on appeal is waived). Here, the arguments advanced by Ms. Carl do not show any error by the trial court when it either granted the Development Bank's motion for summary judgment, or, in turn, entered a judgment in favor of the Development Bank.

III. CONCLUSION

This Court finds that the record before the trial division support affirmance of the judgment in favor of the Development Bank, even if in some instances for reasons for that are different than those on which the trial division made its decision. *See* Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996) (affirmance on different grounds).

We hereby dismiss this appeal.

* * * *

FSM SUPREME COURT TRIAL DIVISION

IN THE MATTER OF ATTORNEY YOSLYN G. SIGRAH,	)	DPA NO. 003-2018
Respondent Attorney.	)	

DECISION IMPOSING DISCIPLINE

Larry Wentworth
Associate Justice

Hearing: April 20, 2021
Submitted: May 26, 2021
Decided: November 30, 2021
Discipline Imposed: April 20, 2022

APPEARANCES:

Disciplinary Counsel: Aaron L. Warren, Esq.
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* * * *

HEADNOTES

Evidence – Judicial Notice

While the court has no difficulty taking judicial notice that the Chief Justice entered an order in

another case and what that order was, the court is wary of adopting the disciplinary complainant's (the Chief Justice's) findings in that case as its own and as the basis for finding that an attorney engaged in unethical conduct, even though the attorney permitted the court to examine the transcript of the hearing that lead to that order. The court will therefore not base its ruling in this case on any findings made in that case. In re Sigrah, 23 FSM R. 537, 543 (Pon. 2022).

Attorney Discipline; Civil Procedure – Admissions

Rule 36 requests for admission are frequently used by bar counsel in attorney disciplinary cases to narrow or eliminate any factual disputes. In re Sigrah, 23 FSM R. 537, 543 (Pon. 2022).

Attorney Discipline; Civil Procedure – Admissions

Although generally discovery proceedings in disciplinary cases occur by the reviewing justice's order, no such order is needed for requests for admissions because, strictly speaking, a Rule 36 request for admissions is not a discovery procedure at all, since it presupposes that the party proceeding under it knows the facts. In re Sigrah, 23 FSM R. 537, 543 (Pon. 2022).

Civil Procedure – Admissions

While the court must first look to FSM sources of law and circumstances rather than begin with a review of cases decided by other courts, when an FSM court has not previously construed what constitutes a sufficient answer under Civil Procedure Rule 36(a), the court may look to U.S. sources for guidance in interpreting the rule. In re Sigrah, 23 FSM R. 537, 543 n.1 (Pon. 2022).

Attorney Discipline; Civil Procedure – Admissions

Instead of discovering new evidence, the purpose of requests for admission is to narrow the factual issues for trial (or evidentiary hearing). That being so, a procedural rule requiring that discovery in disciplinary proceedings occur by the reviewing justice's order, does not apply to requests for admission. In re Sigrah, 23 FSM R. 537, 543 (Pon. 2022).

Civil Procedure – Admissions

When a party has been served with requests for admission, that party has several available options: 1) it may do nothing whatsoever and the request will be deemed to be an admission of the matter set forth; 2) it may move for an enlargement of time in which to respond to the requests; 3) if it has the proper grounds, it may move for a protective order under Civil Procedure Rule 26(c); 4) it may make a specific admission (if a number of requests are made in a single document and the party of whom they are asked intends to admit some while denying or objecting to others, then it is most convenient if there is a separate response to each request, and a specific admission is appropriate for those matters that are to be admitted); 5) it may deny the matter it is requested to admit; 6) it may set out reasons why, after reasonable inquiry, it cannot truthfully admit or deny the matter; or 7) it may object to the request for an admission. In re Sigrah, 23 FSM R. 537, 544 n.2 (Pon. 2022).

Civil Procedure – Motions – Unopposed

The failure to respond is generally deemed a consent to the motion, and the court may grant the motion as long as it is well-grounded in law and fact. In re Sigrah, 23 FSM R. 537, 544 (Pon. 2022).

Civil Procedure – Admissions

Once the party of whom the requests to admit were made has responded, the party who requested the admissions may, if dissatisfied, move to determine the sufficiency of the answers or objections. In re Sigrah, 23 FSM R. 537, 544 n.3 (Pon. 2022).

Civil Procedure – Admissions

When a request is denied, the court must consider: 1) whether the denial fairly meets the substance of the request; 2) whether good faith requires that the denial be qualified; and 3) whether any "qualification" which has been supplied is a good faith qualification. In re Sigrah, 23 FSM R. 537, 544 (Pon. 2022).

Civil Procedure – Admissions

Objections that the party making the requests for admission should obtain the information by independent discovery and investigation, or that the matter is already within that party's knowledge, are misplaced. Whether the requesting party could obtain the information independently or whether certain facts are within the requesting party's knowledge are irrelevant considerations. In re Sigrah, 23 FSM R. 537, 545 (Pon. 2022).

Civil Procedure – Admissions

A responding party's objection that she cannot answer, or suggestion that the disciplinary counsel's request is ambiguous, because "there are more than 2 cases involving Linda Carl and FSMDB," cannot be an answer, or a qualification to a denial, made in good faith because the requesting party, in his first request for admission, unambiguously identified the case involved. In re Sigrah, 23 FSM R. 537, 545 (Pon. 2022).

Civil Procedure – Admissions

A response that fails to admit or deny a proper request for admission does not comply with Rule 36(a)'s requirements if the answering party has not, in fact, made reasonable inquiry, or if information readily obtainable is sufficient to enable her to admit or deny the matter. In re Sigrah, 23 FSM R. 537, 545 n.4 (Pon. 2022).

Civil Procedure – Admissions

An objection that a document speaks for itself is improper because a request for an admission as to the meaning of a document is simply a request for the responding party's admission of having understood the document in a manner concurring with the meaning set forth by the requesting party. The responding party may simply admit or deny this, and if denied, the response need not, but may, include the responding party's alternative interpretation. In re Sigrah, 23 FSM R. 537, 545 (Pon. 2022).

Civil Procedure – Admissions

When the reviewing justice has determined that an answer does not comply with Rule 36(a)'s requirements, the reviewing justice may order either that the matter is admitted or that an amended answer be served. That the court may treat an inadequate denial as an admission suggests the need for care in drafting denials. In re Sigrah, 23 FSM R. 537, 545 & n.5 (Pon. 2022).

Civil Procedure – Admissions

When the court, exercising its discretion very cautiously, ordered the responding party to file and serve amended answers to each of the disciplinary counsel's requests for admission instead of ordering that the matters in all 26 requests be deemed admitted; when it further ordered that any request for admission for which an amended answer was not filed and any request for which the amended answer was later found insufficient or a nullity would be deemed admitted under Rule 36(a) and noted that any matter so admitted would be conclusively established unless the court on motion permits withdrawal or amendment of the admission; and when no amended answers were filed or an enlargement of time sought, the court therefore ordered that each of the disciplinary counsel's 26 requests for admission be deemed admitted. In re Sigrah, 23 FSM R. 537, 545-46 (Pon. 2022).

Attorney Discipline

A lawyer, in connection with a disciplinary matter, must not 1) knowingly make a false statement of material fact; or 2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that the disclosure of information otherwise protected by FSM MRPC Rule 1.6 is not required. This duty applies to a lawyer's own discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This would violate the more general model rules requiring candor towards the tribunal and barring attorney misconduct. In re Sigrah, 23 FSM R. 537, 546 n.7 (Pon. 2022).

Civil Procedure – Admissions; Civil Procedure – Summary Judgment – Grounds

Deemed admissions can provide the factual basis for a summary judgment motion. In re Sigrah, 23 FSM R. 537, 546 (Pon. 2022).

Attorney Discipline

When it is conclusively established that a March 13, 2017 order in aid of judgment and the writ of garnishment both required a company to make monthly $500 payments to a bank; that the respondent attorney was the attorney of record for that company; that the court-issued writ of garnishment was served on the respondent attorney as the attorney of record for the company; that the writ of garnishment required the company to pay the bank $500 every month through January 2018; that, because she was served with the writ of garnishment, the attorney of record knew of the company's court-ordered obligation to pay $500 a month to the bank; that the company paid $500 to the bank in April 2017, but after that did not pay the bank because the respondent attorney, although she knew of the company's obligation to pay the bank, advised it not to make any more payments to the bank and instead told it to make the payments to the judgment-debtor for whom the respondent attorney was also the attorney of record in the civil action; and that, after the judgment-debtor died, the respondent attorney then advised the company to give the money to the respondent attorney herself, who, instead of paying the money to the bank as the writ of garnishment that had been served on her required, gave the money to one or both of the decedent's daughters, it is proven by clear and convincing evidence that the respondent knowingly and willfully violated a court order. In re Sigrah, 23 FSM R. 537, 546 (Pon. 2022).

Attorney Discipline

Since the Disciplinary Rules direct the reviewing justice to render a decision within twenty days of the hearing's conclusion, and, if that justice finds the misconduct allegations proven, the justice shall impose an appropriate sanction or combination of sanctions pursuant to Rule 3, it would seem that the parties should, at the end of the Rule 5(d) hearing, address the matter of appropriate sanctions, in case the justice finds the misconduct allegations are proven. In re Sigrah, 23 FSM R. 537, 547 n.8 (Pon. 2022).

Attorney Discipline

The court considers aggravating and mitigating factors when determining which sanctions or what discipline to impose on an attorney. In re Sigrah, 23 FSM R. 537, 548 (Pon. 2022).

Attorney Discipline

The aggravating factors the court considers when disciplining an attorney are 1) prior disciplinary offenses; 2) dishonest or selfish motive; 3) a pattern of misconduct; 4) multiple offenses; 5) bad faith disruption of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; 6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; 7) refusal to acknowledge wrongful nature of conduct; 8) vulnerability of victim; 9) substantial experience in the practice of law; and 10) indifference to making restitution. In re Sigrah, 23 FSM R. 537, 548-49 (Pon. 2022).

Attorney Discipline

The appropriate mitigating factors the court considers when disciplining an attorney are 1) absence of a prior disciplinary record; 2) absence of a dishonest or selfish motive; 3) personal or emotional problems; 4) timely good faith effort to make restitution or to rectify consequences of misconduct; 5) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; 6) inexperience in the practice of law; 7) character or reputation; 8) physical or mental disability or impairment; 9) delay in disciplinary proceedings; 10) interim rehabilitation; 11) imposition of other penalties or sanctions; 12) remorse; and 13) remoteness of prior offenses. In re Sigrah, 23 FSM R. 537, 549 (Pon. 2022).

Attorney Discipline

The FSM Disciplinary Rules were drawn from the Republic of Palau Disciplinary Rules. Palau disciplinary proceedings under those rules may thus be helpful in understanding the FSM Disciplinary Rules'

operation. In re Sigrah, 23 FSM R. 537, 549 n.9 (Pon. 2022).

Attorney Discipline

Delay in the disciplinary proceeding is a mitigating factor only when the delay was not caused by the respondent attorney. A respondent attorney's delay may be an aggravating factor. In re Sigrah, 23 FSM R. 537, 549 (Pon. 2022).

Attorney Discipline

Ethical complaints against lawyers should be resolved expeditiously for the dual purpose of protecting the lawyer from interminable proceedings when the lawyer should be exonerated and of protecting the public, the legal profession, and the court from a lawyer's unethical conduct. In re Sigrah, 23 FSM R. 537, 549 (Pon. 2022).

Attorney Discipline

Ignoring a disciplinary counsel's requests for admissions and later submitting deceptive and bad faith answers to the requests displays an uncooperative attitude towards the disciplinary proceedings and is not a full and free disclosure and is thus an aggravating factor. In re Sigrah, 23 FSM R. 537, 550 (Pon. 2022).

Attorney Discipline

Before the disciplinary sanctions take effect, the sanctioned attorney must comply with Disciplinary Rules 12(a) and 12(b). Once the sanctions have taken effect, the sanctioned attorney must then also comply with the requirements of Disciplinary Rules 12(d) and 12(g). In re Sigrah, 23 FSM R. 537, 550 (Pon. 2022).

* * * *

COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

During the April 20, 2021 hearing, both the disciplinary counsel and respondent attorney's counsel indicated that they had never seen the transcript of the January 18, 2018 hearing in Civil Action No. 1996-060, which was the basis of Chief Justice Dennis K. Yamase's ethics complaint that initiated this disciplinary action. The respondent attorney, Yoslyn G. Sigrah, in particular, expressed a desire to review the transcript before proceeding further.

Since the court had not seen it either, the court deferred ruling on the pending summary judgment motion for at least 30 days while it looked into the matter. The 25-page transcript was, without any difficulty whatsoever, quickly located as listed in the docket book as "Transcript of Kazuhiro Fujita" filed on January 31, 2018, in Civil Action No. 1996-060. The court then gave the parties until May 20, 2021, to file their memorandums directing the court's attention to those parts of the transcript that the court should consider when ruling on the pending summary judgment motion.

Sigrah submitted her memorandum on May 20, 2021. She directed the court's attention to passages in the transcript which, in her view, indicated that Kazuhiro Fujita was having problems understanding the questions. The disciplinary counsel filed a response on May 26, 2021, noting that, despite two earlier requests, the court clerk had not provided him the transcript until after his May 25, 2021 request, and asking that this be considered excusable neglect for his tardy filing. He stated that he had no comment on the transcript other than to say that, read in its entirety, it wholly supported the allegations against the respondent.

The court considered the disciplinary counsel's tardy filing to be the result of excusable neglect. It therefore granted the disciplinary counsel's implied request to enlarge time for his response. The court considered the matter under submission after May 26, 2021.

I. Formal Complaint's Allegations

The disciplinary counsel's amended formal complaint, filed April 15, 2019, alleges that respondent attorney Sigrah violated Rules 1.7 [conflict of interest], 1.15 [safekeeping of property], and 3.4(c) [knowingly violating a court order] of the FSM Model Rules of Professional Conduct.

The amended complaint alleges that Sigrah represented judgment-debtor Linda Carl in Civil Action No. 1996-060, FSM Development Bank v. Linda Carl and the Estate of Yoshiro Carl, and that on March 13, 2017, the court in that case issued an order in aid of judgment and a writ of garnishment, both of which required Fujita Enterprises to pay $500 a month to the judgment creditor, the FSM Development Bank. On April 3, 2017, Fujita Enterprises, in compliance with the writ that had been served on Kazuhiro Fujita on Fujita Enterprises' behalf, paid the bank $500.

The amended complaint further alleges that Sigrah was also Fujita Enterprises' attorney and that after Fujita Enterprises' first payment, Sigrah instructed Fujita Enterprises to make all of its future ($800 a month) rent payments [from which the $500 was garnished] entirely to Linda Carl, and, that after Linda Carl died in July 2017, Sigrah then directed Fujita Enterprises to give Sigrah the full $800 rent payment each month, which Sigrah then passed on to Linda Carl's daughters. The amended complaint also alleges that Kazuhiro Fujita testified to these facts at a January 18, 2018 contempt hearing and that Sigrah also admitted to these facts at that hearing, and further admitted that she had given the rental payments that she had received from Fujita to Linda Carl's surviving daughters.

The amended complaint also asserts that these factual allegations were proven when the Chief Justice held Kazuhiro Fujita in contempt of court for not paying the FSM Development Bank $500 a month from May 2017, through January 2018. This adjudication was reported at In re Contempt of Fujita, 21 FSM R. 634 (Pon. 2018). The amended complaint further asserts that these acts constitute ethical misconduct by respondent attorney Sigrah in violation of FSM Model Rules of Professional Conduct Rule 1.7 (by creating a conflict of interest between two of her clients Linda Carl and Fujita Enterprises (Kazuhiro Fujita)); Rule 1.15 (safekeeping of another's property when she failed to notify the bank that she held the rental payments that Fujita should have paid to the bank, and instead of remitting the money to the bank, diverted those funds every month from May 2017 through January 2018 to her other client(s), Linda Carl, and after Linda Carl died, Linda Carl's daughters); and Rule 3.4(c) for willfully violating the court's order garnishing the Fujita Enterprises' rental payments.

II. Summary Judgment Motion

A. *Contentions*

On June 28, 2020, the disciplinary counsel moved for summary judgment on the allegation that respondent attorney Sigrah violated FSM Model Rules of Professional Conduct Rule 3.4(c) by willfully advising a third party, Fujita Enterprises, to not comply with a court-issued writ of garnishment. The disciplinary counsel further states that a violation of Model Rule 3.4(c) also violates FSM Disciplinary Rule 2(a), which makes the violation of any of the FSM Model Rules of Professional Conduct a ground for discipline, and Disciplinary Rule 2(d), which makes an attorney's willful disobedience or violation of a court order directing the attorney to do or cease doing an act a ground for discipline.

Disciplinary counsel contends that, based on the Chief Justice's July 9, 2018 contempt order and on Sigrah's (non-)responses and deemed admissions to his requests for admissions, there is no genuine factual dispute that Sigrah violated these rules and should be disciplined.

Sigrah, in her July 13, 2020 opposition, contends that she has not made any admissions and that what the disciplinary counsel claims are admissions are not proven facts and that therefore material facts are genuinely in dispute, precluding summary judgment. Sigrah further challenges the findings made in Civil

Action No. 1996-060 and contends that those findings may not be used in this proceeding and asserts that there are other facts in that case which she claims were not considered but which could have changed the result. Sigrah asserts that the disciplinary counsel has not provided clear and convincing evidence. She further asserts that not only did she not violate the FSM Model Rules of Professional Conduct or the FSM Disciplinary Rules but also that summary judgment should be entered in her favor.

B. *Judicial Notice*

Disciplinary counsel first asks the court to take judicial notice that in the Chief Justice's July 9, 2018 contempt order, In re Contempt of Fujita, 21 FSM R. 634 (Pon. 2018) (attached as Exhibit B to the motion), the Chief Justice found Sigrah directly and personally responsible for diverting the garnished sums to Linda Carl and later Carl's daughters.

The court has no difficulty taking judicial notice that the Chief Justice entered that order and what that order was. Arthur v. Pohnpei, 16 FSM R. 581, 588 n.3 (Pon. 2009). Even though Sigrah has (and the disciplinary counsel did not object) permitted the court to examine the transcript of the hearing that lead to that order, the court is wary of adopting the disciplinary complainant's (the Chief Justice's) findings in Civil Action No. 1996-060 as its own and as the basis for finding that Sigrah engaged in unethical conduct. The court therefore does not base its ruling in this case on any findings made in Civil Action No. 1996-060.

C. *Attorney's Admissions*

Disciplinary counsel also asserts that the summary judgment motion's factual basis is provided by Sigrah's admissions established through her insufficient responses to his requests for admission.

1. *Rule 36 Requests in Disciplinary Matters*

Rule 36 requests for admission are frequently used by bar counsel in attorney disciplinary cases to narrow or eliminate any factual disputes. *See, e.g.*, Florida Bar v. Daniel, 626 So. 2d 178, 182 (Fla. 1993); In re Redding, 501 S.E.2d 499, 500 (Ga. 1998); Iowa Sup. Ct. Attorney Disciplinary Bd. v. Netti, 797 N.W.2d 591, 595 (Iowa 2011) (attorney sanctioned for ignoring board's request for admission by deeming all requests admitted); Iowa Sup. Ct. Bd. of Prof'l Ethics & Conduct v. Palmer, 563 N.W.2d 634, 635 (Iowa 1997) (requests for admission served with complaint); Committee on Prof'l Ethics & Conduct v. Shaffer, 230 N.W.2d 1, 2-3 (Iowa 1975); Attorney Grievance Comm'n v. Frost, 85 A.2d 264, 273 (Md. 2014) (requests for admission served on attorney along with complaint); Attorney Grievance Comm'n v. McLaughlin, 813 A.2d 1145, 1161 (Md. 2002); In re Giese, 662 N.W.2d 250, 254 (N.D. 2003); In re Skagen, 149 P.3d 1171, 1180 n.6, 1189 (Or. 2006).

Although generally discovery proceedings in disciplinary cases occur only by court order, FSM Dis. R. 9(c), no such order is needed for requests for admissions because, "[s]trictly speaking, Rule 36 [requests for admissions] is not a discovery procedure at all, since it presupposes that the party proceeding under it knows the facts . . . ." 8B CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 2253, at 324 (3d ed. 2010).[1] Instead of discovering new evidence, the purpose of requests for admission is to narrow the factual issues for trial (or evidentiary hearing). Therefore, a procedural rule requiring that discovery in disciplinary proceedings occur only by court order, does not apply to requests for admission. *See, e.g.*, In re Disciplinary Proceeding against Jensen, 430 P.3d 262, 272 (Wash. 2018).

[1] While the court must first look to FSM sources of law, when an FSM court has not previously construed an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. *See, e.g.*, George v. Albert, 17 FSM R. 25, 31 n.1 (App. 2010); Alanso v. Pridgen, 15 FSM R. 597, 600 n.2 (App. 2008); Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 n.1 (App. 2008). The court had not previously construed what constituted a sufficient answer under Civil Procedure Rule 36(a).

2. *Procedural History of Disciplinary Counsel's Requests*

a. *Requests Made*

On July 10, 2019, disciplinary counsel filed and served on Sigrah his Requests to Admit (FSM Civil Rule of Procedure 36(a)), which contained 26 specific requests for Sigrah to either admit or deny.[2] Sigrah did not file a response, timely or otherwise, to these 26 requests for admission. Nor did she ask for more time to respond. On September 24, 2019, although it could have then deemed the requests to be admitted because of Sigrah's complete failure to respond, FSM Civ. R. 36(a); Netti, 797 N.W.2d at 595, the court instead ordered that

> if the Respondent Attorney has not, by October 23, 2019, filed and served her responses to the Requests to Admit, those requests will be deemed admitted. FSM Civ. R. 36(a). And "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." FSM Civ. R. 36(b).

Order Setting Schedule at 1 (Sept. 24, 2019).

On October 23, 2019, Sigrah filed Respondent's Answer to Disciplinary Counsel's Request for Admission, in which she stated that she could neither admit nor deny each of the first five requests for admission and denied each of the following 21 requests and included the same objection or qualification in all 26 answers.

b. *Responses' Sufficiency*

On November 25, 2019, the disciplinary counsel filed his motion to determine the sufficiency of Sigrah's answers to his requests for admission.[3] Sigrah did not file a response. The failure to respond is deemed a consent to the motion, FSM Civ. R. 6(d), and the court may grant the motion as long as it is well-grounded in law and fact. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 442 (App. 1994).

On January 13, 2020, the court, in an exhaustive analysis, concluded that each request asked for the admission or denial of a single fact and none required an extended essay in response. "When a request is denied, the court must consider: (1) whether the denial *fairly* meets the substance of the request; (2) whether *good faith* requires that the denial be qualified; and (3) whether any 'qualification' which has been supplied is a *good faith* qualification." Thalheim v. Eberheim, 124 F.R.D. 34, 35 (D. Conn. 1988) (emphasis in original).

In each of her 26 answers, Sigrah stated the following objection or qualification:

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[2] When a party has been served with requests for admission, that party has several available options:
1) it may do nothing whatsoever and the request will be deemed to be an admission of the matter set forth;
2) it may move for an enlargement of time in which to respond to the requests;
3) if it has the proper grounds, it may move for a protective order under Civil Procedure Rule 26(c);
4) it may make a specific admission (if a number of requests are made in a single document and the party of whom they are asked intends to admit some while denying or objecting to others, then it is most convenient if there is a separate response to each request, and a specific admission is appropriate for those matters that are to be admitted);
5) it may deny the matter it is requested to admit;
6) it may set out reasons why, after reasonable inquiry, it cannot truthfully admit or deny the matter; or
7) it may object to the request for an admission. 8B WRIGHT, MILLER, & MARCUS, *supra*, § 2259, at 354-56.

[3] Once the party of whom the requests to admit were made has responded, the party who requested the admissions may, if dissatisfied, "move to determine the sufficiency of the answers or objections." FSM Civ. R. 36(a).

> There are more than 2 cases involving Linda Carl and FSMDB. The cases are active and still in litigation. Any questions relating to the handling of the cases by attorneys of record on the cases can be obtained from these Linda Carl/FSMDB cases, Pohnpei Trial Division, FSM Supreme Court.

That objection was not a sufficient answer or a proper response to any of the disciplinary counsel's requests for admission because

> [o]bjections that [the party making the requests for admission] should obtain the information by independent discovery and investigation, or that the matter is already within [that party's] knowledge, are . . . misplaced. . . . Whether [that party] could obtain the information independently or whether certain facts are within [that party's] knowledge are irrelevant considerations.

Diederich v. Department of Army, 132 F.R.D. 614, 617 (S.D.N.Y. 1990).

Sigrah further objected that she could not answer, and suggested that the disciplinary counsel's requests were ambiguous, because "[t]here are more than 2 cases involving Linda Carl and FSMDB." This answer, or qualification to a denial, was not made in good faith because the disciplinary counsel, in his first request for admission, specifically identified the case involved as "FSM Civil Action No. 1996-060, *FSM Development Bank v. Linda Carl and Estate of Yoshiro Carl* (the 'Carl Action')," and then referred to "the Carl Action" in each of the following 25 requests.

With few exceptions, the requests for admission only asked Sigrah to admit or deny facts that were within her personal first-hand knowledge. Those few exceptions, such as Request #6, which asked Sigrah to "[a]dmit that Fujita Enterprises made one rent payment of $500.00 to FSMDB on April 3, 2017 in accordance with the payment schedule in the Writ of Garnishment," was a "fact" that, if not already known to Sigrah of her own personal knowledge, was one she could easily have made the "reasonable inquiry" into that Rule 36(a) obligated her to do before responding to a request for admission.[4] Sigrah gave no indication that she tried to make a reasonable inquiry. She merely, and improperly, directed the disciplinary counsel to various court files.

Sigrah's further objection to Request #5 that "[t]he writ speaks for itself" was also an improper and an insufficient answer because "objections that documents . . . 'speak for themselves' . . . are improper." Diederich, 132 F.R.D. at 617. "[A] request for admission as to the meaning of a document . . . is simply a request for [the responding party's] admission of having understood the [document] . . . in a manner concurring with the meaning set forth by the [requesting party]." *Id.* The responding party may simply admit or deny this, and "if denied, the response need not, but may, include [the responding party's] alternative interpretation." *Id.*

The court, on January 13, 2020, therefore concluded that Sigrah's answers did not comply with Rule 36(a)'s requirements. When the court determines that an answer does not comply with Rule 36(a)'s requirements, the court "may order either that the matter is admitted or that an amended answer be served." FSM Civ. R. 36(a).[5]

The court exercised this discretion very cautiously, and, instead of ordering that the matters in all 26

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[4] A response that fails to admit or deny a proper request for admission does not comply with Rule 36(a)'s requirements if the answering party has not, in fact, made reasonable inquiry, or if information readily obtainable is sufficient to enable her to admit or deny the matter. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

[5] "The fact that the court may treat an inadequate denial as an admission suggests the need for care in drafting denials." 8B WRIGHT, MILLER, & MARCUS, *supra*, § 2260, at 359.

requests be deemed admitted, it ordered Sigrah to file and serve, no later than February 14, 2020, amended answers to each of the disciplinary counsel's requests for admission, and further ordered that any request for admission for which an amended answer was not filed and any request for which the amended answer was later found insufficient or a nullity would be deemed admitted under Rule 36(a). The court noted that any matter so admitted would be "conclusively established unless the court on motion permits withdrawal or amendment of the admission." FSM Civ. R. 36(b). The court also noted that this was Sigrah's third opportunity[6] to provide sufficient responses to the disciplinary counsel's requests for admission and did not expect that there would be a fourth.[7]

No amended answers were filed. Nor did Sigrah ask for an enlargement of time to amend her answers. The court, on March 11, 2020, therefore ordered that each of the disciplinary counsel's 26 requests for admission be deemed admitted.

3. *Effect of Admissions*

Deemed admissions can provide the factual basis for a summary judgment motion. *See* Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 (Chk. 1995) (admissions obtained through a failure to respond to requests for admissions may be used as the factual basis for summary judgment). Since the disciplinary counsel's requests for admission were deemed admitted, the following facts are conclusively established for the purpose of this proceeding. FSM Civ. R. 36(b).

The March 13, 2017 Order in Aid of Judgment and the Writ of Garnishment in Civil Action No. 1996-060 both required Fujita Enterprises to make monthly $500 payments to the FSM Development Bank. Sigrah was the attorney of record for Fujita Enterprises in that case. On March 13, 2017, the court-issued writ of garnishment was served on Kazuhiro Fujita and on Sigrah as the attorney of record for Fujita Enterprises. The writ of garnishment required Fujita Enterprises to pay the bank $500 every month through January 2018. Because she was served with the writ of garnishment, Sigrah knew of Fujita Enterprises' court-ordered obligation to pay $500 a month to the bank. Fujita Enterprises paid $500 to the bank on April 3, 2017, in accordance with the writ of garnishment. After that, Fujita Enterprises did not pay the bank. Fujita Enterprises stopped paying because Sigrah, although she knew of Fujita Enterprises' obligation to pay the bank, advised Kazuhiro Fujita not to make any more payments to the bank. Sigrah instead told Fujita to make the payments to Linda Carl, a judgment-debtor in Civil Action No. 1996-060, for whom Sigrah was also the attorney of record in Civil Action No. 1996-060. After Linda Carl died, Sigrah then advised Fujita to give the money to Sigrah herself, who, instead of paying the money to the bank as required by the writ of garnishment that had been served on her and that she was well aware of, gave the money to one or both of Linda Carl's daughters.

Since these facts are conclusively established, it is proven by clear and convincing evidence that Sigrah knowingly and willfully violated a court order – the March 13, 2017 writ of garnishment in Civil Action

[6] Sigrah's first chance was when she was originally served the requests for admission and made no response. Her second chance was when the court ordered her to respond by October 23, 2019, or the requests would be deemed admitted, and Sigrah then filed the answers that were deemed insufficient and a nullity. The January 13, 2020 order gave her a third chance.

[7] The court also cautioned Sigrah to be mindful that a lawyer, in connection with a disciplinary matter, cannot "knowingly make a false statement of material fact; or fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority . . . ." FSM MRPC R. 8.1. "The duty imposed by this Rule applies to a lawyer's own . . . discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct." FSM MRPC R. 8.1 cmt. This would also violate the general rules requiring candor towards the tribunal, FSM MRPC R. 3.3, and barring attorney misconduct, FSM MRPC R. 8.4.

No. 1996-060. *See* Attorney Grievance Comm'n of Md. v. Kapoor, 894 A.2d 502, 517 (Md. Ct. App. 2006) ("Because Respondent [Attorney] did not respond to Petitioner's Request for Admission of Facts and Genuineness of Documents, each matter of which an admission was requested was deemed admitted and conclusively established as a matter of law."). Sigrah has therefore knowingly disobeyed an obligation under the rules of the FSM Supreme Court, thereby violating Model Rule 3.4(c). She thus also violated FSM Disciplinary Rule 2(a), which makes the violation of any of the FSM Model Rules of Professional Conduct a ground for discipline, and Disciplinary Rule 2(d), which makes an attorney's willful disobedience or violation of a court order directing the attorney to do or cease doing an act a ground for discipline.

This does not affect the allegations that Sigrah violated FSM Model Rules 1.7 [conflict of interest] and 1.15 [safekeeping of property] since the disciplinary counsel did not address them in the summary judgment motion. Disciplinary counsel apparently does not intend to proceed further on those allegations separately.

Accordingly, the court found, in its November 30, 2021 Order Finding Disciplinable Conduct, that respondent attorney Yoslyn G. Sigrah had engaged in unethical conduct for which discipline is warranted.

III. IMPOSING DISCIPLINE

A. *Next Step*

Neither the disciplinary counsel nor the respondent attorney was, at the Rule 5(d) summary judgment hearing, prepared to address what possible discipline the court should impose if it found unethical conduct.[8] Therefore, the court ordered the parties to file and serve by December 21, 2021, their recommendations about what discipline should be imposed, with either side able to file a response to the other's recommendations no later than January 10, 2022.

Disciplinary counsel filed his recommendations on December 21, 2021. The respondent attorney filed a response on January 10, 2022, and also asked for more time so that her attorney of record could respond. Since the court was then unaware of the certificate of service for the December 21, 2021 filing on the respondent attorney's counsel of record (it seems it was misplaced), the court, on February 28, 2022, gave the respondent attorney's counsel of record until April 1, 2022, to file and serve a response to disciplinary counsel's December 21, 2021 filing. That time was enlarged to April 13, 2022, and the respondent attorney's counsel of record filed a separate response that day.

B. *Parties' Submissions*

1. *Disciplinary Counsel's*

The disciplinary counsel argues that Sigrah's conduct warrants disbarment. He contends that Sigrah not only knowingly disobeyed a court order, violating FSM Model Rule of Professional Conduct 3.4(c) and FSM Disciplinary Rules 2(a) and 2(d), but also, stemming from that core violation, had a conflict of interest between her two clients [FSM MRPC R. 1.7], by taking funds owed to the FSM Development Bank by one client, Fujita, and failed to keep that client's property safe [FSM MRPC R. 1.15] by diverting it to another client, Linda Carl, thereby depriving the bank of its funds and implicating both her clients in a conversion of funds.

Disciplinary counsel further urges disbarment because this is a case where the attorney was the

[8] The Disciplinary Rules direct the reviewing justice to "render a decision within twenty (20) days of the conclusion of the hearing," and, if that justice finds the misconduct allegations proven, "the justice shall impose an appropriate sanction or combination of sanctions pursuant to Rule 3." FSM Dis. R. 5(g). It would thus seem that the parties should, at the end of the Rule 5(d) hearing, address the matter of appropriate sanctions, in case the justice finds the misconduct allegations are proven.

proponent or instigator of the conduct violating a court order and her only explanation for that conduct was that she had appealed the trial court order and therefore felt that her client(s) were not obligated to obey the trial court order. He argues that Sigrah's failure to communicate to the court that she had diverted her client's funds and the reasons for doing so – her acting unilaterally and without notice to the court – exposed her clients, and her, to legal jeopardy. Disciplinary counsel concludes that, disbarment, although harsh, is appropriate because Sigrah not only willfully disregarded the trial court's legal authority and its orders and writs, but also has not taken any accountability for her actions, thus striking at the legal system's core, compromising its integrity and the rights of others to obtain legal recourse.

2. *Respondent Attorney's*

Sigrah, in her own response, states that she has filed a notice of appeal from the November 30, 2021 Order Finding Disciplinable Conduct; avers that her counsel of record would respond to the disciplinary counsel's recommendation on more of the factual and legal grounds; further states that Fujita has recently made the ordered payments to the bank; and directs the court's attention to the Constitution's Professional Services Clause, which provides that "[t]he national government of the Federated States of Micronesia recognizes the right of the people to . . . legal services and shall take every step reasonable and necessary to provide these services," FSM Const. art. XIII, § 1.

Sigrah, citing Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989), notes that FSM case law requires that whenever a national government official contemplates an action that may be anticipated to affect the availability of legal services, that official must take every step reasonable and necessary to avoid unnecessarily reducing the availability of legal services. Sigrah further notes that she is one of a very few local FSM citizen lawyers who have graduated from a U.S. law school, and that her disbarment would unnecessarily reduce the availability of legal services to FSM people in dire need of those services.

Sigrah's counsel of record asked the court to take judicial notice of recent filings in Civil Action No. 1996-060 that would indicate that not only has Fujita paid the $4,500 that should have been paid under the writ of garnishment but also that separate sanctions that were imposed in that case have been paid in full. Based on this, he moves that this decision not be made (stayed) until after the Sigrah's appeal of the November 30, 2021 Order Finding Disciplinable Conduct has been resolved.

The court denied the stay request because the pending appeal was from the November 30, 2021 interlocutory order, and from not an appealable final order, and no Appellate Rule 5(a) permission to appeal that interlocutory order had been either sought or granted. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

C. *Factors to Consider when Imposing Discipline*

The court must now determine which sanctions or what discipline to impose. When making such a determination, the court considers the following aggravating and mitigating factors:

The aggravating factors are as follows:

(a) prior disciplinary offenses;
(b) dishonest or selfish motive;
(c) a pattern of misconduct;
(d) multiple offenses;
(e) bad faith disruption of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
(g) refusal to acknowledge wrongful nature of conduct;

(h) vulnerability of victim;
(i) substantial experience in the practice of law; [and]
(j) indifference to making restitution.

Conversely, the following are appropriate mitigating factors:

(a) absence of a prior disciplinary record;
(b) absence of a dishonest or selfish motive;
(c) personal or emotional problems;
(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
(f) inexperience in the practice of law;
(g) character or reputation;
(h) physical or mental disability or impairment;
(i) delay in disciplinary proceedings;
(j) interim rehabilitation;
(k) imposition of other penalties or sanctions;
(l) remorse; [and]
(m) remoteness of prior offenses.

In re Shadel, 16 Palau 262, 264-65 (Pal. Disc. Trib. 2009) (citing In re Tarkong, 4 Palau Intrm. 121, 131-32 (Pal. Disc. Trib. 1994)).[9]

D. *Consideration of Factors*

The court will try to consider the countervailing factors in order, and in tandem, where possible. The first tandem factor is Sigrah's lack of a prior disciplinary record. This is a mitigating factor. (The court is aware that there are earlier, still-pending disciplinary complaints against Sigrah, but the court will not presume those will be resolved in any particular way.)

The second tandem factor is motive. Sigrah's motive was not selfish because she neither sought nor obtained any personal gain. Although the disciplinary counsel hints at it, there is no clear and convincing evidence that Sigrah's motive was dishonest, as opposed to seriously misguided. This also is a mitigating factor.

But there was a pattern of misconduct in that there were multiple offenses or incidents because, each month over the nine-month period that this disciplinary complaint covers, Sigrah induced Fujita not to obey the court order and writ. These are aggravating factors.

Delay in the disciplinary proceeding is a mitigating factor only when the delay was not caused by the respondent attorney. A respondent attorney's delay may be an aggravating factor. *Cf.* In re Skagen, 149 P.3d at 1192-93 (respondent attorney's long delay in producing discovery for disciplinary authorities constituted "bad faith obstruction of disciplinary proceeding"). Ethical complaints against lawyers should be resolved expeditiously for the dual purpose of protecting the lawyer from interminable proceedings when the lawyer should be exonerated and of protecting the public, the legal profession, and the court from a lawyer's unethical conduct. *See* In re Tarkong, 4 Palau Intrm. at 132. Delay caused by the respondent attorney thwarts that dual purpose. Since in this case the majority of the delay was caused by the respondent attorney, it will not be considered as a mitigating factor.

[9] The FSM Disciplinary Rules were drawn from the Republic of Palau Disciplinary Rules. Palau disciplinary proceedings under those rules may thus be helpful in understanding the FSM Disciplinary Rules' operation.

Sigrah, after first ignoring the disciplinary counsel's requests for admissions, later submitted deceptive and bad faith answers to those requests and did not display a cooperative attitude towards the disciplinary proceedings or make a full and free disclosure. Furthermore, Sigrah has not acknowledged the wrongful nature of her conduct. She made no effort to rectify the consequences of her misconduct. Even if Fujita has finally paid the $4,500, purging his own contempt, Sigrah's other client, Linda Carl or her estate, is harmed by being deeper in debt than she would have been if Fujita's payments to the bank had been made when ordered because of the annual 9% judgment interest that has accrued on that $4,500 over the last four plus years. Nor has Sigrah shown any remorse. These are all aggravating factors.

Since Sigrah was admitted to practice before the FSM Supreme Court in 2010, the court cannot say that Sigrah's actions were, at the time, due to being inexperienced in the practice of law, so that mitigating factor does not apply either. She has been an admitted and practicing attorney for quite some time. This is an aggravating factor.

No evidence showed that Sigrah's actions were due to personal or emotional problems on her part or to a physical or mental disability or impairment. Nor was there any evidence about her character or reputation. Thus, these mitigating factors have no bearing on this matter. The other mitigating factors not considered are also inapplicable.

IV. Discipline or Sanctions Imposed

Accordingly, the court having weighed the aggravating and mitigating factors and the seriousness of her misconduct, the court imposes the following discipline on Yoslyn G. Sigrah: two months suspension from the practice of law, and, as permitted by FSM Disciplinary Rule 3(i), payment of the disciplinary counsel's expenses in investigating and prosecuting this action. The disciplinary counsel shall submit an accounting of those expenses within ten days.

These sanctions shall, as required by the Disciplinary Rules, take effect 30 days after the Chief Clerk enters this order. FSM Dis. R. 12(c). Before then, she must comply with Disciplinary Rules 12(a) and 12(b). Once the sanctions have taken effect, Sigrah must then also comply with the requirements of Disciplinary Rules 12(d) and 12(g). Sigrah may apply for reinstatement after showing proof of payment of the disciplinary counsel's expenses.

* * * *

FSM SUPREME COURT TRIAL DIVISION

MARY ACKER,	)	CIVIL ACTION NO. 2018-012
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FEDERATED STATES OF MICRONESIA,	)	
	)	
Defendant.	)	
_____	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Beauleen Carl-Worswick
Associate Justice