

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

IN THE ADMISSION OF ELEANOR ODUCAYEN NISPEROS

SUPREME COURT NO. 2007-ADM-0031-BAR

Cite as: 2007 MP 33

Decided December 31, 2007

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

PER CURIAM:

¶ 1 Eleanor Oducayen Nisperos (“Nisperos”) engaged in the practice of law as an assistant attorney general without first being admitted to practice law in the Commonwealth. Because Nisperos failed to submit a timely application to practice law, and because the Attorney General’s Office delayed her application, we find that Nisperos violated the Commonwealth Rules of Admission, and that the Attorney General’s Office contributed to Nisperos’s unauthorized practice of law.

I

¶ 2 On November 28, 2007, the Court received Nisperos’s application for admission to practice law as an assistant attorney general in the Commonwealth courts on a temporary basis pursuant to 1 CMC § 3603. Nisperos’s contract with the Attorney General’s Office states that her employment was to begin June 20, 2007, but Nisperos did not sign the contract until July 31, 2007. The differing dates make it unclear as to the exact date Nisperos began working for the Attorney General’s Office. Nisperos, however, claims she began work as an assistant attorney general on July 16, 2007.

¶ 3 After beginning work with the Attorney General’s Office, Nisperos signed and filed pleadings in the trial court in her official capacity as an assistant attorney general. On August 2, 2007, she filed an answer in *Li v. Department of Labor*, Civil No. 07-0215 (NMI Super. Ct. Aug. 2, 2007) (Answer to Complaint of Judicial Review of Agency Action at 3), but failed to affix her bar association number.¹ We use Nisperos’s appearance as an assistant attorney general in the trial court, for the purposes of this decision only, as the official starting date of her practice of law. The Commonwealth Rules of Admission state that attorneys may not commence practicing law for the Commonwealth government until their bar application is approved and they have taken the oath of admission before a Supreme Court Justice. Com. R. Admiss. II(5)(J). Thus, in violation of Com. R. Admiss. II(5)(J),² it took Nisperos from August 2, 2007 until November 28,

¹ Nisperos also signed and filed a motion to dismiss before this Court in her official capacity as an Assistant Attorney General on September 2, 2007. *See Wu v. Dep’t of Labor*, Appeal No. 07-0009-GA (Defendant-Appellee’s Motion to Dismiss).

² Although we referenced 1 CMC § 3603(a)(4) in ordering Nisperos to show cause as to why she should not be disciplined for practicing law without a license, the practice of law in the Commonwealth is ultimately governed by this Court’s inherent powers. NMI Const. art. IV, § 3; *see also* NMI Const. art. IV, § 9. In that regard, we have adopted a variety of rules governing the practice of law in the Commonwealth, including the Commonwealth Rules of Admission, which govern the present case. While the scope,

2007, almost four months after she signed and filed documents in the trial court, to request admittance to practice law in the Commonwealth courts.³

¶ 4 On December 11, 2007, we ordered Nisperos to cease her practice of law and show cause as to why she should not be disciplined and her application for admission should not be denied for practicing law in the Commonwealth without a license. On December 17, 2007, Nisperos responded to the order to show cause. In her response, Nisperos accepted complete responsibility for failing to be admitted to the CNMI Bar Association before practicing law in the Commonwealth. However, she noted that she initially submitted her completed application to the Attorney General's Office on September 10, 2007. She claims that her original application authorized payment for her background check from her personal credit card. However, Nisperos states that the Attorney General's Office removed her payment authorization form and assured her that the Attorney General's Office would pay for the background check. On September 12, 2007, the Attorney General's Office submitted Nisperos's application without the required \$250 payment, resulting in its rejection.

¶ 5 Nisperos states that although she inquired about the status of her application via email with Deputy Attorney General Greg Baka on September 18, 2007 and November 26, 2007, Baka did not inform her of her rejected application until December 6, 2007. On December 11, 2007, the same day this Court ordered Nisperos to show cause as to why she should not be disciplined for practicing law without a license, the Attorney General's Office placed Nisperos on administrative leave.

¶ 6 During the order to show cause hearing on December 20, 2007, Nisperos accepted full responsibility for her rejected application, as well her unauthorized practice of law. Nisperos highlighted her record as a government attorney for thirty-six years, and continually stressed that she meant no disrespect to the Court, the CNMI Bar Association, or the people of the Commonwealth.⁴

interpretation, and constitutionality of 1 CMC § 3603 merits further discussion, we find it less than ideal to address those issues in the present case.

³ Additionally, all attorneys in the Commonwealth are required to affix their CNMI Bar Association "identification number immediately to the right of their names on the signature of all pleadings in the Commonwealth Courts." General Order 2005-100. Nisperos failed to do so, as she was not a member of the CNMI Bar Association.

⁴ In contrast, in *In re Roy*, 2007 MP 28 ¶ 2, our decision was heavily influenced by the prosecutor's unwillingness to accept blame for her mistakes, as well as for her disrespectful conduct toward the Court. In *In re Roy*, the prosecutor stated that she should not be disciplined for failing to file a brief on two separate appeals because, *inter alia*, she was overworked and one of the cases was "relatively minor." At the order to show cause hearing, the prosecutor "repeatedly turned to face onlookers in the courtroom and

II

¶ 7 Any person who practices law in the Commonwealth without being admitted to practice law in this jurisdiction is subject to discipline. Com. Disc. R. & P. 17. Discipline may consist of “[d]isbarment, suspension, public censure, private reprimand, and/or any other sanction that is deemed appropriate.” *Id.* 3(a). “We have ‘the inherent authority to impose sanctions that are not specifically addressed by rule.’” *In re Roy*, 2007 MP 28 ¶ 3 (quoting *Tenorio v. Superior Court*, 1 NMI 112, 127 (1990)). “‘The purpose of suspension or disbarment is not to punish the attorney, but rather to guard the administration of justice, maintain the dignity of the courts and the integrity of the profession, and protect the public.’” *Id.* ¶ 4 (quoting *Saipan Lau Lau Dev. Inc. v. Superior Court*, 2001 MP 2 ¶ 38). Sanctions are imposed to deter other attorneys who are considering violating the rules of our profession. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 16.

¶ 8 “Notice and an opportunity to respond must always be given before sanctions” are imposed to comply with due process. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 NMI 343, 363 (1992). In the instant case, Nisperos received due process after she had an opportunity to respond in writing to our order to show cause, as well as the opportunity to be heard at a hearing. *See In re Roy*, 2007 MP 28 ¶ 6 (“An opportunity to respond in writing to an order to show cause regarding sanctions and a chance to be heard at a hearing provide adequate due process.”); *Milne v. Lee*, 2001 MP 16 ¶ 32 (determining that there was no due process violation after the attorney facing discipline was given a hearing).

¶ 9 “We have the inherent authority and jurisdiction to regulate the conduct of attorneys practicing before us.” *In re Roy*, 2007 MP 28 ¶ 7. Nisperos, appearing before this Court and the trial court in her official capacity as an assistant attorney general, is subject to our jurisdiction. “The practice of law is not limited to appearances in court. It also embraces the preparation of papers that are to be filed in court on another’s behalf and that are otherwise incident to a lawsuit.” *Toledo Bar Ass’n v. Joelson*, 872 N.E.2d 1207, 1208-09 (Ohio 2007) (per curiam). To determine the appropriate sanction, we consider “the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession.” *In re Giberson*, 581 N.W.2d 351, 354 (Minn. 1998). “We look to other cases involving similar attorney misconduct for guidance.” *Roy*, 2007 MP 28 ¶ 7. In *Joelson*, the Ohio Supreme Court determined that where a non-lawyer engaged in the unauthorized practice of law, civil penalties were unwarranted when

mouthed words to them.” *Id.* ¶ 12 n.4. After the hearing, “the prosecutor stormed out of the courtroom, made loud remarks to seated onlookers as she left, and slammed the door before the Justices exited the courtroom.” *Id.*

the non-lawyer respondent ceased his unauthorized practice of law, cooperated in investigative proceedings, and caused no significant harm. 872 N.E.2d at 1209. “Nonetheless, we decide the instant case, like each case, on its unique circumstances and facts.” *In re Roy*, 2007 MP 28 ¶ 7.

¶ 10 Here, Nisperos’s contrite responses to this Court’s order to show cause, her sincere demeanor at the order to show cause hearing, and her outstanding record as a government attorney for thirty-six years strongly influence our decision. Notwithstanding Nisperos’s apologetic attitude and acceptance of blame, however, we cannot ignore her conduct. As an assistant attorney general, Nisperos has an obligation to both the Commonwealth and the legal profession to abide by the rules of the Court and the laws of the Commonwealth. With thirty-six years of experience as a government attorney, we find it disconcerting that Nisperos failed on such a fundamental level.

¶ 11 We are equally troubled with the role the Attorney General’s Office played in this matter. The primary responsibility of the Attorney General’s Office is to serve the people of the Commonwealth in upholding and enforcing the Commonwealth’s laws. When the Attorney General’s Office disregards Court rules, or otherwise contributes to the unauthorized practice of law, the Commonwealth is ill-served. The Attorney General’s Office took two-and-a-half months to notify Nisperos of her rejected application, which came about in part because the Attorney General’s Office failed to provide proper payment for its processing. There is no doubt that the Attorney General’s Office harms the people of the Commonwealth when it carelessly delays the admittance of an assistant attorney general into the CNMI Bar Association. The Attorney General’s Office is the highest institution of law enforcement in the Commonwealth, and it should be the first to follow the rules of the Court.

¶ 12 For practicing law without a license in the Commonwealth for a period of almost four months in violation of Com. R. Admiss. II(5)(J), Nisperos and the Attorney General’s Office must be disciplined “in order to protect the courts, the legal profession, and the people of the Commonwealth.” *In re Roy*, 2007 MP 28 ¶ 12. A mere reprimand would fail to reform the practices of the Attorney General’s Office in its processing of applications for admission to practice law in the Commonwealth. *See id.* (stating that a reprimand would encourage others to disregard the orderly process by which our courts and the legal profession are governed).

III

¶ 13 Pursuant to our broad power under Com. Disc. R. & P. 17, and good cause appearing, IT IS HEREBY ORDERED that:

(1) Assistant Attorney General Nisperos's application for admission to practice law in the Commonwealth be accepted by the CNMI Bar Administrator. Nisperos's admittance, however, is contingent upon a favorable background check by the National Conference of Bar Examiners.

(2) The Attorney General's Office and Nisperos are jointly and severally fined \$500, payable to the Supreme Court within fifteen days of this opinion.

Concurring:

Demapan, C.J., Castro, J., Manglona, J.