

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU A-A
APPELLATE DIVISION

FILED

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<p>LUCY AUGUST, <i>Appellant,</i> v. GUY ROBERT DELUMEAU, JR., <i>Appellee.</i></p>	<p>SUPREME COURT OF THE REPUBLIC OF PALAU</p>
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Cite as: 2024 Palau 29
Civil Appeal No. 24-012
Appeal from Civil Action No. 20-033

Decided: November 6, 2024

Counsel for Appellant	Johnson Toribiong
Counsel for Appellee	C. Quay Polloi

BEFORE: FRED M. ISAACS, Associate Justice, presiding
ALEXANDRO C. CASTRO, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION¹

PER CURIAM:

[¶ 1] Before the Court is Appellant Lucy August’s appeal of the trial court’s Order Denying Claimant’s Motions to Disqualify Petitioner’s Counsel entered on April 12, 2024. Ms. August maintains that Appellee’s counsel C. Quay Polloi should have been disqualified as counsel in this estate case for previously issuing Certificates of Title over the disputed land as Senior Judge of the Land Court. Because we find that the issuance of Certificates of Title in

¹ Inasmuch as neither party requests oral argument and we find the same unnecessary, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

a matter in which the issuing judge did not make a merits determination is no more than an incidental administrative act, we **AFFIRM**.

BACKGROUND

[¶ 2] The salient facts are not in dispute. On November 18, 2019, Iseko Takamine died. In her Last Will and Testament, she appointed her daughter Valentina Ngiraibiochel Delumeau as administrator of the estate. The estate includes Cadastral Lot No. 057 B 01. Valentina petitioned to probate the estate, and Lucy August timely filed a Notice of Objection and Adverse Claim.

[¶ 3] Valentina subsequently passed away. Counsel C. Quay Polloi later noticed his appearance on behalf of Guy Robert Delumeau, Jr., Valentina's eldest son, and successfully moved to substitute Mr. Delumeau as petitioner.

[¶ 4] During discovery, Ms. August objected to Mr. Delumeau's discovery requests and asserted that Mr. Polloi should be disqualified as counsel. Specifically, she argued that Mr. Polloi, while serving as Senior Judge of the Land Court, approved and executed Certificates of Title confirming ownership interests in Cadastral Lot No. 057 B 01 for Everlyne Ngeskesuk and Ms. August.²

[¶ 5] In a sworn affidavit, Mr. Polloi attested that as Senior Judge of the Land Court he was responsible for signing all certificates of title, regardless of whether he heard the merits of a case. He further asserted that former Associate Judge Salvador Ingereklii heard the merits and issued at least the initial determination of ownership of Cadastral Lot No. 057 B 01 in favor of Iseko Takamine.

[¶ 6] Ms. August moved to stay the case pending a ruling on her disqualification motions. The trial court denied the motions on the basis that ABA Model Rule 1.12(a) did not disqualify Mr. Polloi as counsel because his ministerial act of signing certificates of title following a merits determination by a different Land Court judge did not qualify as personal or substantial

² Everlyne Ngeskesuk is Iseko's granddaughter. Ms. August is Everlyne's aunt. Their respective Certificates of Title were previously voided by the trial court, which decision we affirmed on appeal. *See generally August v. Ngiraibiochel*, 2019 Palau 33.

involvement in the matter. Following entry of summary judgment,³ Ms. August noticed the instant appeal.

STANDARD OF REVIEW

[¶ 7] We review matters of law de novo, findings of fact for clear error, and exercises of discretion for abuse of that discretion. *Obechou Lineage v. Ngeruangel Lineage of Mochouang Clan*, 2024 Palau 2 ¶ 5. Because the relevant facts in this case are undisputed and the applicable standard set forth in the ABA Model Rules of Professional Conduct is relatively clear, the issue is a mixed question of law and fact. *See Ngiralmu v. Republic of Palau*, 16 ROP 167, 169 (2009) (citing 75A Am. Jur. 2d *Trial* § 604 (2007) (“In a mixed question of law and fact, (1) the historical facts are admitted or established; (2) the rule of law is undisputed; and (3) the issue is whether the facts satisfy the relevant statutory or constitutional standard . . .”). We review mixed questions of law and fact de novo. *In re Kemaitelong*, 7 ROP Intrm. 94, 95 (1998); *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 228 (1996).

DISCUSSION

[¶ 8] The primary issue presented on appeal is whether the trial court erred in denying Ms. August’s motions to disqualify Mr. Polloi as counsel pursuant to ABA Model Rule of Professional Conduct 1.12(a) when it found that Mr. Polloi neither personally nor substantially participated in prior Land Court decisions concerning the disputed land when, as Senior Judge of the Land Court, he signed Certificates of Title for the land following a merits decision by another judge.

I. Model Rule 1.12(a)

[¶ 9] Ms. August argues that the act of signing Certificates of Title implies familiarity with the merits of the case and that to hold otherwise would erode public trust in the Land Court. In the alternative, if we agree, as the trial court found, that Mr. Polloi merely performed a ministerial act, Ms. August

³ Although related to the underlying disqualification issue, the trial court’s decision to grant Mr. Delumeau’s motion for summary judgment is not at issue on appeal.

maintains that his conduct is governed by Model Rule 1.12(a)'s mandate as to law clerks.

[¶ 10] The ABA Model Rules of Professional Conduct are binding on attorneys in Palau. *See* ROP Disc. R. 2(h). Model Rule 1.12(a) provides:

Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.⁴

[¶ 11] We find the Commentary to Model Rule 1.12 instructive. Comment [1] states that “the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits.”

[¶ 12] Here, Mr. Polloi served as Senior Judge of the Land Court from 2007 to 2018. During his tenure, he attests that Iseko Takamine brought a case to determine her ownership interest in Cadastral Lot No. 057 B 01, the merits of which case were adjudicated by Associate Judge Ingereklii. Following Judge Ingereklii's final determination, Mr. Polloi signed the Certificate of Title confirming Takamine's ownership of the land pursuant to 35 PNC § 1314(b), which provides that

[w]ithin five (5) days of receipt of the final cadastral map, the Land Court shall issue a certificate of title setting forth the names of all persons or groups of persons holding interest in the land pursuant to the determination either

⁴ Paragraph (d), which states that “[a]n arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party,” is inapplicable here.

originally made or as modified by the Appellate Division of the Supreme Court, as the case may be.

Mr. Polloi later signed two Certificates of Title respectively naming Everlyne Ngeskesuk and Ms. August as persons holding interest in Cadastral Lot No. 057 B 01. The record does not reflect that Mr. Polloi made a merits determination in either Ms. Ngeskesuk or Ms. August's Land Court case.

[¶ 13] For purposes of Model Rule 1.12(a), to the extent that Mr. Polloi signed Certificates of Title confirming ownership in the disputed lot, his representation of Mr. Delumeau in this case appears connected to a matter in which Mr. Polloi participated as a judge. However, we find that such participation does not rise to the level of personal and substantial. Indeed, Mr. Polloi's act of signing the Certificates was merely a remote or incidental administrative responsibility of his position as Senior Judge, one which was mandated by statute. Moreover, there is no evidence to suggest his conduct affected the merits of any of the relevant Land Court cases. To the extent that Ms. August suggests that Mr. Polloi's conduct as a Senior Judge should be treated as that of a law clerk, we find such theory wholly unpersuasive and lacking relevant support. *See Estate of Myla Mira v. Republic of Palau*, 2023 Palau 14 ¶ 18 (“We have repeatedly ruled that “[u]nsupported legal arguments need not be considered by the Court on appeal.”) (quoting *Gibbons v. Seventh Koror State Legislature*, 13 ROP 156, 164 (2006)). Law clerks are tasked with assisting the court with legal research, analysis, and opinion drafting, none of which acts are at issue here. Accordingly, we find no error in the trial court's determination that Model Rule 1.12(a) does not apply to disqualify Mr. Polloi as counsel in this matter.

II. Model Rule 1.18(c)

[¶ 14] Ms. August alternatively contends Mr. Polloi “could be deemed to be in violation of ABA Model Rule 1.18 (c)” because “it can be inferred that while reviewing the underlying decisions upon which the certificates of title for the parties to this case [were issued] ... he acquired in the process the details of the claims of each party, which he may now use in favor or against either party.”

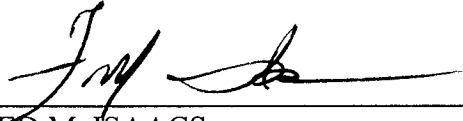
[¶ 15] We find that Ms. August forfeited this argument on appeal by failing to raise it in front of the Trial Division. *See Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004) (“No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue.”). Notwithstanding Ms. August’s failure to raise the issue below, her argument is also facially unmeritorious. Significantly, Mr. Polloi’s status as a Land Court judge is far from that of a private attorney representing one of the parties to an action. Moreover, Model Rule 1.18(c) governs an attorney’s ethical obligations to former prospective clients. Ms. August does not allege, nor does the record suggest, that she or any related party is a former prospective client of Mr. Polloi.

[¶ 16] Inasmuch as we find no error in the trial court’s determination regarding disqualification, we decline to consider the Appellee’s argument that Ms. August’s claim is barred by *res judicata*.

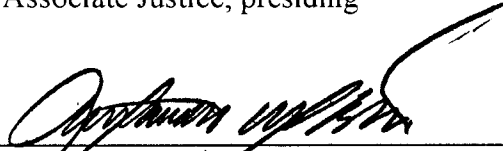
CONCLUSION

[¶ 17] For the foregoing reasons, we **AFFIRM** the Trial Division’s decision.

SO ORDERED, this 6th day of November 2024.



FRED M. ISAACS
Associate Justice, presiding



ALEXANDROC. CASTRO
Associate Justice



KEVIN BENNARDO
Associate Justice