IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

In Re:	Case No. 1:13-MC-00004
STEPHEN C. WOODRUFF,	**FOR PUBLICATION**
Respondent.	**ORDER IMPOSING RECIPROCAL DISCIPLINE OF DISBARMENT**

I. INTRODUCTION

Respondent Stephen C. Woodruff has been disbarred from the practice of law in the Commonwealth of the Northern Mariana Islands ("CNMI" or "Commonwealth"). On February 10, 2017, Respondent appeared at a hearing to determine whether to impose reciprocal discipline in this District and disbar him from practice in this Court, or instead to impose different discipline or no discipline. For the reasons stated herein, the Court finds that the reciprocal discipline of disbarment is warranted and will impose it.

II. BACKGROUND

Respondent was disbarred by the Commonwealth Superior Court on June 7, 2013. *See* Disciplinary Action: Disbarment, *In the Matter of Woodruff*, Civil Case No. 13-0017 (Commw. Super. Ct. June 7, 2013), *available at* https://www.cnmilaw.org/pdf/superior/13-06-07-CV13-0017.pdf. The disbarment order was affirmed by the Commonwealth Supreme Court on December 9, 2015. *In the Matter of Woodruff*, 2013-SCC-0030-CIV, 2015 MP 11, 2015 WL 8488972, 2015 N. Mar. I. LEXIS 12 (N. Mar. I. 2015). On December 24, 2015, this Court issued to Respondent a Notice of Intent to Impose Reciprocal Discipline and Order to Show Cause (ECF No. 75), and set a reciprocal-discipline hearing for January 22, 2016. On December

28, 2015, Respondent notified the Court that he had petitioned the Commonwealth Supreme Court for rehearing (ECF No. 76). At a pre-hearing conference on January 19, 2016, Respondent told the Court that if rehearing were denied and the mandate issued, he would likely petition the United States Supreme Court for certiorari.[1] The Court vacated the January 22 reciprocal-discipline hearing and stayed the proceedings. The Court told Respondent that if the mandate issued and he petitioned for certiorari, the stay would continue until the petition was decided by the U.S. Supreme Court.

On January 22, 2016, the Commonwealth Supreme Court denied Respondent's petition for rehearing and ordered the mandate to issue on January 26. (Order Denying Petition for Rehearing, ECF No. 87-3.) On January 25, Respondent moved to stay the mandate, and on January 28, his motion was denied. (Motion to Stay Mandate, ECF No. 87-4; Order Denying Stay of Mandate, ECF No. 87-5.) On February 10, in this Court, Respondent filed an Update (ECF No. 87), to which he attached his motion and the two orders and in which he requested "that the Court continue to hold the matter in abeyance pending submission to the Supreme Court of the United States of Respondent's petition for writ of certiorari" (Update, p. 3). This Court did not issue any further orders, and the stay of reciprocal-discipline proceedings remained in effect.

On November 18, 2016, the United States, a party in a different matter in which Respondent was opposing counsel, informed the Court that Respondent had not petitioned for certiorari and that his disbarment in the CNMI appeared to be final. (*Guanlao v. Zedde*, No. 1:16-CV-00018, Memorandum in Support of Motion to Strike and to Stay Proceedings, ECF No. 25.) When its own search of the U.S. Supreme Court docket confirmed this information, the

[1] A transcript of the January 19, 2016 hearing is not presently available. The Court relies on its review of the audio recording of the hearing.

Court ordered Respondent to show cause why the stay should not be lifted. (Order, Dec. 8, 2016, ECF No. 88.) On December 22, 2016, Respondent notified the Court that he had no objection to lifting the stay, and requested a hearing. (Response, ECF No. 89.)

On December 30, 2016, the Court held a status conference with Respondent, who appeared pro se. Respondent confirmed that the record of the disciplinary proceedings in the CNMI courts consisted of the exhibits he had submitted on January 18, 2016 (ECF Nos. 79–85) and in the Update of February 18. The Court set a reciprocal-discipline hearing for February 10, 2017. Prior to that hearing, Respondent submitted the transcript of a hearing before the Commonwealth Supreme Court on January 23, 2013 (ECF No. 97) and a Supplemental Memorandum Opposing Reciprocal Discipline (ECF No. 98-1). At the reciprocal-discipline hearing, Respondent made a PowerPoint presentation, which was admitted in evidence (ECF No. 101). Subsequent to the hearing and with the Court's leave, Respondent filed a document identifying pertinent parts of the record (Identification, ECF No. 102).

III. LEGAL STANDARD

Under Local Disciplinary Rule 16(c), after a hearing at the request of the Respondent,

> the Court shall impose the same discipline [as the other jurisdiction] unless it clearly appears in the record upon which the discipline is predicated (1) that the procedure was so lacking in notice or opportunity to be heard as to constitute deprivation of due process; or (2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court should not, consistent with its duties, accept as final the conclusion on that subject; or, (3) that the misconduct established warrants substantially different discipline in this Court.

These three factors reflect those that the United States Supreme Court set forth one hundred years ago in *Selling v. Radford* (1917):

> we should recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear: 1. That the state procedure, from want of notice or opportunity to be heard, was wanting in due

> process; 2, that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not, consistently with our duty, accept as final the conclusion on that subject; or 3, that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do.

243 U.S. 46, 51. *See In re Kramer ("Kramer III")* 193 F.3d 1131, 1132 (9th Cir. 1999) (applying the *Selling* factors: "(1) no deprivation of due process; (2) sufficient proof of misconduct; and (3) no grave injustice would result from the imposition of such discipline"). The respondent attorney bears the burden "to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline." *In re Kramer ("Kramer IV"),* 282 F.3d 721, 724 (9th Cir. 2002).

IV. DISCUSSION

Respondent asserts that "the imposition of reciprocal discipline, particularly the sanction of disbarment, would be unwarranted and unjust." (Response, p. 6, ECF No. 89.) He draws attention to all three *Selling* factors: "Respondent was denied the opportunity to present a defense to the disciplinary charges [i.e., deprived of due process] and ordered disbarred without any sworn testimony or presentation of competent evidence of any kind [i.e., insufficient proof]. . . . Moreover, whatever deficiencies in Respondent's practice of law may have existed during the years 2008 through 2012, they were, at worst, as Justice Pro Tem Soll noted in his dissent in *In re Woodruff,* 2015 MP 11, ¶ 33. only of the 'inattention to his legal practice' variety and no longer exist [i.e., grave injustice]." (Response, p. 6.)

The due-process and sufficiency-of-proof arguments arise from the fact that in the disciplinary action in the Commonwealth Superior Court, the clerk of court entered a default when Respondent missed the deadline to file an answer to the disciplinary complaint.

(Disbarment Order, p. 2; Entry of Default, ECF No. 81-1, p. 36.) Respondent moved to set aside the entry of default, and the judge denied the motion. (Order, ECF No. 81-1, p. 65.) A default judgment hearing was held on May 14, 2013. (*Id.*, p. 1.) In light of the default and pursuant to Rule 9(c) of the CNMI Disciplinary Rules (2013), the Superior Court found all the facts in the disciplinary case to be admitted by Respondent as true. (*Id.*, p. 6.) These included allegations that in nine civil actions Respondent took payment from clients but failed to keep in contact with them, failed to respond to their inquiries about the status of their cases, failed to do work he promised to do and file documents that needed to be filed, and failed to make scheduled court appearances, including for trial – often with disastrous consequences for the clients. (*Id.*, pp. 6–17.) Because these facts were deemed admitted, the prosecutor did not have to put on witnesses and Respondent was not permitted to challenge the truth of these matters. The judge found that Respondent had repeatedly violated the Model Rules of Professional Conduct, which have been adopted as the rules governing attorney conduct in the CNMI,[2] with respect to competence, diligence, communication with clients, and candor to the court.

The problem with Respondent's argument is that the CNMI proceedings gave him the notice and opportunity to be heard that was his due. He simply failed to avail himself of them. The Court has reviewed all the pertinent filings and orders in the Superior Court disciplinary case (they are in the record at ECF No. 81-1) and finds no fundamental unfairness in the process. In his motion to set aside the default (ECF No. 81-1, p. 39), Respondent admitted to receiving service of the initial complaint and the first amended complaint ("FAC"). His excuse for failing to respond was that he failed to record the date of service of the FAC and "never became mentally clear on when my response was due" (ECF No. 81-1, p. 41) – despite the fact

[2] Rule 2 of the Commonwealth Disciplinary Rules and Procedures that were in effect in 2013.

that the prosecutor had expressly noted on the first page of the FAC that a response would be due ten days after service. After a hearing on March 14, 2013 (Transcript, ECF No. 81-1, p. 90), the Superior Court judge found that this did not amount to excusable neglect or other good cause, and he denied the motion. (Order, ECF No. 81-1, p. 65.)

One circumstance that makes Respondent's failure to answer the FAC especially perplexing is that he knew the disciplinary complaint was coming. On January 4, 2013, the CNMI Disciplinary Committee had applied to the Commonwealth Supreme Court for an order to show cause why Respondent should not be temporarily suspended pending the resolution of eleven ethical complaints in the Superior Court. The application was granted, and a show-cause hearing was held on January 23. On February 1, the Commonwealth Supreme Court issued an opinion temporarily suspending Respondent "pending the resolution of the disciplinary matters referred to the Superior Court for prosecution." *In re Disciplinary Proceedings of Woodruff*, 2013 MP 1 ¶ 25, 2013 WL 10077807 (N. Mar. I. Feb. 1, 2013). Almost all the disciplinary matters that Respondent addressed in considerable detail at the show-cause hearing (Transcript, ECF No. 97) are the same ones that the prosecutor alleged two weeks later in the initial complaint. It appears that Respondent was in a position to answer the complaint as soon as it was filed, and yet with his license on the line he failed to respond either to the initial complaint or to the FAC.

Respondent takes a different view of events. First, he regards the Disciplinary Committee's action to have the CNMI Supreme Court temporarily suspend him as irregular and unfair, and asserts it should factor in the due-process analysis. However, those proceedings were prior to and separate from the disciplinary complaint that eventuated in Respondent's disbarment, and therefore are outside the scope of review for reciprocal discipline. Second,

Respondent believes that having had to defend against the Disciplinary Committee's show-cause order in January 2013 made it unduly burdensome for him to respond to the disciplinary complaint and FAC in February. Under the heading "Relationship of Supreme Court Action to Respondent's Failure to Timely Answer Complaint" (Identification, ECF No. 102, pt. VII), Respondent has called the Court's attention to remarks he made to the Superior Court judge at the March 14 hearing:

> As [the disciplinary prosecutor] indicated, he served the complaint on my staff. Ordinarily, it would have been noted on the . . . document, the time it was received. It wasn't. I have many other obligations that I have to meet. But the burden on me, and the obligations I have to meet were increased by the actions of the Supreme Court. In the Supreme Court, . . . I specifically asked for additional time to . . . respond, . . . and I was not granted the time that I asked for.

(Transcript, March 14, 2013, ECF No. 81-1, p. 60.)

What this Court sees in those remarks is an attorney blaming everyone except himself for his own lack of diligence. He is a busy man with many obligations; his staff failed to mark down the date of service; the Commonwealth Supreme Court did not give him the extra time he needed.

This pattern repeated itself recently in this reciprocal-discipline action. The Court set a deadline of January 14, 2017, for Respondent to file a written memorandum in opposition to the imposition of reciprocal discipline. On January 12, Respondent moved for a two-week extension of time (ECF No. 91). On January 13, the Court granted the motion in part and extended the deadline by one week, to January 20 (Order, ECF No. 92). Respondent missed that deadline and submitted a memorandum two days late, on January 22. The Court struck the memorandum but gave Respondent leave to move to refile it, if accompanied by a declaration showing good cause (Order, Jan. 30, 2017, ECF No. 96). Respondent filed such a motion (ECF

No. 98). In the accompanying declaration (ECF No. 99), Respondent bemoaned the fact that the Court had not found his reasons for a two-week extension to be sufficiently compelling. "I was disappointed but resolved to do the best I could. As anticipated, I had little time in the following week to complete the memorandum. I did not review the order, which I had read quickly when issued, and failed to recall the 3:00 p.m. deadline. I ultimately ended up removing whole sections I was unable to complete, before finally submitting the document to the Court." (Declaration, ¶¶ 6, 7.) These excuses are similar to those Respondent made for missing the deadline to respond to the FAC – blaming the Court for failing to appreciate how busy he was and laying any deficiencies in the quality of the memorandum at the Court's feet.[3] Once again, with his privilege to practice law at risk, he missed a deadline by failing to pay it the attention it deserved.

Respondent's failure to attend to his own disciplinary cases mirrors the misconduct alleged in the FAC. A client's green card application was denied when Respondent failed to reschedule an interview with U.S. immigration authorities. In one labor case, Respondent failed to file additional documents required to perfect an appeal. In another, after Respondent failed to file a response to a motion to dismiss, the hearing officer granted the motion with prejudice. These and other cases show a pattern of lack of diligence and failure to communicate that caused substantial harm to clients.

The same pattern showed itself in Respondent's conduct in his reciprocal-discipline case. Last February, the Court took Respondent at his word that he would be petitioning for certiorari and continued to stay these proceedings, in the expectation that as an officer of the Court, he would keep the Court apprised of the progress of his petition. That expectation was

[3] Even so, the Court granted Respondent leave to file the memorandum out of time. (Order, Feb. 1, 2017, ECF No. 100.)

misplaced. He also failed to inform the Court when he was disbarred by the Supreme Court of Hawai'i (*Office of Disciplinary Counsel v. Woodruff*, No. SCAD-0000353, 2016 WL 5900197 (Haw. Oct. 11, 2016)) and when he was suspended from practice before the U.S. Supreme Court (Order List, 580 U.S. __, Oct. 31, 2016).[4]

Respondent appealed his disbarment to the Commonwealth Supreme Court, which reviewed and rejected his claim that default was entered unlawfully. In so doing, the court entertained arguments that Respondent had not made in the Superior Court – something that it was not obliged to do. *In the Matter of Woodruff*, 2015 MP 11 ¶ 12. Moreover, Respondent did not deny that he missed the deadline to answer the FAC "due to his own inattention." *Id.* ¶ 24. Even Justice Pro Tem Herbert D. Soll, dissenting on grounds that remand for a disciplinary hearing would be appropriate as an exercise of the court's inherent authority to regulate attorney conduct, agreed that "the trial court followed the proper procedure when it entered default and refused to set aside entry of default." *Id.* ¶ 31.

Respondent is essentially inviting this Court to conduct a de novo review of the CNMI disciplinary decisions. To accept the invitation would go beyond *Selling*'s mandate to undertake "an intrinsic consideration of the state record." *Selling*, 243 U.S. at 51. A federal court must not do that:

> [Appellant] seeks collaterally to attack in this court a final judicial decision of the highest court of California. He invites this court, in the context of an original disciplinary proceeding, to review de novo the state's findings of fact. Although this court must examine the record to determine whether any of the *Selling* infirmities exist, the court must accord a presumption of correctness to the state court factual findings. Otherwise, the court would be drawn into an extensive inquiry requiring it to sit in review of a California Supreme Court judgment. This the court is without jurisdiction

[4] "An attorney who is a member of this court's bar . . . shall promptly notify the court of any change or potential for a change in his or her status in another jurisdiction which could make the attorney ineligible . . . for membership in this court's bar[.]" D. N. Mar. I. Local Rule 83.5(e).

> to do; review of that nature may be obtained only in the United States Supreme Court.

In re Rosenthal, 854 F.2d 1187, 1188 (9th Cir 1988).

Respondent has cited to no case in any jurisdiction that says it is a *per se* due-process violation to disbar an attorney without a disciplinary hearing when the attorney, through his own fault, has forfeited the opportunity for a hearing. In *In re Thies*, the District of Columbia Circuit held that the U.S. Tax Court could not disbar an attorney relying exclusively on the attorney's automatic disbarment in New York State by operation of a statute mandating disbarment following a felony conviction. 622 F.2d 771 (D.C. Cir. 1980). The circuit court found that the state court "did not offer appellant the procedural guarantees specified by Selling v. Radford." *Id.* at 773. It pointed to the lack of a hearing and the absence of recorded findings as to the attorney's character. *Id.* In Respondent's proceedings, however, Respondent was afforded an opportunity for a hearing – he just failed to take advantage of it. Moreover, the Superior Court did make specific, detailed findings of fact documenting Respondent's violations of ethics rules.

To satisfy *Selling*'s requirement of due process, only the *opportunity* to be heard, after fair notice, need be afforded to an attorney. In *Matter of Jafree*, 759 F.2d 604 (7th Cir. 1985), the Seventh Circuit imposed reciprocal discipline following the Illinois Supreme Court's disbarment of an attorney upon recommendation of a disciplinary board without a hearing. The attorney had been served with notice of the disciplinary complaint against him and with notice of a hearing set before the board. *Id.* at 607. "Respondent neither answered the complaint nor appeared at the hearing." *Id.* The attorney asserted that service of process had been invalid – an argument rejected by the Illinois Supreme Court – but the Seventh Circuit found that it did not matter. "[T]he question before this court in not whether there was personal service, but whether

respondent was afforded his due process right to adequate notice of and opportunity to respond to the charges against him. We have no trouble concluding on the record before us . . . that he was." *Id.* at 608. The court observed that the attorney had "actual notice" of the proceedings and was served with notice of a motion to deem the allegations in the complaint as true. *Id.* Respondent, similarly, had notice of when his response to the complaint was due, but failed to attend to it as a diligent attorney under threat of disbarment may be expected to do.

As to the sufficiency of the evidence, Rule 9(c) of the CNMI Disciplinary Rules (2013) provides that if an answer is not timely filed, "the charges shall be deemed admitted." Once default was entered, the Superior Court had ample evidence, as described previously, to find a violation of ethics rules by clear and convincing evidence that was serious enough to warrant disbarment.

No grave reason exists to refuse to give the Commonwealth's disbarment order reciprocal effect. Respondent urges the Court to follow the lead of Justice Pro Tem Soll, who regarded disbarment as a harsh sanction to impose without a hearing for what Respondent alleges were mere lapses of attentiveness. However, it is not the province of this Court to second-guess the sanction that the Commonwealth Superior Court imposed and a majority of the justices of the Commonwealth Supreme Court affirmed. In *In re Roman,* 601 F.3d 189 (2d Cir. 2010), the Second Circuit rejected the recommendation of its own grievance committee to impose a three-month suspension of an attorney instead of reciprocating the Ninth Circuit's six-month suspension. The court observed that in determining whether to reciprocate, "we do not determine *de novo* what sanction the Ninth Circuit should have imposed; instead, we accord great deference to the Ninth Circuit's determination." *Id.* at 194.

Respondent urges the Court to consider that the misconduct for which he was disbarred

in the CNMI occurred more than five years ago, and asserts that he has changed his ways. The Court does not find this argument persuasive. The instances of misconduct, from 2008 to 2012, were not old at the time the Superior Court disbarred Respondent in 2013. Any staleness is due to time it took to afford Respondent due process, and was compounded when Respondent procured an undeserved year's stay in these proceedings. *Cf. In re Roman*, 601 F.3d at 195 ("we do not consider Roman's misconduct before the Ninth Circuit to have occurred at such a remote time in the past that it renders reciprocal discipline at the current time unjust"). Furthermore, Respondent's own conduct in these proceedings, as described earlier, indicates that he has not made as much progress as he imagines.

V. CONCLUSION

Respondent has not met his burden to show by clear and convincing evidence that one of the *Selling* factors applies. He was given fair notice and an opportunity to be heard by the CNMI courts; there was not such infirmity of proof as to give rise to a clear conviction that their judgment cannot be accepted as final; and no grave reason exists not to impose the same discipline in this District. For these reasons, the Court ORDERS as follows:

(1) Respondent Stephen C. Woodruff is DISBARRED from practice before this Court.

(2) This Order shall be effective thirty (30) days after the date it is entered. *See* LDR 17(c). Respondent shall not accept any new retainer or engage as the attorney for another in any new case or legal matter of any nature. However, during the thirty-day period Respondent may complete on behalf of any client all matters which were pending on the entry date.

(3) Within ten (10) days after the effective date of this Order, Respondent shall file with this Court an affidavit showing: (1) that he has complied with the provisions of this

Order and of Local Disciplinary Rule 17, including but not limited to provisions to notify and advise clients and to notify opposing counsel; and (2) that he has notified all other commonwealth, state, territorial, and federal jurisdictions to which he is admitted to practice of this disciplinary action. Such affidavit shall also set forth the residence or other address where communications may thereafter be directed to Respondent.

(4) The Clerk shall publish notice of Respondent's disbarment in the *Marianas Variety* and the *Saipan Tribune. See* LDR 17(e).

(5) The Clerk shall transmit a certified copy of this Order to all judges within this District, to all courts to which Respondent has been admitted, as reflected in Respondent's application for admission to this Court's bar, and to the administrative agencies therein. *See* LDR 17(f).

(6) Respondent is advised to keep and maintain records pursuant to LDR 17(g).

(7) Respondent may not apply for reinstatement until the expiration of at least two (2) years from the effective date of disbarment. *See* LDR 18(b).

SO ORDERED.

/s/ Frances M. Tydingco-Gatewood
Designated Judge
Dated: Mar 09, 2017