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IN THE SUPREME COURT OF GUAM

IN RE:	)	Supreme Court Case No. ADC 03-001
	)	
<b>CAROL FITCH BAULOS,</b>	)	<b>ORDER</b>
	)	
Respondent.	)	

This matter comes before the court upon the recommendation of the Ethics Committee of the Guam Bar Association ("the Committee") to impose discipline against Respondent Carol Fitch Baulos ("Baulos"). Because of the nature of the proceedings and the gravity of the discipline sought to be imposed, it is helpful to briefly review the record before this court.

**A. FACTUAL AND PROCEDURAL BACKGROUND**

1. Proceedings before the Ethics Committee

The disciplinary proceeding was prompted by an ethics complaint filed against Baulos by Diana Castro ("Castro"), who had retained Baulos in April, 2002 to represent her in a divorce. Castro alleged several incidents with regard to her dissatisfaction with Baulos's representation.

On January 23, 2003, the Committee filed a Specification of Charges ("the Specification") against Baulos in Supreme Court Case No. EC 02-027, based on the allegations from Baulos's representation in Castro's divorce case. The Specification was mailed to Baulos that same day, with a Notice of the Specification advising Baulos of her right to file an answer. The Notice further stated that failure to specifically deny any fact alleged or failure to file an answer within 20 days after service of the Specification would result in the facts alleged in the Specification being deemed admitted. A return receipt indicated that the Specification and Notice were received by Baulos on February 6, 2003. An answer by Baulos was due to the Committee by February 26, 2003; however,

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1 she did not file any responsive pleading. Because Baulos failed to answer or otherwise appear  
2 within 20 days after service of the Specification, the Committee entered default against her on  
3 March 7, 2003. On April 9, 2003, the Committee issued its Findings of Fact and Conclusions of  
4 Law; Recommended Discipline (“Recommended Discipline”).<sup>1</sup>

5 2. Appellate proceedings

6 The Committee submitted a proposed order for discipline, and attached its Recommended  
7 Discipline, to this court on April 9, 2003; Baulos was served notice that same day. On April 29,  
8 2003, Baulos filed a statement objecting to the Committee’s findings and conclusions, and  
9 requesting a hearing before this court. The subsequent proceedings before this court were marked  
10 with a number of extensions with regard to filing of certain documents, including Baulos’s amended  
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12 <sup>1</sup> The Ethic Committee of the Guam Bar Association (“the Committee”) recommended discipline against  
13 Respondent Carol Fitch Baulos (“Baulos”) as follows:

14 (A) Respondent shall be publicly reprimanded by the Supreme Court of Guam and that [the  
15 Committee] shall publish the following:

16 CAROL FITCH-BAULOS [sic], an attorney licensed to practice  
17 law, has been public reprimanded by the Supreme Court of Guam  
18 for violations of the Rules of Professional Conduct for (1) the  
19 failure to competently represent a client in a domestic case; (2)  
20 the failure to act with reasonable diligence and promptness in  
21 representing the client; (3) the failure to make reasonable efforts  
22 to expedite litigation consistent with the interests of the client;  
23 and (4) the failure to keep the client reasonably informed about  
24 the status of a matter, to promptly comply with reasonable  
25 requests for information and to explain a matter to the extent  
26 reasonably necessary to permit the client to make informed  
27 decisions regarding the representation.

28 B. That within ninety (90) days of the entry of judgment, the Respondent shall pay to the  
Guam Bar Association the cost of publishing the public reprimand in the *Pacific Daily News* and the  
*Marianas Variety*.

C. That Respondent bear all expenses and costs which were incurred in this proceeding  
before the Committee, including the cost of depositions, transcripts, witnesses and also for attorney  
fees as provided in Rule 10 of the Supreme Court of Guam’s Rules for the Discipline of Attorneys,  
and that Prosecuting Counsel submit an itemized breakdown of costs and attorney time incurred in  
prosecuting this matter.

D. That a recommendation be made to the Supreme Court of Guam that it order the  
Respondent to submit to an evaluation by a medical provider and that a report on the Respondent’s  
ability to adequately practice law and fulfill the fiduciary duties inherent in the practice of law be made  
to the court at a hearing with Prosecuting Counsel present.

E. The Committee further recommends that if Respondent fails to submit to an evaluation  
as ordered by the court or fails to provide the court with a report from a medical provider on her  
fitness to practice law as described above then the court may allow the Committee, by and through  
Prosecuting Counsel, to proceed pursuant to Rule 14 of the court’s Rules for the Discipline of  
Attorneys and seek the Respondent’s immediate suspension from the practice of law.

Findings of Fact, Conclusions of Law; Recommended Discipline, p. 5-6.

1 Designation of Record.<sup>2</sup>

2 On August 22, 2003, this court issued a briefing schedule, which was served on Baulos that  
3 same day. Baulos's opening brief would have been due on September 22, 2003; however, she failed  
4 to file her opening brief. Order, October 6, 2003. In failing to file a brief, Baulos was deemed to  
5 have waived oral argument. *Id.*

6 On October 7, 2003, the Committee's Prosecuting Counsel filed motions to dismiss  
7 Baulos's objection and to enter an order to impose discipline ("the motions"), as well as a  
8 supporting memorandum. On October 29, 2003, Baulos filed a request to oppose the motions and  
9 request for appointment of counsel. Baulos's request to oppose the motions was granted, but her  
10 request for appointment of counsel was denied. Order, November 17, 2003. The hearing on the  
11 motions was held on November 20, 2003, where Baulos and Prosecuting Counsel appeared and  
12 presented arguments.

13 On December 12, 2003, this court denied the Committee's request to dismiss Baulos's  
14 objection, but agreed with the Committee's recommendation that Baulos submit to a medical  
15 evaluation and file the medical report with this court. Order, December 12, 2003. All other  
16 recommendations regarding proposed discipline were stayed pending submission of the medical  
17 report. *Id.* As with the order to amend her Designation of Record, Baulos requested and was  
18 granted two extensions to submit the medical report.<sup>3</sup> When Baulos failed to file the report after  
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20 <sup>2</sup> Baulos was ordered to submit a Designation of Record by May 19, 2003, and the Prosecuting Counsel for  
21 the Ethics Committee of the Guam Bar Association ("the Committee") was given 10 days later to designate additional  
22 documents. Order, May 12, 2003. On May 19, 2003, Baulos filed her designation. On May 29, 2003, the Committee  
23 through its Prosecuting Counsel, filed its designation and objected to Baulos's designation as being overly-broad. This  
24 court agreed with Prosecuting Counsel, and ordered Baulos to submit an amended designation. Order, June 4, 2003.  
25 On June 9, 2003 and again on June 25, 2003, Baulos filed and was granted requests for extensions. Order, June 11,  
26 2003; Order, June 30, 2003. The Committee did not object to the first or second extensions.

27 On July 9, 2003, Baulos filed a third request for an extension. On July 14, 2003, Prosecuting Counsel filed  
28 an objection, requesting: 1) that the extension be denied; and 2) that the record, as designated by the Committee, be  
filed as the record in this case. On July 15, 2003, Baulos filed a reply to the objection, reiterating her argument that  
she needed additional time to obtain a tape recording of a proceeding in a prior disciplinary action. This court  
determined Baulos had "failed to present adequate grounds" for another extension, and agreed with both requests made  
by Prosecuting Counsel. Order, August, 19, 2003. Thus, the extension was denied and the record in this case consisted  
of those documents indicated on the Committee's Designation of Record. *Id.*

<sup>3</sup> This court's December 12, 2003 order stated that Baulos was to file the medical report by January 5, 2004.  
Baulos did not file a medical report by the due date. On January 6, 2004, Baulos filed a request for extension of time,  
stating that she her assigned doctor had been off-island and returned only on January 5, 2004. Baulos stated she was

1 the second extension, this court extinguished the stay with regard to the Committee's  
2 recommendation of proposed discipline. *Id.* At a hearing on March 19, 2004, both Baulos and  
3 Prosecuting Counsel appeared and presented arguments. Baulos indicated that her physician had  
4 not completed the medical report.

## 6 DISCUSSION

7 At the March 19, 2004 hearing, Prosecuting Counsel orally recommended that Baulos be  
8 summarily suspended from the practice of law pursuant to Rule 13(a)(3) of the Supreme Court of  
9 Guam's Rules for the Discipline of Attorneys. We note this recommendation differs from that  
10 originally proposed, which sought, *inter alia*, an evaluation by a medical provider, and, upon failure  
11 to submit to the evaluation or submit a medical report regarding the evaluation, a suspension  
12 proceeding pursuant to Rule 14 of the Supreme Court of Guam's Rules for the Discipline of  
13 Attorneys.<sup>4</sup>

14 However, we determine that Rule 13, which governs summary suspension, merits further  
15 discussion. Rule 13(a)(3) provides:

16 (a) Summary Suspension. Upon recommendation by the Ethics Committee,  
17 an attorney may be summarily suspended from the practice of law by the Supreme  
18 Court:

18 . . .

19 (3) upon the Ethics Committee's demonstrating to a three justice

20 able to see her doctor that day, but he "requested time to consult with other physicians regarding the manner in which  
21 he would be allowed to present the information requested." The doctor would discuss the matter with Baulos at her  
22 regular appointment scheduled for January 8, 2004. This court granted the extension of time, finding specifically that  
23 because the delay was prompted by circumstances beyond Baulos's control, she had shown good cause for an extension.  
24 Order, January 12, 2004. Thus, the report's due date was extended to January 19, 2004. *Id.*

25 Again, Baulos did not file the medical report by the due date. On January 20, 2004, Baulos requested another  
26 extension, stating that her appointment for the evaluation was not scheduled until January 22, 2004. This court granted  
27 the request, but also indicating that in light of the extensions previously granted, Baulos "shall make every attempt to  
28 comply with this order." Order, January 21, 2004. Thus, the report's due date was extended to February 5, 2004. *Id.*  
The hearing scheduled for January 29, 2004, was to be rescheduled after submission of the report. *Id.*

Yet again, Baulos did not file the medical report by the due date. On February 17, 2004, Baulos again  
requested an extension, stating that she had met with the physician as scheduled, but the medical report was not expected  
to be completed until February 24, 2004. This court denied Baulos's request, noting that she had been granted two prior  
extensions and still failed to submit the report or any documentation from her doctor substantiating the need for the  
extension. Order, February 24, 2004.

<sup>4</sup> See note 1, *supra* (describing the discipline recommended by the Committee).

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panel constituted in the manner prescribed by Rule 3, above, that an attorney is incapacitated from practicing law or defending himself[.]

GUAM RULES FOR THE DISCIPLINE OF ATTORNEYS R. 13 (1998). Rule 3 governs the proceedings before this court. Thus, we must now determine whether the Committee has demonstrated to this court that Baulos “is incapacitated from practicing law or defending [her]self.” *Id.*

We conclude, based on the Recommended Discipline and the Committee’s elucidation of Baulos’s conduct in this proceeding, including her numerous failures to meet established deadlines, that the Committee has demonstrated Baulos’s incapacity to practice law or defend herself. In light of our determination, we further conclude that Baulos shall be summarily suspended from the practice of law pursuant to Rule 13(a)(3)

In imposing the suspension, we do not adopt the proposed discipline set forth by the Committee in its Recommended Discipline.<sup>5</sup> Rather, Baulos shall seek reinstatement pursuant to Rule 13(d)(2), which provides:

**(d) Reinstatement.** An attorney suspended under the provisions of Paragraph (a) of this rule shall be reinstated immediately upon the filing of a certificate by the Ethics Committee demonstrating that:

...

(2) if the suspension was imposed because of incompetency or incapacity, the Ethics Committee certifies that the incapacity or incompetency no longer exists[.]

GUAM RULES FOR THE DISCIPLINE OF ATTORNEYS R. 13 (1998). Thus, it is for the Committee to determine, and then certify to this court, that the incapacity no longer exists.<sup>6</sup>

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<sup>5</sup> See note 1, *supra* (describing the discipline recommended by the Committee).


<sup>6</sup> We note that pursuant to Rule 13(e) of the Supreme Court of Guam Rules for the Discipline of Attorneys, it does not appear that Baulos’s reinstatement terminates the instant proceedings. Rule 13(e) states: “Reinstatement after a summary suspension shall not terminate any formal disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Ethics Committee as provided in these rules.” GUAM RULES FOR THE DISCIPLINE OF ATTORNEYS R. 13 (1998).

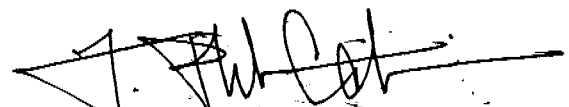
1           Therefore, pursuant to Rule 13(b) of the Supreme Court of Guam's Rules for the Discipline  
2 of Attorneys, this court hereby orders as follows:

- 3           A.    Respondent has violated Guam Rules of Professional Conduct 1.1,  
4                1.3, 1.4 and 3.2 as described in the Ethics Committee's  
5                Recommended Discipline.
- 6           B.    Respondent shall be immediately suspended from the practice of law  
7                pursuant to Rule 13(a)(3) of the Supreme Court of Guam's Rules for  
8                the Discipline of Attorneys.
- 9           C.    Respondent's reinstatement to the practice of law shall be pursuant  
10               to Rule 13(d)(2) of the Supreme Court of Guam's Rules for the  
11               Discipline of Attorneys.

12           **SO ORDERED**, this 23 day of March 2004.

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14           \_\_\_\_\_  
15           ROBERT J. TORRES  
16           Associate Justice

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18           \_\_\_\_\_  
19           FRANCES TYDINGCO-GATEWOOD  
20           Associate Justice

21             
22           \_\_\_\_\_  
23           F. PHILIP CARBULLIDO  
24           Chief Justice