

In re Doran, 15 ROP 113 (2008)
**In the Matter of
MARK DORAN,
Respondent.**

DISCIPLINARY PROCEEDING
NO. 08-004

Supreme Court, Disciplinary Tribunal Republic of Palau

Decided: July 1, 2008

Disciplinary Counsel: John K. Rechucher Counsel for Respondent: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALE, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

PER CURIAM:

¶114

On May 6, 2008, this Tribunal appointed Disciplinary Counsel to investigate a Complaint filed against the above-named respondent. The thrust of the Complainant's allegations is that Respondent may not be eligible to practice law in Palau because he has been suspended from the California State Bar since 1997.¹ The May 6 Order directed Disciplinary Counsel to inquire into possible violations of the Palau Rules of Admission for Attorneys and Trial Counselors ("Rules of Admission") and the Republic of Palau Disciplinary Rules ("Disciplinary Rules").

Disciplinary Counsel filed his Report on June 13, 2008. The report suggests that although Respondent may have violated Rule 10 of the Rules of Admission, such rule and Rule 2 of the Disciplinary Rules should not be applied in this case. The Disciplinary Counsel concludes that because Respondent's suspension in California was an "administrative" suspension based on his failure to pay bar dues instead of on a finding of misconduct, such an act does not warrant reciprocal discipline here. Disciplinary Counsel maintains that Rule 10 of the Rules of Admission and Rule 2 of the Disciplinary Rules were not intended to impose reciprocal "administrative" suspension to a member of the Palau Bar. Accordingly, Disciplinary Counsel opines that the Tribunal should dismiss this matter. The Tribunal disagrees.

DISCUSSION

¹ Complainant also raises the fact that Respondent was disciplined by the California State Bar in 1992. This issue was raised in a prior disciplinary proceeding where the Disciplinary Tribunal reviewed whether Respondent should have been sanctioned under Rule 11 (a) of the Republic of Palau Disciplinary Rules and Procedures for untimely reporting both his 1991 suspension and his 1992 public censure in California. *In re Doran*, 3 ROP Intrm. 253, 254-55 (1992). The Tribunal found no undue delay by Respondent in reporting both his suspension and public censure to the Chief Justice. *Id.* at 256. In that proceeding, however, Respondent's 1992 sanction was not considered in relation to Rule 10 of the Rules of Admission or Rule 2 of the Republic of Palau Disciplinary Rules and Procedures.

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Rule 10 of the Rules of Admission provides, in part, the following:

Any member of the Palau Bar . . . disbarred or *suspended* from the practice of law in any court of competent jurisdiction, shall *automatically be suspended* from the practice of law in the Republic of Palau. Provided, that in the event a member of the Palau Bar is disciplined in some other jurisdiction and the Palau Supreme Court determines from the record upon which the discipline was predicated that:

- (a) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (b) there was such an infirmity of proof establishing the misconduct that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (c) the imposition of the same **1115** discipline by this Court would result in grave injustice; or
- (d) the misconduct established is deemed by this Court to warrant substantially different discipline, then such attorney shall not be automatically similarly disciplined by this Court.

An attorney automatically suspended pursuant to this Rule may be reinstated upon approval of the Court only on written application showing cause why such attorney should be reinstated, excepting, however, that in the event the discipline imposed in the other jurisdiction has been stayed there, the discipline imposed in this Court shall likewise be deferred until such a stay expires in the other jurisdiction.

Any member of the Palau Bar convicted, disbarred, or suspended as described in this Rule *shall immediately notify in writing the Clerk of Courts* of such action and shall state the particulars thereof.

(emphasis added).

In addition, Rule 2 of the Disciplinary Rules provides, in pertinent part, the following:

Rule 2. GROUNDS FOR DISCIPLINARY ACTION.

An attorney may be subject to disciplinary action as provided by these rules for any of the following causes occurring within or outside the Republic of Palau.

...

(c) Violation of his oath or duties as an attorney.

...

(f) Suspension, disbarment, or other disciplinary sanction by competent authority in any state, federal, or foreign jurisdiction.

According to Disciplinary Counsel's report, Respondent was suspended from practicing law in California in 1997 due to his failure to pay his bar dues.² In fact, Respondent admits that "he voluntarily changed his status from that of an active member to an inactive member [of the California Bar] in 1992, but he has not paid his inactive membership fee." The Tribunal takes judicial notice that Respondent is an active member of the Palau Bar, has been a member of the Palau Bar since August 27, 1993, was admitted to the Palau Bar by examination, and has paid his dues to the Palau Bar for the current year.

Despite Disciplinary Counsel's arguments to the contrary, there is no Palauan legal authority **1116** that indicates that suspensions for failure to pay dues are excepted from the rules defined in Rule 2 of the Disciplinary Rules and Rule 10 of the Rules of Admission. These rules do not distinguish between what Disciplinary Counsel terms as "administrative" and "disciplinary" suspensions, nor do they premise any discipline on a finding of misconduct. Moreover, Disciplinary Counsel failed to review the requirement in Rule 10 of the Rules of Admission, which provides that "[a]ny member of the Palau Bar . . . suspended as described in this Rule shall *immediately notify in writing the Clerk of Courts of such action and shall state the particulars thereof.*" The Tribunal is not aware of any such notification regarding Respondent's suspension in California.

The Tribunal, therefore, finds by clear and convincing evidence that Respondent failed to immediately notify in writing the Clerk of Courts of his suspension in California and the particulars thereof, in violation of Rule 10 of the Rules of Admission. As Respondent is currently an active member of the Palau Bar, admitted by examination, the Tribunal shall not address the matter of reciprocal discipline as such discipline is unnecessary under these particular circumstances.

APPROPRIATE SANCTION

Disciplinary Rule 3 lists the various forms of discipline that maybe imposed on lawyers found to be in violation of the Rules. These include disbarment, suspension for not more than five years, public censure, private censure, a fine, or community service. "In determining appropriate sanctions, Tribunals in previous disciplinary proceedings in Palau have referred to the list of aggravating and mitigating circumstances set forth in the ABA Standards for Imposing Lawyer Discipline (1986)." *In re Schluckebier*, 13 ROP 35, 41 (2006) (citing *In re Tarkong*, 4

² In *In re Doran*, 3 ROP Intrm. 253 (1992), a similar issue was raised in relation to Respondent's suspension in 1991 for failure to pay dues. The Tribunal, however, never reviewed this issue because Respondent paid his dues and was reinstated to the California Bar before a decision was issued in the matter.

ROP Intrm. 121, 131 (1994)).

The aggravating factors listed by the ABA Standards are as follows:

(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution.

The mitigating factors are the following:

(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical or **1117** mental disability or impairment; (i) delay in disciplinary proceedings; (j) interim rehabilitation; (k) imposition of other penalties or sanctions; (l) remorse; (m) remoteness of prior offenses.

Id. “The ultimate prerogative and responsibility to select the appropriate discipline in light of all of the circumstances of this case, however, is our own.” *Id.*

Based on the foregoing, a hearing in this matter is hereby set for FRIDAY, JULY 11, 2008 at 10:00 A.M. in COURTROOM 101 at the Palau Supreme Court in Koror. During this hearing, Respondent shall have the opportunity to present any arguments or mitigating factors that may affect the Tribunal’s determination of an appropriate sanction.