IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ELIZABETH BLANCO MATSUNAGA,
Plaintiff-Cross-Appellant

v.

DOUGLAS F. CUSHNIE,
Defendant-Cross-Appellee

SUPREME COURT NO. 2012-SCC-0004-CIV
SUPERIOR COURT NO. 97-0043

OPINION

Cite as: 2012 MP 18

Decided December 28, 2012

Mark B. Hanson, Saipan, MP, for Appellant Elizabeth Blanco Matsunaga
Earle A. Partington, Saipan, MP, for Appellee Douglas F. Cushnie
BEFORE: JOHN A. MANGLONA, Associate Justice; JOSEPH N. CAMACHO, Justice Pro Tem; ROBERT J. TORRES, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Plaintiff-Cross-Appellant Elizabeth Blanco Matsunaga ("Matsunaga") appeals the trial court's order in aid of judgment, which held that Defendant-Cross-Appellee Douglas F. Cushnie ("Cushnie") did not owe Matsunaga prejudgment interest on $50,000 the trial court previously ordered Cushnie to disgorge. Cushnie counters that: (1) Matsunaga's claim is an improper petition for rehearing of our mandate in *Matsunaga v. Matsunaga*, 2006 MP 25 (*Matsunaga I*); (2) Matsunaga's cross-appeal should be dismissed because she is raising the prejudgment interest issue for the first time on appeal without an applicable exception; (3) Matsunaga's claim is barred by the doctrine of laches; and (4) Matsunaga's claim is precluded by res judicata. For the reasons stated below, we AFFIRM the trial court's finding that Cushnie does not owe prejudgment interest on the $50,000 and order counsel for both parties to show cause why they should not be sanctioned.

I

¶ 2 This appeal arises from an ongoing dispute between Matsunaga and Cushnie, an attorney she hired to sell real property. While representing Matsunaga, Cushnie collected: (1) $150,000 for negotiating the sale; (2) $8,500 in rental fees from the real estate intended for Matsunaga, which was placed in Cushnie's client trust account and then transferred to his general account; and (3) $2,008.50 in additional attorney fees. After receiving these funds, the trial court disqualified Cushnie from representing Matsunaga and ordered him to return the $2,008.50 in attorney fees.

¶ 3 When Cushnie failed to return the $2,008.50, Matsunaga filed a lawsuit alleging breach of fiduciary duty and due diligence. The trial court agreed, finding Cushnie had not only breached his fiduciary duty, but also had done so knowingly in violation of his ethical duties. *Matsunaga v. Cushnie*, No. 97-0043 (NMI Super. Ct. June 29, 2004) (Findings of Fact and Conclusions of Law at 14) ("Original Ruling"). Accordingly, the court ordered Cushnie to: (1) disgorge $50,000 of the $150,000 fee; (2) return the $8,500 of Matsunaga's funds he took from his trust account; and (3) pay back the original $2,008.50 in fees he had been ordered to return prior to the case. *Id.* at 16-17. When discussing each amount separately, the trial court did not discuss prejudgment interest on the $50,000 forfeiture. For the $8,500 amount, the trial court specifically awarded prejudgment interest of nine percent per annum. The trial court combined the two sums and ordered Cushnie to pay $58,500 to Matsunaga, in addition to "prejudgment interest per the order above." *Id.* at 16. Cushnie appealed.

¶ 4 On appeal, we affirmed the trial court's award to Matsunaga of $50,000 in forfeited legal fees plus the $8,500 he took as an advance and the $2,008.50 in fees he failed to repay. *Matsunaga I*, 2006 MP 25 ¶ 31. We then "entered a judgment for $2,008.50 plus pre-judgment interest at a rate of 9% per annum and an additional $58,500 with interest pursuant to 7 CMC § 4101 [regarding post-judgment interest]

against Cushnie." *Matsunaga I*, No. CV-04-0020-GA (NMI Sup. Ct. January 26, 2007) (Mandate at ¶¶ 1-2).

¶ 5 In February 2007, Matsunaga told Cushnie he was "responsible for paying *pre-judgment* and *post-judgment* interest on $58,500." *Matsunaga v. Cushnie*, Civ. No. 97-0043 (NMI Super. Ct. Aug. 21, 2009) (Response to Defendant Cushnie's Improper Sur-Reply at Exhibit A). Shortly after the letter, in March 2007 Cushnie made payments of $72,645.52 and $28.84 toward the amount awarded in the Original Ruling.

¶ 6 Approximately six months after the payments, in October 2007 Cushnie's attorney sent a letter to Matsunaga's attorney. The letter sought to clarify whether: (1) the earlier payments satisfied the judgment and all post-judgment interest; (2) the payments also satisfied the prejudgment interest on the $2,008.50; and (3) Matsunaga was only seeking prejudgment interest regarding the $8,500 in returned rental fees, not the $50,000 forfeited portion of Cushnie's property sales commission. Matsunaga responded that she was not pursuing prejudgment interest on the $50,000.

¶ 7 Two years after this exchange, Matsunaga filed a motion for an order in aid of judgment, which sought, consistent with her February 2007 letter to Cushnie, prejudgment interest on both the $50,000 and $8,500 amounts. In August 2011, the trial court issued an order in aid of judgment granting Matsunaga prejudgment interest on the $8,500 amount, but not the $50,000 amount:

> 1. The Court ORDERS defendant Douglas F. Cushnie to pay plaintiff the sum of $50,000 *without prejudgment interest*. Mr. Cushnie SHALL pay post-judgment interest as provided by 7 CMC § 4101.
>
> 2. The Court ORDERS defendant to pay plaintiff the sum of $8,500, plus prejudgment interests [sic] per the Original Ruling and post-judgment interest as provided by 7 CMC § 4101.
>
> 3. The Court ORDERS defendant to pay plaintiff the sum of $2,008.50, plus prejudgment interest per the Original Ruling and post-judgment interest as provided by 7 CMC § 4101.

Matsunaga v. Cushnie, Civ. No. 97-0043 (NMI Super. Ct. August 24, 2011) (Order in Aid of Judgment at 5) ("OAJ") (emphasis added).

¶ 8 In response, Cushnie petitioned this Court for a writ of mandamus, claiming the OAJ contravened our mandate in the underlying action, *Matsunaga I*. *In re Cushnie*, 2012 MP 3 ¶ 1. We denied Cushnie's petition because he "fail[ed] to address the law governing mandamus." *Id.* ¶ 18.

Cushnie then appealed the OAJ, with Matsunaga filing a cross-appeal. Shortly thereafter, Cushnie voluntarily dismissed his appeal, leaving Matsunaga's cross-appeal seeking prejudgment interest on the $50,000 forfeiture as the only question for us to decide.

II

¶ 9 The Supreme Court has appellate jurisdiction over final judgments and orders of the Superior Court. 1 CMC § 3102(a). In this case, the OAJ was never set forth on a separate document and was, thus, not a "final judgment" when it was entered on August 24, 2011. However, the judgment became a "final judgment" 150 days after it was entered. NMI Sup. Ct. R. 4(a)(7)(A)(ii). For this reason, the appeal was timely and this Court has jurisdiction.

III

¶ 10 In appealing the OAJ, the parties raised five issues. Three, as explained below, were waived.[1] As for the remaining issues, we review de novo the applicability of laches. *In re Estate of Rios*, 2008 MP 5 ¶ 8. We likewise review de novo the interpretation of both mandates, *In re Estate of Malite*, 2010 MP 20 ¶ 28, and written instruments, including orders and judgments. *Fusco v. Matsumoto*, 2011 MP 17 ¶ 26.

IV

¶ 11 Before reaching the prejudgment interest issue, we will consider Cushnie's preliminary arguments in turn.

A. Petition for Rehearing

¶ 12 Cushnie claims Matsunaga is actually using this cross-appeal as a subterfuge to reargue *Matsunaga I* or, perhaps, the denial of the writ of mandamus petition. Cushnie contends that if Matsunaga wanted to reargue these decisions, then she should have timely filed a petition for rehearing. Because Cushnie fails to supply adequate legal analysis, however, we decline to consider the substance of his argument.

¶ 13 Ordinarily we only consider "arguments sufficiently developed to be cognizable." *Commonwealth v. Minto*, 2011 MP 14 ¶ 46 n.8 (quoting *People v. Freeman*, 882 P.2d 249, 265 n.2 (Cal. 1994)). A party must do more than simply cite to case law for an argument to be sufficiently developed. Consequently, when a party fails to sufficiently develop an argument, we have the discretion to find that a party waived the issue. *See In re Blankenship*, 3 NMI 209, 216 (1992) (waiving issues the appellant did not discuss or analyze).

¶ 14 Here, Cushnie fails to adequately develop his legal argument on why Matsunaga's appeal of the OAJ constitutes an impermissible petition for rehearing of *Matsunaga I* or the denial of writ of petition. Cushnie simply quotes NMI Supreme Court Rule 40(a)(1)-(2) in full and then concludes—without any analysis—that Matsunaga is not challenging the OAJ, but rather seeks to challenge the mandate of *Matsunaga I* or the denial of the writ of petition. Because Cushnie failed to provide legal analysis in

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[1] We do not review issues a party has waived. *In re Blankenship*, 3 NMI 209, 216 (1992). Consequently, we need not set forth the applicable standard of review for those issues.

support of his conclusion that this appeal constituted an impermissible petition for rehearing, we hold he waived his argument and, therefore, will not address it.

B. New Issue on Appeal

¶ 15 Cushnie also asserts Matsunaga cannot appeal the prejudgment interest issue because she failed to raise it prior to this appeal. But, like the previous issue, Cushnie's legal arguments fall short of being "sufficiently developed to be cognizable." *Commonwealth v. Minto*, 2011 MP 14 ¶ 46 n.8 (internal quotation marks and citation omitted). In his brief, Cushnie block quotes *Brown v. Civil Service Commission*, which set forth the full rule for when an appellate court may hear a new issue on appeal. 818 F.2d 706, 710 (9th Cir. 1987). Immediately following the rule statement, Cushnie concludes that Matsunaga's "appeal does not fall within any of the three exceptions and must be dismissed, and her opening brief does not even argue any exception." Cushnie Answering Br. at 1. Cushnie then offers a final paragraph that perplexingly discusses a standard of review (though it is unclear about which issue) and previews his res judicata argument. There was no analysis of the laws and facts relevant to deciding whether the issue of prejudgment interest on the $50,000 was raised for the first time on appeal. Because Cushnie failed to furnish us with a sufficiently developed argument, we hold he has waived it.

C. Laches

1. Availability of Laches

¶ 16 Next, Cushnie argues the doctrine of laches bars Matsunaga's claim. Matsunaga maintains, in contrast, that Cushnie has already waived laches as an affirmative defense because we found he had waived it in his earlier petition to this Court for a writ of mandamus. *In re Cushnie*, 2012 MP 3 ¶ 8 n.3.

¶ 17 The argument raised in *In re Cushnie* was that laches barred Matsunaga's claim regarding the $8,500 in returned rental fees because she failed to act from 2007 to 2011. We rejected this argument because Cushnie waited until his reply brief to raise it. *In re Cushnie*, 2012 MP 3 ¶ 8 n.3.

¶ 18 In this case, Cushnie makes a slightly different argument. He contends laches should bar Matsunaga's request for prejudgment interest on the $50,000 amount because she waited from the Original Ruling in 2004 until this appeal to raise the issue. Because Cushnie's current laches defense addresses (1) a different award not in dispute during the mandamus petition and (2) behavior over a longer period, we hold he has made a distinct, albeit similar, laches argument not barred by his previous waiver. Accordingly, since Cushnie has not waived his current laches argument, we will address its merits.

2. *Whether Laches Applies*

¶ 19 We review the applicability of laches de novo. *In re Estate of Rios*, 2008 MP 5 ¶ 8. If available, laches operates as an equitable bar to an action when a party seeking a remedy from an alleged wrong causes prejudice to the adverse party through neglect or delay. *In re Martens*, 2007 MP 5 ¶ 7 (quoting

Rios v. Marianas Pub. Land Corp., 3 NMI 512, 523-24 (1993)). The party asserting laches has the burden of proof. *Id.* ¶ 8. To establish laches, an appellee must show: "(1) inexcusable delay in the assertion of a known right; and (2) the party asserting laches was prejudiced." *In re Estate of Rios*, 2008 MP 5 ¶ 9. We will address each element in turn.

¶ 20 The analysis of the delay "is in large part fact-based," *National Wildlife Federation v. Burford*, 835 F.2d 305, 318 (D.C. Cir. 1987), and focused on the equities of the particular case. *Jones v. Reagan*, 748 F.2d 1331, 1335 (9th Cir. 1984). Because "laches is an equitable, hence flexible doctrine, . . . no length of time is considered *per se* unreasonable." *Whitfield v. Anheuser-Busch, Inc.*, 820 F.2d 243, 245 (8th Cir. 1987). Moreover, "[w]here the delay is excusable and there has been no prejudice to the other party, mere passage of time poses no bar to relief." *Jones*, 748 F.2d at 1335. Courts have found a variety of causes for delay reasonable, including where: (1) the party exhausted other remedies first; (2) the delay was "used to evaluate and prepare a complicated claim;" or (3) the delay was used to calculate if the harm "justif[ied] the cost of litigation." *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 954 (9th Cir. 2001).

¶ 21 In terms of prejudice, courts generally recognize two forms: evidentiary and economic, *Rios v. Marianas Pub. Land Corp.*, 3 NMI 512, 524 n.15 (1993), the latter of which some courts have called "expectations-based." *Danjaq*, 263 F.3d at 955. "Evidentiary prejudice includes such things as lost, stale, or degraded evidence, or witnesses whose memories have faded or who have died." *Id.* Expectations-based prejudice, on the other hand, happens when the party asserting laches "took actions or suffered consequences that it would not have, had the plaintiff brought suit promptly." *Id.* In *Rios*, we looked to allegations of improvements the defendant made to land during the period the plaintiff delayed filing as an affirmative act the defendant would not have taken had he known the plaintiff intended to file a claim. *Rios*, 3 NMI at 526. Expectations-based prejudice seldom includes the accrual of prejudgment interest. *See Kansas v. Colorado*, 533 U.S. 1, 25 (2001) (O'Connor, J., dissenting) (stating "the doctrine of laches is rarely available to preclude the steady buildup of prejudgment interest, [even though] the amount of such interest can become quite large.").

¶ 22 In this case, Matsunaga has alleged since 2004 that the Original Ruling granted her prejudgment interest on the $50,000. It appears, however, that until 2007 the parties did not know they interpreted the Original Ruling's order regarding prejudgment interest on the $50,000 forfeiture differently. When the parties' difference in opinion emerged, Matsunaga told Cushnie in the February 2007 letter, that he was "responsible for paying *pre-judgment* and *post-judgment* interest on $58,500." *Matsunaga v. Cushnie*, Civ. No. 97-0043 (NMI Super. Ct. Aug. 21, 2009) (Response to Defendant Cushnie's Improper Sur-Reply at Exhibit A). A subsequent letter in October 2007 though suggested Matsunaga was only seeking

prejudgment interest on the $8,500.[2] In any event, when Cushnie did not pay prejudgment interest on either amount, Matsunaga filed a motion for an order in aid of judgment in June 2009, which sought prejudgment interest on both the $50,000 forfeiture and $8,500 in advanced attorney's fees. In short, Matsunaga repeatedly, if not always consistently, asserted her claim that the Original Ruling awarded her prejudgment interest on the $50,000 forfeiture. As such, contrary to Cushnie's argument that Matsunaga waited eight years to raise the prejudgment issue, she has not acted with inexcusable delay.

¶ 23 Turning to prejudice, this case does not rely on testimony or other evidence that may have faded over time. The appeal deals solely with interpreting the Original Ruling, which is readily available to both parties. Likewise, Cushnie did not allege any facts that showed he took any actions or suffered any consequences from Matsunaga's alleged delay in litigating the prejudgment interest question. For example, even though Elizabeth's October 2007 letter stated that she only sought prejudgment interest on the $8,500, but not the $50,000, Cushnie took no action regarding either amount. Failing to act regarding the expressly disputed $8,500 indicates Cushnie did not rely on the letter for his inaction regarding the $50,000. In addition, Cushnie knew or should have known based on the March 2007 letter, as well as subsequent litigation starting in 2009 and continuing into the present, that Matsunaga believed the Original Ruling awarded her prejudgment interest on the $50,000. Finally, although the amount of prejudgment interest in this case may have swelled since the Original Ruling, that alone does not constitute prejudice under the doctrine of laches. *See Kansas v. Colorado*, 533 U.S. 1, 25 (2001) (O'Connor, J., dissenting) (asserting that prejudgment interest, even if it becomes significant, is seldom a basis for laches). Because Cushnie has not shown evidentiary or economic harm, he has not suffered prejudice.

¶ 24 Since Matsunaga did not act with inexcusable delay and Cushnie did not suffer either evidentiary or economic prejudice, we hold the doctrine of laches does not apply.

D. Res Judicata

¶ 25 Cushnie's final affirmative defense is res judicata. Cushnie argues the doctrine of res judicata bars Matsunaga's claim. Like before though, Cushnie failed to supply sufficient legal analysis. In his brief, Cushnie provides a nearly one page-long rule statement, consisting primarily of a single string cite supporting the uncontroversial proposition that res judicata bars parties from re-litigating claims they already have or could have litigated in an earlier proceeding. He failed, however, to even set forth the

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[2] Claiming detrimental reliance on the October 2007 letter, which only sought prejudgment interest on the $8,500, Cushnie argued to the trial court below that Matsunaga should be equitably estopped from seeking prejudgment interest on the $50,000. The trial court rejected that argument because Cushnie did not pay prejudgment interest on the $8,500 the letter expressly called for. OAJ at 4. In short, the trial court held, when a party fails to act on an expressly disputed amount, inaction regarding the other amount "cannot be seen as reliance." *Id.* We do not reach this issue because Cushnie declined to raise it on appeal here.

elements of res judicata. Nor did he apply the facts to the law. His analysis immediately detoured into two tangents unrelated to res judicata before concluding: "No reason whatsoever is offered as to why Matsunaga should get a second bite at the apple when the issue *might* have been, *could* have been, and *should* have been litigated (as it really was litigated) the first time around." Cushnie Answering Br. at 7. Because Cushnie does not provide adequate legal analysis, his res judicata argument is waived. *Saipan Achugao Resort Members' Ass'n Wan Jin Yoon*, 2011 MP 12 ¶ 50; *Commonwealth v. Minto*, 2011 MP 14 ¶ 46 n.8; *In re Estate of Camacho*, 2012 MP 8 ¶ 12 n.7 (Slip Opinion, July 18, 2012).

E. Prejudgment Interest on the $50,000 Disgorgement

¶ 26 We now address whether the Superior Court failed to comply with the mandate in *Matsunaga I* by declining to award Matsunaga prejudgment interest on the $50,000 disgorgement. This issue has two components: (1) whether the trial court properly interpreted this Court's 2006 mandate; and (2) if so, whether the trial court correctly construed the Original Ruling. We review de novo the interpretation and application of mandates, *In re Estate of Malite*, 2010 MP 20 ¶ 28 (citing *Wabol v. Villacrusis*, 4 NMI 314, 315 (1995)), and written instruments, including orders and judgments. *Fusco v. Matsumoto*, 2011 MP 17 ¶ 26 (citing *Malite v. Superior Court*, 2007 MP 3 ¶ 23) (holding that interpretation of written instruments is a question of law); *see also Phoenix Windows, Inc. v. Viking Const., Inc.*, 868 A.2d 102, 105 (Conn. App. Ct. 2005) ("As a general rule, judgments are to be construed in the same fashion as other written instruments.") (quoting *Brewer v. Gutierrez*, 681 A.2d 345, 347 (1996))).

1. Interpreting the Mandate

¶ 27 In general, trial courts must strictly comply with the mandate from an appellate court. *In re Estate of Malite*, 2010 MP 20 ¶ 29. However, in certain circumstances, a trial court may diverge from a mandate so long as the change is "consistent with the 'spirit' of the appellate decision." *Id.* ¶ 30 (quoting *Wabol v. Villacrusis*, 2000 MP 18 ¶ 16). That is because "[a] mandate cannot be applied in a vacuum, and must be interpreted in light of the appellate court's opinion." *In re Cushnie*, 2012 MP 3 ¶ 17 (quoting *Town House Dep't Stores, Inc. v. Hi Sup Ahn*, 2003 Guam 6 ¶ 16)).

¶ 28 In *Matsunaga I*, we affirmed the Original Ruling's award of prejudgment interest, stating that we "find that it was within the Superior Court's discretion to award [Matsunaga] $50,000 in legal fees plus the $8,500 advance and $2,008.50 offset, *including the award of prejudgment interest*." *Matsunaga I*, 2006 MP 25 ¶ 31 (emphasis added). Regrettably, we did not mention prejudgment interest regarding the $50,000 or $8,500 amounts in our conclusion, simply stating: "We AFFIRM the decision of the Superior Court which entered a judgment for $2,008.50 plus pre-judgment interest at a rate of 9% per annum and an additional $58,500 with interest pursuant to 7 CMC § 4101 [governing post-judgment interest] against Cushnie." *Id.* ¶ 48. Our mandate then repeated nearly verbatim our incomplete conclusion: "The Supreme Court AFFIRMS the decision of the Superior Court which entered a judgment for $2,008.50 plus pre-

judgment interest at a rate of 9% per annum and an additional $58,500 with interest pursuant to 7 CMC § 4101 against Cushnie." *Matsunaga I*, Civ. No. 04-0020-GA (NMI Sup. Ct. Jan, 26, 2007) (Mandate at ¶ 2). From this, the trial court had the unenviable duty to apply our mandate in *Matsunaga I* despite apparent inconsistencies regarding the prejudgment interest issue.

¶ 29 Because of the inconsistency between our opinion and mandate in *Matsunaga I*, the trial court had to comply with "either the affirmation of its judgment, or the erroneous summation of the trial court award." *In re Cushnie*, 2012 MP 3 ¶ 17. The trial court chose to comply with the former, which we subsequently approved in *In re Cushnie*. *Id.* We reaffirm that decision here because, as discussed in *In re Cushnie*, it was clear that the opinion in *Matsunaga I* had affirmed the trial court's award of prejudgment interest for the $8,500 amount. *Id.* ¶ 13-15.

2. *Construing the Original Ruling*

¶ 30 Having reaffirmed that the trial court correctly construed the mandate from *Matsunaga I*, we now must determine whether its denial of prejudgment interest on the $50,000 amount was a proper construction of the Original Ruling. Neither Commonwealth written law nor the Restatements contain rules for construing orders. For this reason, we consult "the common law . . . as generally understood and applied in the United States." 7 CMC § 3401. Courts in other United States jurisdictions generally analyze orders and judgments in the same manner as other written instruments. *E.g.*, *Phoenix Windows, Inc.*, 868 A.2d at 105; *Balius v. Gaines*, 908 So. 2d 791, 798 (Mass. App. Ct. 2005); *Eddins v. Eddins*, 403 S.E.2d 164, 166 (S.C. Ct. App. 1991); *Bruce v. Steele*, 599 S.E.2d 883, 886 (W. Va. 2004). Under Commonwealth precedent, courts read written instruments in a manner that gives them their "plain grammatical meaning." *Fusco*, 2011 MP 17 ¶ 27 (quoting *Commonwealth Ports Auth. v. Tinian Shipping Co.*, 2007 MP 22 ¶ 17). Thus, we will review whether the trial court's interpretation of the Original Ruling is in line with its plain meaning.

¶ 31 The prejudgment interest question arises from the conclusion of the Original Ruling, which orders Cushnie to pay Matsunaga, among other things, $58,500, including prejudgment interest consistent with the trial court's discussion in the opinion:

> On the plaintiff's second cause of action, breach of fiduciary duty in the Diamond Hotel Matter, the Court finds in favor of the plaintiff and ORDERS defendant Douglas F. Cushnie to pay plaintiff the sum of $58,500. In addition, Mr. Cushnie SHALL pay prejudgment interest per the order above and post-judgment interest as provided by 7 CMC § 4101.

Original Ruling at 15-17. The key question is what the trial court meant when it ordered Cushnie to "pay prejudgment interest per the order above." *Id.* at 16. While the trial court merged the $50,000 and $8,500 awards into a single amount in the conclusion, it addressed the $50,000 and $8,500 amounts in separate paragraphs in the body of the decision. In the first of these paragraphs, the trial court explained why it felt

disgorgement of the $50,000 was warranted and ordered Cushnie to forfeit $50,000 in fees. The paragraph did not mention interest. In the following paragraph, the trial court discussed the reasons why Cushnie should forfeit the $8,500 and ordered Cushnie to "pay prejudgment interest of 9% per annum." *Id.* at 14. Thus, in the body of the decision, the court expressly ordered prejudgment interest on the $8,500, but did not mention interest regarding the $50,000. That omission suggests the court did not order prejudgment interest on the $50,000. *See Ada v. Calvo*, 2012 MP 11 ¶ 17 (Slip Opinion, Sept. 5, 2012) (stating "silence can be significant") (citing *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, 1999 MP 20 ¶ 14).

¶ 32 A finding of no prejudgment interest on the $50,000 amount also accords with the purpose for ordering an attorney to disgorge fees. When an attorney breaches his fiduciary duty to the client, a disgorgement order "protects relationships of trust by discouraging" attorneys from future disloyal acts. *Burrow v. Arce*, 997 S.W.2d 229, 238 (Tex. 1999)). That the order may enrich a principal as well is merely an auspicious accident for the client. In contrast, prejudgment interest compensates a client for funds they should have had access to prior to the claim. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 43. Put simply, since a client does not have a rightful claim to forfeited money until a judgment, they should not receive prejudgment interest on it.

¶ 33 Because of the trial court's clarity regarding the prejudgment issue within the body of the Original Ruling and the rationale underlying forfeitures, we hold the Original Ruling did not award prejudgment interest on the $50,000 amount.

F. Sanctions

¶ 34 We have "the inherent authority and jurisdiction to regulate the conduct of attorneys practicing before us." *In re Roy*, 2007 MP 28 ¶ 7. That authority encompasses not only court appearances, but also "the preparation of papers that are to be filed in court on another's behalf and that are otherwise incident to a lawsuit." *In re Admission of Nisperos*, 2007 MP 33 ¶ 9 (quoting *Toledo Bar Ass'n v. Joelson*, 872 N.E.2d 1207, 1208-09 (Ohio 2007) (per curiam)).

¶ 35 Egregious deviations from acceptable legal practice warrant regulation through sanctions. In such situations, sanctions exist "to protect the public and to maintain the integrity of the profession and the dignity of the courts." *In re Rhodes*, 2002 MP 2 ¶ 15 (quoting *Office of Disciplinary Counsel v. Lau*, 900 P.2d 777, 783 (Haw. 1995)); *see also In re Giberson*, 581 N.W.2d 351, 353 (Minn. 1998) ("The purpose of attorney discipline is not to punish the attorney but rather to guard the administration of justice and to protect the courts, the legal profession and the public." (citation and internal quotation marks omitted)). Sanctions are appropriate when an attorney violates statutes or other rules regulating professional conduct. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 19 (citing *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1136-37 (9th Cir. 2001)). Likewise, sanctions are appropriate for failure to provide adequate legal authority and reasoning. In *Bank of Guam v. Mendiola*, for instance, we issued an

order to show cause regarding sanctions because a lawyer failed to provide adequate legal authority and displayed a lack of "effort in mounting a sustainable legal argument." 2007 MP 1 ¶ 18. Similarly, in *Guo Qiong He v. Commonwealth*, we sanctioned a party for failing to explain their reasoning, offering "largely conclusory arguments," and "taking sources out of context." 2003 MP 3 ¶¶ 19, 25.

1. Briefing by Matsunaga's Attorney

¶ 36 Matsunaga's principal brief encompasses four pages, less than one of which even addresses the merits of the case. Plaintiff-Cross-Appellant Principal Br. at 3-4. In that short discussion, counsel failed to provide any legal analysis and fundamentally misrepresented the three cases he cited. First, he asserted "[t]here is no doubt from the language of the June 29, 2004 written judgment" that the trial court ordered Cushnie to pay prejudgment interest on the $50,000. In support, he cited to pages fifteen through seventeen of the Original Ruling. Contrary to counsel's representation, the cited language actually shows the Original Ruling did not order Cushnie to pay prejudgment interest. See IV.E.2. Matsunaga's brief omitted the trial court's discussion in the Original Ruling regarding the $50,000. That discussion tellingly does not mention prejudgment interest.

¶ 37 Second, counsel for Matsunaga cited to the body of *Matsunaga I*, 2006 MP 25 ¶ 31, which found "it was within the Superior Court's discretion to award Mrs. Matsunaga $50,000 in legal fees plus the $8,500 advance and $2,008.50 offset, including the award of prejudgment interest," but omitted critical language contrary to this claim. Specifically, counsel failed to mention our conclusion, which did not expressly award prejudgment interest on either the $50,000 or the $8,500:

> We AFFIRM the decision of the Superior Court which entered a judgment for $2,008.50 plus pre-judgment interest at a rate of 9% per annum and an additional $58,500 with interest pursuant to 7 CMC § 4101 [governing post-judgment interest] against Cushnie.

Id. ¶ 48.

¶ 38 Third, rather than merely omitting pertinent statements of law, presumably in the hope we would not notice, Matsunaga's counsel fundamentally misrepresented our words in *In re Cushnie*. Counsel alleges *In re Cushnie* concluded the "trial court *had no authority* to alter its award of prejudgment interest." Cross-Appellant's Principal Brief 4 (citing *In re Cushnie*, 2012 MP 3 ¶ 16). Even a cursory glance at this Court's opinion in *In re Cushnie* shows this assertion to be false.[3] What counsel misrepresents as our opinion was actually a discussion of the quandary the trial court found itself in when faced with having to decide between two irreconcilable positions: "strictly comply[ing] with either the affirmation of its judgment, or the erroneous summation of the trial court award." *In re Cushnie*, 2012 MP

[3] The misrepresentation may also violate the Rules of Professional Responsibility. For example, ABA Model Rule 3.3(a)(1) declares that a "lawyer shall not knowingly make a false statement of fact or law to a tribunal." Model Rules of Prof'l Conduct R. 3.3(a)(1).

3 ¶ 16. Following that discussion, we actually concluded "the trial court was permitted to interpret the mandate in light of the opinion." *Id.*

¶ 39 In summary, Matsunaga's appeal rested on a single page of argument consisting of three short paragraphs. Despite its brevity, counsel for Matsunaga nonetheless found a way to commit three serious ethical and legal violations. Because Matsunaga's counsel repeatedly and materially omitted and misrepresented key information, we order him to show cause why he should not be sanctioned.

2. Briefing by Cushnie's Attorney

¶ 40 Cushnie's counsel repeatedly failed to advance adequate legal authority. On the first issue, Cushnie's attorney cited NMI Supreme Court Rule 40, but did not supply any case law to support his novel argument that Matsunaga's appeal was actually a motion to reconsider. Defendant-Cross-Appellant's Answering Br. at 8. He then concludes, without any analysis, that: (1) a motion to reconsider was Matsunaga's appropriate remedy; (2) res judicata now applied; and (3) Matsunaga's only reason for appealing was to "improperly collect eight years of interest." Defendant-Cross-Appellant's Answering Br. at 8. The legal argument consists of a conclusion followed by a tangent followed by an attack on the opposing party's motives. To assess Cushnie's claim, a sufficiently developed legal argument would have given at least one reason supporting his argument. Cushnie's counsel did not.

¶ 41 For the second issue, which asked whether Matsunaga has raised the prejudgment issue for the first time on appeal, Cushnie's counsel cited a solitary case, then failed to flesh out through case law (or argument) what key terms within his rule statement meant. Defendant-Cross-Appellant's Answering Br. at 1. Following the rule statement, counsel's single sentence of analysis was actually a conclusion: "Matsunaga does not fall within any of the three exceptions and must be dismissed, and her opening brief does not even argue about any exception." Defendant-Cross-Appellant's Answering Br. at 1. To be analytically adequate, Cushnie's brief would have had to discuss what issues the parties raised in prior proceedings and why the exceptions, especially the second exception regarding an appellate court's ability to hear legal issues not relying on any factual record, did not apply.

¶ 42 On the fourth issue, res judicata, Cushnie's counsel provided a wordy rule statement comprised primarily of a single string cite to support the widely accepted proposition that res judicata bars old claims that could have or actually were litigated in a prior proceeding. Defendant-Cross-Appellant's Answering Br. at 6-7. This rule statement, however, did not provide any of the elements of res judicata such as finality, validity, and on the merits. Defendant-Cross-Appellant's Answering Br. at 6-7. In his analysis, Cushnie's counsel criticized opposing counsel for allegedly failing to cite governing law and debated the standard of review for the prejudgment interest question rather than analyzing any prior cases. He then concluded: "[n]o reason whatsoever is offered as to why Matsunaga should get a second bite at the apple when the issue *might* have been, *could* have been, and should have *been* litigated (as it really was

litigated) the first time around." Defendant-Cross-Appellant's Answering Br. at 7. In contrast, an adequately reasoned brief would have discussed what the elements of res judicata are and why they applied. That discussion would have included stating the issues in each prior proceeding and analyzing whether the issues in those judgments were final, valid and on the merits. Again, Cushnie's counsel did not.

¶ 43 And, finally, when discussing prejudgment interest, counsel neglected to provide a rule statement or standard of review. Defendant-Cross-Appellant's Answering Br. at 2. Similarly, rather than analyze the issue, counsel simply photocopied the relevant pages of previous decisions in this case. Defendant-Cross-Appellant's Answering Br. at 2-6. While more than counsel for Matsunaga, who omitted harmful language, Cushnie's counsel, in effect, pointed us to the relevant portions of the record and asked us to make his arguments for him. Constructing Cushnie's legal arguments was counsel's job, not ours. *See J.G. Sablan Rock Quarry, Inc. v. Dep't of Pub. Lands*, 2012 MP 2 ¶ 25 n.8 (Slip Opinion, Mar. 30, 2012) ("The appellate court is not required to search the record on its own seeking error." (quoting *Del Real v. City of Riverside*, 115 Cal. Rptr. 2d 705, 710 (Cal. Ct. App. 2002))).

¶ 44 While any one of these issues alone may have been forgiven, the sheer volume of them "force[d] this Court to waste valuable resources in an effort to determine whether unsubstantiated claims have any legal basis. This delays justice for both the parties in the present case, as well as those in other cases pending before the Court." *Bank of Guam v. Mendiola*, 2007 MP 1 ¶ 14. Because Cushnie's counsel consistently did not provide adequate legal authority or analysis, we order him to show cause why he should not be sanctioned.

V

¶ 45 For the reasons stated above, we AFFIRM the trial court's holding in the OAJ that Matsunaga was not awarded prejudgment interest on the $50,000 and order counsel for both parties to show cause in writing why they should not be sanctioned no later than January 28, 2013.

SO ORDERED this 28th day of December, 2012.

/s/
JOHN A. MANGLONA
Associate Justice

/s/
JOSEPH N. CAMACHO
Justice Pro Tem

/s/
ROBERT J. TORRES
Justice Pro Tem