

In re Wolff, 5 ROP Intrm. 184 (1996)
IN THE MATTER OF MARTIN WOLFF,
Respondent.

DISCIPLINARY PROCEEDING NO. 4-95

Supreme Court, Disciplinary Tribunal
Republic of Palau

Decision

Decided: March 4, 1996

Disciplinary Counsel: Derek J. Simmons

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice

PER CURIAM:

Disciplinary Counsel filed a complaint against Martin Wolff arising from the course of litigation in *Superluck Enterprises, Inc. v. Republic of Palau*, Civil Action Nos. 20-85 & 45-85, and related incidents. *Superluck* included issues involving the value and condition of the M/V AESAREA. After deadlines for discovery had passed, Juliet Browne, an Assistant Attorney General, informed Wolff that she had discovered a memorandum about these issues. The memorandum Browne gave to Wolff contains the signature of former Attorney General Russell Weller and has been referred to in the course of these proceedings as the "Weller Memorandum." Much of the controversy in the instant action involves the Weller Memorandum. Wolff stated that Browne fabricated the Weller Memorandum.

Other aspects of the *Superluck* litigation are also implicated by the present disciplinary proceedings. Captain Gerald Seymour gave testimony and submitted a report about the condition and value of the M/V AESAREA. Wolff stated that the testimony and report are false, and that Browne induced those false statements.

The complaint filed by Disciplinary Counsel focuses on a status conference on August 12, 1994; a status conference on April 4, 1995; a letter that Wolff wrote to Justice Miller; and Wolff's ethics complaint against Browne. All of the counts against Wolff are based on the American Bar Association Model Rules of Professional Conduct. Those rules apply to attorneys practicing in Palau. ROP Professional Conduct Rule 2(h). "The standard of proof for establishing allegations of misconduct shall be clear and convincing evidence." ROP Professional Conduct Rule 5(e).

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Wolff's Statements that Browne Fabricated the Weller Memorandum

Wolff admits that during both status conferences, in his response to Browne's ethics complaint against him, and in his ethics complaint against Browne, he accused Browne of

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fabricating the Weller Memorandum. Wolff does not challenge Disciplinary Counsel's assertions that Weller had identified the signature on the memorandum as his own, that Weller had no recollection about whether he had signed the document but did not deny signing the document, and that Browne explained that the document was not produced in a timely manner because it had been misfiled. Wolff argues that he made the allegations against Browne because the Weller Memorandum was disclosed "on her watch," it was disclosed late, and other evidence about the subject matter of the memorandum calls into question the veracity of the statements made within the memorandum. Wolff admits that, before he made the accusations against Browne, he made no investigation into whether Browne was the person who had caused the alleged fabrication. In connection with his statements against Browne regarding the Weller Memorandum, Wolff has been charged with violating various provisions of the Model Rules.

Rule 8.4(d)

Rule 8.4(d) states that a lawyer commits professional misconduct by "engag[ing] in conduct that is prejudicial to the administration of justice." In a prior action involving this Respondent, the Tribunal determined that Wolff had violated, inter alia, Rule 8.4(d) when he made a "racist, irrelevant, and impertinent statement [that] was obviously meant to serve no other purpose than to embarrass opposing counsel." *In the Matter of Martin Wolff*, 5 ROP Intrm. 51, 51-52 (1995). The Tribunal noted that the statement "prejudiced the administration of justice by sully[ing] the court's files, and by diverting the time and energy of both the trial judge presiding over the civil action and members of [that] Panel." *Id.* at 51.

In the instant case, Wolff's baseless accusation sullied the court's files and diverted the time and energy of the trial judge and this Tribunal. Nonetheless, unlike the prior *Wolff* action, the conduct of the Respondent vis-a-vis the Weller Memorandum may have been meant to serve purposes other than embarrassing opposing counsel.

An attorney prejudices the administration of justice when he has made "foul and unfounded aspersions upon the character and conduct of [other] members of the bar." *See* Annotation, *Attorneys' Verbal Abuse of Other Attorneys*, 87 A.L.R.3d 351, 357-66 (1978) (citing *Tenn. Bar Assoc. v. Freemon*, 362 S.W.2d 828 (1961); *Leimer v. Hulse*, 178 S.W.2d 335 (Mo. 1944); *Duke v. Committee on Grievances of the Supreme Court*, 82 F.2d 89 (D.C. Cir. 1936)). *See also Matter of Ronwin*, 680 P.2d 107, 115 (Ariz. 1983) (an attorney's subjective belief in a fact asserted in a proceeding is insufficient because "unfounded accusations" and "[b]elief unrelated to reason is a hallmark of fanaticism, zealotry or paranoia The practice of law requires the ability to discriminate between fact and faith, evidence and imagination, reality and hallucination."); *In re Richeson*, 166 P.2d 583 (Ariz. 1946) (using a "groundless" and "malicious" standard).

An attorney must zealously represent his client, and we do not intend to discourage zealous advocacy. Nonetheless, an attorney crosses the boundary between zealous advocacy and ethical impropriety when he makes unfounded aspersions on the character of another attorney. Wolff did not violate the disciplinary rules by arguing that the memorandum was fabricated; delay in production of the memorandum and its author's lack of recollection of it permitted Wolff

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to urge the Court to draw the inference that it was fabricated, even in the face of the author's acknowledgment of his signature on the memorandum.

Nonetheless, Wolff violated Rule 8.4 when he accused Browne of fabricating the memorandum. Nothing supports these very serious accusations against Browne. Clear and convincing evidence shows that Wolff violated Rule 8.4(d) when he accused Browne of fabricating the Weller Memorandum during each of the two status conferences, in the letter to Justice Miller, and in the disciplinary action¹ that he filed against Browne.

Accusations about Captain Seymour's Statements

Wolff admits that, in the ethics complaint that he filed against Browne, he accused Browne of inducing a false report from Captain Gerald Seymour. Wolff stated that he wanted to "bring to the Court's attention what [he] believed to be recent manufacture L187 [sic] of evidence by opposing counsel." After noting conflicts in the versions of the facts that had been gathered, Wolff concluded that Seymour's report was "as phony as a three dollar bill."

Disciplinary Counsel has shown by clear and convincing evidence that Wolff violated Rule 8.4(d). He may have had reasons to believe that the assertions made by Seymour are untrue; Wolff is not subject to discipline for the accusations that he made against Seymour. Nonetheless, he crossed the line into "foul and unfounded" accusations when he made the accusation that Browne had induced Seymour to manufacture the false statements. Nothing supports that conclusion.

CONCLUSION

Wolff violated Rule 8.4(d) when he accused Browne of fabricating the Weller Memorandum and manufacturing false testimony by Seymour. The remaining allegations against Wolff were not proved by clear and convincing evidence. In accordance with the parties' agreement and this Tribunal's prior order, at a later date the Tribunal will conduct a hearing to determine the penalty or penalties for these violations.

¹ Wolff argued that the action he filed against Browne was aimed at fulfilling his obligation to bring to light potential ethical violations. However, he has such an obligation only if he has "knowledge" that a lawyer violated certain rules of professional conduct. Model Rule 8.3. See Preamble, ABA Model Rules of Professional Conduct, Terminology, paragraph 5 (1991). Nothing indicates that he had such knowledge; his allegations were unfounded.