

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

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

Cite as: 2024 Palau 31
Disciplinary Proceeding No. 24-003

Decided: December 4, 2024

Disciplinary Counsel Brendlynn O. Joseph
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 James Kennedy, alleging he violated the ethical rule regarding concurrent conflicts of interest.

[¶ 2] For the reasons set forth below, we find that disciplinary counsel has failed to establish by clear and convincing evidence that Respondent engaged in attorney misconduct, and we dismiss the complaint accordingly.

BACKGROUND

[¶ 3] On May 21, 2024, the Office of the Chief Justice received a disciplinary complaint against Respondent for his alleged attorney misconduct.

The complaint asserts that Respondent violated ABA Model Rule 1.7 (Conflict of Interest: Current Clients).¹

[¶ 4] The alleged violation involves Respondent’s concurrent representation of both a private entity known as Metropolis or Metropolis System and the OEK Senate regarding an offshore corporations bill referred to as the Metropolis Offshore Corporations Bill or the Palau Exempted Corporation Bill. Respondent allegedly began working as legal counsel for Metropolis in June 2021. His work included reviewing and formatting a draft bill which was introduced on the Senate floor as Senate Bill 11-43 on or about July 29, 2021. Respondent began working as *pro tem* legal counsel for the Senate on June 1, 2022. To date, he remains in this role. During this time, Respondent allegedly remained listed on Metropolis’s website as the entity’s legal advisor in Palau, and Respondent’s LinkedIn profile allegedly indicated that he was Chief Legal Counsel for Metropolis System. In or around August 2023, Respondent allegedly worked with or provided legal consultation to Senator Lencter Basilius regarding Senate Bill 11-43. The complaint contends Respondent’s concurrent representation of both the Senate and Metropolis regarding the offshore corporations bill constitutes a material, non-consentable conflict.

[¶ 5] 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. 24-003, appointed Brendlynn O. Joseph 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 November 14, 2024.

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.”

APPLICABLE STANDARD

[¶ 6] “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).

[¶ 7] “[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. ROP Discp. R. 5(h).

DISCUSSION

[¶ 8] The formal complaint alleges Respondent violated ABA Model Rule 1.7 in his allegedly concurrent conflicting representation of both Metropolis System and the Senate regarding the proposed bill that became Senate Bill 11-43. Rule 1.7 provides:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

[¶ 9] Respondent admitted that he edited a draft bill for a private entity known as Metropolis² prior to becoming Senate *pro tem* legal counsel. He testified that another individual drafted the bill, and that his contribution was limited to reformatting the draft to meet stylistic requirements. Accordingly, while the document known to Respondent as SB 11-43 uses some of his work-product, Respondent insists the text of the Bill itself is different from the draft he edited.³

[¶ 10] The evidence presented in this matter does not show the existence of a concurrent conflict of interest by the applicable clear and convincing standard. The evidence presented does not show that Respondent's representation of the private party was directly adverse to the Senate. Nor does the evidence show a significant risk that Respondent's representation of the Senate is materially limited by any remaining responsibilities to the private party or by Respondent's personal interests. Thus, the evidence fails to show that Respondent violated Rule 1.7.

² Respondent maintains that Metropolis is a now-defunct Delaware partnership, and that while he currently advises a company known as Metropolis Global, his advice relates to an unrelated dispute.

³ We note that our review of the evidence in this regard is materially limited by Disciplinary Counsel's failure to properly introduce into evidence either document.

CONCLUSION

[¶ 11] We find that the record is insufficient to establish by clear and convincing evidence that Respondent violated ABA Model Rule of Professional Conduct 1.7, and we hereby dismiss this matter. All pending motions are further terminated as moot.