

*In re Remoket*, 15 ROP 82 (2008)  
**In the Matter of  
SALVADOR REMOKET,  
Respondent.**

DISCIPLINARY PROCEEDING  
NO. 07-002

Supreme Court, Disciplinary Tribunal  
Republic of Palau

Heard: April 9, 2008

Decided: April 11, 2008

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Disciplinary Counsel: William L. Ridpath

Counsel for Respondent: *Pro Se*

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

PER CURIAM:

This is a disciplinary proceeding in which Salvador Remoket (“Respondent”), 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 (6th ed.)<sup>1</sup> (hereinafter referred to as the “Disciplinary Rules” and “Model Rules,” respectively). The complaint charges Respondent with violating Model Rules 1.1, 1.3 and 1.4 by (1) failing to respond to an order to show cause issued by the trial court in a matter in which he was designated counsel for the plaintiff, (2) failing to advise his client that the matter had been dismissed due to failure to prosecute; and (3) failing to candidly and fully advise his client of the progress of his efforts to file a new action and the prospects for having such action heard on its merits. Prior to oral argument in this matter, Respondent admitted all the allegations made against him. Thus, the sole remaining issue for the Tribunal to consider is what, if any, sanctions are appropriate.

### **BACKGROUND**

A disciplinary complaint was filed on October 9, 2007, by Timothy “Tero” Uehara against Respondent. Mr. Uehara accused Respondent of neglecting to competently and zealously represent him in Civil Action No. 01-26 (the “lawsuit”), resulting in the dismissal of the case without prejudice.

The lawsuit was initiated by a complaint filed by Mr. Uehara’s prior counsel on January

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

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24, 2001. The claim alleged a breach of a construction contract between Mr. Uehara and defendants Masao Udui and Mardrine Sato. Mr. Uehara sought damages in the principal sum of \$62,000.00.

Respondent substituted as counsel for Mr. Uehara on June 3, 2004. On January 30, 2006, neither Respondent nor defendants' counsel appeared for a scheduled trial setting conference. On April 26, 2006, the Court ordered Mr. Uehara to show cause by May 10, 2006, as to why his case should not be dismissed for failure to prosecute. Upon Mr. Uehara's failure to file a statement in response to the Court's show cause order, the Court dismissed Mr. Uehara's case without prejudice on May 18, 2006. Mr. Uehara was not informed of the dismissal until January, 2007.

Mr. Uehara consulted Roman Bedor 184 concerning the dismissal, and Mr. Bedor contacted Respondent. Respondent telephoned Mr. Uehara a short time later to schedule a meeting, at which he admitted that he had erred and said that the matter could be re-filed since it had been dismissed without prejudice. Respondent said that he would work with Mr. Bedor to re-open the matter.

In subsequent communications through the first half of 2007, Mr. Uehara came to understand that Respondent would be the person preparing the documents necessary to re-open the lawsuit. In June 2007, Mr. Uehara went to Respondent's office and was told by him that most of such documents were ready, but that an affidavit was needed from David Shadel, who was off-island at the time. No further contacts were made between the two, and several months later, Mr. Uehara asked another attorney to look into the situation. This attorney reported to Mr. Uehara that nothing had been filed to re-open the lawsuit.

Mr. Uehara had paid Respondent a total of \$2,000.00, comprising a \$1,500.00 retainer at the outset of his representation of Mr. Uehara, and a subsequent \$500.00 payment.

When interviewed by Disciplinary Counsel, Respondent admitted that the lawsuit was dismissed due to his oversight resulting from practice demands. He also related that he did not promptly inform Mr. Uehara of the dismissal because he wanted to research a statute of limitations issue and inform Mr. Uehara of the prospects of re-filing the case. Respondent stated that on his own initiative, he eventually telephoned Mr. Uehara about the dismissal, but was not certain as to how long after the dismissal date that this occurred. Respondent also admitted that he neither prepared any documents to re-open the case nor told Mr. Uehara that he had done this, but rather he told Mr. Uehara that he was investigating the possibility if reopening the case or settling with the other litigants.

Pursuant to the Tribunal's order, Disciplinary Counsel filed a formal complaint on December 11, 2007. Respondent responded to the formal complaint on January 22, 2008. In his response, Respondent admitted all the allegations made against him. On January 28, 2008, this Tribunal found by clear and convincing evidence that (1) the dismissal of the lawsuit constitutes a violation of Rule 1.1, as it resulted from Respondent's incompetence in managing his practice demands; (2) the dismissal constitutes a violation of Rule 1.3 because it was caused by

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Respondent's lack of diligence and promptness; (3) Respondent's failure to promptly inform Mr. Uehara of the dismissal constitutes a violation of Rule 1.4; and (4) Respondent's failure to promptly investigate and inform Mr. Uehara as to the prospects of re-opening the matter constitute violations of Rule 1.3 and 1.4.

### APPROPRIATE SANCTION

Disciplinary Rule 3 lists the various forms of discipline which 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 ROP Intrm. 121, 131 (1994)). **185**

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 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.*

Considering the aggravating factors enumerated in the ABA Standards, Disciplinary Counsel recommends that we make the following findings: Respondent has no prior disciplinary offenses; he has not acted with a dishonest or selfish motive; he has not shown a pattern of misconduct; he has not committed multiple offenses; he did not in bad faith obstruct the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency; he did not submit false evidence, false statements, or commit other

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deceptive practices during the disciplinary process; he did not refuse to acknowledge the wrongful nature of his conduct; and he has not shown indifference to making restitution. In addition, Disciplinary Counsel asserts that Mr. Uehara is not particularly vulnerable in this matter. The sole aggravating factor that Disciplinary Counsel recommends that this Tribunal evaluate is Respondent's substantial experience in the practice of law. We agree with Disciplinary Counsel's recommendations and make these findings.

The Tribunal also considers the relevant mitigating factors enumerated in the ABA Standards. Disciplinary Counsel recommends that we find the following: Respondent has provided a full and free disclosure to the disciplinary board and has held a cooperative attitude toward these proceedings; Respondent holds a highly respected character and reputation 186 in the community; and Respondent shows sincere remorse for his conduct. Respondent has admitted full responsibility for his actions and testified that he has altered his office's calendaring practice in order to avoid the recurrence of such a mistake. Again, we agree with Disciplinary Counsel's recommendations and make these findings.

Additionally, as noted by Disciplinary Counsel, the Tribunal believes Mr. Uehara may, on his own accord, pursue a separate action against Respondent regarding any claims he may deem applicable.

As recommended by Disciplinary Counsel, we find that public censure is a proper sanction in this case. Respondent is required to (1) pay Mr. Uehara the \$2000.00 he received in legal fees, and (2) pay 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 Tribunal 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 further proceedings.