

In re Perrin, 8 ROP Intrm. 165 (2000)
IN THE MATTER OF DAVID PERRIN,
Respondent.

DISCIPLINARY PROCEEDING NO. 99-03

Supreme Court, Disciplinary Tribunal
Republic of Palau

Decided: April 18, 2000

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

BEATTIE, Justice:

In this disciplinary proceeding, attorney David Perrin is charged with the violation of Rule 15 of this Court's rules of professional conduct, the unauthorized practice of law. After conducting a hearing and considering the evidence presented, we find no clear and convincing evidence that Perrin violated the Rules of Professional Conduct pertaining to the unauthorized practice of law.

FACTS

Perrin is legal counsel to the President of the Republic of Palau. He has been employed in this capacity since February, 1999. Temmy Shmull is the President's Chief of Staff, and has direct supervisory authority over Perrin. In the middle of 1999, the President was concerned that the powers of the Special Prosecutor were too broad. He decided, as President of Palau, that it was appropriate to file a lawsuit to challenge the powers of the Special Prosecutor. Shmull was contemplating such a suit, and the President asked Perrin to help Shmull with the lawsuit.

In October of 1999, Shmull approached Perrin and asked Perrin's assistance in drafting a complaint against the Special Prosecutor in order to challenge the Special Prosecutor's authority to hire and delegate matters to an Assistant Special Prosecutor. Perrin drafted the complaint, and attached a penal summons and other documents. Shmull signed the complaint, inserted the date, and filed it as his own *pro se* complaint. The case was assigned to Associate Justice Michelsen. Judge Michelsen recognized that the complaint was written in such a manner that its author clearly had legal training, and questioned Shmull in court as to whether, and from whom, Shmull had assistance in drafting the complaint. Shmull said that Perrin had drafted the complaint. Judge Michelsen then brought the matter to the attention of the Chief Justice, noting a possible unauthorized practice of law. Disciplinary counsel was appointed, and, following an investigation, disciplinary counsel concluded that Perrin's actions violated Rule 15 in that Perrin had not passed the Palau Bar Examination and was apparently acting outside of the scope of his employment as a government lawyer in providing legal services to Shmull. Perrin claimed that the work he did for Shmull did not constitute the practice of law, and, even if it did, it was within the scope of his employment as President's counsel.

At the hearing by the Disciplinary Tribunal, Perrin presented two witnesses in his behalf, President Nakamura and Temmy Shmull. President Nakamura testified that during the middle part of 1999 he and Shmull had discussed their concerns about the limits **1166** of the Special Prosecutor's power under the Special Prosecutor's Act, and the possibility of filing a lawsuit. He testified that when Shmull stated that he intended to file suit, the President suggested that he seek Perrin's help. President Nakamura further testified that he asked Perrin to assist Shmull in the case and considered Perrin's conduct in doing so appropriate.

Shmull testified that he had discussed with the President his intent to file suit. He testified that after his conversation with the President, he did some research and gathered documents, then in a brief and general conversation asked Perrin to put them in a legal format. When Perrin returned the complaint with attached documents to him, he did not make any changes, and made his own decision to file it at a later point. He stated that he did not intend to have an attorney represent him in the action.

Perrin testified that Shmull, in a conversation of less than ten minutes, stated that he wanted to file a lawsuit regarding the Special Prosecutor's use of his authority, and asked him to prepare a complaint. Shmull suggested several theories for causes of action, and in response to Perrin's question, stated that the President was aware of Shmull's intent to file suit and request of Perrin's assistance.

DISCUSSION

Practice of law

Before we discuss the rules concerning the practice of law in Palau, we will first determine whether Perrin's conduct constituted the practice of law. Perrin argues that his actions were not the practice of law because Shmull handed him the facts and theories to be included in the complaint, and that he merely "translated" them into a legal format. However, it seems clear that a person who takes facts and concepts and "translates" them into causes of action in a legal format is practicing law. Indeed, Shmull sought out Perrin precisely because of his legal training and skill in formulating a complaint that would stand up under legal scrutiny.¹ We have previously held that the mere preparation of legal documents, even without an accompanying signature on the document, constitutes the practice of law. *See In the Matter of John S. Tarkong*, 4 ROP Intrm. 121, 124 (1994). Perrin's act of preparing the complaint was clearly the practice of law.

¹ As it turns out, the trial judge determined that the complaint did not state a viable legal claim, but the test for whether conduct constitutes the practice of law does not depend upon the quality of the work performed, but rather the nature of the work.

Scope of employment

The Rules of Admission for Attorneys to Practice in the Courts of the Republic of Palau provide that a person must be admitted to practice law before the courts of Palau in order to practice law in Palau. *See ROP Rules of Admission for Attorneys to Practice in the Courts of the Republic of Palau*, Rule 1. One of the requirements for admission is passing the Palau bar examination. *See ROP Rules of Admission for Attorneys to Practice in the Courts of the Republic of Palau*, Rule 2(d). Perrin did not pass the Palau bar examination, but was nevertheless admitted to practice under Rule 3, which provides that a government attorney may practice law in **L167** Palau “so long as the attorney is acting within the scope of his or her employment”

Perrin’s employment contract is the place we must look in order to ascertain the scope of his employment, and the scope is quite broad. His duties and responsibilities are:

[T]o advise the President and the Office of the President of the Republic of Palau; to advise boards, commissions, and as directed by the President or his designee, Ministries of the Executive Branch of the Republic of Palau; to represent, and to assist the Office of the Attorney General in representing, the Republic in matters involving actual and potential litigation; to draft and review contracts; to draft and review legislation, rules, and regulations; and otherwise provide such legal advice and services as appropriate and directed by the President or his designee.

Certainly there are legal tasks which, although “directed by the President” would nonetheless constitute the unauthorized practice of law. For example, if Perrin represented Shmull in a breach of contract action arising out of Shmull’s operation of a business in order to collect money for Shmull personally, it would clearly not be an “appropriate” legal task for a government lawyer. However, the complaint that Perrin drafted tested the limits of the Special Prosecutor’s powers by alleging that the Special Prosecutor had created the position of Assistant Special Prosecutor and expended public funds in recruiting, hiring and retaining an assistant special prosecutor without lawful authority to do so. It alleged that the Special Prosecutor had violated 40 PNC § 406, and requested declaratory and injunctive relief as well as the repayment to the national treasury of all funds expended to date. The suit was intended to benefit the ROP, as any damages or injunctive relief would accrue to the national treasury rather than to Shmull personally. Perrin testified that he viewed the suit as interpreting the limits of the Special Prosecutor’s authority as defined by the Special Prosecutor Act, reflecting a concern of the President and the Chief of Staff.

The disciplinary counsel had the burden of establishing by clear and convincing evidence that Perrin’s legal services were outside the scope of his employment. Under the foregoing facts, we believe the evidence fell short of this standard.

CONCLUSION

Perrin drafted a complaint at the request of one of his supervisors, with the knowledge

In re Perrin, 8 ROP Intrm. 165 (2000)

and approval of the President, that sought to interpret a statute and provided no personal benefit to the supervisor. Although the drafting of a legal document constitutes the practice of law, because we are unpersuaded that there is clear and convincing evidence that Perrin acted outside the scope of his employment, we hereby DISMISS the complaint.

MILLER, Justice, dissenting:

¶168 The facts of this matter are neither complicated nor subject to doubt. Respondent, “a salaried employee of the Republic of Palau National Government,” drafted a summons and complaint intended for filing -- and filed -- by a private citizen in his capacity as a taxpayer. There is no doubt that Respondent was practicing law in so doing, as the majority rightly concludes, nor is there any doubt that he was doing so outside the scope of his employment as legal counsel to the President. That the private citizen was and is employed as the Chief of Staff to the President, and that his decision to litigate was supported by the President, do not alter this conclusion. Although Respondent’s employment contract is broadly written to encompass “legal advice and services” at the President’s direction, it also contains a significant limitation -- those services must be “appropriate” to his position. Temmy Shmull is as entitled as any other citizen of the Republic to act as a private attorney general where statutes permit. But no other citizen of the Republic is entitled to enlist the free legal services of the President’s lawyer in doing so, and neither was it “appropriate” for Mr. Shmull to do so, whether or not the lawsuit was intended to yield him any financial benefit. Take it one step further: Would it have been appropriate for Respondent to have signed the complaint and prosecuted it on Mr. Shmull’s behalf -- that is, for the legal counsel to the President of the Republic to appear in court not on behalf of the Republic or the President or even the President’s Chief of Staff in some official capacity, but on behalf of a private individual? If the answer is “of course not” -- and I believe that it is -- then it was equally inappropriate for him to do so anonymously.

Respondent made a mistake and I would not sanction him more than to say so. We compound that mistake by not saying so clearly now. I respectfully dissent.