

In re Oilouch, 13 ROP 31 (2006)
**In the Matter of
RAYNOLD B. OILOUCH,
Respondent.**

Disciplinary Proceeding No. 05-005

Supreme Court, Disciplinary Tribunal
Republic of Palau

Heard: December 19, 2005

Decided: January 9, 2006

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Disciplinary Counsel: Paul J. Miovas, Jr.

Counsel for Respondent: Pro se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
LOURDES F. MATERNE, Associate Justice

PER CURIAM:

This is a disciplinary proceeding in which Respondent Raynold Oilouch, 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 Conduct.¹ Prior to oral argument in this matter, Respondent and Disciplinary Counsel stipulated that Respondent violated ABA Model Rule 1.7(a). Thus, the sole remaining issue for the Court to consider is what, if any, sanctions are appropriate.

BACKGROUND

The present disciplinary proceeding arises out of Respondent's representations of Evence Beches and Emmy Beches. On April 11, 2002, Evence Beches retained Respondent as counsel to represent him in a land dispute involving property in Kayangel. To date, the Kayangel litigation has not been resolved, and Respondent remained counsel for Mr. Beches in the matter as of the filing of the present disciplinary complaint. Nevertheless, in July 2005, Respondent agreed to represent his aunt, Emmy Beches, in a divorce action against her husband Evence Beches.

As part of his representation of Mrs. Beches, Respondent filed, on July 27, 2005, an "Emergency Motion for TRO, Preliminary Injunction and Permanent Injunction." On that morning, Respondent contacted Mr. Beches and asked that he meet him at the courthouse. During this meeting, Respondent and Mr. Beches discussed Mrs. Beches' desire for a divorce. While there remains some dispute over whether Respondent informed **L33** Mr. Beches that he

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

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was representing Mrs. Beches in the context of the divorce,² it is undisputed that Respondent did not discuss any potential conflicts of interest with either Mr. or Mrs. Beches, nor did he obtain consent from Mr. Beches to represent Mrs. Beches in the pending divorce action. At this point, Respondent admits that his representation of both clients constituted a conflict of interest in violation of ABA Model Rule 1.7(a).

ANALYSIS

This Court's Disciplinary Rules provide that any attorney may be subject to disciplinary action by reason of "[a]ny act or omission which violates the American Bar Association Model Rules of Professional Conduct." Disciplinary Rule 2(h). Model Rule 1.7 prohibits an attorney from representing a client if the representation involves a concurrent conflict of interest. ABA Model Rules of Professional Conduct Rule 1.7 (2004 ed.). Such a conflict 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 responsibility to another client, a former client or a third person or by a personal interest of the lawyer.

Model Rules 1.7(a). Where, as here, the conflict arose out of representation of one client in a manner directly adverse to another client, the fact that the matters in which the attorney represents each client are unrelated is irrelevant. "Loyalty to a current client prohibits undertaking representation directly adverse to another client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated." Model Rules 1.7 (Comment 6). *See also In re Law Office of Kirk & Shadel*, 3 ROP Intrm. 285, 289 (1993) (Rule 1.7(a) "imposes a flat ban on representing one client against another client absent the consent of both.").

The ABA Model Rules allow an attorney to represent a client despite the existence of a concurrent conflict of interest only where the attorney has taken adequate steps to safeguard his or her client's rights. Specifically, the Rules provide that an attorney may only continue to represent a client despite a conflict if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation of 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.

Model Rules 1.7(b). Only where an attorney **134** has satisfied each of these four steps may he or

² Respondent maintains that he immediately informed Mr. Beches that he would be representing Mrs. Beches in the divorce action. Mr. Beches disputes this assertion.

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she represent a client with whom there exists a conflict of interest.

In the present case, Respondent made no effort to inform his clients regarding the conflict of interest inherent in his representation of both Mr. Beches in his Kayangel land dispute and Mrs. Beches in her action for divorce against Mr. Beches. Nor did Respondent make any effort to obtain the informed consent of his clients to proceed with the dual representation. Under the Model Rules, informed consent “requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client.” Model Rules 1.7 (Comment 18). Respondent made no such effort to inform his clients of the potential ramifications of the conflict. By failing to do so, and failing to obtain consent to proceed despite the conflict, Respondent violated Model Rule 1.7.

Given the nature of this violation, we believe that, in addition to public censure, it is proper to take steps to ensure that Respondent has adequate knowledge and understanding of his ethical obligations to his clients. See *In re Tarkong*, 4 ROP Intrm. 121, 132 (1994) (“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.”) (citing *Levin v. State Bar of California*, 767 P. 2d 689, 693 (Cal. 1989)). In both his Answer to the Complaint, as well as during oral argument, Respondent expressed confusion as to the ethical rules involving conflicts of interest, even though the prohibition in this matter was and is straightforward. In his Answer, for example, Respondent asked the court “to give direction as to who and to what extent ABA Rule 1.7 should be applied given the fact that Palau is a small community and it is extremely difficult to draw the line as to what situation creates a conflict of interest and what does not.” Respondent’s Answer at 3. To this, we note only that it is not our role to explain an attorney’s ethical obligations; rather, all members of the bar have a professional and ethical duty to make themselves aware of all rules applicable to the practice of law. *In re Tarkong*, 3 ROP Intrm. 12A, 12G (1991). For this reason, we order Respondent to take and obtain a passing score on the Multi-State Professional Responsibility Exam (MPRE) within 12 months.³ We believe this sanction appropriate in light of Respondent’s uncertainty regarding his ethical and professional responsibilities to his clients. See *In re Shadel*, 6 ROP Intrm. 252, 257 (1997) (ordering attorney to pass MPRE following disciplinary proceeding); *In re Tarkong*, 3 ROP Intrm. at 12J (suspending attorney from bar with passage of MPRE as a condition to readmission). Respondent is hereby ordered to report to the Court on this matter within 12 months.

³ The MPRE is generally offered twice annually in Palau, in March and August. Therefore, the 12-month period should give Respondent two opportunities to take the exam on-island. Presently, the MPRE is next scheduled to be offered in Palau on March 13, 2006. A scaled score of 75 is considered passing within this jurisdiction.