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

In the Matter of the Application of

DAVID A. YORK,

For Admission Pro Hac Vice to the Courts of the Commonwealth of the Northern Mariana Islands

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SUPREME COURT NO. 2007-ADM-0017-PHV

Cite as 2010 MP 11

Decided June 30, 2010

Colin M. Thompson, Saipan, Northern Mariana Islands, for Appellant.
Timothy H. Bellas and Michael W. Dotts, Saipan, Northern Mariana Islands, for Appellee.
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice.

DEMAPAN, C.J.:

¶ 1 This matter arises out of David A. York's application for admission pro hac vice in the Superior Court case of *UMDA v. Pfaff*, Civ. No. 07-0152 (NMI Super. Ct. Nov. 13, 2007). York, an attorney licensed to practice in five U.S. jurisdictions,[1] applied for admission pro hac vice by motion to this Court on July 18, 2007. He sought to represent Robert Pfaff, a party to the subject litigation who he had represented in various matters in other jurisdictions. However, on July 11, 2007 – one week before he moved this Court for pro hac vice status – York appeared on behalf of Pfaff and participated in the deposition of a party to the underlying action, Paul Dingee. The deposition took place in the state of Wisconsin and was conducted by Matthew Bordon, an attorney admitted to practice law in the Commonwealth. Throughout the deposition, York made objections on the record and repeatedly commented on the basis of questions posed by Bordon.[2]

I.

¶ 2 On July 24, 2007, approximately one week after York applied for admission pro hac vice, counsel for the opposing party filed an objection to York's application, bringing to light his actions taken at the July 11, 2007, deposition in Wisconsin. Three weeks later, York attempted to unilaterally withdraw his application from consideration by this Court.[3] The Court did not accept York's withdrawal, but rather a single justice denied his application on August 17, 2007, based on his unauthorized participation in the Wisconsin deposition. Shortly thereafter, York appealed the

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[1] York is licensed in California, Michigan, Virginia, the District of Columbia, and Illinois.

[2] York points to no less than twenty-two separate occasions wherein he interjected himself in order to "protect the legitimate interests of his client . . . ," yet he still curiously claims that his "participation in the deposition was never intended to be an appearance . . . ." David York's Memorandum in Reply to UMDA's Opposition to Motion to Strike Evidence at 9. Specifically, York notes that he "debated Bordon on the LLC Act and the terms of the UMDA LaoLao LLC 2d Operating Agreement," objected to a question that called for privileged information, told Murray to correct an answer that the deponent incorrectly gave, asked opposing counsel to clarify multiple questions, and "stated that a line of questioning was based on events outside the scope of deposition [sic] and was based on non-existent factual predicates." *Id.* at 6-8. Contrary to York's assertion, his lack of an official appearance on the record does not nullify the fact that he represented his client by actively participating in and influencing many aspects of the deposition. York's role was certainly not one of mere advisory participation. There is no question that York was an active participant.

[3] York attempted to withdraw his application only after another attorney involved in the same litigation, O. Russell Murray, had his pro hac vice status revoked for similar conduct. Like York, Murray participated in the Dingee deposition but was not licensed to practice law in the Commonwealth at the time. After the Court learned of Murray's participation in the deposition, it made a finding of unauthorized practice of law and revoked Murray's recently-granted pro hac vice status. The Court's findings regarding Murray became public on August 9, 2007; York attempted to withdraw his application five days later.

decision by requesting a full panel review of his denial. He did not request a review of the actual denial of admission, but rather asked the Court set aside its finding of unauthorized practice of law in the denial order.

¶ 3 York first seeks to vacate the contents of the order on procedural grounds, arguing that this Court does not have jurisdiction to conclude that he engaged in the unauthorized practice of law. In support, he relies on the ABA Model Rule of Pro Hac Vice Admission.[4] The specific regulation governing a jurisdiction's authority to discipline out-of-state lawyers and applicants reads:

> [d]uring the pendency of an application for admission pro hac vice and upon granting of such application, an out-of-state lawyer submits to the authority of the courts and the [lawyer regulatory authority] of this state for all conduct relating in any way to the proceeding in which the out-of-state lawyer seeks to appear.

Model Rule on Pro Hac Vice Admission R. I(F)(1)(a) (2002). Based on this regulation, York argues that at time of the Wisconsin deposition, "he had not yet submitted a pro hac vice application and, therefore, had not submitted to the authority of the CNMI to regulate the practice of law." Appeal to En Banc Panel to Set Aside Finding of Unauthorized Practice of Law and Vacate Order of Single Justice at 5. In essence, he suggests that the Court's authority to make a finding of impropriety is strictly limited to actions taken after an application for pro hac vice status has been filed.

¶ 4 The deposition in question occurred on July 11, 2007. York did not apply for admission pro hac vice until July 18, 2007. Under his reading of the Model Rule, York did not submit to the authority of this Court until July 18, 2007. We agree that this is a fair interpretation. However, York further asserts that the Court may only base its findings in the denial order on events that transpired on or after that date. This interpretation of the Model Rule is unnecessarily narrow. The order denying his application based on the unauthorized practice of law was not entered until August 17, 2007 – nearly a month after York came under the jurisdictional umbrella of the Commonwealth courts. While he may not have submitted to the disciplinary authority of the Commonwealth courts until July 18, 2007, nothing in the Model Rule or Commonwealth law precludes this Court from taking into account his prior actions in the pending Commonwealth case for which he seeks admission.

¶ 5 Aside from York's above attempt to procedurally sidestep this Court's disciplinary authority, he also claims that geographical considerations prohibit us from making a finding of

[4] Although we address York's argument, which relies on the Model Rule of Pro Hac Vice Admission, we note that the Model Rule has not been adopted by the Court.

unauthorized practice of law. York claims that because the deposition was held in Wisconsin, he technically never practiced law in the Commonwealth and thus could not have violated Commonwealth regulations. In support, he suggests that Rule 8.5 of the Model Rules of Professional Conduct narrows the jurisdictional scope of the Commonwealth to regulate the practice of law only among (1) those attorneys already admitted to the Commonwealth bar, and (2) those not admitted to the Commonwealth bar but who are within the physical borders of the Commonwealth. David York's Memorandum in Reply to UMDA's Opposition to Appeal to En Banc Panel to Set Aside Finding of Unauthorized Practice of Law and Vacate Order of Single Justice at 14-16. Specifically, Rule 8.5(a) states that "[a] lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." Model Rules of Prof'l Conduct R. 8.5(a) (2010).

II.

¶ 6 The issue we are faced with is whether practicing law "in this jurisdiction" is limited to the actual geographical boundaries or whether one may practice law "in this jurisdiction" by virtue of his or her active participation in a Commonwealth case wherever the proceeding may take place. For the reasons set forth below, we find that one engages in the practice of law in this jurisdiction when he or she represents a client in a case that is filed under and governed by Commonwealth law.[5]

¶ 7 A primary function of the bar admission process is to protect residents and litigants of a particular jurisdiction from actions taken by unfit attorneys. Model Rules of Prof'l Conduct R. 5.5 cmt. 2 (2010). It ensures that an attorney has such minimum competency and knowledge of local law that he or she may effectively represent the interests of his or her client. Additional policy considerations exist for pro hac vice applicants, as these applicants' qualifications and capabilities are not typically scrutinized to the same extent as those who seek regular bar admission. For example, because procedural and substantive laws differ from jurisdiction to jurisdiction, a lawyer seeking admission pro hac vice is required to associate with a local attorney so that he or she will, throughout the duration of the litigation, have the active participation of one who is familiar with local law and practices. Model Rules of Prof'l Conduct R. 5.5 cmt. 8 (2010). We

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[5] York repeatedly draws the Court's attention to the fact that he did not make an official appearance on the record during the deposition. In doing so, he implies that his conduct during the deposition may not have even amounted to the practice of law, such that there would be no reason to explore whether the conduct was actually unauthorized. Courts in various jurisdictions, however, have held that similar intrusive behavior in which one advocates for his or her client does indeed qualify as the "practice of law." *See The Fla. Bar v. Riccardi*, 304 So.2d 444, 445 (Fla. 1974); *Office of Disciplinary Counsel v. Willis*, 772 N.E.2d 625, 627 (Ohio 2002); *In re Jackson*, 843 So.2d 1079, 1082 (La. 2003).

cannot ignore the fact that, at times, Commonwealth law is applicable to a Commonwealth proceeding that occurs even outside the geographical boundaries of the Commonwealth. In such proceedings there is no reason why the above policy considerations and protections should not apply.

¶ 8 The proceeding at issue here is a deposition in a case that was filed in the Commonwealth Superior Court. Because it was filed in the Commonwealth, the Commonwealth Rules of Civil Procedure, which govern deposition requirements and limitations, apply.[6] NMI R. Civ. P. 81(a). Additionally, whether certain testimony extracted in a deposition is eventually admissible in court is a decision made by a Commonwealth judge pursuant to the Commonwealth Rules of Evidence. NMI R. Evid.101. York himself objected to a question on the basis that it called for privileged information, yet he was not licensed – and consequently not yet deemed fit to practice – in either the state where he was physically located at the time, or the jurisdiction where the case was filed. While a deposition may occur outside the geographical borders of the Commonwealth, Commonwealth law is still very much applicable to activities in furtherance of a case that was filed in Commonwealth courts. The Commonwealth discovery rules that govern a proceeding do not dissolve upon crossing a political boundary as York suggests, thus it is illogical to assert that the courts' ability to regulate attorney conduct in connection with those proceedings also dissolves.

¶ 9 Additionally, if geographical boundaries imposed absolute limitations on a jurisdiction's ability to discipline an attorney for conduct in an ongoing case filed in that jurisdiction, an attorney would be free to sabotage the proceeding so long as the deposition was not taken within the boundaries and he or she had not yet applied for admission in the jurisdiction. Under York's argument, even if the attorney did eventually apply for admission, he or she would be insulated from discipline for any conduct that previously occurred.

¶ 10 York's position would also allow litigants to sidestep the admissions process by simply traveling to a different jurisdiction for a few hours. As his opposition stated in their opposing brief:

> lawyers would be free to skirt the requirements of admission by simply holding depositions in other jurisdictions (for example, taking CNMI depositions in Guam), while this Court and the Superior Court would be without power to sanction any improper conduct such as depositions by attorneys not admitted before the Court. Any attorney doing something as fundamental as taking or

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[6] While Commonwealth rules would seem to apply to the deposition at hand, we note that The Restatement (Second) of Conflict of Laws provides that the state with the most significant relationship to the communication at issue generally governs. Restatement (Second) of Conflict of Laws § 188 (1969). Although this issue is relevant to our discussion, it was not addressed by either party, and its determination at this point in the proceedings is not necessary to the disposition of this case.

> defending a deposition must be subject to the Court's jurisdiction and governed by the Court's rules through admission (either pro hac vice or by ordinary application), otherwise they would be free to violate those rules without fear of repercussion or consequence.

Response to David York's Motion for Full Panel Review at 2. Considering the ease of inter-jurisdictional travel, even in a relatively isolated jurisdiction such as the Commonwealth of the Northern Mariana Islands, we find that the phrase "in this jurisdiction" turns on the law that governs the case, rather than the geographical location of the proceeding. To further demonstrate the complications of interpreting the Model Rules as imposing strict geographical limitations, we are mindful that technological advancements play an increasing role in litigation. For example, depositions may be conducted via video conferencing, where the deponent and his or her attorney is in the Commonwealth, but the other participating attorney may actually be situated thousands of miles away. Due to these considerations, we find it illogical to impose strict geographical restrictions on our disciplinary authority, especially when Commonwealth law dictates the procedure and substance of the proceeding.

¶ 11 This Court has plenary control over who may practice law in the Commonwealth. NMI Const. art. IV, § 9; *In re Matter of Pro Hac Vice Admissions*, General Order 99-900 (NMI Sup. Ct. Aug. 23, 1999). While guideposts for determining an attorney's fitness to practice do exist, such as the requirement to be a law school graduate and a member in good standing in other jurisdictions, admission to the Commonwealth bar is solely at the discretion of the Court. No set of laws, be it Commonwealth or federal, creates a right to admission, pro hac vice or otherwise. *Leis v. Flint*, 439 U.S. 438, 441-442 (1979). Rather, bar admission is a privilege. *Id.* That being said, the Court has an incentive to admit reputable and competent lawyers for practice in particular cases. For example, certain matters are best litigated by those familiar with a party's legal situation and personal history, or by an attorney who specializes in a complex area of litigation. The Court also has an incentive to deny the applications of those it feels have abused the process of admission, for it is this process that protects the integrity of the litigation arena and protects our citizens from intrusive behavior by potentially unfit attorneys.

¶ 12 York's participation in the Wisconsin deposition prior to applying for and receiving pro hac vice status raises questions as to his respect for the bar admissions process in the Commonwealth. In fact, at the time he participated in the Wisconsin deposition, he had made no affirmative step toward gaining admission to practice in a Commonwealth case.[7] In this instance,

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[7] York briefly raises an argument under Model Rule of Professional Conduct 5.5 that he might have been able to reasonably expect to be admitted to practice in this case. While this may be true, neither he nor the local counsel with whom he associated had taken any action in furtherance of his admission. Thus,

we must conclude York engaged in the unauthorized practice of law when he actively participated in a legal proceeding in a case filed in the Commonwealth and governed by the rules of the Commonwealth before taking a single step in the admissions process. The fact that the proceeding occurred outside the physical boundaries of the Commonwealth is irrelevant.

¶ 13 While we impose no discipline upon York, we understand that the disposition of this case may affect his standing as a member of the bar in other jurisdictions. However, the speculative damage to York's professional reputation is not sufficient to warrant a reversal based on a jurisdictional deficiency or an alleged violation of his due process rights. *See id.* at 443. The August 17, 2007, denial order did not deprive York of any right that would otherwise entitle him to further review. Accordingly, pursuant to our plenary power to regulate bar admissions, we find that the August 17, 2007, order was proper, and we DENY York's request to set aside the findings upon which the order was based.

SO ORDERED this 30th day of June 2010.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice

York could not have reasonably expected to be admitted when he had not yet taken a single step in the admissions process.