In re Wolff, 8 ROP Intrm. 16 (1999)
IN THE MATTER OF THE APPLICATION OF MARTIN WOLFF, Petitioner.

DISCIPLINARY PROCEEDING
No. 99-01

Supreme Court, Disciplinary Tribunal
Republic of Palau

Argued: August 6, 1999
Decided: August 19, 1999

Counsel for Petitioner: Marvin Hamilton

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MILLER, Justice:

Respondent Martin Wolff has petitioned this Tribunal for reinstatement to the bar of the Republic of Palau. Wolff was disbarred on July 12, 1996, *In re Wolff*, 5 ROP Intrm. 249 (1996), following findings that Wolff had violated ROP Rule of Professional Conduct 2(h) and Model Rule 8.4(d) of the American Bar Association's Model Rules of Professional Conduct by making unfounded allegations that an Assistant Attorney General had fabricated evidence and procured false testimony in a civil case. *In re Wolff*, 5 ROP Intrm. 184 (1996). We review first Wolff's disciplinary history, then the submissions made in this proceeding, and finally analyze all of this evidence in light of the standards applicable to a reinstatement petition.

Discipline prior to disbarment

⊥17 Prior to the 1996 allegations, Wolff had previously been found by this Tribunal to have violated Rules 4.4 and 8.4(d) of the ABA Model Rules, and was publically reprimanded and contingently fined $1,000, [1] for filing an affidavit containing racial slurs directed at opposing counsel. *In re Wolff*, 5 ROP Intrm. 51 (1995). The filing of the affidavit also resulted in Wolff being held in contempt by the trial judge presiding over the case. On Wolff's appeal, the contempt citation was upheld by the Appellate Division. *Dalton v. Heirs of Borja*, 5 ROP Intrm. 95 (1995).

[1] The fine was contingent on the outcome of the appeal of the contempt sanction. Because the contempt sanction was affirmed on appeal, the fine imposed by the Disciplinary Tribunal was vacated.

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Discipline resulting in disbarment

Wolff's disbarment resulted from allegations he made during court proceedings in the case of *Superluck Enterprises Inc. v. Republic of Palau* , Civil Action Nos. 20-85 and 45-85. *In re Wolff*, 5 ROP Intrm. 184 (1996). On four separate occasions before the court, Wolff accused Assistant Attorney General Juliet Browne of fabricating a memorandum that was produced after discovery in the case had ended. Wolff admitted that he made no investigation into the truth of his accusations against Browne before making them. *Id*. at 185. While the Tribunal recognized Wolff's right to assert that the memorandum was fabricated, it found that Wolff's accusation that Browne fabricated it was unsupported, and that such allegations were "conduct prejudicial to the administration of justice" under ABA Model Rule 8.4(d). *Id*. at 184-85. In addition, the Tribunal found that Wolff violated the same rule by also accusing Browne of inducing a witness to file a false report. *Id*. at 186-87. Again, while noting Wolff's right to challenge the content of the report, the Tribunal found that Wolff's allegation that Browne had induced the witness to make false statements was "foul and unfounded." *Id*.

Following the Tribunal's finding of Wolff's violations, Justice Hoffman was appointed as Master to make findings of fact to assist the Tribunal in determining the appropriate punishment to be imposed on Wolff. Following a four day hearing which was held from April 16 through April 19, 1996, he issued twenty-nine pages of factual findings. Among those findings, Justice Hoffman stated that

> [i]n the past seven years, Wolff had made 14 separate accusations, including the one that is the subject of this proceeding, of dishonesty, false statements, fraud, suborning perjury, etc. against ten members of the Bar. Many of the accusations contain multiple charges of wrongdoing on the accused Bar Member's part. None of the charges were found to have merit. With many of them, the court or disciplinary counsel found the charges to be frivolous and without foundation.

Further, Justice Hoffman found that Wolff had brought suit against twelve members of the bar (some of them more than once) in response to those attorneys representing clients in actions against persons represented ⊥18 by Wolff. [2] Finally, Justice Hoffman found that Wolff had intentionally made false statements to the Court in the course of an appellate argument, *see Wolff v. Sugiyama* , 5 ROP Intrm. 207, 212-13 (1996), that Wolff had communicated with parties he knew to be represented by counsel in litigation in Palau, and that he had previously been privately reproved by the State Bar of California for the same behavior.

On June 24, 1996, Wolff submitted his resignation from the bar. Wolff was informed that the Tribunal would not act on his tendered resignation since the bifurcated hearing had only completed the merits phase, and the Tribunal had yet to determine the appropriate penalty. Wolff did not appear for the oral argument on the penalty phase, despite the Tribunal's Show Cause Order directing him to appear. Accordingly, Justice Hoffman's findings of fact were adopted by the Disciplinary Tribunal, his resignation was rejected, and pursuant to the terms of the Show

[2] The Master was able to determine that two of these lawsuits were frivolous, and made no findings as to the rest.

Cause Order, Wolff was deemed to have consented to the penalty of disbarment. *In re Wolff*, 5 ROP Intrm. 249 (1996).

Matters subsequent to disbarment

Wolff was again the subject of disciplinary proceedings following his disbarment. In *In re Wolff*, 6 ROP Intrm. 205 (1997), the Tribunal considered allegations that, prior to his disbarment, Wolff had participated with his client in interrogating an adverse witness in violation of a court order. The Tribunal found that, in December 1995, Wolff's client in a criminal matter and the client's estranged wife appeared at Wolff's office one evening. *Id*. at 211. As part of pretrial proceedings, the trial court had issued an order prohibiting the client from having any contact with his wife prior to her testimony. *Id*. at 207. Despite his knowledge that the client's appearance with his wife violated the court's order, Wolff proceeded to interrogate the spouse for several hours in the client's presence. *Id*. at 211. The Tribunal found that Wolff's interrogation of the spouse, in violation of the court order, was conduct prejudicial to the administration of justice in violation of ABA Model Rule 8.4(d). [3] *Id*. at 214. Since Wolff had already been disbarred at this point, the Tribunal did not determine a penalty, but stated that existence and nature of the violation was a factor to be considered should Wolff apply for reinstatement to the bar in the future. *Id*. at 216.

In April 1997, Wolff was found liable in a civil action [4] for several torts against two of his domestic helpers. *Arugay v. Wolff*, 7 ROP Intrm. 227 (Tr. Div. 1997). The trial court found that in 1993, Wolff forcibly raped ⊥19 one of his domestic helpers. *Id*. at 227-28. Additionally, on another occasion, in response to his wife's outrage over rumors in the community that Wolff was having sex with his domestic helpers, Wolff forced the helpers to walk partially naked through the streets of Ngchesar Village. *Id*. at 229-30. The Trial Division found Wolff liable for assault and battery, invasion of privacy, false imprisonment, intentional infliction of emotional distress, and conversion, and issued a judgment against him for $191,957.88 in compensatory damages, and an additional $112,000 in punitive damages. *Id*. at 230-33. Wolff, who unsuccessfully sought an order calling for the judiciary to pay the cost of a free transcript of the trial proceedings, *Wolff v. Arugay*, 6 ROP Intrm. 191 (1997), did not challenge on appeal the trial court's findings of fact, and his appeal of the award of punitive damages was unsuccessful. *Wolff v. Arugay*, 7 ROP Intrm. 22 (1998).

Wolff's petition for reinstatement

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[3] In addition, the Tribunal noted that the facts supported an additional finding that Wolff offered an inducement to the spouse to testify favorably to his client in violation of ABA Model Rule 3.4(b). However, since disciplinary counsel had not charged such a violation in the complaint, the Tribunal did not formally find Wolff guilty of an additional disciplinary infraction. 6 ROP Intrm. at 215-16.

[4] The Tribunal is aware that the burden of proof in a civil case is merely the preponderance of the evidence, while disciplinary proceedings require clear and convincing evidence. ROP R. Prof. Conduct 5(e); *In re Wolff*, 5 ROP Intrm. 184 (1996). The findings of fact in the civil case are weighed with that discrepancy in mind.

In re Wolff, 8 ROP Intrm. 16 (1999)

On June 23, 1999, Martin Wolff petitioned the Disciplinary Tribunal for reinstatement. In his petition, Wolff alleged that at the time of his disbarment, he was suffering a major depressive disorder, commonly called "burn out syndrome." He argued that he is currently fit to practice law and that he should be reinstated to the bar because any further disbarment constitutes punishment. He attached a chronology of events dating back to 1983, which he attributes to causing his "complete mental and physical breakdown." Additional attachments chronicled his appointment to the President's National Task Force on Agriculture Development in April 1999, and his resignation therefrom less than two months later.

At the hearing on his petition for reinstatement, Wolff offered testimony from three witnesses--two members of the bar, [5] and a national legislator--and statements from several other prominent members of the community, as well as his own testimony. All the witnesses offered by Wolff generally testified that they believe he should be given a second chance, and several noted his work on behalf of the agricultural community of Palau and observed that since the disbarment, Wolff had become more humble and mature.

Wolff himself testified that he was happy as a farmer in Ngchesar, and that his petition for reinstatement was occasioned by pleas for assistance from President Nakamura and Johnson Toribiong. He testified that he himself did not care if he was reinstated and never thought about resuming the practice of law until President Nakamura suggested it. [6] Wolff testified that, around the time of his disbarment, he was suffering from "burn out syndrome," and that he had since received psychological counseling from Dr. Collier. He testified that he sees a change in himself as a result of the counseling, that he has gained perspective, and that he is more relaxed and less confrontational. Regarding the *Arugay* case, Wolff disputes the finding that he raped one of the helpers, and submitted an affidavit to the Tribunal that states that at the time of ⊥20 the rape, he was having an affair. He contends that this fact would have rebutted the allegation that he told the helper that his sexual needs were going unfulfilled because of his wife's pregnancy. Wolff states that he chose not to offer that evidence at the trial of the case because of the consequences to his paramour.[7]

In addition to the evidence submitted by Wolff, the Tribunal also received a letter from a member of the general public, advocating a conditional reinstatement of Wolff. Two members of the bar filed affidavits in opposition to Wolff's petition, one suggesting that the findings in the *Arugay* case evidence Wolff's moral turpitude and that he is unfit to practice law in Palau, the other stating that he did not believe that Wolff had taken any steps to made amends to either the members of the Palau Bar Association or the general public for his conduct.

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[5] Apparently dissatisfied with the tenor of one witness' live testimony, Wolff subsequently filed written interrogatories the witness had answered a month earlier.

[6] Wolff testified that he had previously considered filing a petition for reinstatement, but solely for the purpose of clearing his record in anticipation of seeking a doctorate in agricultural studies from an Australian university.

[7] Wolff also contends that he knows the identity of the "real rapist." He argues that this evidence is relevant not only to dispute the verdict in the *Arugay* case, but also to demonstrate the profound change in his personality. He argues that if the trial of this civil case had occurred before his disbarment, he would certainly have disclosed the identities of these individuals to his benefit.

Analysis

A disbarred lawyer seeking reinstatement to the Palau bar must demonstrate that he is qualified to practice law in the Republic of Palau and is worthy of the Court's trust and confidence. Rule 13, *Disciplinary Rules and Procedures for Attorneys and Trial Counselors Practicing in the Courts of the Republic of Palau.* The Tribunal considers the following factors when deciding an application for reinstatement:

(1) character and standing prior to the disbarment;
(2) the nature and character of the charge for which he was disbarred;
(3) his conduct subsequent to disbarment;
(4) the extent of Petitioner's rehabilitation;
(5) the time that has elapsed between disbarment and the application for reinstatement;
(6) Petitioner's demonstrated consciousness of wrongful conduct and disrepute which the conduct has brought to the profession;
(7) present moral fitness of Petitioner;
(8) Petitioner's current proficiency in the law; and
(9) Petitioner's frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.

7 Am. Jur. 2d *Attorneys at Law* § 116; *Matter of Dunn* , 707 P.2d 1076 (Kan. 1985); *In re Moynihan*, 778 P.2d 521 (Wash. 1989).

A disbarred attorney bears a heavy burden to prove that he can undertake the practice of law without endangering the public or reputation of the profession. *Id.* In order to be reinstated, a disbarred attorney must present clear and convincing evidence both that he has reformed and that he currently possesses good moral character. 7 Am. Jur. 2d *Attorneys at Law* §117; *Hippard v. State Bar*, 782 P.2d 1140 (Cal. 1989).

This Tribunal finds that Wolff has failed to meet his burden in several significant ⊥21 respects. First, an applicant seeking reinstatement cannot meet his burden to show rehabilitation by words alone--rather, a disbarred attorney must show by his actions that he is fit to practice law. *Matter of Ayala*, 812 P.2d 358, 359 (N.M. 1991). Therefore, when analyzing a petitioner's conduct subsequent to disbarment, courts have looked at the petitioner's efforts at employment, especially if the petitioner held a position of trust, whether the petitioner has engaged in volunteer activities, and whether the petitioner has undergone any substance abuse or psychiatric treatment. *See, e.g., In re Moynihan* , 778 P.2d 521, 523-24 (Wash. 1989); *Werner v. State Bar* , 265 P.2d 912 (Cal. 1954). Wolff presented no evidence other than his own testimony and that of a few witnesses to demonstrate his reformation. Although letters and testimony from supporters, especially members of the bar, are admissible as evidence and are entitled to great weight in proving rehabilitation, *Hippard v. State Bar* , 782 P.2d 1140 (Cal. 1989), they are insufficient to meet Wolff's burden in this case. The witnesses could not recite any specific actions by Wolff which demonstrate a substantial reformation of his trustworthiness and fitness to practice law. Other than Wolff's brief service on the President's Task Force on Agriculture Development,

Wolff failed to present any significant evidence of actions demonstrating his rehabilitation.

Moreover, although it is Wolff's contention that, at or before the time of his disbarment, he was suffering from "burn out syndrome" and was psychologically unfit to defend himself in the ongoing disciplinary proceedings, he has presented no psychiatric evidence or testimony concerning his current condition beyond his own affirmation that he is 100% better than he was three years ago.

Another important factor to be considered in addressing a petition for reinstatement is whether the applicant has acknowledged his wrongdoing and has taken responsibility for his misconduct. *Application of Griffith* , 913 P.2d 695 (Ore. 1996). Continuing to blame others for prior misconduct warrants denial of petition for reinstatement. *Matter of Quintana*, 812 P.2d 786 (N.M. 1991). In his testimony, it was clear that Wolff has still not taken responsibility for his actions. There was no testimony that Wolff had apologized to Juliet Browne for his unfounded allegation that she fabricated evidence which resulted in his disbarment. [8] Similarly, there is no evidence that Wolff has made any attempt to satisfy the pending judgment against him. [9] When questioned about specific conduct, he continued to avoid taking responsibility for his actions. He either contends that the findings were in error or else he blames it on his illness. [10] Further, he testified that he ⊥22 knows "what really happened" regarding the events in the *Arugay* case, and that he "sleeps well at night" with that knowledge. Although Wolff disputes the rape charge, he has repeatedly admitted to parading his two female domestic helpers partially naked through the village. Given these admissions, this Tribunal finds the testimony that Wolff "sleeps well at night" particularly troubling. Finally, Wolff even denied misconduct that he had previously admitted. When questioned about the Tribunal's finding in *In re Wolff*, 6 ROP Intrm. 205 (1997), of an additional uncharged violation due to Wolff's offering an inducement to a witness to testify for the defense, *see* n. 3 *supra*, Wolff now says that he never told her that he would defend her. At the time, however, he admitted that she was offered free legal services, [11] but argued that it is was not unethical since it was in exchange for her truthful testimony.

Finally, the Tribunal finds that the fact that less than three years have elapsed since Wolff's disbarment, weighs against his reinstatement. Although Wolff is correct that disbarment

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[8] Wolff did testify that he apologized to the target of the racial slurs that resulted in the 1995 discipline.

[9] Whether or not the attorney seeking reinstatement has made restitution to the individuals he has wronged is one factor or moral fitness that courts have considered. *Hippard v. State Bar of California*, 782 P.2d 1140 (Cal. 1989) (denying attorney's petition for reinstatement solely because he had not made restitution). The significance of restitution is that it forces the attorney to "confront in concrete terms, the harm his actions have caused." *Id.* at 1145.

[10] Wolff suggested in his testimony that he was unable, at the time of the prior disciplinary proceedings, to object to the extensive findings of fact made by Justice Hoffman. However, he did not offer any testimony in this proceeding that would negate those findings in whole or in part.

[11] *See In re Wolff*, 6 ROP Intrm. at 214: "[The witness] was told (according to Wolff's version) that, if she 'told the truth,' and that if she was prosecuted for anything in connection with the testimony, his client would pay Wolff's legal fees, and Wolff would defend her."

is not intended primarily as punishment, disbarment is intended to protect the public and the profession. The mere passage of time, therefore, does not result in reinstatement. *Matter of Ayala*, 812 P.2d 358, 359 (N.M. 1991). Rather, the sufficiency of time elapsed is determined by weighing the nature of the offense against the time that has elapsed. *Matter of Reinstatement of Stroh*, 739 P.2d 690 (Wash. 1987). Given the extensive history of Wolff's misconduct, his burden in demonstrating that he has changed his ways and is now worthy of this Court's trust and confidence is significant.

Much was made in the course of Wolff's testimony and his counsel's closing argument about the transformation of the "old" Martin Wolff to the "new" Martin Wolff. This panel is unconvinced. To the contrary, the panel finds on the basis of Wolff's own testimony that any such transformation has either not taken place, or, at the least, has not fully taken hold.[12]

Two examples will suffice. First, asked to comment upon the generally positive letter submitted by a member of the public, *see* p. 6, *supra*, Wolff surmised that the letter had been drafted by Johnson Toribiong.[13] There is no evidence before the panel either to support or reject that supposition. What is remarkable, however, is that the Wolff, whose disbarment followed immediately upon a ⊥23 finding that he had made an unfounded accusation, would take the opportunity of presenting his own sworn testimony before this Tribunal to engage in similarly reckless factual speculation.[14]

Second, and more disturbing, was Wolff's reaction to questioning concerning the most recent disciplinary proceeding against him. In particular, Wolff professed surprise at the notion that the Disciplinary Tribunal in that proceeding had treated as factual admissions the content of leading questions that he had posed to a witness at the criminal trial at issue there. According to Wolff, he had learned something "new" about cross-examination from the findings of the Tribunal, since he had previously believed that a lawyer was entitled to "put words" in a witness' mouth. Of course, however, the principle upon which the prior Disciplinary Tribunal had relied was the well-established "rule that a lawyer may not cross-examine a witness by asking questions that lack a factual basis," [15] much less suggest answers that he knows or believes are untrue and where the intended result of such cross-examination would be to elicit false testimony. Wolff's surprise was, if not disingenuous, then at least an indication that he has not

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[12] In his letter of resignation from the Task Force on Agriculture Development, Wolff stated that "the last three years of absence from public, social and political activity has not mellowed me one iota." Although Wolff argued that this sentence merely meant that he still knew right from wrong, the Tribunal finds this statement troubling and that it contradicts the testimony stating that Wolff has changed and is more humble.

[13] There is nothing inherently disparaging in the notion of an attorney assisting a layperson in the submission of a letter in legal proceedings. Wolff's comments, however, implied not that Mr. Toribiong had merely assisted the author in the grammar and organization of his letter, but that he had used him as a mouthpiece for presenting his own views to the Tribunal.

[14] What is even more remarkable is that such speculation followed Mr. Toribiong's appearance, at Wolff's request, in support, albeit sometimes hesitantly offered, of his petition.

[15] *United States v. Finley*, 934 F.2d 837, 839 (7th Cir. 1991) (*citing, Michelson v. United States*, 69 S.Ct. 213, 221 n.18 (1948)); *see also*, Rule 3.4, *Model Rules of Professional Conduct*.

yet fully come to grips with the ethical failings which led to his disbarment -- a necessary step if there is to be a true transformation in Wolff's approach to the practice of law.

* * *

Our rule that a disbarred attorney may apply for reinstatement implies as well that the rejection of a petition for reinstatement is without prejudice. If Petitioner sees fit, he may again apply for reinstatement at some later date. For all of the reasons stated above, however, we conclude that the current petition should be DENIED.