

IN THE SUPREME COURT
REPUBLIC OF THE MARSHALL ISLANDS

E. COOPER BROWN,)	
)	S. Ct. Civ. No. 91-06
Appellant,)	(NCT No. 23-2110)
)	
vs.)	
)	
THE NUCLEAR CLAIMS TRIBUNAL)	
OF THE MARSHALL ISLANDS,)	
)	
Appellee.)	
_____)	

Opinion of the Court

Summary:

An attorney representing claimants before the Nuclear Claims Tribunal was ordered by the Tribunal, pending review of the Tribunal's referral of the attorney to the Standing Committee on Professional Conduct of the Marshall Islands, not to appear before the Tribunal without local, licensed co-counsel. The Supreme Court found that the Order violated the attorney's due process rights to notice and an opportunity to be heard and reversed the Order.

Digest:

Attorneys -- Privileges, disabilities, and liabilities -- requirement to associate local, licensed co-counsel: Absent a duly adopted universal rule to that effect, conditioning an attorney's right to appear before the Nuclear Claims Tribunal upon his associating local, licensed co-counsel, requires that the attorney be accorded due process.

Constitutional Law -- due process -- procedural: The minimum elements of due process guaranteed by Article II, Section 4(1) of the Constitution are notice and the opportunity to be heard.

Attorneys -- suspension and disbarment -- complaints: An order of the Nuclear Claims Tribunal referring an attorney to the Marshall Islands Standing Committee on Professional Conduct is not appealable.

Before: Ashford, C.J. and Samuel P. King* and Ronald D. Libkuman**, Associate Justices pro tem

Ashford, Chief Justice:

This is an appeal by E. Cooper Brown (hereafter "Brown") from orders "against him" in a Decision and Order dated December 2, 1991 of the Nuclear Claims Tribunal, Republic of the Marshall Islands (hereafter the "Tribunal") in proceeding No. 23-2110 before the Nuclear Claims Tribunal. Brown is an attorney representing numerous complainants in that proceeding. Notwithstanding that the Complaint filed by Brown was dismissed by the Tribunal without prejudice to complainants, we have been assured by counsel that the complainants' substantive rights have not been prejudiced by the dismissal. We have re-captioned this case to identify the real parties in interest on this appeal.

The purpose of the Nuclear Claims Tribunal Act, 42 MIRC Ch. 1 (hereafter, the "Act") is to compensate residents of the Marshall Islands who sustained injuries or property damage as a result of the United States' nuclear testing program in the mid-1946 to mid-1958 period. The Act provides for a Defender

*Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, by appointment of the Cabinet.

**Ronald D. Libkuman, Esq. of the Hawaii State Bar, by appointment of the Cabinet.

of the Fund who represents the fund, and a Public Advocate who represents claimants, and provides for payment of these counsel. Claimants may also retain independent attorneys. 42 MIRC Ch. 1, §§ 18 and 17.

Brown is a lawyer who is licensed to practice law in the Marshall Islands, but whose principal office is in Takoma Park, Maryland. Claim forms were filed with the Tribunal in 1989 in which he was named as the attorney for 52 claimants. Apparently in September, 1991 Brown became aware that the Defender of the Fund had written several letters to his clients advising them that their claims for certain types of injuries had been admitted or rejected. On October 2nd and 3rd Brown wrote two letters to C. Sebastian Aloom (hereafter "Aloom"), chairman of the Tribunal, questioning these decisions and the manner in which they were made. Brown wrote a third letter to Aloom on October 3 advising Aloom that he had been denied permission to see medical records of his clients and requested that the Tribunal authorize the doctors in control of the records to allow Brown to review the records. Brown wrote a fourth letter to the Clerk of the Nuclear Claims Tribunal on October 3 with the same request. Our attention has not been invited to any response to these letters. On October 28 Brown filed the "Complaint" with the Tribunal, on behalf of his clients, against the Defender of the Fund. The Complaint purported both to challenge decisions by the Defender of the Fund and to appeal those decisions to the Special Tribunal, that is, to one

member of the Tribunal. See 42 MIRC Ch. 1, § 11.

Earlier, the Defender of the Fund and the Public Advocate had agreed upon an extension of the time within which appeals from decisions of the Defender of the Fund had to be filed. Brown, apparently, was unaware of the extension and filed the Complaint to protect the appeal rights of his clients. However, had it not been for the extension, the time for appeal would have expired on 45 of Browns' 52 clients. On October 29, without a hearing and on its own motion, the Tribunal dismissed three of the five Counts in the Complaint (Counts II, III and IV) because they did "not even remotely relate to actions of the Defender of the Fund" and were thus "frivolous". Two Counts (I and V) were allowed to stand because they challenged the determinations of the Defender of the Fund as to complainants' claims and were thus "validly drawn".

Brown's motion for reconsideration of the October 29 order was denied by a November 12 Decision and Order of the Tribunal, which also required Brown to file an affidavit within one week stating which of his clients he or his agents had attempted to contact, the date of each attempt, the means employed, whether the person was contacted and the response. On November 19 Brown filed an Affidavit and Memorandum attempting to verify his attorney-client relationship with complainants, but not complying with the Tribunal's November 12th Decision and Order. On the same date, he also wrote to the Defender of the Fund, naming his clients, and asking for information regarding each

client's claim. Brown's legal assistant, Fitzpatrick, also filed an affidavit on November 25 to explain why he could not comply immediately with the Tribunal's November 12 Decision and Order.

The Tribunal then issued its Decision and Order dated December 2, 1991, that ordered: (1) the Clerk of the Tribunal to transmit copies of the Decision and Order and record to the Standing Committee on Professional Conduct of the Marshall Islands Judiciary with the Tribunal's recommendation that disciplinary action and sanctions be imposed against Brown consistent with the findings therein and such other findings as the Committee might make; (2) that during the pendency of the review by the Standing Committee, Brown not be permitted to appear before the Tribunal on any matter without local co-counsel who is authorized to practice law in the Marshall Islands or before the Tribunal; (3) that the Clerk transmit copies of the Decision and Order and related portions of the record to the Standing Committees of the State Bars of Hawaii, Maryland and the District of Columbia; (4) that Brown within ten days file a list of all jurisdictions in which he is licensed along with licensing information; and (5) that dismissed "this proceeding" without prejudice to the named complainants.

The statement of questions presented, in Brown's notice of appeal, and the arguments in his briefs make it clear that paragraph (5) of the Order was not appealed and that Brown's primary concern was with paragraph (2), requiring him to

associate local counsel. Since other aspects of the Order can be construed as action "against him", however, we are constrained to comment upon them.

As noted above, the purpose of the Act is to provide compensation for personal injury and property damage caused by the United States' nuclear testing program in the northern Marshall Islands. The interests of the complainants, who have waited many years for compensation, is paramount. The conduct of the attorneys and the Tribunal itself must always be directed towards the goal of expeditiously and fairly adjudicating the complainants' claims. Attorneys must have access to information necessary to properly represent their clients; and proceedings by the Tribunal must be conducted in a fair and unbiased manner giving parties a right to be heard when appropriate. Attorneys must represent their clients to the best of their abilities, and must not undertake the representation of clients unless they can provide proper representation.

The Tribunal has the same right as a natural person to report an attorney to the Standing Committee on Professional Conduct. This is not a matter for appellate review by this Court. Brown's rights have been in no way impaired by the report, even though the manner of reporting may be unusual.

Similarly, the order of the Tribunal to send the Decision and Order of December 2, 1991 to other jurisdictions is not an appealable order. Brown, presumably, will be accorded due process in whatever disciplinary proceedings are held.

Pending review of the referral to the Standing Committee, the December 2, 1991 Decision and Order also requires that Brown associate with local, licensed co-counsel in all appearances before the Tribunal. This Court interprets that Order to mean that Brown must have associated local, licensed co-counsel before representing any claimants in any way before the Tribunal, whether personally or by the filing of pleadings. The Tribunal's decision in this regard was expressly based on concerns expressed by the Tribunal regarding Brown's failure to communicate with his clients, his conduct in response to Tribunal inquiries and the adequacy of Brown's representation of the complainants.

Brown asserts that the requirement of associating co-counsel is a sanction that has been imposed upon him by the Tribunal, without notice of the transgression of which he was accused or of the possibility that he might be sanctioned and without any opportunity to be heard. The Defender of the Fund, on the other hand, asserts that the requirement to appear only with co-counsel was not a disciplinary sanction, but was merely a condition imposed upon Mr. Brown because of the Tribunal's concern for the proper representation of his clients.

However the requirement of associating co-counsel is characterized, it is clear that it was a condition imposed upon Brown's right to practice before the Tribunal without any notice to him that he was at risk of having that condition imposed, without any specification of why he was at risk and

without any opportunity for him to be heard. The condition resulted in his being deprived of the right to independently appear before the Tribunal without the minimum elements of due process guaranteed by Article II, Section 4(1) of the Constitution. Those minimum elements are notice and the opportunity to be heard. Navarro v. Kim, et al., Sup. Ct. Civ. No. 88-08 (August, 1989); Balcs et al. v. Tennekone, Sup. Ct. Civ. No. 87-05 (August, 1989).

Section 6(4)(a) of the Act bestows upon the Tribunal, among other powers, the power of "making rules and promulgating procedural regulations." Section 6(4)(b) of the Act requires that the Tribunal publish and make available to the public in printed form all rules and regulations promulgated and states that promulgation shall be subject to the Administrative Procedures Act of 1979 (6 MIRC Ch. 1).

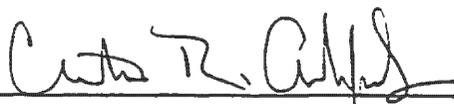
The Administrative Procedures Act, in Section 3(1)(b) requires each agency to "adopt rules of practice setting forth the formal and informal procedures available". It also requires, except for emergency rules, that advance notice of proposed rules be given in various ways. 6 MIRC Ch. 1, § 4(a).

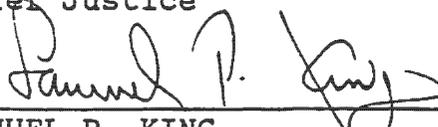
The Tribunal, upon reflection or inquiry or both, may well conclude that claimants' attorneys who have their principal places of business outside of the Marshall Islands, who do not maintain an office in or regularly visit the Marshall Islands in the course of their law practices, who do not speak Marshallese, or who lack what the Tribunal reasonably believes to

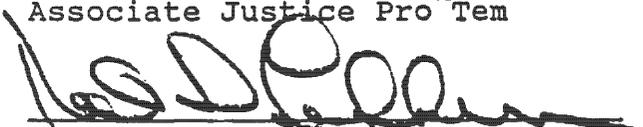
be qualifications in other respects, should be required to associate with local, licensed co-counsel. If so, it can exercise its rule-making power in the prescribed manner to promulgate a rule of universal application to all who are within its scope.

Paragraph number 2 at page 14 of the December 2, 1991 decision and order is reversed.

Entered: August 13, 1992.


CLINTON R. ASHFORD
Chief Justice


SAMUEL P. KING
Associate Justice Pro Tem


RONALD D. LIBKUMAN
Associate Justice Pro Tem

Appearances: Jon M. Van Dyke, Esq. for Appellant
Trial Assistant John M. Silk for Appellee (Joshua Berger, Esq. on the briefs)

SUPREME COURT
REPUBLIC OF MARSHALL ISLANDS

FILED

Majuro Date: AUG 14 '92

 , Special Assistant
Clerk of Courts, Hon. Olufa