

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA)	CIVIL ACTION NO. 1996-060
DEVELOPMENT BANK,)	
)	
Plaintiff,)	
)	
vs.)	
)	
YOSILYN CARL, as the administrator of the)	
estate of Linda Carl, the ESTATE OF LINDA)	
CARL, and the ESTATE OF YOSHIRO CARL,)	
thru its administrator Fred Carl,)	
)	
Defendants.)	
_____)	

ORDER OF DISQUALIFICATION

Dennis K. Yamase
Chief Justice

Decided: May 12, 2021

APPEARANCES:

For the Plaintiff:	Nora E. Sigrah, Esq. P.O. Box M Kolonia, Pohnpei FM 96941
For the Defendant: (Yosilyn Carl)	Yoslyn G. Sigrah, Esq. P.O. Box 3018 Kolonia, Pohnpei FM 96941
For the Defendant: (Estate of Y. Carl)	Vincent Kallop, Esq. Micronesia Legal Services Corporation P.O. Box 129 Kolonia, Pohnpei FM 96941

* * * *

HEADNOTES

Attorney and Client – Disqualification of Counsel

The court has a duty, in accordance with the Model Rules of Professional Conduct, to regulate the conduct of the attorneys who practice before it. FSM Dev. Bank v. Carl, 23 FSM R. 297, 299 (Pon. 2021).

Attorney and Client – Disqualification of Counsel

When an attorney’s disqualification is in the public interest, the court cannot act contrary to that interest by permitting a delay to justify the continuance of a breach of legal ethics. FSM Dev. Bank v. Carl, 23 FSM R. 297, 299 (Pon. 2021).

Attorney and Client – Disqualification of Counsel

The standard is whether the attorney has a conflict of interest in representing both clients in the case before the court. FSM Dev. Bank v. Carl, 23 FSM R. 297, 299 (Pon. 2021).

Attorney and Client – Disqualification of Counsel

When an attorney’s loyalty to one client was diminished in her desire to placate the financial desires of other clients, this is a conflict-of-interest which the attorney should have avoided by declining to represent the one client in this case. This decision would have had no impact on the attorney’s ongoing attorney-client relationship with that client in other unrelated matters. FSM Dev. Bank v. Carl, 23 FSM R. 297, 299 (Pon. 2021).

Attorney and Client – Disqualification of Counsel

The test for a lawyer to determine whether a conflict of interest exists in representing more than one client is found in MRPC Rule 1.7. FSM Dev. Bank v. Carl, 23 FSM R. 297, 300 (Pon. 2021).

Attorney and Client – Disqualification of Counsel

When two clients appear interested in obtaining another client’s rent, while the estate client’s interests is in satisfying the judgment entered in this case and the rent payer’s interest is in operating his ongoing business while also complying with the court’s order in aid of judgment, but the rent payer has been deemed in contempt of court, the conflict of interest at issue is one that is directly adverse, and cannot be waived. Accordingly, the attorney is disqualified from further representing any client in connection with the case other than the estate and its administrator. FSM Dev. Bank v. Carl, 23 FSM R. 297, 300 (Pon. 2021).

* * * *

COURT’S OPINION

DENNIS K. YAMASE, Chief Justice:

Previously, on April 21, 2021, the Court issued an Order in the above-captioned case requiring each party to submit its respective position on whether attorney Yoslyn Sigrah, Esq., can permissibly undertake the concurrent representation of various clients in connection with the above-captioned matter, including: 1) the estate of Linda Carl and Yosilyn Carl, as its administrator; 2) Yosilyn Carl; 3) McLinda Carl; and 4) Kazuhiro Fujita. See Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001) (although resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation, in litigation, a court may *sua sponte* raise the question when there is reason to infer that the lawyer has neglected the responsibility).

As explained more fully below, after receiving briefs from Yosilyn Carl and the Federated States of Micronesia Development Bank (“Development Bank”), the Court hereby disqualifies Yoslyn Sigrah, Esq., from further representing Yosilyn Carl, McLinda Carl and/or Kazuhiro Fujita in connection with this case. The scope of Ms. Sigrah’s representation in this case shall be limited to the estate of Linda Carl, and its administrator, Yosilyn Carl.

To begin, there is no dispute that attorney Yoslyn Sigrah, Esq. represents the estate of Linda Carl, including its administrator Yosilyn Carl. By her own admission, Ms. Sigrah also represents Kazuhiro Fujita, who is not a named party to this case. In addition, from the record, it appears that Ms. Sigrah also represents Yosilyn Carl and/or her sister, McLinda Carl, both of whom are heirs to the estate of Linda Carl. At this time, neither Yosilyn Carl nor McLinda Carl is a named party to this litigation in their personal capacities as heirs of the estate of Linda Carl; instead, only Yosilyn Carl is a named party to this case, and even then, that is limited to her capacity as the administrator of the estate of Linda Carl.

The question now before the Court is whether Ms. Sigrah may concurrently represent all of these clients in this matter. See *FSM Dev. Bank v. Ehsa*, 18 FSM R. 388, 392 (Pon. 2012) (the court has a duty, in accordance with the Model Rules of Professional Conduct, to regulate the conduct of the attorneys who practice before it). In its brief, the Development Bank asserts that Ms. Sigrah should be disqualified from representing all of her clients in this matter except the estate of Linda Carl. According to the Development Bank, Ms. Sigrah has a material conflict of interest with regard to her representation of Yosilyn Carl, McLinda Carl and Kazuhiro Fujita. According to the Development Bank, this is especially true in the case of Kazuhiro Fujita as he was previously found in contempt of court for failing to remit his rent payments that were due and owing the estate of Linda Carl to the Development Bank in satisfaction of the judgment that was entered in this case. The record shows that Mr. Fujita apparently did so based upon advice he received from Ms. Sigrah, who was, at the time, also representing the estate of Linda Carl, as well as Yosilyn Carl and McLinda Carl, as heirs to the estate of Linda Carl.

In her brief, Yosilyn Carl asserts that Ms. Sigrah's concurrent representation of her various clients in the above-captioned case is permissible for three reasons. First, Ms. Carl maintains that the Court waited over 1,000 days before raising an issue about Ms. Sigrah's apparent conflict of interest arising from her concurrent representation of these clients. This reason, however, is unavailing. Indeed, and as this Court has previously explained, "[t]he court has a duty, in accordance with the Model Rules of Professional Conduct, to regulate the conduct of the attorneys who practice before it." *Ehsa*, 18 FSM R. at 392. "Since an attorney's disqualification is in the public interest, the court cannot act contrary to that interest by permitting a . . . delay . . . to justify the continuance of a breach of legal ethics." *Id.*

Second, Yosilyn Carl asserts that Ms. Sigrah has had an ongoing attorney-client relationship with Mr. Fujita well before she began representing him in this case. That established attorney-client relationship is borne out in the pending case of *Fujita Enterprises v. Amor*, Civil Action No. 2014-044 (Pon.). In this regard, the Court takes judicial notice of the decisions issued in *Fuji Enterprises v. Jacob*, 20 FSM R. 121 (Pon. 2015), *Fuji Enterprises v. Jacob*, 20 FSM R. 279 (Pon. 2015), and *Fuji Enterprises v. Jacob*, 21 FSM R. 355 (App. 2017), all of which involve Ms. Sigrah's representation of Fuji Enterprises. The attorney-client relationship that Ms. Sigrah has with Mr. Fujita in these cases, however, is irrelevant here, and does not in anyway justify Ms. Sigrah's concurrent representation of Mr. Fujita in this case. Indeed, in those cases, Ms. Sigrah is apparently representing "Fujita Enterprises," which is an entity separate and distinct from Mr. Fujita himself. Moreover, Ms. Sigrah is not undertaking the representation of any additional clients in connection with the *Fujita Enterprises* matter. The standard here, is whether Ms. Sigrah has a conflict of interest in representing both Mr. Fujita and the estate of Linda Carl in the above-captioned case. See *McVey v. Etscheit*, 14 FSM R. 207, 213-14 (Pon. 2006) (since loyalty is an essential element in the lawyer's relationship to a client, if an impermissible conflict of interest exists before representation is undertaken, the representation should be declined, and if such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation).

Here, the record shows that Ms. Sigrah advised Mr. Fujita to defy the Court's garnishment Order with regard to the submission of his monthly rental payment to the Development Bank. The record shows that the payment in questions was provided to Yosilyn Carl and/or McLinda Carl. This advice resulted in Mr. Fujita being held in contempt of court, while the estate of Linda Carl continued to allow the judgment entered against it in this case to go unsatisfied. Thus, Ms. Sigrah's loyalty to these clients was diminished in her desire to placate the financial desires of Linda Carl and McLinda Carl. This is a conflict-of-interest which Ms. Sigrah should have avoided by declining to represent Mr. Fujita in this case. This decision would have had no impact on Ms. Sigrah's ongoing attorney-client relationship with Mr. Fujita in other unrelated matters.

Third, and lastly, Ms. Carl asserts that Ms. Sigrah's concurrent representation of multiple clients in this case is permissible because the conflict of interest in question is one that is waivable and, in fact, has been waived by Mr. Fujita's endorsement of a "consent" form for Ms. Sigrah to represent him in all matters

concerning the estate of Linda Carl. As noted above, the test for a lawyer to determine whether a conflict of interest exists in representing more than one client is found in MRPC Rule 1.7. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015). MRPC Rule 1.7 provides as follows:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

FSM MRPC R. 1.7.

In this matter, Ms. Sigráh's representation of Yosilyn Carl and/or Ms. Linda Carl is directly adverse to Mr. Fujita's interests, as well as the interests of the estate of Linda Carl. Indeed, both Yosilyn Carl and McLinda Carl appear interested in obtaining Mr. Fujita's rent, while the estate of Linda Carl's interests is in satisfying the judgment entered in this case. Mr. Fujita's interests, by comparison, are in operating his ongoing business, while also complying with the Court's Order in Aid of Judgment, including the related garnishment Order. As it stands, Mr. Fujita has been deemed in contempt of court. Under these circumstances, the conflict of interest at issue here is one that is directly adverse, and cannot be waived, as provided for under MRPC Rule 1.7(b). See George v. Nena, 12 FSM R. 310, 319 (App. 2004) (a conflict of interest is a conflict that affects counsel's performance, as opposed to a mere theoretical division of loyalties).

Accordingly, and for the reasons stated above, the Court hereby disqualifies Yoslyn Sigráh, Esq., from further representing Yosilyn Carl, McLinda Carl and Kazuhiro Fujita in connection with this case. The scope of Ms. Sigráh's representation in this case shall be limited to the estate of Linda Carl, and its administrator, Yosilyn Carl.

* * * *