

In re Walton, 16 ROP 281 (2008)
In the Matter of EVERETT WALTON,
Respondent

Disciplinary Proceeding No. 07-003

Supreme Court, Disciplinary Tribunal
Republic of Palau

Decided: September 29, 2008

Disciplinary Counsel: Keith Peterson, William Ridpath

Before: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

PER CURIAM

This is a disciplinary proceeding in which Everett Walton (“Respondent”) is alleged to have violated the Palau travel rules and the American Bar Association Model Rules of Professional Conduct (6th ed.)¹ (Hereinafter referred to as the “Model Rules”). On November 28, 2007, this Tribunal appointed Mr. Keith Peterson as Disciplinary Counsel to investigate certain allegations against Respondent regarding such alleged violations. Specifically, the Tribunal ordered Counsel to conduct an investigation regarding whether Respondent violated Palau’s travel rules and Model Rule 8.4(c) when he traveled with his wife to Hawaii on a Continental flight that stopped in Yap. Respondent allegedly p.282 breached Continental security regulations and was not allowed to reboard the flight in Yap. Counsel was asked to submit a report of his findings along with a recommendation as to how the Tribunal should proceed.

Counsel’s first report was submitted on January 28, 2008. In his report, Disciplinary Counsel noted that, during his investigation, Respondent told him that the rules are “totally inapplicable” to him as the Special Prosecutor. Upon review of the report, however, the Tribunal found it contained insufficient information to evaluate the Respondent’s conduct and ordered Counsel to supplement the report. The Tribunal, therefore, asked Counsel to provide further information regarding specific aspects of Respondent’s conduct. For example, the Tribunal ordered Counsel to investigate the reasons behind Respondent’s deplaning in Yap. This inquiry was motivated by the Tribunal’s concern that Respondent may have billed the Republic for travel expenses that Respondent knew were unauthorized. Following his unexpected stay in Yap, Respondent submitted an amended trip report to claim those expenses. Respondent’s amended report contained no explanation of his reasons for being in Yap, and in fact, made the stay-over in Yap sound as though it were a planned stop-over to conduct official business.

Travel Regulation 305.1 governing layovers makes clear that layover expenses are only reimbursable if the layover is caused by forces outside the employee’s control. Counsel’s

¹The Model Rules have been incorporated into the ROP Disciplinary Rules and Procedures through Disciplinary Rule 2(h).

In re Walton, 16 ROP 281 (2008)

supplemental report, filed April 16, 2008, offers unequivocal evidence that Respondent's deplaning was not caused by forces outside his control. According to the Continental Airlines Inflight Report that describes the deplaning incident in Yap, Respondent

repeatedly questioned flight crew and agents regarding security procedures (half of pax required to deplane)² in Yap. Comments were made such as "what about the bums that are on the right side of the plane," and "so half of the terrorists get to stay onboard?" Customer used profanity and did not cease his actions even after being warned of removal. . . .

(Incident Report of Continental Airlines, Exhibit D to Disciplinary Counsel's Supplemental Report.)

Clearly the Respondent did not comply with the travel regulations, but the Tribunal remains concerned about whether Respondent's conduct was dishonest so as to constitute a violation of Rule 8.4 of the Model Rules. Rule 8.4(c) state that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation" Put another way, the Tribunal's concern continues to be whether Respondent, being not **p.283** entitled to reimbursement or per diem for his layover, knew or should have known that he was not so entitled, yet claimed those monies anyway.

On April 30, 2008, after finding two prior reports insufficient, this Tribunal ordered a second Supplemental Report of Disciplinary Counsel. The Tribunal directed Counsel to focus on the Respondent's state of mind and level of knowledge vis a vis whether Respondent had been deceitful in submitting his trip report. By the same order, the Tribunal also appointed Mr. William Ridpath as Disciplinary Counsel to replace Mr. Keith Peterson.

The newly appointed Disciplinary Counsel filed his supplemental report in this matter on July 18, 2008, and recommends dismissal of the Complaint. The key issue is whether Respondent's failure to indicate the reason for his layover in Yap on his trip report was an act of dishonesty. In short, the Disciplinary Counsel's latest report finds the evidence that Respondent possessed the requisite intent to deceive falls short of clear and convincing.

The most recent report notes that Respondent's deplaning incident was very widely publicized at the time it occurred, and that Respondent had spoken to many people about the incident immediately after it happened. Even the director of the agency who processes the travel reports indicated that he was aware of the incident. Counsel notes that while this does not conclusively establish a lack of intent to deceive, it does suggest that knowledge of the events were so widespread that Respondent could not reasonably have expected to mislead anyone with his travel report, especially considering Respondent himself seemed to be telling anyone and everyone about the incident. Respondent also stated that it had always been his practice to file every brief trip reports. These two facts combine to make it plausible that Respondent did not

²The Tribunal notes that airplanes that make stopovers in Yap are required to follow the Federated States of Micronesia security procedure of deplaning half of the passengers on the plane in order for security personnel to search the passenger compartment and ensure the security of the airplane.

In re Walton, 16 ROP 281 (2008)

intend to deceive. If that is true, the only violations that can be established are violations of travel regulations, not violation of the code of professional responsibility.

Given that the evidence is almost entirely circumstantial, Counsel concludes that “the intent element requisite to establish a violation of Rule 8.4(c) would be difficult to prove to a clear and convincing evidence standard.” Counsel makes clear his reluctance to recommend dismissal. However, given the high standard of proof required, Counsel does not find sufficient evidence to support going forward.

The Disciplinary Tribunal has reviewed the Disciplinary Counsel’s Second Supplemental Report and agrees with his recommendation that this matter be dismissed. The Tribunal, however, wishes to note its own reluctance in dismissing this matter. The Tribunal’s reluctance stems from its concerns regarding Respondent’s conduct and attitude, beginning from the time of the deplaning incident in Yap. The Tribunal is particularly concerned about Respondent’s belief that the travel rules do not apply to him.

As previously noted, it is the Tribunal’s opinion that the deplaning incident was completely the fault of Respondent, due to his unprofessional and egregious conduct. Travel Regulations 305.1 makes clear that layover expenses are only reimbursable if the layover was **p.284** caused by forces outside the employee’s control. For this reason, the Tribunal believes that Respondent should have been forced to pay the expenses that he incurred as a result of such event. Because Respondent’s trip report was either not reviewed closely by the government personnel charged with reviewing it or was simply left unquestioned, the Palau Government paid the expenses of Respondent who was not entitled to such benefits. Regardless, the Complaint against Respondent is hereby **DISMISSED**.

Pursuant to Rule 3 of the Republic of Palau Disciplinary Rules and Procedures, “[t]he cost of investigating and prosecuting the action may also be assessed against the respondent attorney in cases which do not result in dismissal.” In all other instances, such as the matter currently before the Tribunal, the Palau Bar Association reimburses the expenses of disciplinary counsel. See Rules of Admission for Attorneys and Trial Counselors 9(c) (“All monies collected by the Bar Association shall be administered by the President and Treasurer of the Palau Bar Association or their designees for the benefit of the members of the Palau Bar Association and/or payment of costs associated with Disciplinary Proceedings.”) In order to determine Disciplinary Counsel’s fees and expenses, Disciplinary Counsel should submit an itemized list of such costs and fees to the Tribunal, for its records, and to the Palau Bar Association.