

MAR 28 2018

for the Northern Mariana Islands
By  (Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

In Re:

STEPHEN C. WOODRUFF,

Respondent.

Case No. 1:13-MC-00004

ORDER MODIFYING DISCIPLINE

I. INTRODUCTION

Before the Court is Respondent's Motion for Relief from Judgment ("Motion," Oct. 26, 2017, ECF No. 116). The Motion came on for a hearing on March 28, 2018. Respondent appeared pro se. For the reasons stated herein, the Court GRANTS the Motion IN PART.

II. BACKGROUND

On March 9, 2017, the Court imposed reciprocal discipline on Respondent and disbarred him from practice in this District, reciprocating Respondent's disbarment by the CNMI courts. (Order Imposing Reciprocal Discipline of Disbarment, "Reciprocal Discipline Order," ECF No. 104.) Respondent moved to modify the Reciprocal Discipline Order (Apr. 5, 2017, ECF No. 105), and the Court denied that motion (Apr. 7, 2017, ECF No. 108). Respondent appealed. (Notice of Appeal, May 5, 2017, ECF No. 11.)

Meanwhile, the United States Court of Appeals for the Ninth Circuit was itself considering whether to impose reciprocal discipline on Respondent. The matter was referred to the Appellate Commissioner, who conducted a hearing and prepared a report and recommendation. ("R&R," No. 13-80077, Oct. 13, 2017, Dkt. Entry 57.) After

1 reviewing the three *Selling* factors (*see Selling v. Radford*, 243 U.S. 46, 51 (1917); *In re*
2 *Kramer*, 193 F.3d 1131, 1132 (9th Cir. 1999)), the Appellate Commissioner found a lack
3 of due process, infirmity of proof, and grave risk of injustice, and recommended that the
4 Ninth Circuit should not accord a presumption of correctness to the Commonwealth
5 disciplinary proceedings. (R&R 50.) Nonetheless, in light of a pattern of failures of
6 Respondent to meet deadlines and follow Ninth Circuit rules in various appeals, the
7 Appellate Commissioner recommended imposition of alternative discipline of 18
8 months' probation, during which Respondent would be allowed to complete pending
9 appeals but prohibited from taking new cases. (*Id.*)

12 On October 26, 2017, Respondent filed the present Motion for Relief from
13 Judgment under Rule 60(b) of the Federal Rules of Civil Procedure, asserting that the
14 Appellate Commissioner exposed the flaws in the Commonwealth disciplinary
15 proceedings and that this Court should therefore revise its own analysis of the record.
16 Respondent offered to accept a period of probation not to exceed 18 months and asserted
17 that at a minimum he should be allowed to complete his representation of Gary Ramsey,
18 the plaintiff in *Ramsey v. Muna*, 14-CV-21.

21 On November 15, 2017, the Ninth Circuit issued an order (ECF No. 117)
22 adopting the Appellate Commissioner's recommendations in all respects except for the
23 restriction on taking new cases during the probationary period, a restriction to which
24 Respondent had objected.

25 On November 30, 2017, this Court issued a Notice (ECF No. 118) to Respondent
26 indicating an inclination to grant the Motion and proposing to modify its order of

1 discipline as follows: (1) one year's suspension from the date relief is granted; (2)
2 permission to resume representing Gary Ramsey; (3) restriction against bringing new
3 cases during the probationary period; and (4) permission to apply for reinstatement after
4 six months.

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6 On December 7, 2017, Respondent filed a Response to the Court's Notice (ECF
7 No. 119) and declined the Court's proposal. He stated that he "does not believe it is
8 appropriate to impose discipline on Respondent that is harsher and more restrictive than
9 that imposed by the Ninth Circuit." (Response 2.) He asserted that probation is an
10 available means of discipline because, although not set forth in the District's Local
11 Disciplinary Rules ("LDR"), it is provided for in the CNMI Disciplinary Rules. He
12 observed that LDR 16(c) expressly gives the Court power to enter all appropriate orders:
13 "Where the Court determines that any of said [*Selling* factors] exist, it shall enter such
14 other order as it deems appropriate."
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17 On January 31, 2018, the Appellate Commissioner issued an order (ECF No. 121)
18 granting a limited, 60-day remand of Respondent's appeal of this Court's Reciprocal
19 Discipline Order, "for the limited purpose of enabling the district court to consider
20 appellant's [Rule] 60(b) motion."
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22 23 **III. DISCUSSION**

24 The Court has a firm conviction that reciprocal discipline was warranted and that the
25 Court was correct to impose it on Respondent. In its own original reciprocal-discipline
26 proceeding, the Ninth Circuit did not review this Court's Reciprocal Discipline Order or
27 comment on it. The Ninth Circuit's decision not to impose reciprocal discipline is not binding
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1 on this Court. Nor is the Court bound to reciprocate and impose the same discipline that the
2 Ninth Circuit did, namely probation.

3 Nevertheless, the Court is mindful of the Ninth Circuit's decision, and recognizes that it
4 is based on a review of essentially the same record of CNMI disciplinary proceedings and on
5 application of the same law. A district court may grant relief from an order for "any . . . reason
6 that justifies relief." Fed. R. Civ. P. 60(b)(6). As the Court observed previously, "[t]o require
7 Respondent to see his appeal of this Court's reciprocal-discipline order to the end when the
8 Ninth Circuit has already made its position known in a parallel disciplinary proceeding would
9 likely waste judicial resources and impose needless costs on Respondent." (Notice 2.) Surely,
10 those are adequate reasons to afford Respondent relief, and the Court will do so.
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13 The Court agrees with Respondent that under LDR 16(c), in matters of reciprocal
14 discipline, it has the authority to craft appropriate discipline other than the types listed in LDR
15 3. However, the Court does not find probation to be appropriate in this case and in this District.
16 Respondent observes that probation is available under the Commonwealth's disciplinary rules.
17 The CNMI bar, however, has a standing disciplinary committee specifically tasked with
18 supervising probationers. (N. Mar. I. Rules of Attorney Discipline and Proc., Rule 4(a)(9) and
19 Rule 7.) The District Court bar has only ad hoc disciplinary committees, and no structure for
20 ongoing supervision of attorneys under discipline who are handling a regular case load.
21 Therefore, the Court will modify its Reciprocal Discipline Order as it outlined in its Notice. The
22 modification will give Respondent the opportunity to show his progress in attention to deadlines
23 and other matters of competent representation in the *Ramsey* case. Plaintiff Gary Ramsey has
24 declared in Court pleadings his desire for Respondent to continue representing him. Respondent
25 may apply for full reinstatement to the District Court bar in as little as six months.
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(1) Respondent is suspended from practice in this District for a period of **one year** from the date of this order;

(3) Respondent is not permitted to enter appearances in new cases during the period of suspension.

The Clerk is directed to send a copy of this order to the United States Court of Appeals for the Ninth Circuit.

SO ORDERED: March 28, 2018



Frances Tydingco-Gatewood
Designated Judge