

In re Doran, 3 ROP Intrm. 253 (1992)
IN THE MATTER OF MARK P. DORAN,
Respondent.

DISCIPLINARY PROCEEDING NO. 3-92

Supreme Court, Disciplinary Tribunal
Republic of Palau

Decision and order
Decided: November 13, 1992

Disciplinary Counsel: John K. Rechucher

Attorney for Respondent: Carlos H. Salii

Disciplinary Tribunal: ARTHUR NGIRAKLSONG, Acting Chief Justice; LOREN A. SUTTON, Associate Justice; and ROBERT A. HEFNER, Part-time Associate Justice.

PER CURIAM:

This matter was heard by the Disciplinary Tribunal on November 9, 1992.

BACKGROUND

Respondent became an employee of Koror State on or about November 15, 1990, and on that basis was admitted to practice law before this Court. On August 12, 1991, he was suspended from the State Bar of California (the "State Bar") for his failure to pay his professional dues. Respondent apparently received notice of his suspension on October 8, 1991, although the Court notes the existence of a mail receipt showing delivery to Respondent's place of work on October 3, 1991. Respondent informed the Court of his suspension on October 8, 1991. Respondent has since paid his dues and been reinstated.

1254 On January 22, 1991, Respondent received notice that the State Bar had initiated proceedings against him for ethical violations. On March 30, 1992, Respondent signed a STIPULATION AS TO FACTS AND DISCIPLINE PURSUANT TO RULES 405 - 407 OF THE TRANSITIONAL RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA (the "Stipulation") with the State Bar whereby he admitted to performing or omitting certain actions, and he agreed to a public censure with conditions. The State Bar signed the Stipulation on May 12, 1992; on May 13, 1992 it became an order of the State Bar Court. Respondent was sent a copy of the Stipulation on May 18, 1992. Respondent notified the Court of his public censure by letter dated June 19, 1991 and received June 22, 1991; the letter stated that Respondent had just received a copy of the Stipulation. By letter dated June 25, 1992, Respondent was officially notified that the Stipulation was binding and effective and that he would be publicly censured with conditions.

The complaint against Respondent alleged violations of (1) the disciplinary rules and

In re Doran, 3 ROP Intrm. 253 (1992)

other laws in California and (2) Rule 11(a) of the Disciplinary Rules and Procedures for Attorneys and Trial Counselors Practicing in the Courts of the Republic of Palau (the “Rules”), in that Respondent delayed in reporting both his 1991 suspension and his 1992 public censure in California.

The resolution of this case turns upon two issues: (1) whether under Rule 11(a) Respondent had a duty to inform the Court upon the inception of a disciplinary proceeding against him, or only upon being sanctioned by another jurisdiction; and (2) whether reciprocal discipline should be imposed.

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RULE 11(a)

Rule 11(a) provides:

All attorneys . . . shall upon being subjected to professional disciplinary action in another jurisdiction promptly inform the Chief Justice of such action. Upon being informed that an attorney . . . has been subjected to discipline in another jurisdiction, the Chief Justice shall obtain a certified copy of such disciplinary order.

There is no Palau case law available to assist us in determining the meaning of this section. Accordingly, we turn to other authorities for assistance. The rules and cases in other jurisdictions lead to the conclusion that “disciplinary action” means the imposition of a sanction.

Two different Model Rules promulgated by the American Bar Association (the “ABA”) contemplate that reciprocal discipline proceedings begin only upon an attorney’s sanction in another jurisdiction. The Model Rules for Lawyer Disciplinary Enforcement, promulgated by the ABA House of Delegates in August 1989, Rule 22, provides: “Upon being disciplined in another jurisdiction, a lawyer admitted to practice . . . shall promptly inform disciplinary counsel of the discipline.” The Model Federal Rules of Disciplinary Enforcement, promulgated by the ABA House of Delegates in February 1978, Rule II, provides: “Any attorney admitted to practice before this Court shall, upon being subjected to professional discipline by any other Court . . . promptly inform the Clerk of this Court of such action.” We pause to note that the Republic of Palau Disciplinary Rules make reference to other ABA Rules. *See* Rule 2(h).

1256 In addition, case law regarding licensing in other professions define “disciplinary action” as censure, reprimand or other sanctions or as restrictions imposed on a license--in other words, a sanction, *Bhuket v. State ex rel. Missouri State Bd. of Registration* , 787 S.W. 2d 882, 885 (Mo. App. 19__). According to this interpretation, an attorney would be “subject to disciplinary action” only once a sanction had been imposed upon him.

It seems clear, then, under Rule 11(a) an attorney admitted to practice in Palau should be required to notify the Chief Justice promptly once the attorney has received notice that he has been sanctioned by another jurisdiction. Requiring an attorney to report the initiation of proceedings against him in another jurisdiction would violate the basic principle of our legal

In re Doran, 3 ROP Intrm. 253 (1992)

system that a person is considered guiltless until his guilt or liability has been proven in court. If a Palau attorney reported the initiation of a disciplinary proceeding to the Court and was later exonerated, his reputation before the Court and in Palau circles might nevertheless be affected.

Under the facts of this case, we find no undue delay by Respondent in reporting both his suspension and public censure to the Chief Justice, once he was informed of the sanctions. Accordingly, Respondent shall not be sanctioned under Rule 11(a).

RECIPROCAL DISCIPLINE

At the hearing on this matter, Respondent stated that he was not aware from the complaint that reciprocal discipline might be imposed by the tribunal. We find that although Count 2 of the L257 complaint revolves around Respondent's actions in California, it is not clear that reciprocal discipline is sought, and the words "reciprocal discipline" do not appear in the complaint nor does Count 2 cite Rule 11. The only Rule cited in the conclusion of the complaint is Rule 11(a), for Respondent's alleged delay in informing the Chief Justice.

Because the Court believes Respondent was not given sufficient notice that reciprocal discipline was sought, Respondent will not be subject to reciprocal discipline at present.

Nevertheless, the Court hereby gives notice to Respondent under Rule 11 that he is ORDERED to inform the Court why the imposition of discipline identical to that imposed upon him by the State Bar of California would be unwarranted in the Republic of Palau. Respondent stipulated to a 10-day deadline, and accordingly he shall respond within 10 days of the date of this decision. Further, Respondent's arguments shall be limited to Rule 11(c)(3) of the Rules, given his stipulation regarding Rules 11(c)(1) and (2).