

In re Perrin, 10 ROP 111 (2003)
**In the Matter of
DAVID C. PERRIN,
Respondent.**

DISCIPLINARY PROCEEDING
NO. 03-01

Supreme Court, Disciplinary Tribunal
Republic of Palau

Heard: May 26, 2003
Decided: June 13, 2003

Disciplinary Counsel: Douglas Parkinson

Counsel for Respondent: Pro se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
R. BARRIE MICHELSEN, Associate Justice.

PER CURIAM:

This is a disciplinary proceeding concerning allegations that David C. Perrin has engaged in the unauthorized practice of law in violation of ROP Professional Conduct Rule (“Disciplinary Rule”) 2(i).

BACKGROUND

Admission to the bar of this Court requires the successful completion of the Palau bar examination. *See* Rule of Admission for Attorneys to Practice in the Courts of the Republic of Palau (“Rule”) 2(d). In order to permit attorneys on relatively short-term government contracts to practice law in Palau without having to pass the bar examination, and in order to give those government attorneys who intend to practice on a longer term basis ample time to comply with Rule 2(d), Rule 3(a) provides a four-year exemption from compliance with Rule 2(d). To qualify for this exemption, the applicant must be admitted to practice in another jurisdiction.¹

¶112 Applicants who do not qualify for a Rule 3(a) exemption may apply for admission under

¹Rule 3(a) states in pertinent part:

Any attorney who is a salaried employee of the Republic of Palau National Government . . . and who has been in active practice of law at any time within the five (5) years immediately preceding the date of employment, may practice law in Palau without complying with Rule 2(d) of these rules for a single period of four (4) years, . . . so long as the attorney . . . maintains membership in good standing in the bar of any state, territory, or possession of the United States or other foreign country. . . . Any practice of law after the expiration of this four (4) year period, . . . without having first complied with Rule 2(d) of these rules, constitutes the unauthorized practice of law.

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Rule 3(b), which provides an exemption for law school graduates who are not admitted to practice in another jurisdiction. A person admitted pursuant to Rule 3(b) is permitted to practice under this subsection only during the four-year period following graduation, may only practice under the supervision of a qualified attorney, and has a continuing obligation to make all efforts to pass the Palau bar examination.²

Turning to the specifics of this case, Mr. Perrin was hired as Legal Counsel to the President and was admitted to the Palau Bar under Rule 3(a) on February 16, 1999, but did not apply to take the Palau bar examination until May 30, 2002. Mr. Perrin sat for the Multistate Professional Responsibility Examination (“MPRE”) in November 2002, but was advised on December 10, 2002 that he had not passed and that his bar membership would expire as of February 16, 2003. The next administration of the MPRE was scheduled for March 9, 2003, but as of February 16, 2003, Mr. Perrin had not applied to retake it. On March 21, 2003, Eugene Murret, Administrator of the Palau Bar, advised Mr. Perrin by letter that his admission had expired on February 16, 2003. Mr. Perrin replied that his admission had not expired because he is entitled to a new exemption pursuant to Rule 3(b).

Mr Perrin does not deny that he has engaged in the practice of law after February 16, 2003.³

1113 DISCUSSION

The Disciplinary Counsel has the burden to establish by clear and convincing evidence any allegations of misconduct. Disciplinary Rule 5(e); *In re Wolff*, 8 ROP Intrm. 16, 18 (1999). Because the parties do not disagree as to whether the conduct in which Mr. Perrin engaged after February 16, 2003, qualifies as the practice of law, the only issue left to be resolved is whether

²Rule 3(b) states in pertinent part:

Any law school graduate who otherwise meets the requirements of Rule 2 and who is employed by the Republic of Palau National Government . . . may be admitted to practice law in Palau without complying with Rule 2(d) of these rules within four (4) years of the employee’s graduation from law school, so long as the employee is making all efforts to comply with Rule 2(d) . . . and is under the supervision of an attorney who is an active member of the Palau Bar and who has been in the active practice of law for at least two years.

³Disciplinary Counsel has identified four separate instances of unauthorized practice by Mr. Perrin. On March 12, 2003, Mr. Perrin signed a Motion to Dismiss and a supporting Memorandum of Points and Authorities in *Melekeok Government Bank v. Financial Institution Commission*, Civil Action No. 03-50. On March 24, 2003, he corresponded by letter with opposing counsel of record in *Republic of Palau v. Tell*, Civil Action No. 99-282, requesting the identity of an estate representative to substitute for the recently deceased defendant of record and stating that he was considering asking the Court to appoint a representative *ad litem*. On March 27, 2003, a Motion for Continuance in *Republic of Palau v. Tell*, Civil Action No. 99-282, recited that Mr. Perrin had conferred with counsel for intervenor on the same date. On April 23, 2003, Defendant’s Response to Plaintiff’s Opposition to Motion to Dismiss in *Melekeok Government Bank*, recited that Mr. Perrin was acting as co-counsel for defendants. In his answer to Disciplinary Counsel’s Formal Complaint, although Mr. Perrin denies that the actions recited in paragraph 21 constitute the unauthorized practice of law, he does not deny that he engaged in the conduct stated therein. Accordingly, we deem those allegations to be admitted.

that practice was unauthorized.

Mr. Perrin directs our attention to Rule 3(b). He argues that its plain meaning applies to his situation, and therefore no violation of Disciplinary Rule 2(i) has occurred. Under his analysis of Rule 3(b) the language “within four (4) years of the employee’s graduation from law school” is merely meant to emphasize what he sees as a change from an earlier version of Rule 3(b), which he reads to have established a four-year exemption triggered by graduation from law school and thereby limited the Rule’s exemption to recent law school graduates. Mr. Perrin argues that because the new Admissions Rules superseded the previous Rules any change in language must therefore mean a change in intent and effect. Thus, Mr. Perrin argues that Rule 3(a) entitled him to qualify for admission and receive a four-year exemption from Rule 2(d) and at the expiration of that period he was then entitled to an indefinite exemption under Rule 3(b).

Mr. Perrin’s characterization of Rule 3(b) reads the “four-year” language out of the Rule entirely. His efforts are unconvincing and, in our view, frivolous. Rule 3(b)’s link between recent graduation from law school and compliance with Rule 2(d) is obvious and unavoidable.

Not only does Mr. Perrin’s reading of Rule 3(b) render Rule 3(a)’s prohibition that “[a]ny practice of law after the expiration of this four (4) year period . . . constitutes the unauthorized practice of law” meaningless, his argument fails to acknowledge the procedural requirement of formal admission to the bar. Mr. Perrin does not contest, nor could he, that his eligibility to practice law pursuant to Rule 3(a) expired on February 16, 2003. Even under his “plain language” approach, he was not entitled to continuing admission, but was required to seek readmission to the bar pursuant to Rule 3(b). He made no attempt to do so despite having been advised of the expiration of his admission. Mr. Perrin’s argument is thus all the more disingenuous.

Finally, even if we were to adopt Mr. Perrin’s analysis of the interplay between Rules 3(a) and 3(b), the further exemption that he seeks under Rule 3(b) requires each employee admitted thereunder to “mak[e] all efforts to comply with Rule 2(d).” Mr. Perrin sat for an administration of the MPRE on November 9, 2002. He was advised that he **1114** failed the exam and did not make arrangements to retake it at the next available opportunity. Mr. Perrin argues that because he requested regrading of the exam⁴ and that because his job required him to be off-island⁵ at the

⁴Mr. Perrin was advised on December 10, 2002 that he had not passed the MPRE. At that time, he was also advised that the next administration date was March 9, 2003 and that the registration date for that sitting was January 28, 2003 and that the late registration date was February 13, 2003. Communication with NCBE, the body that administers the MPRE, and ACT, the body that grades the MPRE, revealed that a request for a regrade was not received from Mr. Perrin until February 5, 2003. Had Mr. Perrin been “making all efforts” to comply with Rule 2(d), surely he would not have waited nearly two months to request a regrade.

⁵Mr. Perrin argues that he has little control over his travel schedule. There is no evidence in the record that Mr. Perrin’s off-island trip was scheduled before December 10, 2002, the date on which he was notified that he had failed the November administration of the MPRE. Moreover, it was at Mr. Perrin’s behest that the trip originally scheduled to conclude March 3, 2003, be extended so that he could participate in a World Trade Organization workshop that ended March 7, 2003 and returned him to Palau on March 9, 2003. In his memorandum regarding this trip Mr. Perrin stated that the trip would not

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time of the next administration of the MPRE that he has satisfied the “all efforts” requirement. We disagree. The plain fact is that Mr. Perrin’s position as Legal Counsel requires admission to the bar. By failing to register for the March administration of the MPRE, he failed to comply with the requirements of the exemption to which he argues he is entitled.

Because Mr. Perrin’s admission to the bar under Rule 3(a) expired on February 16, 2003, and the exception provided under Rule 3(b) does not entitle him to a further exemption to continue to practice law without first having complied with Rule 2(d), Mr. Perrin’s continued practice of law after February 16, 2003 constitutes the unauthorized practice of law and is a violation of Disciplinary Rule 2(i).

SANCTIONS

Disciplinary Rule 3 lists the various forms of discipline which may be imposed on lawyers found to be in violation of the Rules: disbarment, suspension for not more than five years, public censure, private censure, a fine, or community service. “In considering the appropriate sanction, we consider it our duty to impose the discipline that is necessary to protect the public, the legal profession, and the courts.” *In re Tarkong*, 4 ROP Intrm. 121, 132 (1994). The Tribunal refers to the list of aggravating and mitigating factors set forth in the ABA Standards for Imposing Lawyer Discipline (1986) in order to craft an appropriate sanction. *Id.* at 131-32 (citing *In re Howard*, 743 P.2d 719, 731-33 (Or. 1987)).

Mr. Perrin was informed on December 10, 2002, that his admission would expire on February 16, 2003, and he continued to engage in the practice of law after his admission had expired. On March 21, 2003, Mr. Perrin was again advised that his admission had expired and he continued to engage in the practice of law. On March 28, 2003, Mr. Perrin was advised that a disciplinary complaint had been submitted alleging that he was engaged in the unauthorized practice of law and he continued **L115** to engage in the practice of law.⁶ Such actions constitute a pattern of misconduct and are an aggravating factor taken into consideration by this Tribunal. Additionally, Mr. Perrin has steadfastly refused to acknowledge the wrongfulness of continuing to practice without successfully passing the Palau bar or even the possibility of an alternative interpretation, relying instead on a completely untenable reading of Rule 3(b) to defend his continued unauthorized practice of law. This too is an aggravating factor to be considered in determining the appropriate sanction in this case.

Given the ongoing and deliberate nature of the violation, pursuant to Disciplinary Rules 3 and 12, the Tribunal orders Mr. Perrin as follows:

1. Effective immediately Mr. Perrin shall not engage in the practice of law in the Republic of Palau unless and until such time as he has complied with the requirements of Rule 2(d) and has been admitted in accordance with paragraph 2 below.

interfere with his litigation responsibilities, but he did not advise his employer of the MPRE testing date and the importance of his sitting for that examination.

⁶Furthermore, since the disciplinary hearing held on May 26, 2003, Mr. Perrin has appeared before the Trial Division in Civil Action 03-103, litigation related to the *Melekeok Government Bank* case.

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2. At such time as Mr. Perrin has complied with the requirements of Rule 2(d), he may not reapply for admission to the bar of this Court until a period of one hundred and twenty days has elapsed, which reflects the period of time Mr. Perrin engaged in the unauthorized practice of law after February 16, 2003.

3. Pursuant to Disciplinary Rule 3(e), Mr. Perrin is ordered to pay a fine in the amount of \$1000 to the Clerk of Courts no later than thirty days after the issuance of this decision.

4. Pursuant to Disciplinary Rule 3, Mr. Perrin is liable for legal fees and costs of Disciplinary Counsel. Mr. Perrin is directed to pay to the Clerk of Courts Disciplinary Counsel's legal fees and costs no later than thirty days after service upon him of Disciplinary Counsel's submission of his fees and costs to this Tribunal.

5. Because the Tribunal's orders prohibiting Mr. Perrin from engaging in the practice of law and postponing his subsequent admission to the bar are tantamount to a suspension from the practice of law, pursuant to Disciplinary Rule 12(e) the Chief Justice will cause notice of the sanction to be published in a newspaper of general circulation in the Republic of Palau. Such publication is a cost of the prosecution of the action and pursuant to Disciplinary Rule 3, Mr. Perrin is ordered to pay that cost to the Clerk of Courts no later than thirty days after notice to him by the Office of the Chief Justice of the cost of publication.