

FSM SUPREME COURT TRIAL DIVISION

IN THE MATTER OF ATTORNEY )  
MARSTELLA E. JACK, ESQ. )  
 )  
Respondent Attorney. )  
\_\_\_\_\_ )

DPA NO. 001-2006

DECISION

Dennis L. Belcourt  
Associate Justice

Hearing: August 25, 2021  
Submitted: September 15, 2021  
Decided: November 9, 2021

APPEARANCES:

Disciplinary Counsel: Johnson Asher, Esq.  
P.O. Box 1183  
Kolonia, Pohnpei FM 96941

For the Respondent Attorney: Marstella Jack, Esq. (pro se)  
P.O. Box 2210  
Kolonia, Pohnpei FM 96941

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HEADNOTES

Attorney Discipline

The disciplinary rules do not encourage settlement or compromise between the disciplinary counsel and the respondent-attorney, and any settlement between them does not, in itself, justify abatement of the

disciplinary proceedings. The court may reject a sanction jointly proposed by the disciplinary counsel and respondent-attorney. In re Jack, 23 FSM R. 441, 443 (Pon. 2021).

Attorney and Client; Constitutional Law – Professional Services Clause; Criminal Law and Procedure – Right to Counsel

Rule 4.2 (prohibiting communication with represented party without consent of party’s attorney) is an important protection of the right to an attorney, a right that is enshrined in the FSM Constitution. In re Jack, 23 FSM R. 441, 443 (Pon. 2021).

Attorney Discipline

When a disciplinary matter has been pending for about 15 years, which passage of time presents concerns; when the record does not suggest that the improperly-contacted party suffered any prejudice as a result of the contact; and when the respondent-attorney has not been found subject to discipline in any other instance, an appropriate sanction will be a \$300 fine, payable within 90 days, and making it a matter of public record. In re Jack, 23 FSM R. 441, 444 (Pon. 2021).

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COURT’S OPINION

DENNIS L. BELCOURT, Associate Justice:

This matter comes before the Court on a request by disciplinary counsel and respondent-attorney that it accept their stipulation of that respondent-attorney violated Rule 4.2 of the FSM Model Rules of Professional Conduct and that she be fined for said violation.

I. BACKGROUND

On March 23, 2006, pursuant to this Court’s Disciplinary Rules and Procedures (“Disciplinary Rules”), Rule 4(a), a motion to initiate the subject disciplinary proceedings was made by a specially assigned justice. On June 6, 2006, an order was issued appointing disciplinary counsel; however, due to potential conflict he was replaced with a second disciplinary counsel on December 18, 2008. On January 19, 2009, the new disciplinary counsel filed her report recommending that a formal complaint be filed in this matter and that appropriate action be taken. On October 20, 2009, disciplinary counsel was directed to file a formal complaint by October 30, 2009 and a formal hearing was set for November 24, 2009. On October 22, 2009, disciplinary counsel filed a complaint, notifying respondent-attorney to file her answer no later than 20 days after service of the complaint and notice. Some discovery was completed, and a hearing was held November 24, 2009 at 10:45 a.m.

On December 9, 2009, before a decision was issued from the hearing, respondent-attorney filed a motion to quash the hearing, contending that disciplinary counsel was ineligible as a staff attorney for the court and had not been admitted to practice before the court. On February 8, 2010, the presiding judge, Chief Justice Andon Amaraich, having passed away, the acting chief justice, the Honorable Martin Yinug, deferred decision on the motion. On February 28, 2011, upon the departure of the second disciplinary counsel, a third disciplinary counsel was appointed by the Court, followed, on May 13, 2011, by the vacation of said appointment and appointment of a fourth disciplinary counsel.

Consecutive enlargement motions were filed by the fourth disciplinary counsel, and the Court gave said disciplinary counsel until August 26, 2011 to file his report.

On August 26, 2011, disciplinary counsel filed a report recommending a hearing on the pending motion to quash, or if the Court grants the motion to quash then a new hearing should be scheduled. In the event of denial of the motion, disciplinary counsel recommended that the appropriate public discipline be

imposed upon respondent-attorney. He concurrently filed an opposition to respondent-attorney's motion to quash.

On September 8, 2011, respondent-attorney requested more time—three weeks—to respond to disciplinary counsel's report and opposition to her motion to quash. On September 29, 2011, respondent-attorney requested an additional week to file its responses. On October 6, 2011, respondent-attorney filed its response to the disciplinary counsel's August 26, 2011 report and to disciplinary counsel's opposition to motion to quash. On November 23, 2011, the Court issued an order denying respondent-attorney's motions for enlargement of time filed on September 8, 2011 and September 29, 2011 and allowing respondent-attorney 10 days from service of the order to file an amended motion for enlargement of time. On December 7, 2011, respondent-attorney filed her amended motion for enlargement of time. On December 14, 2011, the Court granted respondent-attorney's amended motion.

On January 13, 2012, the Court, Chief Justice Yinug presiding, denied respondent-attorney's motion to quash the evidentiary hearing held on November 24, 2009. On September 18, 2014, upon the passing of Chief Justice Yinug, this matter was reassigned to an associate justice, who recused herself on December 11, 2015. On September 8, 2016, the new chief justice reassigned this matter to himself and ordered disciplinary counsel to file his report on the matter within 20 days after service of this order. No report was filed (it is unclear to the Court whether the September 8, 2016 was served upon disciplinary counsel).

On July 6, 2021, this matter was reassigned to the current presiding justice. On July 9, 2021, a status conference in his matter was scheduled to be held on August 4, 2021 at 10 a.m. On August 5, 2021, order continuing status conference was issued rescheduling the status conference to August 25, 2021 at 10 a.m. On August 26, 2021, an order was issued memorializing the status conference and ordering the parties to each file their briefs within 20 days after service of the order on whether there is a violation of the FSM Model Rules of Professional Conduct and to propose the type of discipline to be imposed if a violation were found.

On September 15, 2021, the respondent-attorney and disciplinary counsel filed a stipulation for an order and fine against respondent-attorney wherein they made the following recommendations: that the Court find that the respondent-attorney violated the model rules of professional conduct when she spoke directly to the defendant Roosevelt Kansou directly without the presence of his counsel in Kosrae sometime in 2006; that the court order a fine of \$300 to be paid within 90 days from the date of the entry of the order; that the court take into account the extensive period of 15 years during which time respondent-attorney, through mental stress and anxiety over this disciplinary matter, had to wait for the Court to process this matter, and that none of the delay is caused by respondent-attorney's failure to comply with a court order or the disciplinary rules; that the parties agree that this is the first and only time that respondent-attorney is charged with an attorney disciplinary matter; and that the parties further agree that the Court may impose any additional punishment that it deems appropriate for the violation.

## II. DISCUSSION

In reviewing the stipulation submitted by disciplinary counsel and the respondent-attorney, the Court recognizes that the Court's disciplinary rules do not encourage settlement or compromise between the disciplinary counsel and the respondent-attorney and that any settlement between them does not, in itself, justify abatement of the disciplinary proceedings. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999). The Court may reject a sanction proposed by the disciplinary counsel and respondent-attorney. *Id.* at 172. The Court acknowledges that the parties have agreed on a finding that respondent-attorney violated Rule 4.2 of the FSM Model Rules of Professional Conduct (prohibiting communication with represented party without consent of party's attorney) and have also proposed discipline through payment of a \$300 fine by respondent-attorney. This Court considers Rule 4.2 an important protection of the right to an attorney, a right that is enshrined in the FSM Constitution in article IV, section 6 and article XIII, section 1.

The Court remains mindful of the fact that this disciplinary matter has been pending for approximately 15 years, which passage of time presents concerns. While the matter at issue, the contact with Senator Kansou, is a violation of Rule 4.2, it appears also that the record does not suggest that Senator Kansou suffered any prejudice as a result of the contact. Further, the respondent-attorney has not been found subject to discipline by this Court in any other instance.

Based on all of these considerations, the Court finds that Ms. Marstella Jack, Esq., is in violation of Rule 4.2 of the FSM Model Rules of Professional Conduct; that the appropriate fine therefor should be \$300, payable no later than 90 days from the date of entry of this order. Further, pursuant to Rule 5(h), this Court finds that this decision should be a matter of public record.

### III. CONCLUSION

NOW, THEREFORE, IT IS HEREBY ORDERED that respondent-attorney is found to have violated Rule 4.2 of the FSM Model Rules of Professional Conduct and shall pay a fine in the amount of \$300 no later than 90 days after this order is entered. This order shall be a matter of public record.

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