

In re Smith, 11 ROP 36 (2003)
**In the Matter of
MARK SMITH,
Respondent.**

DISCIPLINARY PROCEEDING
NO. 03-002

Supreme Court, Disciplinary Tribunal
Republic of Palau

Heard: October 31, 2003
Decided: November 12, 2003

Disciplinary Counsel: Douglas Parkinson

Counsel for Respondent: Carlos Salii

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
J. UDUCH SENIOR, Associate Justice Pro Tem.

PER CURIAM:

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This is a disciplinary proceeding in which Respondent Mark Smith, an attorney licensed to practice law in the Republic of Palau, is charged with violations of this Court's Disciplinary Rules and Procedures and the American Bar Association Model Rules of Professional Conduct¹ (hereinafter referred to as the "Disciplinary Rules" and "Model Rules," respectively). The complaint filed by disciplinary counsel contained five counts. The complaint charged Respondent with (1) violating Model Rule 1.3 for not acting with reasonable diligence in representing his client, (2) violating Model Rule 1.4(a) for not keeping his client reasonably informed, (3) violating Model Rule 1.16(d) in that his actions and/or inactions resulted in a *de facto* withdrawal without steps taken to protect the client's interest, (4) violating Disciplinary Rule 2(c) for violating his duties as an attorney, and (5) violating Disciplinary Rule 2(h). For the reasons stated below, this Tribunal finds that the available evidence supports the conclusion that Respondent committed misconduct as described in Model Rules 1.3 and 1.16(d).

FINDINGS OF FACTS

In the course of his practice, Respondent represented Pacific Savings Bank ("PSB") in several matters. Initially, Respondent kept an office in Palau and maintained a Palauan post office box as his address of record with the Court. He also retained a mailbox at the Palau Supreme Court Clerk's office.

In May 2002, Respondent opened a law office in Guam. By August 26, 2002,

¹The Model Rules have been incorporated into the ROP Disciplinary Rules and Procedures by Disciplinary Rule 2(h).

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Respondent had moved to Guam and discontinued his visits to Palau. Shortly after Respondent's move to Guam, the post office closed his post office box due to nonpayment of rent. Similarly, Respondent's court mailbox went unchecked. As a consequence of Respondent's absence from Palau, several of the PSB cases languished in the court system. Specifically, Respondent represented PSB as its counsel of record in *PSB v. Niro*, Civil Action No. 02-187, *PSB v. Deltang*, Civil Action No. 02-188, *PSB v. Tellames*, Civil Action No. 02-192, and *PSB v. Singeru*, Civil Action No. 02-193. Respondent filed complaints in the aforementioned cases on June 14, 2002. No further activity occurred with respect to these cases. On April 4, 2003, the Court mailed Notices of Possible Dismissal for failure to prosecute the cases to Respondent's address of record. The notices were returned as undeliverable. Respondent also represented PSB as its counsel of record in *PSB v. Masaichi*, Civil Action No. 02-195. In *Masaichi*, Respondent and defendants jointly filed a Proposed Stipulated Judgment on August 2, 2002. On August 27, 2002, the Court mailed a letter to Respondent's address of record notifying him that the Proposed Stipulated Judgment did not conform to the Rules of Court. Respondent failed to respond. On April 4, 2003, the Court issued an order declaring that the case would be dismissed in thirty days unless Respondent took affirmative steps to prosecute the case. Respondent again failed to respond.² Fortunately, PSB's counsel in other matters **L38** became aware of the impending dismissals. PSB filed motions to substitute counsel in Respondent's cases and requested additional time to prosecute those actions. The Court granted PSB's motions.

CONCLUSIONS OF LAW

The standard of proof for establishing allegations of misconduct is clear and convincing evidence. Disciplinary Rule 5(e). We hereby find, by clear and convincing evidence, that Respondent has violated Model Rules 1.3 and 1.16(d). Model Rule 1.3 states that "A lawyer shall act with reasonable diligence and promptness in representing a client." Respondent's inactivity with regard to the PSB matters coupled with his failure to heed the Court's notices demonstrate a lack of reasonable diligence and promptness on his part. Model Rule 1.16(d) states, in pertinent part, that "upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest." As a result of his move to Guam and the commensurate neglect of his Palauan workload, Respondent effectively withdrew from representing PSB. As such, Respondent failed to protect his client's interests by not giving PSB notice which would have afforded PSB the opportunity to timely substitute counsel.

This Tribunal determines appropriate sanctions by reference to the ABA Standards for Imposing Lawyer Discipline. *In re Shadel*, 6 ROP Intrm. 252, 257 (1997); *In re Tarkong*, 4 ROP Intrm. 121, 131 (1994). We find that public censure is a proper sanction in this case. In addition, we find it appropriate to require Respondent to pay the disciplinary counsel's costs of investigating and prosecuting this matter. Disciplinary counsel should submit an itemized list of his costs and attorney's fees to the Court and to Respondent. Once Respondent receives the itemized list, he shall have ten days to object to the amount requested. In the absence of any objection, he shall pay the amount within thirty days. If an objection is filed, it shall be set for

²After the initiation of the instant disciplinary proceeding, on June 24, 2003, Respondent informed the Court that he intended to be put on inactive status and requested that the Court close his mailbox. Various Court documents dating back to August 2002, were found in the mailbox.

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further proceedings.