, asserts that he struggled to navigate these novel ethical issues, and admits that he was personally and professionally overwhelmed at the time. Rule 1.5(c) does not condone an oral contingency fee agreement so long as an attorney does not act to collect on it; rather, the Rule expressly states that any such agreement must be in writing. Furthermore, lawyers owe their client a duty to remain prompt, competent, and diligent. *See, e.g.*, Model Rules of Pro. Conduct r. 1.1 (AM. BAR ASS’N 1983) (“A lawyer shall provide competent representation to a client.”); *id.* r. 1.3 (“A lawyer shall act with reasonable diligence and promptness in representing a client.”). “A lawyer’s work load must be controlled so that each matter can be handled competently.” *Id.* at cmt. 2. Respondent should have memorialized the entire agreement in a writing that satisfied the Model Rules. He failed to do so. If he was unsure about the law or overwhelmed, he should have refrained from taking additional cases, managed his time appropriately, and reduced his caseload as necessary. Therefore, Respondent violated Rule 1.5(c).

[¶ 17] Respondent contends that he at all times maintained a good-faith belief that he was acting in accordance with the law. Insofar as Respondent believes the “good faith” language in Rule 2(b) excuses his conduct, he misunderstands the Rule. This Rule required Respondent to obey the court order directing him to remit the awarded funds, which he ought to have, in good faith, done. To the extent that Respondent is alleging this belief as a mitigating factor, the good-faith standard is both subjective and objective. In a

matter before the Review Department of the State Bar Court of California,³ an attorney was found culpable of attorney misconduct. The review board explained that “[i]n order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable.” *Matter of Purcell*, No. SBC-21-O-30734, 2023 WL 3035199 *11 (Cal. Bar Ct. Apr. 14, 2023). The board ultimately determined that the attorney’s defiant behavior was “objectively unreasonable,” which undercut his good faith argument. *Id.* Likewise, Respondent’s good-faith argument lacks merit because, as previously discussed, his conduct was objectively unreasonable.

SANCTIONS

[¶ 18] As officers of the Court, lawyers must, at a minimum, maintain a high caliber of integrity, competence, and diligence. Respondent failed to meet this threshold standard when he entered into an oral contingency agreement and disobeyed the trial court’s order. Consequently, the Disciplinary Tribunal imposes the following sanctions:

1. Respondent shall pay Disciplinary Counsel’s reasonable costs and fees within two calendar days upon receiving an invoice from Disciplinary Counsel.
2. Respondent shall arrange to spend two (2) hours in the Law Library to study the following book: ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT (AM. BAR ASS’N, 6th ed. 2007).⁴ He must certify by December 31, 2024 that he has complied with this requirement.

³ The California Business and Professions Code provides similar language to Palau’s Disciplinary Rules. *See, e.g.*, Cal. Bus. & Prof. Code § 6103 (“A wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.”).

⁴ A copy of this book has been placed on hold for Respondent in the Ngerulmud Law Library. Respondent is encouraged to pay particular attention to Rule 1 (Client-Lawyer Relationship) and Rule 8 (Maintaining the Integrity of the Profession).

3. Respondent shall draft a letter to Presiding Justice Salii wherein he genuinely accepts responsibility for his actions by November 15, 2024.
4. Respondent shall reduce his workload as necessary to ensure that he can fulfill his duty to provide each client with adequate representation.

CONCLUSION

[¶ 19] We find, by clear and convincing evidence, that Respondent violated Rule 2(b) of Palau's Disciplinary Rules & Procedures for Attorneys and Rule 1.5(c) of the ABA Model Rules of Professional Conduct, and we hereby impose the aforementioned sanctions.