FOR PUBLICATION

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

In the Matter of Disciplinary Proceedings of

DOUGLAS WILLIAM RHODES,

Respondent.

DECISION AND ORDER

Cite as: *In re Disciplinary Proceedings of Rhodes*, 2002 MP 02

SUPDA NO. 2002-001

Hearing held February 6, 2002

For Respondent: Perry B. Inos, Esq.
P.O. Box 502017
Saipan, MP 96950

BEFORE: DEMAPAN, Chief Justice, CASTRO and MANGLONA, Associate Justices.

DEMAPAN, Chief Justice:

¶1 On January 21, 2002, this Court received a letter from the Bar Administrator informing the Court that Douglas William Rhodes ("Respondent") was convicted of a felony and had not disclosed that fact when applying for a limited admission to the Bar of the Commonwealth of the Northern Mariana Islands. On the same day, this Court ordered Respondent to show cause why his limited admission to the Commonwealth Bar should not be revoked. For the reasons that follow, Respondent is disbarred and ordered to pay sanctions in the amount of $10,000.

STATEMENT OF JURISDICTION

¶2 As this matter deals with the regulation of the Bar of the Commonwealth of the Northern Mariana Islands, this Court has jurisdiction pursuant to the Court's inherent powers,[1] as well as Com. Dis. R. 1.[2]

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[1] *See In re the Matter of Antonio P. Villanueva*, 1 CR 952, 957 (Dist. Ct. App. Div. 1984) ("Disciplinary matters for attorneys and trial assistants are unique proceedings within the authority and control of the courts. The courts have the inherent power to regulate the practice of law, whether in or out of court."); *In re Kramer*, 193 F.3d 1131, 1132 (9th Cir. 1999) ("There is little question but that district courts have the authority to supervise and discipline the conduct of attorneys who appear before them. This includes the inherent authority to suspend or disbar lawyers.") (citation and quotation omitted); *Sodona v. Villagomez*, 3 N.M.I. 535 (1993) ("The court has the inherent judicial power to enforce its promulgated rules and may impose sanctions upon attorneys who violate the rules.") (citation omitted).

[2] Com. Dis. R. 1 states, in pertinent part: "Any attorney or trial assistant or any other person who practices law in the Commonwealth of the Northern Mariana Islands is subject to the disciplinary jurisdiction of the Courts of the Commonwealth . . . ."

ISSUE PRESENTED AND STANDARD OF PROOF

¶3 The issue before us is whether Respondent should be prohibited from practicing law in the Commonwealth. The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. *See* Com. Disc. R. 9(g).

FACTUAL AND PROCEDURAL BACKGROUND

¶4 The following facts are undisputed as they are taken from statements made by Respondent in papers submitted to the Court under oath, and from Respondent's testimony to this Court, also given under oath:

¶5 On May 12, 1998, Respondent applied for a limited admission to the Bar of the Commonwealth of the Northern Mariana Islands, having been hired by Micronesian Legal Services Corporation ("MLSC"). The application form was submitted under oath. Respondent represented in his application that he had never been a party to, or otherwise involved in, any action or legal proceedings, either civil, criminal or quasi criminal. Respondent also represented that he had never been convicted of a felony or misdemeanor. Further, Respondent represented that he was "Current" on his student loans, the repayment of which started in 1990.

¶6 Respondent was granted a limited admission to practice law before the Commonwealth courts pursuant to Com. R. Admiss. II(5)(I)[3] on June 3, 1998. He

[3] Com. R. Admiss. II (5)(I) reads:

> An attorney who is a salaried employee of the Commonwealth Government or the Micronesian Legal Services Corporation (MLSC) may practice before the courts of the Commonwealth without taking the CNMI bar examination [for] a period of four (4)

worked at MLSC until February 2001, when he transferred to the Office of the Public Defender as an Assistant Public Defender.

¶7 In January 2002, four months prior to the expiration of his limited admission, Respondent filled out a subsequent application for regular admission to the Bar. In this application, submitted with supporting affidavits, Respondent represented that he had "robbed a gas station at knifepoint in the City of Adrian, Michigan" in 1978. Respondent admitted that he pled guilty to Assault with Intent to Commit Armed Robbery.[4] He was sentenced to six months of incarceration and five years of probation. Respondent also represented that he was in default on his student loans, and had not earned sufficient income to make a payment since 1992.

¶8 The representations made on the January 2002 application were either omitted from the May 1998 application, or directly contradicted by information affirmatively supplied by Respondent on the May 1998 application.

¶9 At the February 6, 2002 closed hearing,[5] Respondent admitted that he was a felon who had not been pardoned. Respondent testified that the omission of the felony conviction was, in essence, a clerical error:

> In June, 1998 I came to Saipan having been offered a job at Micronesian Legal Services Corporation in May of 1998. And when I came, I was given the application to fill out. Um- during the course of filling it out, I

> years, provided that such attorney shall have been admitted to the practice of law in another jurisdiction of the United States, and shall have maintained good standing. Admission under this Rule is limited to legal work for the government and MLSC. The attorney shall complete and file with the Supreme Court the application and questionnaire form used for the bar examination, including the three character references. The attorney may not commence practicing law for the Commonwealth Government or MLSC until his/her application has been approved and he or she has taken the Oath of Admission before a Supreme Court Justice.

[4] Respondent also represented that he was a "defendant in a civil Action for Divorce in 1992 in the State of New York, County of Erie."

[5] Respondent was represented by counsel. Also present, at the request of the Court, was a member of the Disciplinary Committee of the Bar of the Commonwealth of Northern Mariana Islands.

> came to the areas where, I, where they asked about prior convictions, prior criminal history, that kind of thing and, uh, it was my understanding that I had left it blank at the time with the idea that I was gonna fill in the information at a later date. I did not believe I had written "no." Um I, I was going to supplement the application with a affidavit. For whatever reason the application was typed up and uh I failed to review it prior to signing it.

Respondent then testified that he had not reviewed this application until after this Court ordered him to show cause.[6]

¶10 At the hearing, Respondent offered to resign from the Bar and return to New York. Further, Respondent intimated that the Bar of the State of New York need not be advised of this Court's order to show cause.

> I would ask this Court to, ah, allow me the opportunity to, ah, just move on. I'll return to New York, ah, ah, where where I am currently admitted. I would ask that ah, this could be done without ah, any permanent, ah, negative marks on my record. Ah, I am attorney I am an attorney in good standing in New York. I am currently on active status in New York. I continue to pay my dues and, ah, uh, [unintelligible from counsel] I would be willing to withdraw my application for the Bar, uh, resign from the Bar, resign from my current position, and uh, return to New York if that's the case.

¶11 By a letter dated February 6, 2002, written after the hearing, Respondent advised the Court that he would immediately cease any activity as an attorney in the Commonwealth.

ANALYSIS

1. **Respondent Shall be Disbarred Effective Immediately.**

¶12 An attorney may work for the Commonwealth government for up to four years without taking the Commonwealth bar examination. *See* Com. R. Admiss. II (5)(I).

[6] Respondent testified that, having failed to make a payment on his student loans since 1992, at the time of his 1998 application he was actually "current" as he had made arrangements with his creditor.

However, to practice as a Commonwealth government attorney, one must be of good moral character and must not have been convicted of a felony. Com. R. Admiss. II (2) (A) and (B).[7]

¶13 By his own admission at the hearing, Respondent is not qualified to practice law in the Commonwealth due to his status as a felon. Further, we find that Respondent has not fulfilled the requirements of Com. R. Admiss. II (5)(I), which requires an applicant to "*complete* and file with the Supreme Court the application and questionnaire form used for the bar examination." Com. R. Admiss. II (5)(I) (emphasis added). One does not *complete* the required application by omitting material information.

¶14 We note that this is not the first time an attorney was less than candid on an application for admission to practice law in the region. *See The Florida Bar v. Webster*, 20 Fla. L. Weekly S571 (Fla. 1995) (Florida Supreme Court disbars attorney who materially omits information on applications to practice in the Federated States of Micronesia and the Republic of Palau.). It is appropriate that this Court disbar Respondent effective immediately.

2. **Additional Sanctions are Appropriate**

¶15 Com. Dis. R. 3(b) allows for cumulative sanctions.[8] Attorney sanctions exist not to punish the offending attorney, but "to protect the public and to maintain the integrity of the profession and the dignity of the courts." *Office of Disciplinary Counsel v. Lau*, 900 P.2d 777, 783 (Haw. 1995). *See also In re Gilbertson*, 581 N.W.2d 351, 353 (Minn. 1998) ("The purpose of attorney discipline is not to punish the attorney but rather to

[7] *See also* 1 CMC § 3603 (reflecting the Legislature's desire that this Court not allow felons to practice as government attorneys).
[8] Com. Dis. R. 3(b) reads: "Cumulative sanctions, where appropriate, may also be imposed by the Court."

guard the administration of justice and to protect the courts, the legal profession and the public.") (quotation and citation omitted).

¶16 In short, courts impose sanctions with an eye towards other attorneys who are considering violating the ethical canons of our profession.[9] In fashioning the appropriate sanctions to impose, we will consider "the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and to the profession." *Gilbertson*, 581 N.W.2d at 354.

¶17 Were we to believe Respondent's assertion that these omissions were mere clerical errors, we would still order sanctions. That an attorney would sign an application for admission to the Bar and submit it to this Court without first reading it is conduct that is repugnant to this Court and will not be tolerated. Sanctions are appropriate to underscore to future applicants the need to complete their applications thoroughly and with caution.

¶18 Further, even were we to accept as true Respondent's assertion that this was all a mistake, Respondent, by his own admission, has violated MODEL RULES OF PROF'L CONDUCT R. 5.5(a).[10] Rule 5.5(a) is applicable to Respondent through Com. Dis. R. 2. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142, 146 n.13 (1994). Sanctions, therefore, are appropriate to dissuade others from practicing law in the Commonwealth contrary to the Rules of this Court. It must be added that, whether we believe the omission was or was not unintentional, the public was still harmed in that an unqualified attorney was practicing law in the Commonwealth.

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[9] *See Office of Disciplinary Counsel*, 900 P.2d at 783 ("A mere reprimand in this case would encourage others to disregard the orderly processes by which our courts and the legal profession are governed.").

[10] MODEL RULES OF PROF'L CONDUCT R. 5.5 reads, in pertinent part: "A lawyer shall not" (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."

¶19 We do not, however, believe Respondent's testimony that the omission of a felony conviction was a mere clerical error. We find it difficult to believe that Respondent did not realize that he did not supplement his application with the details of his felony conviction.[11]

¶20 As such, we find that Respondent violated MODEL RULES OF PROF'L CONDUCT R. 8.1(a) and MODEL RULES OF PROF'L CONDUCT R. 3.3(a)(1) when he filed his application for admission in 1998, and violated the same Rules in the February 6, 2002 hearing on the matter. MODEL RULES OF PROF'L CONDUCT R. 8.1 reads, in pertinent part: "An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not (a) knowingly make a false statement of material fact." MODEL RULES OF PROF'L CONDUCT R. 3.3 reads, in pertinent part: "(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal." We take time to express our astonishment that Respondent would ask us implicitly to join him in deceiving the State Bar of New York.[12]

3. **The Nature of the Sanctions**

¶21 As we have determined that additional sanctions are appropriate, the issue shifts to the nature of the sanctions. We find that the type and gravity of these violations merit large monetary sanctions. Respondent has exhibited a pattern of deceit to this Court that must not and will not be tolerated. One should not even have to mention that Respondent

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[11] The statute under which Respondent was apparently convicted allows for "imprisonment in the state prison for life, or for any term of years." MICH. COMP. LAWS ANN. § 750.89 (West 2001). This Court thinks one would tend to remember having mentioned that fact.

[12] Obviously, we decline to accept Respondent's offer to allow him to resign without going forward with the hearing and this Decision and Order. A copy of this Decision and Order shall be forwarded to the New York Bar Association.

harmed the profession. That an attorney would deceive the Supreme Court by omitting a felony conviction on his bar application, and then attempt to perpetuate the deceit by citing mere clerical error is the antithesis of all for which the legal profession stands.

¶22 Com. Dis. R. 3 allows for sanctions as we deem "appropriate." Com. Dis. R. 3. Clearly, it is appropriate to impose substantial sanctions to underscore our desire that this activity not be repeated. Therefore, the Order below includes sanctions of $10,000.

¶23 Accordingly, **IT IS HEREBY ORDERED that:**

1. Douglas William Rhodes be DISBARRED, and his limited admission to the Bar of the Commonwealth of the Northern Mariana Islands is hereby PERMANENTLY REVOKED; and

2. Respondent pay sanctions in the amount of $10,000 on or before April 13, 2002.

SO ORDERED THIS 13TH DAY OF FEBRUARY 2002.

/s/_____
MIGUEL S. DEMAPAN, CHIEF JUSTICE

/s/_____
ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE

/s/_____
JOHN A. MANGLONA, ASSOCIATE JUSTICE