

*In re Toribiong*, 15 ROP 107 (2008)  
**In the Matter of  
JOHNSON TORIBIONG,  
Respondent.**

DISCIPLINARY PROCEEDING  
NO. 08-002

Supreme Court, Disciplinary Tribunal  
Republic of Palau

Heard: May 26, 2008  
Decided: June 24, 2008

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Disciplinary Counsel: Clara Kalscheur

Counsel for Respondent: *Pro Se*

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

PER CURIAM:

This is a disciplinary proceeding in which Respondent Johnson Toribiong, 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.<sup>1</sup> Specifically, Respondent is charged with violating Palau Disciplinary Rule 2(h) and ABA Model Rule 13(a)(1) and (2) by representing, in a criminal case, two clients with concurrent conflicting interests.

### **BACKGROUND**

The disciplinary complaint arises out of Respondent's representation of Ting Feng Chiang and Lolita Pamintuan in consolidated Criminal Cases Nos. 06-183 and 06-212. The government alleged that the Carnival Bar, run by Chiang, covered a prostitution business run by Chiang. Pamintuan allegedly recruited women from the Philippines to work as waitresses but who were forced to work as prostitutes upon their arrival in Palau. Chiang was allegedly in charge of paying the women wages for services they rendered. Chiang was charged with 64 counts: 1 count of Advancing Prostitution, 16 counts of People Trafficking, 16 counts of Exploiting a Trafficked Person, 2 counts of Violation of the Foreign Investment Act, 2 counts of Aiding and Abetting Violation of the Foreign Investment Act, 9 counts of Violation of the Tax Code, 16 counts of Violation of Labor Laws and/or Regulations, and two counts of Money Laundering. Pamintuan was charged with 1 count of Advancing Prostitution and 7 counts of People Trafficking.

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

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At Chiang's bail hearing, Respondent notified the Trial Court that he was representing both Chiang and Pamintuan, and promised to advise the Court if he discovered a conflict in his dual representation. Chiang contends that he was never aware of Respondent's dual representation at trial, and Respondent admits that he never procured consent from Chiang or Pamintuan to the dual representation. At trial, Respondent did not put Chiang on the stand, believing that his testimony would be incriminating. He did have Pamintuan testify, hoping that her testimony that her only job at Carnival was to recruit women to serve as legitimate waitresses would distance both herself and Chiang from the criminal operations alleged to have taken place at Carnival. On cross examination, however, Pamintuan testified that Chiang made the final decisions on all matters involving wages for the waitresses, including wage deductions if the waitresses refused to prostitute themselves to customers of the bar. Thus, Pamintuan's testimony proved incriminating to Chiang while remaining exculpatory to her.

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### DISCUSSION

At oral argument in this matter, Respondent admitted that he did not file a response to the complaint filed by Disciplinary Counsel. According to Disciplinary Counsel, she served the Disciplinary Complaint and the Report of Disciplinary Counsel on Respondent through his secretary at Respondent's law office. This Tribunal finds that Respondent was served with the Disciplinary Complaint and the Report of Disciplinary Counsel on April 24, 2008, as stated by Disciplinary Counsel at the hearing. Pursuant to Rule 5(c) of the Disciplinary Rules, the "failure to file a timely answer shall constitute an admission that the complaint is true." Thus, the sole remaining issue for this Tribunal to decide is what, if any, sanctions are appropriate.

Even if we were to examine this case on the merits, we would find a violation of the Palau Disciplinary Rules and the ABA Model Rules of Professional Conduct. Rule 1.7 provides that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." 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 responsibilities to another client." Even if a conflict exists between two clients, a lawyer may represent both if "(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; . . . (4) each affected client gives informed consent, confirmed in writing." *See also In re Oilouch*, 13 ROP 31, 33 (2006).

But "[t]he potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant." Rule 1.7 cmt. 23. Thus, we would begin our analysis with the premise that Respondent should not ordinarily represent multiple defendants in a criminal case. In this case, Respondent claims that he never foresaw a risk of a conflict in his multiple representation because he believed Pamintuan's connection to the Carnival enterprise ended with another defendant in the case who was below Chiang in the chain of command. Respondent believed that he could keep Pamintuan separate from Chiang. Although we would find a "significant risk" in the representation of the recruiter and the mastermind of a criminal operation, even if it were reasonable to believe that Respondent could "provide competent and diligent representation to each affected client" under Rule 13(b)(1), Respondent never obtained written, informed consent to the multiple representation from either party as required by Rule 13(b)(4). Respondent claims that Chiang should have known of the multiple representation because of the proximity of

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Pamintuan at trial, but nothing short of written consent satisfies the Model Rules. At best, there was a significant risk of a conflict in Respondent's dual representation, and, even if this risk was reasonable, he did not obtain written consent from his clients in violation of Model Rule 1.7. *See Oilouch*, 13 ROP 31, 34 (2006) (finding a disciplinary violation when counsel "made no effort to inform his clients regarding the conflict of interest inherent in his [dual] representation . . . [or] any effort to obtain the informed consent of his clients to proceed with the dual representation").

### APPROPRIATE SANCTION

In determining a proper sanction, this **L110** Tribunal must seek "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). In this case, criminal defendants, Respondent, and the members of the Palau bar are well-served to take this opinion as a reminder of the inherent ethical pitfalls when a lawyer represents multiple criminal defendants in the same criminal matter. Respondent in particular appears to need a reminder of how to apply the ethical rules governing this profession. Therefore, in addition to a public censure under Rule 3(c), Respondent is ordered to obtain a passing score on the Multistate Professional Responsibility Exam (MPRE) within one year of the date of this opinion, as a service to the community and his future clients pursuant to Rule 3 (f). The MPRE is offered twice per year in Palau and a scaled score of 75 is considered passing in this jurisdiction. *See Oiloch*, 13 ROP at 34. If Respondent does not file with the Clerk of Courts proof of his passing such examination within one year, further sanctions will be imposed. *See id.* (ordering respondent to pass MPRE following disciplinary proceedings); *In re Shadel*, 6 ROP Intrm. 252,257 (1997) (same); *In re Tarkong*, 3 ROP Intrm. 12A, 12J (1991) (same).

Pursuant to Disciplinary Rule 3, Respondent is also ordered to pay the legal fees and costs of investigating and prosecuting this action. Disciplinary Counsel shall submit an accounting of her fees and costs to this Tribunal within thirty days of this decision and shall serve the same on Respondent. Respondent shall have ten days to file a written objection to Disciplinary Counsel's accounting. Absent an objection, Respondent is directed to pay such fees and costs no later than thirty days after service upon him of Disciplinary Counsel's submission. If an objection is filed, a single member of this panel shall resolve the fee dispute upon further proceedings. *See In re Perrin*, 10 ROP 111, 115 (2003); *In re Rechucher*, 7 ROP Intrm. 28, 32 (1998); *In re Webster*, 3 ROP Intrm. 229, 237 (1992).

Disciplinary Counsel is thanked for her efforts.