

mm/n: 138/2

ALASKA BAR ASSOCIATION

ច្បាប់/កម្មវិធីបញ្ជាក់បញ្ជាក់
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ថ្ងៃ ខែ ឆ្នាំ បញ្ជាក់ (Certified Date/Date de certification):
..... 08 / JUL / 2009

មន្ត្រីទទួលបន្ទុកឯកសារ/Case File Officer/L'agent chargé
du dossier: SANN RADA

June 24, 2009

CONFIDENTIAL

You Bunleng and Marcel Lemonde
Co-Investigating Judges
Extraordinary Chambers in the Courts of Cambodia
PO Box 71
Phnom Penh
Kingdom of Cambodia

Re: ABA File No. 2009D060
Referral concerning Michael G. Karnavas

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):
..... 08 / JUL / 2009

ម៉ោង (Time/Heure): 10:30

មន្ត្រីទទួលបន្ទុកឯកសារ/Case File Officer/L'agent chargé
du dossier: SANN RADA

Dear Judges:

We received the referral of your order of March 3, 2009 concerning Michael G. Karnavas and his conduct in the defense of IENG Sary. We invited a response from Mr. Karnavas. A copy of his letter of April 24, 2009 is enclosed. For the sake of economy I am not enclosing the documents he referenced in his letter and submitted as exhibits. I believe they are already of record in your court.

Your order found that Mr. Karnavas breached court rules and ethical standards by revealing confidential information. You ordered him to remove offending content from the defense website, and to stop posting new offending content. Mr. Karnavas states that he has complied.

It could be problematic for lawyer discipline authorities in Alaska to interpret the confidentiality provisions of the Cambodia courts. But we might take guidance from a similar confidentiality rule that applies in lawyer discipline proceedings under our system. Alaska Bar Rule 22(b) provides that a violation is contempt of the Alaska Supreme Court. The court itself decides the consequence for this. The Bar Association would not ordinarily conduct proceedings for any further sanction. Your decision in Mr. Karnavas's case may be analogized to a finding of contempt. Your order to remove and stop postings appears to be an appropriate consequence that would not require additional action in Alaska.

Under reciprocity principles, the professional discipline of an Alaska lawyer for misconduct in another state of the United States may automatically result in the imposition of the same discipline here. Although Alaska does not have reciprocity with Cambodia, by analogy we could seek to impose the remedy that your court has imposed, namely, to remove and stop postings. Assuming that Mr. Karnavas has complied with your order, no additional action in Alaska would occur.

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Even if we opened a formal investigation, it is unlikely that a lawyer discipline hearing panel would find misconduct warranting professional discipline. The rule that probably applies, Alaska Rule of Professional Conduct 3.4(c), forbids a lawyer to knowingly disobey the orders of a tribunal, unless the disobedience is open and based on the lawyer's belief that the order is invalid. Apart from the question of whether Mr. Karnavas acted with the necessary degree of knowledge, Alaska disciplinary authorities would likely find that any violation of your court order was in open furtherance of an argument that the order was not applicable.

Under the rules of the Alaska Supreme Court, the Bar Association must review a disciplinary referral to decide if formal investigation is warranted. We do not condone defiance with court orders and rules designed for the orderly administration of justice and fairness to parties. We advise Mr. Karnavas that repeat referrals of this sort may result in formal investigation if circumstances warrant. But I must conclude that formal investigation of this referral is not warranted. Please let me know if you have any questions about my decision, or about Alaska's lawyer discipline process in general.

Sincerely,

ALASKA BAR ASSOCIATION



Mark Woelber
Assistant Bar Counsel

MW/air

Enclosure

cc: Michael G. Karnavas