



By the order of the court, Judge David A Wiseman

CLERK OF THE COURT
SUPERIOR COURT

2014 JUL 15 AM 11:45

Km

BY
[Signature]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR PUBLICATION

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

IN RE THE MATTER OF:)	CIVIL CASE NO. 13-0086
)	Disciplinary Case No. 2012-07
RAMON K. QUICHOCHO,)	
)	
Respondent.)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
)	
)	
)	
)	

I. INTRODUCTION

THIS MATTER came before the Court for a closed-door evidentiary hearing on November 20, 2013, at 1:30 p.m. in Courtroom 223A on the prosecution of a sealed disciplinary matter under Commonwealth Disciplinary Rule 7(f). The prosecuting attorney appointed to this disciplinary matter was George Hasselback, Esq. (hereinafter "Disciplinary Counsel"). The Respondent is Ramon K. Quichocho (hereinafter "Respondent"), appeared and was represented by his counsel, Michael Dotts, Esq.

This case arises out of allegations that Respondent violated Rules 1.1, 1.4(a)(1-3), 1.6(a), 1.9(c)(2), and 8.4(b) and (c) of the Model Rules of Professional Conduct. In lieu of closing arguments following the evidentiary hearing held in November, the Court allowed the parties to submit proposed findings on or before January 13, 2014. Thus, having considered those written submissions of the parties above, the Court hereby issues the following findings of fact and conclusions of law.

1 **II. FINDINGS OF FACT**

2 As an initial matter, the Court would like to point out that the vast majority of the facts presented
3 below were disputed by both Respondent and Disciplinary Counsel, as only one or two critical facts
4 remained undisputed. However, the Court has reviewed the evidence and considered the credibility of the
5 witness testimonies, and in view of the totality of the circumstances **FINDS** as follows:

6 **A. BACKGROUND**

7 1. This matter was referred to the Superior Court by the Commonwealth of the Northern
8 Mariana Islands Bar Association Disciplinary Committee, and the Court then appointed Disciplinary
9 Counsel to prosecute the case. A complaint and answer were filed, and an evidentiary hearing was held on
10 November 20, 2013, at 1:30 p.m. in Courtroom 223A.

11 2. Respondent was at all times relevant to the conduct which made the basis of this case, an
12 attorney licensed to practice law before the Courts of the Commonwealth of the Northern Mariana Islands.

13 3. Respondent practiced law from the Law Offices of Ramon K. Quichocho, LLC, which is
14 located in Gualo Rai, Saipan.

15 4. Ignacio DLG. Demapan (hereinafter “Mr. Demapan”) is a former client of Respondent.

16 5. Respondent first represented Mr. Demapan in 2004 in a lawsuit filed by the Commonwealth
17 Development Authority in the Superior Court of the CNMI — specifically, *Commonwealth Development*
18 *Authority v. Ignacio DLG. Demapan*, Civ. 04-0121.

19 **B. SETTLEMENT OFFER**

20 6. Respondent later represented Mr. Demapan in connection with a government investigation
21 into the land-clearing and destruction of the habitat for a particular protected bird species living on Mr.
22 Demapan’s property — specifically, the nightingale weedwarbler.

23 7. After retaining Respondent for representation, Respondent told client that he had contacted
24 various individuals and officials involved in the investigation and that “[Respondent] would take care of it.”

25 8. On July 29, 2004, former Assistant Attorney General of the CNMI Sean Lynch wrote a letter

1 to Respondent, stating that the government had withdrawn its notice of violation and civil penalty, and that
2 while he would seek redress in a judicial forum in the form of a criminal action, he was open to arranging
3 a meeting with Respondent and Mr. Demapan to discuss the alleged violations.

4 9. Soon thereafter, the government dismissed the administrative proceeding before the Division
5 of Fish and Wildlife.

6 10. The contents of Mr. Lynch's letter were not forwarded, disclosed, or otherwise communicated
7 to Mr. Demapan by Respondent.

8 11. Respondent testified that he provided a copy of Mr. Lynch's letter to Mr. Demapan shortly
9 after it was received, but cannot produce a copy of any such correspondence. Respondent further claims
10 such a copy would be within the file he provided to Mr. Demapan's subsequent attorney, yet he failed to seek
11 such evidence out in preparation of defending the present action.

12 12. In May 2006, Mr. Demapan was arrested and charged in federal court with the taking of an
13 endangered species.

14 13. Respondent briefly represented Mr. Demapan in the federal criminal matter referenced above,
15 but was quickly substituted out and turned over Mr. Demapan's entire file to subsequent counsel.

16 **C. ATTEMPTED VOTE BUYING**

17 14. In the November 2008 general election for the federally elected position for Delegate to the
18 United States House of Representatives, Respondent's uncle, Felipe Q. Atalig, was a candidate for Delegate.

19 15. In October 2008, about two weeks before the election, Respondent saw Mr. Demapan in
20 Shirley's Restaurant, which is located in Garapan, Saipan, CNMI.

21 16. During this conversation, Respondent said the following to Mr. Demapan: "Uncle Ike, kumo
22 un bota si Felipe Atalig para Delagate, todo I kuentamo giya guaho empas, taya esta kuentamu giya guaho."
23 In English, this translates to: "Uncle Ike, if you vote for Filipe Atalig for Delegate, I will forgive the debts
24 that you owe to me."

25 17. Mr. Demapan asked Respondent if he was serious about his offer, to which Respondent

1 replied that he was.

2 18. Respondent claimed Mr. Demapan owed approximately \$8,000 in legal fees in connection
3 with the Commonwealth Development Authority matter in which Respondent first represented Mr.
4 Demapan.

5 19. Mr. Demapan believed this conversation to mean that Respondent was offering to forgive
6 the \$8,000 in legal fees incurred by him in the previous CDA matter in exchange for his vote and support.

7 20. Mr. Atalig was called to testify at the November hearing, informing the Court that
8 Respondent was not a member or Chairman of Mr. Atalig's Committee to Elect Felipe Atalig for U.S.
9 Delegate.

10 21. Mr. Atalig further testified that Respondent was not authorized by Mr. Atalig to solicit Mr.
11 Demapan's vote on his behalf, and had no knowledge that Respondent had "written off" \$8,000 of Mr.
12 Demapan's debt so that Mr. Demapan would vote for and support Mr. Atalig.

13 22. Around November 2009, Respondent and Mr. Demapan had a falling out due to politics.

14 23. In 2009, Respondent filed a small claims action against Mr. Demapan to collect on the legal
15 fees and costs related to his representation in the Division of Fish and Wildlife administrative proceedings,
16 which was reduced to judgment in Respondent's favor.

17 24. Mr. Demapan has since paid off the small claims judgment.

18 25. Respondent has not been charged with violating 42 U.S.C. 1973i(c) – the Federal prohibition
19 against vote buying – which is punishable by a \$10,000 fine, imprisonment of not more than five years, or
20 both.

21 **D. LEGAL FEES ASSIGNMENT**

22 26. Mr. Demapan and his wife entered into an attorney-client relationship with Respondent
23 sometime in 2004, in relation to *Commonwealth Development Authority v. Ignacio DLG. Demapan*, Civ.
24 04-0121.

25 27. There was no written fee agreement or retainer deposit forming the basis of the above-

1 mentioned representation.

2 28. Rather, forming the basis of the attorney-client relationship was a verbal agreement for Mr.
3 Demapan to pay Respondent's earned attorney's fees upon the completion of his wife's grandfather's
4 probate matter in the Superior Court of the CNMI.

5 29. In May 2006, despite the arrangement mentioned above, Respondent's office sent numerous
6 billing statements, invoices, and reminder notices to Mr. Demapan for attorney's fees.

7 30. Respondent's office sent in excess of nine total demands to Mr. Demapan, characterizing
8 them as "friendly reminders."

9 31. On August 2, 2006, a single payment of \$100 was made by Mr. Demapan in efforts to satisfy
10 that debt. To date, no other efforts have been made to pay Respondent.

11 32. Respondent owed Dr. Larry Hocog approximately \$8,000 in connection with the expert
12 witness testimony provided in one of Respondent's cases at around the same time as his collection efforts.

13 33. On January 15, 2012, Dr. Hocog and his attorney, Robert Myers, approached Respondent in
14 efforts to assign the attorney's fees Mr. Demapan owed Respondent in order to satisfy the debt Respondent
15 owed Dr. Hocog.

16 34. This assignment was memorialized in a document named "Assignment of Accounts
17 Receivable with Non-Recourse."

18 35. In assigning the attorney's fees owed to him, Respondent provided Dr. Hocog and his
19 attorney Mr. Demapan's name, as well as the purported amount to be transferred — some \$8,623.

20 36. The assignment from Respondent to Dr. Hocog was made without the consent, consultation,
21 and/or knowledge of neither Mr. Demapan nor his wife.

22 37. Sometime in 2012, Mr. Demapan and his wife filed an unrelated lawsuit against Dr. Hocog.

23 38. Soon thereafter, on June 5, 2012, Mr. Demapan and his wife entered into a Settlement
24 Agreement with Dr. Hocog.

25 39. Much to the surprise of Mr. Demapan and his wife, Dr. Hocog tendered, as partial settlement,

1 the debt assigned by Respondent to Dr. Hocog as part of the above-mentioned assignment.

2 40. Dr. Hocog's purpose in approaching Respondent for the assignment of his legal fees was to
3 allow him to settle with Mr. Demapan and his wife was to allow him to settle with them without paying any
4 actual money (other than the negligible difference in amount).

5 41. On June 28, 2012, Mr. Demapan and his wife filed this Bar Complaint against Respondent.

6 **III. CONCLUSIONS OF LAW**

7 Disciplinary Counsel claims Respondent's conduct during his representation of Clients violated
8 Model Rules of Professional Responsibility 1.1, 1.4(a)(1)-(3), 1.6(a), 1.9(c)(2), and 8.4(b) and (c). The
9 Model Rules, as adopted by the ABA, are applicable in the CNMI by operation of the Commonwealth
10 Disciplinary Rules and Procedures. NMI Disc. R. 2; *Bisom v. Commonwealth*, 2002 MP 19 ¶ 55. The Court
11 will provide the applicable legal standard for each allegation and address Disciplinary Counsel's claims in
12 turn.

13 **A. GENERAL LEGAL STANDARD**

14 Professional responsibility is the basic requirement for all attorneys, trial assistants, and other officers
15 and administrators of the court in order to maintain the highest possible level of morality in the judicial
16 system. *In re the Matter Villanueva*, 1 CR 952, 956 (Dist. Ct. App. Div. 1984).

17 The Commonwealth courts have the inherent power and duty to regulate the practice of law, both
18 in and out of court pursuant to the Commonwealth Disciplinary Rules and Procedures. 1 CMC § 3403; NMI
19 Disc. R. 1; *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 19. The standard of proof for establishing allegations
20 of attorney misconduct is clear and convincing evidence. NMI Disc. R. 9(g); *In re Disciplinary Proceedings*
21 *of Rhodes*, 2002 MP 2 ¶ 3; *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicholas)*, 2001 MP 2 ¶ 30.

22 **B. VIOLATION OF MODEL RULES 1.1 & 1.4(A)(1-3)**

23 The Court will first address the alleged violations of Model Rules 1.1 and 1.4(a)(1-3) in connection
24 with the Settlement Offer made by former Assistant Attorney General Sean Lynch.

25 Model Rule 1.1 reads: "[a] lawyer shall provide competent representation to a client. Competent

1 representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for
2 the representation.” MODEL RULES OF PROF’L CONDUCT 1.1. Competent handling “includes inquiry into
3 and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting
4 the standards of competent practitioners.” *Saipan Lau Lau*, 2001 MP 2 ¶ 65. Further, Model Rule 1.4(a)
5 states: “[a] lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which
6 the client's informed consent . . . is required; (2) reasonably consult with the client about the means by
7 which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status
8 of the matter.” MODEL RULES OF PROF’L CONDUCT 1.4(a)(1-3).

9 Disciplinary Counsel claims Respondent violated Rule 1.1 of the Model Rules of Professional
10 Conduct, in that Respondent failed to act with minimal competence in representing Mr. Demapan by failing
11 to keep him reasonably informed of the status of the matter in which he was representing him. Specifically,
12 Disciplinary Counsel claims Respondent did not meet his duty to inform Mr. Demapan about “the threat of
13 criminal charges and/or the overtures of reconciliation” contained in the letter from Mr. Lynch. Disciplinary
14 Counsel further argues that Mr. Demapan was not informed of the contents of said letter until it was too late
15 — that is, Mr. Demapan was not informed that the government intended to “seek redress in a judicial forum”
16 until after the final decision to do so was already made. Thus, Disciplinary Counsel claims Mr. Demapan
17 was deprived of any ability to attempt to settle the subject matter of the investigation short of answering
18 criminal charges.

19 Respondent argues that: (1) Respondent’s representation of Mr. Demapan at the administrative level
20 was successful in that the Division of Fish and Wildlife withdrew its Notice of Civil Violation and Civil
21 Penalty issued to Mr. Demapan; (2) the Federal government arrested and charged Mr. Demapan, not the
22 CNMI represented by Mr. Lynch in the letter at issue, and that it is mere speculation that if Respondent had
23 communicated Mr. Lynch’s letter that the Federal government would have refused to press charges; (3) Mr.
24 Demapan initially testified that he received Mr. Lynch’s letter from Respondent before he was arrested, but
25 later changed his story when Disciplinary Counsel impeached him with his prior inconsistent statement; (4)

1 Respondent testified that he provided a copy of Mr. Lynch’s letter to Mr. Demapan shortly after receiving
2 it; and (5) Mr. Lynch’s letter proposes no settlement – with terms and an expiration date – and thus does not
3 require Mr. Demapan’s informed consent.

4 Here, the Court first finds it necessary to state that, while Mr. Demapan was impeached during his
5 testimony using his prior inconsistent statement, the Court finds great credibility in Mr. Demapan’s
6 testimony, and little of Respondent’s testimony lends any credibility to his version of the events.
7 Respondent could produce no evidence that he communicated the contents of Mr. Lynch’s letter to Mr.
8 Demapan, and claims off-handedly that any such evidence must reside with Mr. Demapan’s subsequent
9 counsel, Attorney Stephanie Flores. However, Respondent had every opportunity to retrieve any copy of
10 such a correspondence – if such evidence, in fact, exists – yet failed to do so in the months preceding the
11 present action. Thus, the Court assigns little to no credibility to Respondent’s testimony, and finds that Mr.
12 Demapan was uninformed of the sequence of events as they happened, and was not timely informed of the
13 contents of Mr. Lynch’s letter.

14 Moreover, the Court does not find that Mr. Lynch’s letter constitutes a settlement offer *per se*, but
15 rather that it was merely an invitation to initiate negotiations to settle the case before filing criminal charges.
16 Model Rule 1.0(e) states: “[i]nformed consent’ denotes the agreement by a person to a proposed course of
17 conduct after the lawyer has communicated adequate information and explanation about the material risks
18 of and reasonably available alternatives to the proposed course of conduct.” MODEL RULES OF PROF’L
19 CONDUCT 1.0(e). Surely, any acceptance or refusal to accept any settlement offer by Mr. Lynch would
20 require informed consent as contemplated by the Model Rules; however, no such offer was made in the
21 present case, and thus Mr. Demapan’s informed consent was not required, and no violation of Model Rule
22 1.4(a)(1) has occurred.

23 That being said, the Court cannot ignore the egregious inaction and neglect which caused Mr.
24 Demapan to be unaware of the possibility of settling the matter with Mr. Lynch before was the subject of
25 federal criminal charges. Respondent had a duty to inform his client of the possibility of the government

1 – whether it be the CNMI or a Federal agency – filing criminal charges, as well as the potential willingness
2 of the Office of the Attorney General to meet and discuss a possible settlement. Respondent failed to do so
3 until after the government made its final decision to file criminal charges, and thus foreclosed any possibility
4 of settling the case with the CNMI before they were filed. Therefore, the Court finds violations of Model
5 Rules 1.1, 1.4(a)(2), and 1.4(a)(3) as a result of Respondent’s failure to keep his client reasonably informed.

6 **C. VIOLATION OF MODEL RULE 8.4**

7 Next, the Court addresses the alleged violations of Model Rules 8.4(b) and 8.4(c) in relation to
8 Respondent’s alleged attempts to buy votes for a candidate for CNMI Delegate to the United States House
9 of Representatives.

10 The Model Rules make committing a crime a disciplinary violation. Specifically, Model Rule 8.4
11 states that it is professional misconduct for a lawyer to: “. . . commit a criminal act that reflects adversely
12 on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; [or] engage in conduct
13 involving dishonesty, fraud, deceit or misrepresentation. . . .” MODEL RULES OF PROF’L CONDUCT 8.4(b)-
14 (c).

15 Disciplinary Counsel claims a violation of Model Rule 8.4(b), arguing that Respondent’s actions in
16 offering to forgive the legal fee debts owed by Mr. Demapan in exchange for his vote and support for
17 Respondent’s uncle Felipe Atalig violated federal law, specifically 42 U.S.C. 1973i(c), which prohibits
18 anyone from “[offering] to pay . . . either for registration to vote or for voting.” Disciplinary Counsel argues
19 in the alternative that, even if Respondent’s actions fall short of criminal behavior, that “vote buying” and
20 similar acts have been used as the basis for disciplining attorneys based on Model Rule 8.4(c). *See KY Bar*
21 *Assoc. v. Maze*, 397 S.W. 891 (KY 2013).

22 In response, Respondent claims that: (1) he did not offer to forgive outstanding legal fees amounting
23 to \$8,000 owed to him by Mr. Demapan if Mr. Demapan promised to vote for and support his uncle, Felipe
24 Atalig; (2) no witnesses to the meeting testified at the evidentiary hearing, other than Mr. Demapan; and (3)
25 no criminal charges, federal or otherwise, were ever filed against Respondent for “vote buying.” Thus,

1 Respondent argues that Mr. Demapan's credibility as a witness was called into question several times during
2 his testimony, and thus casts doubt on the veracity of his recollection of the conversation he claims to have
3 had with Respondent sometime in October 2008.

4 Here, the Court recognizes that the standard of proof is lower than that of a federal criminal charge,
5 in that Disciplinary Counsel merely needs to prove by clear and convincing evidence that this conversation
6 did, in fact, occur as Mr. Demapan testified it did, as opposed to beyond a reasonable doubt to a jury in
7 federal court. However, the Court does not find that there is enough evidence presented to meet the (still)
8 relatively high standard of proof in finding a violation of Model Rule 8.4(b). Ordinarily, attorneys
9 disciplined under this section will have been convicted of a crime and the Court will then take disciplinary
10 action after a Clerk of Court files a certificate of conviction with the Chief Justice. However, this did not
11 occur in the present case because Respondent was never charged, much less convicted, of a local or federal
12 crime in connection with his alleged conversation with Mr. Demapan. Thus, the Court does not find a
13 violation of Model Rule 8.4(b) has occurred in this case.

14 On the other hand, Model Rule 8.4(c) is broadly applied, prohibiting lawyers from engaging in
15 conduct involving dishonesty, fraud, deceit, or misrepresentation, as well as conduct unbecoming an
16 attorney. *See* MODEL RULES OF PROF'L CONDUCT 8.4(c). Therefore, Respondent's assertion that
17 Disciplinary Counsel is required to prove by clear and convincing evidence that Respondent violated federal
18 law in order to prove a violation of the Model Rules is legally unfounded. While the Court recognizes
19 Respondent's arguments regarding the factual basis this particular claim, as well as the legal arguments
20 made in furtherance thereof, the Court still finds great credibility in the remainder of Mr. Demapan's
21 testimony, regardless of the inconsistencies demonstrated by Respondent as to this matter. Similarly, the
22 Court places greater weight with the factual allegations contained within the Complaint than with the
23 complete absence of evidence presented by Respondent as part of his defense. However, that being said,
24 the Court cannot find that the facts alleged by Disciplinary Counsel meet the threshold of clear and
25 convincing in order to warrant judicial discipline in this particular case, although the Court does point out

1 that any similar vote-buying allegations in future cases would constitute a clear violation of Model Rule
2 8.4(c).

3 Thus, the Court does not find any violation of Model Rule 8.4 in connection with Respondent's
4 alleged attempts to "buy" his client's vote for his uncle in exchange for forgiving Mr. Demapan's legal fees
5 owed to him in connection with representation in a previous, unrelated case.

6 **D. VIOLATION OF MODEL RULES 1.6(A) AND 1.9(C)(2)**

7 Lastly, the Court addresses the alleged violations of Model Rules 1.6(a) and 1.9(c)(2) in relation to
8 the purported assignment of owed legal fees to Dr. Hocog in order to settle an unrelated small claims matter.

9 Model Rule 1.6 deals with the confidentiality of information shared in an attorney-client relationship.
10 The relevant section states: "[a] lawyer shall not reveal information relating to the representation of a client
11 unless the client gives informed consent, [or] the disclosure is impliedly authorized in order to carry out the
12 representation . . ." MODEL RULES OF PROF'L CONDUCT 1.6(a). Furthermore, Model Rule 1.9 governs an
13 attorney's duties to former clients, stating in relevant part: "[a] lawyer who has formerly represented a client
14 in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter
15 . . . reveal information relating to the representation except as these Rules would permit or require with
16 respect to a client." MODEL RULES OF PROF'L CONDUCT 1.9(c)(2).

17 Therefore, taken together, it is clear that the Model Rules can be reasonably interpreted to mandate
18 that, in assigning legal fees for collection or as payment of a debt, an attorney must protect the confidences
19 the attorney obtained from his/her client during the representation. Moreover, the Restatement of Law
20 Governing Lawyers addresses fee-collection methods, stating that "[i]n seeking compensation from a client,
21 a lawyer may not [1] employ collection methods prohibited by law, [2] use confidential information . . . , or
22 [3] harass the client. *Restatement of the Law, The Law Governing Lawyers* § 41. Specifically, section 59
23 of the Restatement defines "confidential client information" as "consist[ing] of information relating to the
24 representation of a client, other than information that is generally known. *Id.*, § 59. Lastly, "[a] lawyer may
25 use or disclose confidential client information when and to the extent that the lawyer reasonably believes

1 necessary to permit the lawyers to resolve a dispute with the client concerning compensation . . .” *Id.*, § 65;
2 *see also The Association of the Bar of the City of New York*, Formal Opinion 1993-1 (Nov. 5, 1993) (quoting
3 N.Y. State 154 (1936) (“an attorney may furnish information as to the nature and extent of the services
4 rendered by him to clients for purposes of aiding an assignee in the collection of accounts receivable, unless
5 disclosures include matters made to the attorney in confidence.”))

6 Here, there is no dispute that Respondent revealed any confidential information relating to the
7 representation of Mr. Demapan in assigning the legal fees owed by his client to Dr. Hocog. Respondent
8 testified that he merely provided Mr. Demapan’s name, the exact amount owed, and the date of the last
9 payment to Dr. Hocog’s attorney, Mr. Myers. This is tantamount to Respondent assigning his legal fees to
10 a third-party collection agency in order to recover legal fees owed to him, a practice which is not only not
11 directly prohibited by the Disciplinary Rules or the laws of the CNMI, but also widely used throughout
12 various jurisdictions of the United States. As stated above, simply disclosing the amount owed and the name
13 of a client to a third-party for the purposes of aiding in the collection of accounts receivable is not prohibited
14 by the Model Rules, as these do not reveal any information either relating to the representation or that Mr.
15 Demapan revealed in confidence to Respondent. Thus, the Court cannot find any violation of the particular
16 Model Rules alleged by Disciplinary Counsel – or, for that matter, the rules as established by the
17 Restatement – as no confidential information was released by Respondent in the assignment of the legal fees
18 owed by Mr. Demapan.

19 However, the Court must examine whether any further action should have been taken by Respondent
20 before assigning Mr. Demapan’s legal fees debt without his consent, authorization, or consultation. While
21 the Supreme Court of the CNMI has yet to address the specific issue of what steps an attorney must take with
22 regard to the assignment of legal fees owed to him/her to a third-party collector, the Court looks to both the
23 Restatement and other jurisdictions in the United States for guidance on whether Respondent’s actions
24 comport with the various ethical duties that bind attorneys practicing within the CNMI. The Court does not
25 interpret the plethora of cases presented below as binding authority on this particular issue, but rather a

1 demonstration of the broad spectrum of rules and requirements imposed on various jurisdictions outside the
2 CNMI. Thus, the Court will make its ruling not based on a consensus or majority of jurisdictions, but rather
3 based upon the principles and justifications made within the opinions cited.

4 Disciplinary Counsel claims that while several other jurisdictions allow for attorneys to assign legal
5 fees owed to them to some third-party collector while maintaining appropriate ethical standards, none of the
6 particular standards adopted by various jurisdictions would permit the sort of “clandestine” assignment
7 undertaken by Respondent. Further, Disciplinary Counsel comments that if there was any question in
8 Respondent’s mind regarding the legal authority to assign his legal fees – as the protracted research of any
9 competent attorney would surely create – he could have sought an advisory opinion from the CNMI Bar
10 Association Disciplinary Committee.

11 Respondent testified that he did, in fact, conduct research on this issue, and that he believed to be
12 comporting with the majority approach in that the assignment was proper if he limited his disclosure to only
13 the amount owed. Again, the Court would like to reiterate that insofar as protecting confidential information
14 was the only requirement in the assignment of legal fees to a third-party for the purposes of collection,
15 Respondent would be correct in that disclosing the amount owed comports with the rules regarding attorney-
16 client confidentiality. However, the analysis does not end there, as several jurisdictions examining this
17 precise issue have found that further steps must be taken before assigning legal fees to third-party collectors.

18 For example, some courts have upheld such assignments of legal fees to third parties for funding.
19 *See, e.g., The Association of the Bar of the City of New York*, Formal Opinion 1993-1 (Nov. 5, 1993) (noting
20 that “[t]here is no ethical prohibition against a lawyer assigning his or her accounts receivable to another
21 person” and not requiring the client’s consent unless the representation is ongoing). In *RD Legal Funding,*
22 *LLC v. Erwin & Balingit, LLP*, the District Court for the Southern District of California granted summary
23 judgment to the plaintiff with regard to an assignment of legal fees by a law firm in exchange for funding
24 to the law firm. No. 08cv597-L(RBB), 2009 WL 2579230 (S.D. Cal. Aug. 19, 2009). Further, in *Prostrack*
25 *v. Songailo*, the Nevada Supreme Court granted summary judgment to the assignee of legal fees, rejecting

1 the debtor's arguments that the assignment of legal fees his attorney had made constituted an unethical
2 splitting of fees with a nonlawyer and was against public policy. 97 Nev. 38, 623 P.2d 978 (1981). Further,
3 other permissive jurisdictions have required that the attorney making the assignment maintain some control
4 over the assignee to ensure that the assignee's actions comport with appropriate ethical guidelines. *See, e.g.,*
5 *Vermont Advisory Ethics Opinion 97-04; District of Columbia Advisory Ethics Opinion 298: Sale of*
6 *Assignment of Accounts Receivable to a Collection Agency* (2000).

7 On the other hand, however, other jurisdictions have required that prior to the assignment of attorney
8 fees owed by a client to a third party, the attorney must seek the client's informed consent and the advice
9 of independent counsel. *See, e.g., Opinion 2004-2* (Ohio S. Ct., June 3, 2004) (requiring consent, only if
10 the fees were undisputed, and if the representation has ended in connection with the sale of legal fees arising
11 from a contingent fee case for an immediate payment to the attorney at a discounted rate); *Kansas Ethics*
12 *Opinion 94-08* (1994) (requiring "consent, after full disclosure, by the client, which under Kansas case law
13 may require independent advice of counsel"); *The Association of the Bar of the City of New York Formal*
14 *Opinion 1993-1* (1993) (requiring that the assignment of accounts receivable requires full disclosure . . . to
15 the clients"). Specifically, the Kansas Supreme Court found that a "proposal to assign client accounts to a
16 bank in return for a discounted loan may be permissible but amounts to self-dealing for the attorney and is
17 not permissible under the Model Rules [of Professional Conduct]." *Kansas Ethics Opinion 94-08* (1994).
18 The underlying case involved a loan where 90% of the face value of the receivables was assigned to the
19 attorney, with the right of the bank to collect 100% of the face value against the clients, as well as the right
20 of recourse against the law firm if 100% was not paid by clients. *See id.* The court reasoned that in this
21 specific situation, the attorney would become adverse to his own clients, and thus the loan would violate the
22 Model Rules unless the client consented, the fees were undisputed, and the representation had ended. *See*
23 *id.*

24 Furthermore, other jurisdictions have evaluated this issue specifically with regard to assignments to
25 collections agencies for the purposes of recovering legal fees owed to lawyers or law firms. *See, e.g., Ethics*

1 *Opinion by the Professional Ethics Committee of the Supreme Court of Texas, Opinion 464* (August 1989);
2 *District of Columbia Bar Opinion 298* (2000) (holding that a lawyer may disclose confidences or secrets
3 about a client to a collection agency without the client’s consent only if the information is reasonably
4 necessary to recover the debt and the lawyer assures confidentiality on the part of the collection agency).
5 The DC Bar recognized that “the existence of a client debt as well as client contact information arguably is
6 a ‘secret,’ assuming it was obtained in the course of the professional relationship, and its disclosure would
7 arguably would be detrimental to the client’s interest,” and that “under some circumstances, the client’s
8 identity could constitute a ‘secret.’” *DC Bar Opinion 298*. However, the Committee ruled that “the
9 disclosure of the client’s name, address, and debt amount to a collection agency does not violate Rule 1.6,
10 provided that the lawyer . . . ensures that the collection agency and its personnel maintain the confidentiality
11 of that information. *Id.*

12 Lastly, some jurisdictions completely prohibit the assignment of legal fees for any purpose
13 whatsoever. For example, Florida has followed a different and completely restrictive approach to the
14 assignment of legal fees for the last forty years. In 1973, Florida established that “only the law may initiate
15 or authorize suit to collect the amount owed.” *See Professional Ethics of the Florida Bar, Opinion 72-43*
16 (Feb. 23, 1973). The Court notes that it does not suggest that the CNMI adopt such a restrictive view in this
17 very different economic climate forty years later, but merely illustrates the extreme end of the spectrum of
18 the jurisdictions that have weighed in on this particular issue.

19 Here, the Court does not see fit to simply adopt the rules as interpreted by a number of the
20 jurisdictions cited above, but rather to apply the facts in order to determine if Respondent has, in fact,
21 violated the rules established by any of the restrictive jurisdictions that do not require a client’s consent. The
22 Court is of the opinion that to require such consent by the client would create a maelstrom of collections
23 cases by attorneys attempting to recover legal fees owed to them by their clients where their clients refuse
24 to give consent and the attorney’s are forced to use collection methods themselves. This would incidentally
25 inundate the courts with a multitude of collections cases brought by the aggrieved attorneys and

1 simultaneously obviate the need for collection agencies, as well as fly in the face of the public policy of
2 judicial economy the CNMI has always been apt to employ.

3 Accordingly, the Court finds that : (1) no confidential information was disclosed by Respondent in
4 his assignment of the legal fees owed to him to Dr. Hocog; (2) Respondent's representation of Mr. Demapan
5 had fully and completely concluded before the assignment was made, and thus Respondent no longer owed
6 the same duties to Mr. Demapan; and (3) Respondent had made a lengthy effort to collect what was owed,
7 with no objections made during the attempted collection as to the actual amount owed. As such, while the
8 Court views the circumstances as presented to be more egregious than an ordinary collection effort, the
9 Court finds that Mr. Demapan's consent is not required in this case and that Respondent has not violated
10 any of the Model Rules cited by Disciplinary Counsel, or Restatements sections contemplated above.

11 However, the Court stresses that the factual circumstance of this particular case mirrors that of a
12 collection effort only insofar as the underlying representation has ended, and the aggrieved attorney who
13 cannot collect on the legal fees owed to him assigns that debt to a collection agency to retrieve the debt owed
14 while comporting with the laws governing such a collection. Had the facts of this case been any different
15 – for instance, if Respondent had assigned the debt while the representation of Mr. Demapan was still
16 ongoing, or if Respondent had revealed confidential information to a debtor and potential litigator in order
17 to further an action against his client – the Court would likely find clear and convincing evidence to support
18 violations of the Model Rules stated above. Moreover, while the Court does not find Disciplinary Counsel
19 has satisfied the burden of proof as to these particular violations and it cannot declare Respondent's conduct
20 to be a clear-cut example of professional misconduct, the Court does recognize an air of ethical misgiving
21 inherent in Respondent's actions in that selling his former client's debt to a potential litigation opponent
22 removes any possibility, however remote, of settling the case and not pursuing a court-ordered judgment.
23 This practice rests in stark contrast with customary collection efforts which attorneys in this jurisdiction and
24 others conduct as ordinary business, and is not condoned by this Court in refusing to find violations here.

25 ///

1 **IV. FINAL CONCLUSION**

2 For the foregoing reasons, the Court finds no violations of Model Rules 1.6(a), 1.9(c)(2), or 8.4, yet
3 finds there is clear and convincing evidence to support violations of Model Rules 1.1, 1.4(a)(2), and
4 1.4(a)(3). Further, the Court would like to point out that the purpose of a disciplinary action against an
5 attorney is not to punish the attorney, but rather to guard the administration of justice, maintain the dignity
6 of the court and the integrity of the profession, and to protect the public. *See Saipan Lau Lau Dev., Inc.*,
7 2001 MP 2 ¶ 38.

8 In imposing a sanction after a finding of lawyer misconduct, the Court considers the following
9 factors: (a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the
10 lawyer’s misconduct; and (d) the existence of aggravating or mitigating factors. ABA Standards For
11 Imposing Lawyer Sanctions, § 3.0 (approved 1986, amended 1992). Here, the duty violated and injury
12 caused by Respondent’s misconduct were relatively minor, and no affirmative evidence as to Respondent’s
13 mental state or motive for his actions exists on the record. As such, ethical violations of this magnitude
14 ordinarily warrant a private admonition by the Court, where the lawyer’s conduct is isolated and causes little
15 or no actual or potential injury to a client. *Id.*, § 4.54. However, admonitions are private discipline and
16 cannot be imposed after formal charges have been issued. *See* ABA Model Rules for Lawyer Disciplinary
17 Enforcement, Rule 10(1)(5).

18 Thus, as formal charges have been filed, the Court further considers previous disciplinary penalties,
19 as well as substantial experience in practicing law, as aggravating factors in determining an appropriate
20 alternative disciplinary remedy. *Id.*, § 9.22(a) and (i). Accordingly, in view of the violations found above,
21 a recent disciplinary judgment found against Respondent resulting in his suspension, and Respondent’s
22 extensive history of practicing law in the CNMI, the Court **HEREBY ORDERS** a public reprimand of
23 Respondent’s actions to be published in the newspaper to inform the general public of his professional
24 misconduct, pursuant to § 2.5 of the ABA Standards for Imposing Lawyer Sanctions. The Court
25 **FURTHER ORDERS** Respondent pay for the costs of prosecution, pursuant to the Disciplinary Rules,

1 which are to be determined at a later date, but may include, but are not limited to, the costs of investigations
2 and service of process.

3 The Court shall issue a further order regarding the implementation and other details related to this
4 order.

5
6 **SO ORDERED** this 15th day of July, 2014.


/ s /

7 David A. Wiseman. Associate Judge

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25