

FILED

JUL 14 2015

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

1 STATE BAR OF CALIFORNIA
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8

9
10 STATE BAR COURT

11 HEARING DEPARTMENT - SAN FRANCISCO

12
13 In the Matter of:) Case No. 12-J-10617
14 EARLE ARTHUR PARTINGTON,) NOTICE OF DISCIPLINARY CHARGES
No. 45731,)
15) (Bus. & Prof. Code, § 6049.1; Rules Proc. Of
16 A Member of the State Bar) State Bar, rules 5.350 to 5.354)

17 **NOTICE - FAILURE TO RESPOND!**

18 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
19 WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:**

- 20 (1) **YOUR DEFAULT WILL BE ENTERED;**
21 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;**
22 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;**
23 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
24 OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
25 FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**



1 The State Bar of California alleges:

2 JURISDICTION

3 1. EARLE ARTHUR PARTINGTON ("respondent") was admitted to the practice of law
4 in the State of California on January 15, 1970, was a member at all times pertinent to these
5 charges, and is currently a member of the State Bar of California.

6 PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

7 2. On or about May 17, 2010, the U.S. Navy's Office of the Judge Advocate General
8 issued a letter decision finding that respondent had committed professional misconduct in that
9 jurisdiction. Thereafter, the letter decision of the U.S. Navy's Office of the Judge Advocate
10 General became final.

11 3. A certified copy of the letter decision of disciplinary action of the U.S. Navy's Office
12 of the Judge Advocate General is attached, as Exhibit 1, and incorporated by reference.

13 4. A copy of the statutes, rules or court orders of the U.S. Navy's Office of the Judge
14 Advocate General found to have been violated by respondent is attached, as Exhibit 2, and
15 incorporated by reference.

16 5. On or about October 26, 2010, the United States Court of Appeals for the Armed
17 Forces issued an order imposing reciprocal discipline based on the discipline imposed by the
18 U.S. Navy's Office of the Judge Advocate General.

19 6. A certified copy of the final order of disciplinary action of the United States Court of
20 Appeals for the Armed Forces is attached, as Exhibit 3, and incorporated by reference.

21 7. On or about November 9, 2011, the Supreme Court of Hawaii issued a reciprocal
22 discipline order based on the discipline imposed by the U.S. Navy's Office of the Judge
23 Advocate General.

24 8. A certified copy of the final order of disciplinary action of the Supreme Court of
25 Hawaii is attached, as Exhibit 4, and incorporated by reference.

26 9. On or about June 7, 2012, the District of Columbia Court of Appeals issued a
27 reciprocal discipline order based on the discipline imposed by the Supreme Court of Hawaii.

1 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
2 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
3 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
4 RECOMMENDED BY THE COURT.

5 NOTICE - COST ASSESSMENT!

6 IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC
7 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS
8 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING
9 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND
10 PROFESSIONS CODE SECTION 6086.10.

11 Respectfully submitted,

12 THE STATE BAR OF CALIFORNIA
13 OFFICE OF THE CHIEF TRIAL COUNSEL

14 DATED: July 14, 2015

15 By: 

16 HEATHER E. ABELSON
17 Deputy Trial Counsel
18
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United States

of America



DEPARTMENT OF THE NAVY

Washington, D. C., 20374-5066

I hereby certify that the annexed pages 1-4 constitute a true and accurate of the documents contained in the administrative files of the Department of the Navy relating to the professional responsibility case of Mr. Earle A. Partington, such record being kept in the ordinary course of official business, supervision and custody.

on file in the Office of the Judge Advocate General, Administrative Law Division

S. F. THOMPSON

Director, Administrative Law Div.

(Official Title)

OFFICE OF THE SECRETARY

I hereby certify that S. F. THOMPSON

who signed the foregoing certificate, was at the time of signing Director, Administrative Law Division, Office of the Judge Advocate General

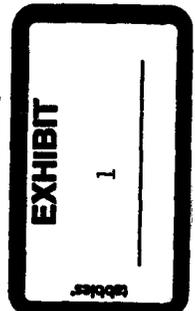
and that full faith and credit should be given his certification as such.

In testimony whereof, I have hereunto set my hand and caused the Seal of the Navy Department to be affixed this 13th day of December, two thousand Thirteen



K. A. FOSTER

K. A. FOSTER
Captain, JAGC, U.S. Navy
Assistant Judge Advocate General
(Civil Law)
For the Secretary of the Navy





DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374-5066

IN REPLY REFER TO

1610
Ser 13/4PR12205.09D

07 MAY 2010

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Earle A. Partington, Esq.
Law Office of Earle A. Partington
1330 Pacific Tower
1001 Bishop Street
Honolulu, HI 96813-3403

Dear Mr. Partington:

This is to inform you that I have received and considered the report of investigation conducted by Captain Robert B. Blazewick, JAGC, USN, relating to your professional conduct as appellate counsel in the general court-martial case of *United States v. AM1 Stewart C. Toles, II, USN*.

In July 2006, you represented AM1 Stewart C. Toles, II, USN, before a general court-martial. Pursuant to a pre-trial agreement, your client plead guilty to and was convicted of attempt to commit disorderly conduct, violation of a lawful general order (sexual harassment), possession of child pornography and manufacture of child pornography. The accused was sentenced to confinement for 60 months, reduction to the paygrade of E-1 and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

In March 2007, you filed an appellate brief before the Navy-Marine Corps Court of Criminal Appeals (NMCCA) on behalf of the accused. In October 2007, NMCCA issued its opinion in *United States v. AM1 Stewart C. Toles, II, USN*, NMCCA 200602374 (2007) (unpublished), affirming the findings and sentence. In the opinion, the Court found that your appellate brief contained "wholly unsupported allegations of error," "disingenuous" arguments, and misrepresentations of the record of trial. Following direction contained in a footnote to the opinion, the Clerk of Court forwarded the NMCCA opinion to the Navy Rules Counsel for review under JAG Instruction 5803.1C, *Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General* (32 C.F.R. Part 776).

SUBJECT: ETHICS INVESTIGATION ICO EARLE A. PARTINGTON, ESQ.

Pursuant to JAGINST 5803.1C, an ethics investigation was convened to examine the allegations of professional conduct violations lodged against you under the JAG Rules of Professional Conduct. As an initial matter, I specifically find that, contrary to your repeated assertions, I possess the jurisdiction and specific authority to review your actions in this professional responsibility matter. See Rule for Court-Martial (R.C.M.) 109(a) and JAGINST 5803.1C, para. 4.b.(2) (32 C.F.R. § 776.2(b)(2)). Further, I find that, contrary to your repeated assertions, the process afforded in JAGINST 5803.1C is in accord with R.C.M. 109(a) and offered you significant and meaningful opportunity to participate and be heard in this matter. On numerous occasions, you declined to elect the rights or otherwise participate in the investigation. Although you chose not to participate, all correspondence that you have submitted throughout the process has been incorporated into the report of investigation and considered.

I have personally reviewed the entire administrative record in this case to include the NMCCA opinion, the appellate brief you authored and filed in this case, pages 252 through 296 of the record of trial (ROT), and Captain Blazewick's ethics investigation. Further, I have personally reviewed all of your correspondence and considered the issues you have raised therein.

I have determined that there is clear and convincing evidence that you violated the following Rules of Professional Conduct set forth under JAGINST 5803.1C: Rule 3.1 (Meritorious Claims and Contentions) and Rule 3.3 (Candor and Obligation Toward the Tribunal).

To summarize your professional misconduct, I find that you took two misstatements made by the military judge when he said he was entering a "finding of not guilty"¹ with respect to certain specifications and, in turn, grossly exaggerated those misstatements in your appellate brief to the point that you intentionally misrepresented the posture of the case by claiming the military judge dismissed and/or acquitted your client of the offenses at issue. An objective reading of the record of trial conclusively demonstrates the military judge intended to convey that he was rejecting your client's attempt to plead guilty to certain offenses and was instead entering "pleas" of not guilty on his behalf. The military judge made this clear on numerous occasions, carefully and specifically explaining this very point

¹ See ROT pages 277, 278.

SUBJECT: ETHICS INVESTIGATION ICO EARLE A. PARTINGTON, ESQ.

to you and your client as reflected on pages 278-282 of the record of trial.² All subsequent proceedings in the court-martial, to include your client's voluntary plea of guilty to lesser-included offenses of the specifications at issue³ in order to preserve the pretrial agreement with the Convening Authority, make abundantly clear that the military judge never ruled on your motion, never dismissed the specifications nor otherwise acquitted your client.

Accordingly, I find that you filed an appellate brief with NMCCA that contained statements you knew to be both false and misleading, specifically: that the appellant had never moved for dismissal of specifications at the trial;⁴ that the military judge had dismissed the specifications at trial; that the military judge had acquitted the accused of the specifications at trial; and that the military judge had ruled that the specifications failed to allege an offense at trial.

No mitigating circumstances have been presented; in fact, your continued dissemblance regarding your appellate filing, your intemperate statements regarding NMCCA, and your assertions that the Navy Judge Advocate General lacks jurisdiction over the performance of counsel in military justice proceedings despite clear and unambiguous authority, are aggravating factors. I have determined the imposition of professional disciplinary action is warranted in this case.

By virtue of the authority vested in me by Articles 6 and 27 of the Uniform Code of Military Justice (U.C.M.J.), R.C.M. 109, and JAGINST 5803.1C, I hereby indefinitely suspend you from practicing law at any and all proceedings conducted under my supervision and cognizance. You are prohibited from representing members of the naval service, in either a military or civilian capacity, before Department of the Navy courts-martial, the Navy-Marine Corps Court of Criminal Appeals, Department of the Navy courts or boards of inquiry or other investigations conducted under the provisions of the Manual of the Judge Advocate General, administrative discharge boards, or other proceedings where members are provided the opportunity to be represented by counsel under Article 27(b) of the U.C.M.J.

² Indeed, you specifically acknowledged at trial the meaning and affect of the military judge's action, "CDC: I know the Court has entered a not guilty plea." See ROT page 280.

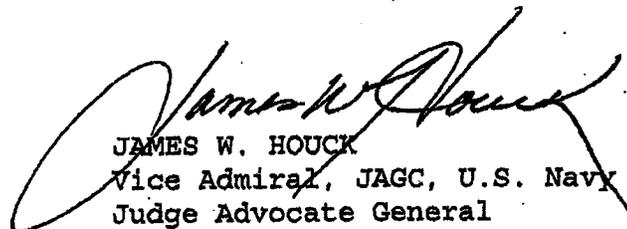
³ See ROT pages 288-292

⁴ See ROT page 253, "CDC: It's a motion to dismiss for denial of due process." See also ROT pages 257, 263, 269, 270 for additional instances of you referring to your motion before the Court

SUBJECT: ETHICS INVESTIGATION IGO EARLE A. PARTINGTON, ESQ.

Further, you are prohibited from practicing law in any capacity, including providing legal advice of any type, in the Department of the Navy.

This is to further inform you that I am providing a copy of my action in this matter to the Service Judge Advocates General, to the Court of Appeals for the Armed Forces, to the Navy and Marine Corps Court of Criminal Appeals and to appropriate state licensing authorities.



JAMES W. HOUCK
Vice Admiral, JAGC, U.S. Navy
Judge Advocate General

Copy to:
Rules Counsel
OJAG (Code 13)
Judge Advocate General of the Army
Judge Advocate General of the Air Force
Judge Advocate General of the Coast Guard
Staff Judge Advocate for the
Commandant of the Marine Corps
Office of the General Counsel
of the Navy
Court of Appeals for the Armed Forces
Commander, Naval Legal Service Command
Assistant Judge Advocates General
of the Navy
Navy and Marine Corps Court of
Criminal Appeals
Navy and Marine Corps Trial Judiciary



involves a departure from the normal attorney-client relationship, careful analysis of the situation is required. The covered attorney must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken on behalf of the client. For example, if the covered attorney is acting as an advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the covered attorney to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the covered attorney should advise the client of the implications of the evaluation, particularly the covered attorney's responsibilities to third persons and the duty to disseminate the findings.

d. CROSS REFERENCES

- (1) Rule 1.2 Establishment and Scope of Representation
- (2) Rule 1.6 Confidentiality of Information
- (3) Rule 1.7 Conflict of Interest: General Rule
- (4) Rule 1.9 Conflict of Interest: Former Client
- (5) Rule 1.13 Department of the Navy as Client
- (6) Rule 1.16 Declining or Terminating Representation
- (7) Rule 4.1 Truthfulness in Statements to Others
- (8) Rule 4.2 Communication with Person Represented by Counsel
- (9) Rule 4.3 Dealing with an Unrepresented Person
- (10) Rule 4.4 Respect for Rights of Third Persons

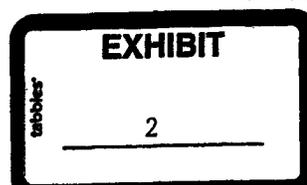
ADVOCACY

1. RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS. A covered attorney shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A covered attorney representing an accused in a criminal proceeding or the respondent in an administrative proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action, may nevertheless defend the client at the proceeding as to require that every element of the case is established.

a. COMMENT

(1) The covered attorney has a duty to use legal procedure for the fullest benefit of the client's cause, but also

Enclosure (1)



has a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. The law, however, is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

(2) The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the covered attorney expects to develop vital evidence only by discovery. Such action is not frivolous even though the attorney believes that the client's position ultimately will not prevail. Merely because an issue has never been raised before, or because it may have been raised under different circumstances and been resolved under those circumstances, the raising of the issue again is not necessarily frivolous. The action is frivolous, however, if the client desires to have the action taken solely for the purpose of harassing or maliciously injuring a person, or if the covered attorney is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law.

(3) A covered attorney does not violate this Rule by raising issues in good faith compliance with court precedent. See, e.g., United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

b. CROSS REFERENCES

- (1) Rule 1.3 Diligence
- (2) Rule 1.4 Communication
- (3) Rule 1.6 Confidentiality of Information
- (4) Rule 3.2 Expediting Litigation
- (5) Rule 3.3 Candor and Obligations Toward the Tribunal
- (6) Rule 3.4 Fairness to Opposing Party and Counsel
- (7) Rule 3.8 Special Responsibilities of a Trial Counsel and Other Government Counsel

2. RULE 3.2 EXPEDITING LITIGATION. A covered attorney shall make reasonable efforts to expedite litigation or other proceedings consistent with the interests of the client and the attorney's responsibilities to tribunals.

a. COMMENT. Dilatory practices bring the administration of justice into disrepute. The interests of the client are rarely served by such tactics. Delay exacts a toll upon a client in uncertainty, frustration, and apprehension. Expediting

Enclosure (1)

litigation, in contrast, often can directly benefit the client's interest in obtaining bargaining concessions and in obtaining an early resolution of the matter. Delay should not be indulged merely for the convenience of the covered attorneys, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent covered attorney acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

b. CROSS REFERENCES

- (1) Rule 1.4 Communication
- (2) Rule 3.1 Meritorious Claims and Contentions
- (3) Rule 3.3 Candor and Obligations Toward the Tribunal

3. RULE 3.3 CANDOR AND OBLIGATIONS TOWARD THE TRIBUNAL

a. A covered attorney shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the covered attorney to be directly adverse to the position of the client and not disclosed by opposing counsel;

(4) offer evidence that the covered attorney knows to be false. If a covered attorney has offered material evidence and comes to know of its falsity, the covered attorney shall take reasonable remedial measures; or

(5) disobey an order imposed by a tribunal unless done openly before the tribunal in a good faith assertion that no valid order should exist.

b. The duties stated in paragraph a continue to the conclusion of the proceedings, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

Enclosure (1)

c. A covered attorney may refuse to offer evidence that the covered attorney reasonably believes is false.

d. In an ex parte proceeding, a covered attorney shall inform the tribunal of all material facts known to the covered attorney which are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse.

e. COMMENT. The covered attorney's task is to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the covered attorney's duty of candor to the tribunal. However, a covered attorney does not vouch for the evidence submitted in a cause; the tribunal is responsible for assessing its probative value.

(1) Representations by a Covered Attorney. A covered attorney is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the covered attorney. Cf. Rule 3.1. However, an assertion purporting to be of the covered attorney's own knowledge, as in an affidavit by the covered attorney or in a statement in open court, may properly be made only when the covered attorney knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances when failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2e not to counsel a client to commit or assist the client in committing a fraud applies in litigation. See Rule 1.2e Comment; see also Rule 8.4a(2) Comment.

(2) Misleading Legal Argument. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A covered attorney is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph a(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case. A covered attorney should not knowingly fail to disclose to the tribunal legal authority from a non-controlling jurisdiction, known to the covered attorney to be directly adverse to the position of the client and not disclosed by opposing counsel, if the legal issues

Enclosure (1)

being litigated have not been decided by a controlling jurisdiction and the judge would reasonably consider it important to resolving the issue being litigated.

(3) False Evidence

(a) When evidence that a covered attorney knows to be false is provided by a person who is not the client, the covered attorney must refuse to offer it regardless of the client's wishes.

(b) When false evidence is offered by the client, however, a conflict may arise between the covered attorney's duty to keep the client's revelations confidential and the duty of candor to the tribunal. Upon ascertaining that material evidence is false, the covered attorney should seek to persuade the client that the evidence should not be offered. If it has already been offered, the attorney's proper course ordinarily is to consult with the client confidentially. The covered attorney should urge the client to immediately correct the matter on the record. If the persuasion is ineffective, the covered attorney must take reasonable remedial measures.

(c) Should the client refuse to correct the matter and if necessary to rectify the situation, a covered attorney must disclose the existence of the client's deception to the tribunal or to the other party (in the case of perjury by a criminal accused, see subparagraph e(4) below). Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the covered attorney cooperates in deceiving the tribunal, thereby subverting the truth-finding process, which the adversary system is designed to implement. See Rule 1.2e. Furthermore, unless it is clearly understood that the covered attorney will act upon the duty to disclose the existence of false evidence, the client can simply reject the covered attorney's advice to reveal the false evidence and insist that the covered attorney keep silent. Thus the client could in effect coerce the covered attorney into being a party to fraud on the tribunal.

(4) Perjury by a Criminal Accused

(a) A criminal case in which the accused insists on testifying when the covered attorney knows that the testimony is perjurious is the most difficult situation. The covered attorney's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if

Enclosure (1)

the covered attorney does not exercise control over the proof, the covered attorney participates, although in a merely passive way, in deception of the tribunal.

(b) If the accused has admitted to the covered attorney facts which establish guilt and the covered attorney's independent investigation establishes that the admissions are true but the accused insists on exercising the right to testify, the covered attorney must advise the client against taking the witness stand to testify falsely. If before trial the accused insists on testifying falsely, the covered attorney shall seek to withdraw from representation. See Rule 1.16. If that is not permitted or if the situation arises during the trial or other proceedings and the accused insists upon testifying falsely, it is a violation of this Rule for the covered attorney to lend aid to the perjury or use the perjured testimony. A criminal accused has a right to the assistance of an attorney, a right to testify and a right of confidential communication with counsel. However, an accused does not have a right to assistance of counsel in committing perjury. Furthermore, a covered attorney has an obligation, not only in professional ethics but under the law, to avoid implication in the commission of perjury or other falsification of evidence. See Rule 1.2e.

(5) Remedial Measures. If perjured testimony or false evidence has been offered, the covered attorney's proper course ordinarily is to remonstrate with the client confidentially. If that fails, the covered attorney should seek to withdraw if that will remedy the situation. If withdrawal will not remedy the situation or is impossible, the covered attorney should make disclosure to the tribunal. It is for the tribunal then to determine what should be done; making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing. If the false testimony was that of the client, the client may controvert the covered attorney's version of their communication when the covered attorney discloses the situation to the tribunal. If there is an issue whether the client has committed perjury, the covered attorney cannot represent the client in resolution of the issue, and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation.

(6) Duration of Obligation. A practical time limit on the obligation to rectify the presentation of false evidence has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation.

Enclosure (1)

(7) Refusing to Offer Proof Believed to be False.

Generally speaking, a covered attorney has authority to refuse to offer testimony or other proof that the covered attorney reasonably believes is untrustworthy. Offering such proof may reflect adversely on the covered attorney's ability to discriminate in the quality of evidence and thus impair the covered attorney's effectiveness as an advocate.

(8) Ex Parte Proceedings.

Ordinarily, a covered attorney has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as a hearing before an initial review officer, there is no balance of presentation by opposing attorneys. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge, magistrate, or other official has an affirmative responsibility to accord the absent party just consideration. The covered attorney for the represented party has the correlative duty to make disclosures of material facts known to the covered attorney and that the covered attorney reasonably believes are necessary to an informed decision.

f. CROSS REFERENCES

- (1) Rule 1.2 Establishment and Scope of Representation
- (2) Rule 1.6 Confidentiality of Information
- (3) Rule 3.1 Meritorious Claims and Contentions
- (4) Rule 3.4 Fairness to Opposing Party and Counsel
- (5) Rule 3.8 Special Responsibilities of a Trial Counsel and Other Government Counsel
- (6) Rule 4.1 Truthfulness in Statements to Others
- (7) Rule 8.4 Misconduct
- (8) Rule 8.5 Jurisdiction

4. RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

a. A covered attorney shall not:

(1) unlawfully obstruct a party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A covered attorney shall not counsel or assist another person to do any such act;

(2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

Enclosure (1)



UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES
WASHINGTON, D.C.

In the Matter of:)
Earle A. Partington) ORDER
USCAAF Bar #14934) Special Dkt # 10-12
)

It appearing that the above-named attorney is a member of the Bar of this Court, that he was suspended indefinitely from the practice of law in the United States Navy-Marine Corps Court of Criminal Appeals by the Judge Advocate General of the Navy, that pursuant to Rule 15(b), Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, said attorney was suspended from the practice of law by this Court and ordered to show cause why a disbarment order should not be entered, and considering the response to the show cause order, it is, by the Court, this 26th day of October, 2010,

ORDERED:

That Earle A. Partington is hereby suspended from the practice of law before this Court for one year from June 10, 2010.

For the Court,

William A. DeCicco
William A. DeCicco
Clerk of the Court

CERTIFIED TRUE COPY

Notary Public Seal for Ellen Rambo Wilson, District of Columbia, Commission Expires 5/31/2017. Includes text: "Subscribed and Sworn to before me" and "day of June, 2015".

EXHIBIT
3



Electronically Filed
Supreme Court
SCAD-11-0000162
09-NOV-2011
11:40 AM

SCAD-11-0000162

IN THE SUPREME COURT OF THE STATE OF HAWAII

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

EARLE A. PARTINGTON, Respondent.

ORIGINAL PROCEEDING
(ODC 10-079-8913)

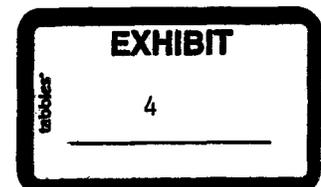
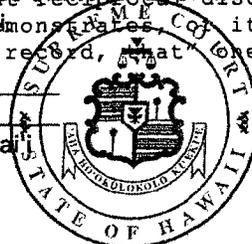
ORDER OF SUSPENSION

(By: Recktenwald, C.J., Duffy, J., and Intermediate Court of Appeals Chief Judge Nakamura, in place of Acoba, J., recused; with Nakayama, J., dissenting, in which McKenna, J., joins)

We are presented with a reciprocal disciplinary proceeding against Respondent Earle A. Partington brought pursuant to the Rules of the Supreme Court of the State of Hawai'i (RSCH) Rule 2.15, which obligates us to impose reciprocal discipline, see RSCH Rule 2.15(d), unless it appears or is shown that¹ (1) the procedures in the foreign jurisdiction through which discipline was imposed were "so lacking in notice or opportunity to be heard as to constitute a deprivation of due

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the Office of the Clerk of the Supreme Court of the State of Hawai'i. Imposed discipline shall be imposed "unless the other jurisdiction's record, or it clearly appears upon the face of the other jurisdiction's record, that one of the four conditions set forth in Hawai'i Rule 2.15(d) is met."
Dated at Honolulu, Hawai'i, on 02 JUN-2015

/s/R. Hasuko
Clerk, Appellate Courts, State of Hawai'i



process"; (2) that "there was such an infirmity of proof establishing the factual basis for the discipline . . . as to give rise to the clear conviction that the supreme court could not, consistent with its duty, accept as final the other jurisdiction's conclusion on that subject"; (3) "the reason for the other jurisdiction's discipline . . . no longer exist"; or (4) that "the conduct established warrants substantially different discipline . . . in this state." See RSCH Rule 2.15(c) (1)-(4).

Upon consideration of the evidence in the record and the Disciplinary Board's Report and Recommendation for the Disbarment of Respondent Partington, and following full consideration of Respondent Partington's arguments and evidence submitted to this court in opposition to the Disciplinary Board's Report and Recommendation, we conclude as follows:

It appears that Respondent Partington submitted an appellate brief to the United States Navy-Marine Corps Court of Criminal Appeals in Washington, D.C., which omitted material facts necessary to accurately portray the court-martial proceedings that were the subject of the appeal. It further appears that the Department of the Navy's Office of the Judge Advocate General imposed upon Respondent Partington an indefinite suspension from the practice of law in the Department of the Navy's jurisdictions, and the United States Navy-Marine Corps Court of Criminal Appeals in Washington, D.C. imposed a one-year suspension upon Respondent Partington. Partington's factual omissions in the appellate brief were in violation of the Hawai'i Rules of Professional Conduct Rule 3.3(a) (1) ("A lawyer shall not knowingly . . . make a false statement of material fact or law to a tribunal [.]") and HRPC Rule 3.3 cmt. 2 ("There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."); HRPC Rule 8.4(a) ("It is professional misconduct for a lawyer to . . .

violate . . . the rules of professional conduct [.]"); and HRPC Rule 8.4(c) ("It is professional misconduct for a lawyer to . . . engage in conduct involving . . . misrepresentation [.]").

It further appears that Respondent Partington has substantial experience in the practice of law and continues to refuse to acknowledge the wrongful nature of his conduct.

In mitigation, it appears that the record in the court-martial was unclear in some respects, and that Partington had some basis on which to argue that his client could not plead guilty to a lesser included offense under the circumstances as they existed.

In submitting an appellate brief which omitted material facts, Partington engaged in professional misconduct. However, unlike the Judge Advocate General and the dissent, and given the lack of clarity in certain aspects of the record, we are not convinced that Partington's omissions were done deliberately with the intent to mislead or deceive the court. Considering all of the circumstances, we conclude that a suspension from the practice of law is warranted, although Partington has demonstrated that the conduct established warrants a shorter period of discipline than the indefinite suspension to practice law imposed by the Judge Advocate General, and the one-year suspension imposed by the United States Navy-Marine Corps Court of Criminal Appeals in Washington, D.C.

Therefore,

IT IS HEREBY ORDERED that Respondent Partington is suspended from the practice of law in this jurisdiction for a period of 30 days, effective 30 days from entry of this order, as provided by the RSCH Rule 2.16(c). This 30-day suspension appropriately recognizes the serious nature of Respondent Partington's misconduct, and is consistent with other cases that we have decided involving misrepresentations to the court. See ODC v. Parker, No. 18045 (Haw. Sept. 9, 1994) (unpublished)

(suspending Parker for one month for his misrepresentations to the Circuit Court, his client, and the ODC). Although there are other cases involving misrepresentations where longer sanctions have been imposed, see Dissenting Opinion at 7-8, those cases often involve additional forms of misconduct.

IT IS FURTHER ORDERED that, in addition to any other requirements for reinstatement imposed by the Rules of the Supreme Court of the State of Hawai'i, Respondent Partington shall pay all costs of these proceedings as approved upon timely submission of a bill of costs.

IT IS FURTHER ORDERED that Respondent Partington shall, within ten (10) days after the effective date of this order, file with this court an affidavit in full compliance with RSCH Rule 2.16(d).

DATED: Honolulu, Hawai'i, November 9, 2011.

/s/ Mark E. Recktenwald

/s/ James E. Duffy, Jr.

/s/ Craig H. Nakamura





Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

DISTRICT OF COLUMBIA COURT OF APPEALS

FILED 6/7/12
District of Columbia
Court of Appeals
Julio Castillo
Julio Castillo
Clerk of Court

No. 12-BG-175

IN RE: EARLE A. PARTINGTON,
Respondent.

Bar Registration No. 87700

BDN: 453-11

BEFORE: Thompson, Associate Judge, Terry and King, Senior Judges.

ORDER
(FILED - June 7, 2012)

On consideration of the certified order of the Supreme Court for the State of Hawaii suspending respondent for thirty days, this court's March 27, 2012, order suspending respondent pending further action of the court and directing him to show cause why identical reciprocal discipline in the form of a thirty-day suspension with a condition of fitness should not be imposed, respondent's motion to defer the matter, the opposition thereto, respondent's motion to set aside the March 27, 2012, order that suspended him pending resolution of this matter, the opposition and reply thereto, and the statement of Bar Counsel regarding reciprocal discipline, it is

ORDERED that respondent's motion to stay proceedings is denied. It is

FURTHER ORDERED that respondent's motion to set aside the March 27, 2012, order suspending him pending resolution of this matter is denied. It is

FURTHER ORDERED that Earle A. Partington is hereby suspended for thirty days, subject to a showing of fitness as a condition of reinstatement (i.e., respondent must demonstrate compliance with Hawaii's conditions for reinstatement). See Rules of the Supreme Court of Hawaii, R. 2.17(a), (b) & (d); see also, e.g. *In re D'Onofrio*, 764 A.2d 797 (D.C. 2001). It is

FURTHER ORDERED that for purposes of filing a petition for reinstatement respondent's suspension will not begin to run until such time as he files an affidavit that fully complies with the requirements of D.C. Bar. R. XI, § 14 (g).

PER CURIAM

A true Copy
Test:

Julio Castillo
Clerk of the District of Columbia Court
of Appeals

BY *[Signature]*
DEPUTY CLERK
Julio Castillo
Clerk of the District of Columbia
Court of Appeals

EXHIBIT
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IN THE SUPREME COURT OF THE STATE OF OREGON

In Re:

Complaint as to the Conduct of

EARLE A. PARTINGTON, OSB Bar #691361,
Accused.

Oregon State Bar
1251, 1265

S060387

ORDER IMPOSING RECIPROCAL DISCIPLINE

Upon consideration by the court.

The accused's request for oral argument is denied. The recommendation of the State Professional Responsibility Board is accepted, and the accused is hereby reciprocally disciplined under BR 3.5 by being suspended from the practice of law for 60 days, effective 60 days from the date of this order.

Thomas A. Balmer

10/17/2013
7:06:44 AM

THOMAS A. BALMER
CHIEF JUSTICE, SUPREME COURT

c: Earle A Partington
Susan Roedl Cournoyer

kag

ORDER IMPOSING RECIPROCAL DISCIPLINE

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Page 1 of 1

EXHIBIT

tabbiter

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EX Ce

Oregon State Bar

True Copy Certificate

I certify that the attached documents consisting of 49 pages, are true and correct copies from the Oregon State Bar membership file or files of:

Earle A. Partington,

Bar No. 074675.

Regulatory Services

By Brandi Morris
Public Records Coordinator
Oregon State Bar

Date 06/08/2015

DECLARATION OF SERVICE
BY CERTIFIED AND REGULAR MAIL

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CASE NO.: 12-J-10617

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

NOTICE OF DISCIPLINARY CHARGES
(Bus. & Prof. Code, § 6049.1; Rules Proc. of State Bar, rules 5.350 to 5.354)

in a sealed envelope placed for collection and mailing as *certified mail, return receipt requested*, and in an additional sealed envelope as *regular mail*, at San Francisco, on the date shown below, addressed to:

Article No.: 9414 7266 9904 2011 9769 04
Earle Arthur Partington
1001 Bishop St., Ste. 1330
Honolulu, HI 96813

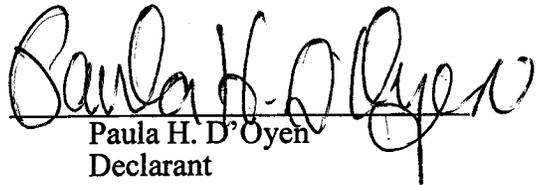
in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: July 14, 2015

Signed:


Paula H. D'Oyen
Declarant