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

IN RE THE MATTER OF STEPHEN C. WOODRUFF,
Respondent-Appellant.

Supreme Court No. 2013-SCC-0030-CIV

Superior Court No. 13-0017

OPINION

Cite as: 2015 MP 11

Decided December 9, 2015

Stephen C. Woodruff, Saipan, MP, Respondent-Appellant.

George L. Hasselback, Disciplinary Counsel, Office of the Public Auditor, Saipan, MP.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; HERBERT D. SOLL, Justice Pro Tem.

CASTRO, C.J.:

¶ 1 Respondent Stephen C. Woodruff ("Woodruff") appeals the trial court orders entering default against him on April 4, 2013; denying reconsideration on April 24, 2013; and disbarring him on June 7, 2013. Two issues are now properly before this Court: (1) whether the trial court erred by entering default pursuant to the Rules of Civil Procedure, and (2) whether the trial court erred by denying Woodruff's motion to set aside entry of default.[1] For the reasons discussed below, we conclude the trial court neither erred by entering default nor refusing to set aside the entry of default; therefore, we AFFIRM the orders of the trial court.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Nine complaints were submitted against Woodruff relating to his professional conduct as an attorney between 2008 and 2012. Woodruff's clients alleged he failed to adequately communicate with them and did not complete work for which he was paid. Consequently, disciplinary counsel applied for an interim suspension of his bar license on January 4, 2013. *In re Woodruff*, 2013 MP 1 ¶ 2. On February 1, 2013, this Court suspended Woodruff from the practice of law. *Id.* ¶ 25.

¶ 3 Disciplinary counsel filed a complaint in the Superior Court against Woodruff on January 22, 2013, alleging violations of the NMI Rules of Attorney Discipline and Procedures ("Disciplinary Rules"). The complaint was served upon Woodruff on February 4th. An amended complaint was subsequently filed and served upon Woodruff on February 19th. The amended complaint included a footnote indicating the due date for Woodruff's response—March 5th.[2] When Woodruff did not respond by March 5th, disciplinary counsel filed for an entry of default. The court entered default on March 6th.

¶ 4 The hearing for default judgment was scheduled for March 14, 2013. Immediately before the hearing, Woodruff moved to set aside the entry of default. *In re Woodruff*, No. 13-0017 (Super. Ct. Mar. 14, 2013) (Notice and

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[1] Woodruff submitted a fifty-six page opening brief in violation of this Court's thirty-five page limit for opening briefs. NMI SUP. CT. R. 32(a)(7). As a consequence of Woodruff's failure to follow court rules, we struck pages 36–56 of Woodruff's brief. *In re Woodruff*, No. 2013-SCC-0030-CIV (NMI Sup. Ct. Oct. 14, 2014) (Order ¶ 9). Although Woodruff raised six issues on appeal, only the first issue was addressed within the portion of the brief that remained. Consequently, only the first issue, which we have divided into two sub-issues, is properly before us.

[2] The Amended Complaint indicated the response was due ten days after service of the amended complaint, which was made on February 19, 2013. Excluding intermediate Saturdays, Sundays, and legal holidays, the tenth day following service was March 5, 2015. *See* NMI R. CIV. P. 6(a).

Motion to Set Aside Default) [hereinafter Motion to Set Aside Default]. In his motion, Woodruff asserted he did not record the date of service of the first amended complaint, and he "never became mentally clear on when [his] response was due." *Id.* at 3. Furthermore, he claims he emailed disciplinary counsel on March 8th, "regarding the date of service of the [amended complaint] and requested [to] agree on a reasonable date . . . to answer or otherwise respond." *Id.* The court denied Woodruff's motion. Woodruff then moved for reconsideration, which the court also denied.

¶ 5 After holding a default judgment hearing, the court ordered Woodruff disbarred. In the disbarment order, the court found Woodruff failed to meet his professional obligations with regard to nine separate clients.

¶ 6 Woodruff now appeals the disbarment order, order denying reconsideration, and order denying motion to set aside default.

II. JURISDICTION

¶ 7 We have jurisdiction over final judgments and orders issued by the Superior Court. NMI CONST. art. IV, § 3. The Superior Court entered the disbarment order on June 7, 2013. Woodruff timely appealed the Superior Court's final judgment. Accordingly, we have jurisdiction.

III. STANDARDS OF REVIEW

¶ 8 Woodruff raises two issues on appeal. First, he argues the trial court erred by entering default pursuant to the timeline provided by the Rules of Civil Procedure. We review the court's entry of default for abuse of discretion. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Second, Woodruff asserts the court erroneously denied his motion to set aside entry of default. The trial court's denial of a motion to set aside entry of default is reviewed for abuse of discretion. *Roberto v. De Leon Guerrero*, 4 NMI 295, 296 (1995).

IV. DISCUSSION

¶ 9 Woodruff argues the court improperly entered default because it erroneously applied the Rules of Civil Procedure to establish the deadline for his response to the amended complaint. Additionally, he contends the court erred by refusing to set aside entry of default. We address each argument in turn.

A. Entry of Default

¶ 10 Woodruff argues the trial court erred by applying Rule of Civil Procedure 15(a) in the context of a disciplinary action. The Disciplinary Rules mandate that disciplinary hearings "shall be conducted in accordance with the procedures contained in this Rule and the Rules of Evidence and Rules of Civil Procedure[ ] where applicable." NMI R. ATT'Y DISC. & P. 9(e). Because the Disciplinary Rules are silent with regard to the filing of amended complaints, the trial court applied Rule of Civil Procedure 15(a), which requires that a response to an amended pleading must be filed within ten days of service or the remainder of the time to respond to the original pleading, whichever is longer. NMI R. CIV. P 15(a). Here, disciplinary counsel filed a complaint on January

22nd and an amended complaint on February 19th. Woodruff did not respond by March 5th, and the trial court entered default the following day.

¶ 11 Woodruff claims he should have been allowed twenty days to respond to the first amended complaint rather than the ten days permitted under the Rules of Civil Procedure. He asserts the trial court erred by applying Rule of Civil Procedure 15(a) because under Disciplinary Rule 9(e), the Rules of Civil Procedure are only applicable to disciplinary hearings—not pleadings. Instead, Woodruff contends that an amended complaint renders the original complaint a nullity, and he was therefore entitled to a full twenty days to respond. Furthermore, he asserts use of the Rules of Civil Procedure is limited to those situations "where applicable," NMI R. ATT'Y DISC. & P. 9(e), which means the rules are not applicable in certain instances. Woodruff contends that attorney discipline cases are "quasi-criminal," and he is therefore entitled to lenity in construing the Disciplinary Rules.

¶ 12 Woodruff did not raise this issue in either his motion to set aside entry of default or his motion to reconsider. Instead, he argued that he failed to record the date of service and was unclear on when his response was due. We generally do not review issues raised for the first time on appeal. *Bolalin v. Guam Publications*, 4 NMI 176, 181 (1994). However, three narrow exceptions to this rule exist: "(1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result . . . ." *Camacho v. Northern Marianas Retirement Fund*, 1 NMI 362, 372 (1990) (citing *Brown v. Civil Service Commission*, 818 F.2d 706 (9th Cir. 1987)). If any of these three exceptions apply, this Court may review the issue.

¶ 13 The issue is whether Rule of Civil Procedure 15(a), regarding amended complaints, applies in attorney disciplinary proceedings. This is purely a legal issue and does not rely upon the factual record—determining where the Rules of Civil Procedure apply in attorney disciplinary proceedings is strictly a matter of interpreting the Disciplinary Rules. Additionally, there is no indication disciplinary counsel would not have tried this case differently had Woodruff raised this issue at trial. *See, e.g.*, *Brown*, 818 F.2d at 710 ("[T]his exception necessarily applies only when the [opposing party] 'would not be prejudiced and would not have tried his case differently either by developing new facts in response to or advancing distinct legal arguments against the issue.'" (quoting *United States v. Gabriel*, 625 F.2d 830, 832 (9th Cir. 1980))). Accordingly, we address Woodruff's argument for the first time on appeal.

¶ 14 We must therefore determine whether Rule of Civil Procedure 15(a) applies within the context of a disciplinary action conducted under the Disciplinary Rules. The Disciplinary Rules provide that the disciplinary "hearing shall be conducted in accordance with the procedures contained in this Rule and the Rules of Evidence and Rules of Civil Procedure[ ] where applicable." NMI R. ATT'Y DISC. & P. 9(e).

¶ 15 The Disciplinary Rules explicitly provide for the application of the Rules of Civil Procedure in two specific instances. First, the rules provide that hearings "shall be conducted in accordance with the procedures contained in [Disciplinary Rule 9] and the Rules of Evidence and the Rules of Civil Procedure[ ] where applicable." NMI R. ATT'Y DISC. & P. 9(e). Second, "[s]ervice of any other papers or notices required by these rules shall be made in accordance with the Rules of Civil Procedure of the Superior Court." NMI R. ATT'Y DISC. & P. 12(b). The Disciplinary Rules do not explicitly provide for the application of the Rules of Civil Procedure with regard to amended pleadings.

¶ 16 Disciplinary Rule 9—entitled "Disciplinary Hearing"—sets forth the procedure applied to disciplinary proceedings. While the procedures detailed in Rule 9 are extensive, they are not fully comprehensive. For instance, Rule 9(c) provides that a respondent attorney shall have twenty days to answer a complaint. NMI R. ATT'Y DISC. & P. 9(c). If the complaint is unanswered, the charges are deemed admitted. *Id.* However, the Disciplinary Rules do not specify the method for computation of time, nor do they provide for the procedural steps following default. Furthermore, Rule 9 does not explicitly provide for motions to set aside entry of default or reconsideration, both of which Woodruff filed in the underlying disciplinary action. In light of these procedural gaps in the Disciplinary Rules, we deem it appropriate to refer to the Rules of Civil Procedure.

¶ 17 Furthermore, applying Rule of Civil Procedure 15(a) for setting the deadline to respond to an amended complaint will facilitate the speedy resolution of disciplinary actions. The Disciplinary Rules provide several deadlines to expedite proceedings. For example, the disciplinary hearing must be held within 90 days of the filing of the complaint. NMI R. ATT'Y DISC. & P. 9(d). And after the conclusion of the hearing, the judge's decision is due within twenty days. NMI R. ATT'Y DISC. & P. 9(i). We think it would be contrary to the underlying intent of the Disciplinary Rules to require disciplinary counsel to re-file a new complaint, thereby triggering a full twenty day response period, rather than allowing counsel to file an amended complaint subject to the shorter response timeline under the Rules of Civil Procedure.

¶ 18 Last, we find unpersuasive Woodruff's assertion that he is entitled to lenity. "The 'rule of lenity' requires the court to interpret any ambiguity so as to provide for the more lenient of any two possible sentencing schemes." *Commonwealth v. Manglona*, 1997 MP 28 ¶ 5 (citing *United States v. Hoyt*, 879 F.2d 505, 512 (9th Cir. 1989)). It "applies not only to interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they impose." *Bifulco v. United States*, 447 U.S. 381, 387 (1980) (superseded by statute). While attorney disciplinary proceedings may be quasi-criminal in nature, Woodruff offers no authority supporting the proposition that the rule of lenity is applicable outside of criminal prosecutions. Furthermore, Woodruff offers no legal argument supporting his conclusion that the rule of lenity should

apply to resolve ambiguities regarding the procedural aspects of attorney discipline.

¶ 19 Accordingly, we conclude the trial court did not abuse its discretion by entering default pursuant to Rule of Civil Procedure 15(a).

B. Motion to Set Aside Entry of Default

¶ 20 Woodruff further argues that the trial court abused its discretion by refusing to set aside entry of default. The trial court may set aside entry of default upon a showing of good cause, and "if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." NMI R. CIV. P. 55(c).[3] Whether good cause exists is a matter of discretion left to the trial court. *Roberto*, 4 NMI at 297. Grounds for setting aside an entry of default often parallels the grounds for setting aside a default judgment under Rule 60(b). *Id.* "The underlying concern is 'whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default.'" *Id.* "[D]efault judgments are generally disfavored," and cases should be decided on the merits, if possible. *Pena v. Seguros J. Commercial, S.A.* 770 F.2d 811, 814 (9th Cir. 1985).

¶ 21 In analyzing whether relief from entries of default and default judgments should be granted, we have looked toward the Ninth Circuit's interpretation of Federal Rules of Civil Procedure for guidance.[4] Under the Ninth Circuit's standard, courts consider three factors: "(1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default

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[3] Grounds for setting aside a default judgment include:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

NMI R. CIV. P. 60(b).

[4] We have previously looked toward the Ninth Circuit's interpretation of the Federal Rule for guidance. See *Roberto*, 4 NMI 295 (citing *Hawaii Carpenters' Trust Funds v. Stone, 794 F.2d 508, (9th Cir. 1986)*, *Falk v. Allen*, 739 F.2d 461 (9th Cir. 1984), *Pena v. Seguros J. Commercial, S.A.* 770 F.2d 811 (9th Cir. 1985), and *Direct Mail Specialists, Inc. v. Eclat Computerized Technologies, Inc.*, 840 F.2d 685 (9th Cir. 1988)). In *Roberto*, this Court made reference to two alternative standards for setting aside entry of default, but did not clearly identify what those standards were. *Roberto*, 4 NMI at 297. Moreover, the Court did not explicitly adopt a particular test. *Id.*

judgment would prejudice the other party." *United States v. Signed Personal Check No. 730*, 615 F.3d 1085, 1091 (9th Cir. 2010) (internal quotation marks omitted), *see also Roberto*, 4 NMI at 297. While it is clear that the party seeking to set aside entry of default bears the burden of satisfying this test, it is unclear whether the party must also establish every factor.[5] *Roberto*, 4 NMI at 297. Nevertheless, the existence of a meritorious defense is a prerequisite to setting aside entry of default. *Id.*

1. Culpable Conduct

¶ 22 A party's conduct is culpable when "he has received actual or constructive notice of the filing of the action and intentionally failed to answer." *Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988). An intentional failure to answer does not include all acts traditionally thought of as intentional; rather, courts have found an intentional failure to answer akin to an act of bad faith:

> [W]hat we have meant is something more like, in the words of a recent Second Circuit opinion addressing the same issue, "willful, deliberate, or evidence of bad faith." Neglectful failure to answer as to which the defendant offers a credible, good faith explanation negating any intention to take advantage of the opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process is not "intentional" under our default cases, and is therefore not *necessarily*—although it certainly may be, once the equitable factors are considered—culpable or inexcusable.

TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 697–98 (9th Cir. 2001) (internal citations omitted). But when the defendant is an attorney, who is presumably aware of the consequences of default, failure to respond upon receipt of actual or constructive notice may constitute culpable conduct. *Id.* at 699 (citing *Direct Mail Specialists*, 840 F.2d at 690).

¶ 23 In his motion to set aside the entry of default, Woodruff claims his possible failure to timely respond "was the result of mistake, inadvertence, excusable neglect, or other good cause . . . ." Motion to Set Aside Default at 3. He claims he was unsure of his response deadline, stating: "[a]t the time of service of the [First Amended Complaint], I failed to record the date of service. As a result, I never became mentally clear on when my response was due." *Id.* On appeal, he asserts that there is no reason to deem his conduct culpable.

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[5] In *Roberto*, this Court indicated its understanding that all three of the factors needed to be shown under one articulation of the test. This view is supported by several federal court opinions. *See, e.g.*, *Pena*, 770 F.2d at 815 (concluding defendant was not entitled to relief after concluding only that default was the result of culpable conduct); *Alan Neuman Productions, Inc.* 862 F.2d, at 1392 (affirming denial to set aside default where defendant's conduct was culpable). This Court rested its decision on the lack of a meritorious defense. *Roberto*, 4 NMI at 297. Thus, it is not clear if prejudice or culpability are similarly dispositive factors.

¶ 24 Woodruff admitted his failure to respond was due to his own inattention. We also note that the basis for the disciplinary action involved multiple complaints that Woodruff failed to diligently pursue legal matters, including repeated allegations of his failure to adequately communicate with clients and to timely complete work. Moreover, in the instant appeal, Woodruff failed to timely file his appendix and filed a nonconforming opening brief despite being granted two extensions of time. If he were a layperson, his conduct in the underlying disciplinary action might not rise to the level of an act that is willful, deliberate, or in bad faith that would qualify as intentional. But because Woodruff is an attorney, who is expected to appreciate the legal consequence of default, we conclude his failure to respond was due to his culpable conduct.

2. Meritorious Defense

¶ 25 "A defendant seeking to vacate a default judgment must present specific facts that would constitute a defense." *TCI Group*, 244 F.3d at 700. The defendant need only "allege sufficient facts that, if true, would constitute a defense: 'the question whether the factual allegation [i]s true' is not to be determined by the court when it decides the motion to set aside the default." *Signed Personal Check No. 730*, 615 F.3d at 1094.

¶ 26 Here, Woodruff claims that a declaration of one his complaining clients, Ellis, provides a defense to one of the nine complaints against him. He also contends that he had not received notice of another two of the complaints prior to the interim suspension proceedings. Additionally, Woodruff asserts Superior Court rulings relating to his representation of Feliciano and Cambronero show meritorious defenses to two other complaints because they are preclusive of disciplinary action. Last, he argues that he "had further identified other defenses that applied generally to all nine complaints, in particular the failure of the Disciplinary Committee to process the complaints against him in the manner required by law." Opening Br. at 30.

¶ 27 Even assuming the Ellis declaration and allegedly deficient notice provide defenses to three of the complaints, Woodruff does not demonstrate the existence of a meritorious defense to the disciplinary action as a whole. Woodruff does not offer legal authority for the proposition that the Superior Court judgments in the Feliciano and Cambronero matters are preclusive of disciplinary action. Furthermore, his conclusory assertion that he has "identified other defenses" that apply to all nine complaints is unavailing because there is no factual support for his claim. To the extent that he asserts Disciplinary Counsel failed to prosecute the complaints in a timely manner, such allegations do not constitute a defense to the underlying disciplinary action. *See* NMI R. ATT'Y DISC. & P. 9(d). Consequently, we conclude Woodruff has not alleged facts sufficient to constitute a meritorious defense to the underlying disciplinary action.

3. Prejudice

¶ 28 To show prejudice to the non-defaulting party, "the setting aside of a judgment must result in greater harm than simply delaying resolution of the

case." *TCI Group*, 244 F.3d at 701. Rather, establishing prejudice requires a showing that setting aside default will hinder the plaintiff's ability to pursue the claim. *Falk*, 739 F.2d at 463. For example, prejudice may exist where delay can lead to loss of evidence or other difficulties with discovery. *TCI Group*, 244 F.3d at 701 (citing *Thompson v. American Home Assurance*, 95 F.3d 429, 433–34 (6th Cir. 1996)). On the other hand, requiring a plaintiff to litigate the merits of a case does not, by itself, constitute prejudice. *Id.* In the absence of default, the plaintiff would have to litigate the merits of the case; thus, "[a] default judgment gives the plaintiff something of a windfall by sparing her from litigating the merits of her claim." *Id.* Thus, "vacating the default judgment" does not prejudice the non-defaulting party because it "merely restores the parties to an even footing in the litigation." *Id.*

¶ 29 Here, setting aside entry of default would have resulted in additional proceedings and additional costs to be borne by the bar association and the Commonwealth. But delay and cost do not properly constitute prejudice. Furthermore, there would be no additional risk of harm to the public because Woodruff continues to be subject to an interim suspension. *In re Woodruff*, 2013 MP 1 ¶ 25. Thus, no prejudice would have resulted from the setting aside of the entry of default.

V. CONCLUSION

¶ 30 Woodruff does not show good cause sufficient to set aside entry of default. He fails to carry his burden of demonstrating that default was not the result of his own culpable conduct and that there was a meritorious defense. We therefore conclude the trial court did not abuse its discretion by refusing to set aside entry of default. We also conclude the trial court did not err by entering default pursuant to the Rules of Civil Procedure. Accordingly, we AFFIRM the entry of default and the default judgment order disbarring Woodruff from the practice of law.

SO ORDERED this 9th day of December, 2015.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

SOLL, J.P.T., dissenting:

¶ 31 Although I agree with the majority that the trial court followed the proper procedure when it entered default and refused to set aside entry of default, I would exercise the Supreme Court's inherent authority to regulate attorney conduct and reverse and remand for further proceedings.

¶ 32 The Supreme Court has "the inherent authority and jurisdiction to regulate the conduct of attorneys practicing before [it.]" *In re Roy*, 2007 MP 28 ¶ 7. When an attorney discipline case is appealed, the Court "may affirm, reverse, or modify the decision of the Superior Court, or remand the matter for further hearing in the Superior Court." NMI R. ATT'Y DISC. & P. 9(k). This decision is based on "the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession." *In re Yana & Atalig*, 2014 MP 1 ¶ 38 (quoting *In re Roy*, 2007 MP 28 ¶ 7) (internal quotation marks omitted). Thus, the Supreme Court may modify attorney discipline after evaluating the aggravating and mitigating circumstances of the particular case. As an example, the Court modified the suspension order in *In re Yana & Atalig* based upon "the flagrant nature of the conduct, the immense weight of the violations, and the considerable harm to the public and the profession," and ordered disbarment. 2014 MP 1 ¶¶ 38, 46.

¶ 33 Disbarment is a drastic remedy that deprives attorneys of their livelihood. It "is not a punishment, but rather a necessary measure to protect the public, which has a right to expect that the court will be vigilant in withholding and withdrawing an attorney's certificate of qualification and character upon which the public relies." *Saipan Lau Lau Dev. v. Sup. Ct*, 2001 MP 2 ¶ 38 (citing *Oklahoma Bar Ass'n v. Woodard*, 362 P.2d 960, 963–64 (Okla. 1960)). Here, Woodruff has lost his livelihood based upon unproven allegations as a consequence of his default. Assuming the truth of the allegations, which generally regard an inattention to his legal practice, Woodruff may be deserving of an opportunity to rehabilitate himself. I am further concerned that Woodruff's default resulted from the application of relatively ambiguous Disciplinary Rules. In light of these considerations, I would exercise the Court's inherent authority to regulate attorney conduct and remand so that a disciplinary hearing could be held.

DATED this 9th day of December, 2015.

/s/
HERBERT D. SOLL
Justice Pro Tem