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IN THE SUPREME COURT OF GUAM

IN RE:)
)
PHILLIP TORRES,)
)
Respondent.)

Supreme Court Case No.: ADC02-004

ORDER

12 This matter comes before the court upon a Submission and Request for Entry of Judgment
13 filed on September 5, 2002 by the Guam Bar Ethics Committee ("Ethics Committee") by and
14 through Prosecuting Counsel Alberto E. Tolentino. The Ethics Committee seeks the entry of
15 judgment against Respondent Phillip Torres in accordance Rule 17(b)(1) of the Supreme Court of
16 Guam Rules for the Discipline of Attorneys based on a Stipulated Admission of Facts and Consent
17 to Discipline ("Stipulation"), entered between Respondent and the Ethics Committee on August
18 23, 2002. In the Stipulation, Respondent admitted and consented to the following:

19 1. That Respondent is an attorney admitted to the Bar of Guam and was a resident of Guam
20 during the time of the conduct alleged herein. As such, he is subject to the jurisdiction of the Guam
21 Bar Ethics Committee and of the Guam Supreme Court pursuant to Rule 3 of the Rules of the
22 Guam Bar Ethics Committee Governing Discipline and Rule 1 of the Supreme Court of Guam
23 Rules for the Discipline of Attorneys, respectively.

24 2. That Respondent's conduct as alleged below occurred during a period when the Guam
25 Rules of Professional Conduct were in effect and applicable to the Respondent's conduct as an
26 attorney licensed to practice law within Guam.

27 3. On or about July, 1998, Respondent represented Un Sil Pak, as plaintiff, in a civil matter
28 before the Superior Court of Guam, specifically, Pak v. Harry Gutierrez, Civil Case No. CV 1840-
98, which was filed on July 30, 1998. Respondent sought and successfully obtained a default

1 judgment. Said Judgment was entered on October 13, 1998.

2 4. On or about March 4, 1999, Respondent obtained a Writ of Execution and levied on
3 rental income being paid to Gutierrez. Beginning on March 30, 1999, those proceeds were received
4 and deposited into the trust account of Respondent's law firm.

5 5. In July 1999, Respondent directed the rental payment for the month of July be made
6 directly payable to himself. Respondent assured the lessee that he made this arrangement with Pak,
7 through Pak's boyfriend Mark Reynolds who had been acting as Pak's agent. The amount of the
8 check was four thousand three hundred seventy five dollars (\$4,375.00) and was endorsed and
9 cashed by Respondent on July 13, 1999.

10 6. Respondent contends that he was authorized to proceed with the transaction because it
11 was approved by Mark Reynolds, who had been acting as agent for Pak. Respondent believed that
12 Reynolds was Pak's agent because: (a) Pak and Reynolds came to Respondent's office together
13 when Pak first met with Respondent; (b) Pak indicated that Reynolds had the authority to act on
14 her behalf, (c) Pak and Reynolds were living together at the time; (d) Reynolds was managing one
15 of Pak's businesses and was overseeing other businesses of Pak's; (e) Reynolds frequently visited
16 Respondent's office to transact business on Pak's behalf; and (f) Respondent was asked to handle
17 several matters for Pak and always dealt with Reynolds. Pak, however, denies that Reynolds was
18 authorized to act as her agent in July 1999. Despite this assertion, Pak has not filed a complaint
19 against Respondent and has professed to be generally satisfied with Respondent's services.
20 Respondent and Prosecuting Counsel stipulate and agree to proceed with this Agreement
21 notwithstanding the factual dispute as to whether Reynolds was authorized by Pak concerning the
22 July payment.

23 7. Respondent also asserts that his law firm was entitled to more than \$4,375.00 in fees
24 pursuant to its written contingent fee agreement with Pak. Respondent did not obtain
25 authorization from Pak to have the July payment made payable directly to him.

26 8. Approximately one year later, Gutierrez filed a Motion to Set Aside Default and Default
27 Judgment. The trial court granted the motion and vacated the default judgment on September 24,
28 1999. Gutierrez then filed a Motion to Return Money Levied. This Motion was granted. The court

1 held that the sole basis for Pak's recovery of the rental proceeds was the default judgment which
2 had been entered in the matter and that, because that judgment had been vacated, Pak had no legal
3 right to those funds. The court ordered that Pak return to the Gutierrez the full amount of rental
4 income which was levied.

5 9. Respondent represents to the Committee that all funds collected under the Writ have
6 been returned to Pak, and that Pak returned the money to Gutierrez.

7 10. Respondent stipulates and agrees that his conduct as described above was a violation
8 of Rule 1.15 of the Guam Rules of Professional Conduct which provides that a lawyer shall hold
9 property of clients in his possession in connection with a representation separate from the lawyer's
10 own property and to promptly notify the client upon receipt of the funds or property.

11 11. In a separate matter, on August 22, 1996, Respondent undertook the representation of
12 Guadalupe Guzman (hereinafter "Guzman") in a child custody/support case before the Superior
13 Court of Guam, Family Division. The adverse party in the proceeding was the natural father of the
14 children, Steven Arceo (hereinafter "Arceo"), who was represented by the Public Defender Service
15 Corporation.

16 12. On April 25, 1997, the Public Defender, in a related case, filed a Complaint for Child
17 Custody on behalf of Arceo and against Guzman in the Superior Court of Guam in Domestic Case
18 No. DM0342-97. On July 9, 1997, Respondent filed a Verified Answer on behalf of Guzman. On
19 April 9, 1999, judgment was rendered and each parent was awarded joint custody of the children
20 and physical custody of the children on alternating weeks.

21 13. On or about May 19, 2000, Respondent undertook the representation of Glenda Leon
22 Guerrero in a divorce action filed by her husband, Daniel Leon Guerrero. One of the allegations
23 in that matter was adultery. Respondent interviewed Arceo relative to that allegation. At that time,
24 Respondent was informed that Arceo had previously obtained an injunction against Daniel Leon
25 Guerrero but that a counterclaim for tortious interference with family relations by seduction had
26 been made against Arceo. Respondent subsequently substituted in as Arceo's counsel in the
27 injunction case and filed an Answer to the Counterclaim. The case has never proceeded beyond
28 that point.

1 14. In early 2001, Guzman contacted Respondent and informed him of her concerns
2 regarding the custody and visitation arrangements and of her anxiety about Arceo's conduct around
3 the children. Guzman was specifically concerned about Arceo's "playboy" lifestyle and how it
4 affected the children. Respondent advised her at that time to withhold the children from Arceo and
5 have Arceo initiate any court proceedings if he was dissatisfied with the arrangement. Respondent
6 did not inform Guzman of his representation of Arceo in the matter with Daniel Leon Guerrero.

7 15. Shortly thereafter, Guzman discovered that Respondent was representing Arceo in the
8 other unrelated domestic case.

9 16. Respondent stipulates and agrees that his conduct as described above was a violation
10 of Rule 1.7 of the Guam Rules of Professional Conduct which provides that a lawyer shall not
11 represent a client if the representation of that client may be materially limited by the lawyer's
12 responsibilities to another client.

13 17. Respondent stipulates and agrees to the imposition of discipline as herein provided:

14 (A) Respondent shall take and pass the Multi State Professional
15 Responsibility Examination ("MPRE") by August 30, 2003, and
16 that Respondent shall be responsible for informing Prosecuting
17 Counsel or the Guam Bar Ethics Committee of his compliance with
18 this provision;

19 (B) Respondent shall be publicly reprimanded by the Supreme
20 Court of Guam and that the Guam Bar Ethics Committee shall
21 publish the following:

22 PHILLIP TORRES, an attorney licensed to practice
23 law, has been publicly reprimanded by the Supreme
24 Court of Guam for violations of the Rules of
25 Professional Conduct for (1) a failure to hold
26 property of a client separate from the lawyer's own
27 property and to promptly notify the client upon
28 receipt of funds or property; and (2) for representing
 a client when the representation of that client may
 be materially limited by the lawyer's responsibilities
 to another client.

 (C) Effective immediately Respondent shall be placed on probation
 and remain thereon until proof of compliance with the provision

1 herein regarding the MPRE is received by the Committee or
2 Prosecuting Counsel.

3 18. In the event that Respondent should fail to take and pass the MPRE as provided above,
4 the Respondent stipulates and agrees that he will be immediately suspended from the practice of
5 law for a period of thirty (30) days and that he will comply with the provisions of Rule 18 of the
6 Supreme Court of Guam Rules for the Discipline of Attorneys.

7 19. Within ninety (90) days of the entry of judgment, the Respondent shall pay to the Guam
8 Bar Association the cost of publishing the public reprimand in the *Pacific Daily News* and the
9 *Marianas Variety*.

10 20. Respondent understands that he is waiving his right to a hearing and a determination
11 by the Guam Bar Ethics Committee and his right to review by the Supreme Court of Guam.

12 21. Respondent understands that the admissions or provisions of the consent decree are
13 voluntary and not the result of force or threats or promises other than what is contained herein.

14 22. The Guam Bar Ethics Committee accepts the above stipulation and the discipline
15 outlined therein.

16 The members of the Ethics Committee, Prosecuting Counsel, and Respondent having
17 agreed to the terms of discipline and other provisions in the Stipulation, this court hereby orders
18 Respondent to comply with the provisions therein. SUPREME COURT OF GUAM RULES FOR
19 THE DISCIPLINE OF ATTORNEYS 17(b)(1)(i). Pursuant to the terms of the Stipulation and Rule
20 12 of the Supreme Court of Guam Rules for the Discipline of Attorneys, Respondent is hereby
21 ordered to take and pass the MPRE by August 30, 2003, and Respondent shall be responsible for
22 informing Prosecuting Counsel or the Ethics Committee of his compliance. Furthermore, effective
23 immediately upon the filing of this Order, Respondent shall be placed on probation and remain
24 thereon until proof of compliance with the provision herein regarding the MPRE is received by the
25 Ethics Committee or Prosecuting Counsel. Should Respondent fail to take and pass the MPRE by
26 August 30, 2003, Respondent shall be suspended from the practice of law for a period of thirty (30)
27 days and shall comply with the provisions of Rule 18 of the Supreme Court of Guam Rules for the
28 Discipline of Attorneys.

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SO ORDERED this 4th day of October, 2002.

Richard H. Benson

RICHARD H. BENSON
Justice Pro Tempore

F. Philip Carbullido

F. PHILIP CARBULLIDO
Associate Justice

Peter C. Siguenza, Jr.

PETER C. SIGUENZA, JR.
Chief Justice