

FILED
Clerk
District Court

SEP - 4 2018

for the Northern Mariana Islands
By *af*
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

In Re:

STEPHEN C. WOODRUFF,

Respondent.

**DISCIPLINARY CASE: FOR
PUBLICATION**

1:13-MC-00061

DECISION AND ORDER

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On May 23, 2016, a panel comprising the three undersigned judges held a merits hearing in the above-captioned disciplinary case involving Respondent Stephen C. Woodruff, a member of this Court's bar. Present were Prosecuting Counsel Rexford C. Kosack and Respondent, who appeared pro se. (Minute entry, ECF No. 45.) The Complaint for Ethical Violations (ECF No. 10) charged violations of Rules 1.1 and 1.3 of the Model Rules of Professional Conduct ("MPRC"), made applicable in this Court by Local Disciplinary Rule ("LDR") 2(h), for conduct during his representation of Murugesan S. Subbaiah on appeal of a civil judgment against him to the Court of Appeals for the Ninth Circuit. The Complaint alleged that Respondent missed the deadline for filing his client's opening brief without having requested an extension of time, and failed to follow up effectively on transcript requests with the district court reporter. Three

1 months after the filing deadline had passed, appellee filed a motion to dismiss. Respondent
2 failed to file a response to the motion or to request an extension of time. When the Ninth Circuit
3 dismissed for failure to prosecute, Subbaiah himself filed a motion to reinstate the case. The
4 Ninth Circuit denied it without prejudice and gave appellant leave to refile it within 28 days
5 along with an opening brief. Respondent, who had never withdrawn from the representation, did
6 not refile the motion or file an opening brief. Three years later, the Circuit Clerk informed
7 Subbaiah that the case would remain closed because of the failure to file an opening brief.
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9 The panel took evidence and heard from witnesses, including the complainant. Subbaiah
10 testified that he had paid Respondent a total of \$1,850 to pursue the appeal – \$850 in
11 installments and a lump sum payment of \$1,000 from a settlement. After hearing the arguments
12 of Prosecuting Counsel and Respondent, the panel found that Prosecuting Counsel had proved
13 by clear and convincing evidence the facts alleged, and that Respondent had violated his duties
14 of competence and diligence as charged. The panel then set a separate hearing for the penalty
15 phase of the proceeding and invited briefs from the parties.
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17 On May 31, 2016, Prosecuting Counsel filed a Disposition Memorandum: Factors in
18 Aggravation (ECF No. 46), and two exhibits, and Respondent filed a Statement Re: Mitigating
19 Circumstances (ECF No. 47). Prosecuting Counsel urged the panel to consider more than a
20 dozen other allegations of similar ethical misconduct by Respondent in cases before this and
21 other courts, especially nine disciplinary complaints that formed the basis for Respondent's
22 disbarment in the Commonwealth of the Northern Mariana Islands. Respondent asserted that
23 Subbaiah suffered little or no material harm, that Subbaiah's own conduct was not beyond
24 reproach, that during the period of the representation he was experiencing serious domestic
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1 difficulties leading to a marital separation, and that over a long legal career in the CNMI he has
2 generally provided competent and diligent representation to clients.

3 On June 14, 2016, the parties filed responses: Response to Prosecuting Counsel's
4 Disposition Memorandum (ECF No. 48), Declaration of Stephen C. Woodruff (ECF No. 49);
5 Respondent's three volumes of exhibits (ECF Nos. 50, 51, and 52); and Prosecuting Counsel's
6 Reply Memorandum (ECF No. 53). Respondent objected to consideration of any of the
7 disciplinary charges that formed the basis of his CNMI disbarment, on grounds that the CNMI
8 courts procedurally defaulted him, he did not have the opportunity to confront the evidence
9 against him, and he was denied due process. Prosecuting Counsel disputed that the client bore
10 any responsibility for the failure of the appeal, and stressed that the client was materially
11 harmed at least in the loss of the \$1,850 he paid Respondent to pursue the appeal.
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14 On June 15, 2016, the panel held a sanctions hearing. The panel heard a recording of
15 Subbaiah's testimony as to the \$1,850 loss, and then heard argument from both counsel. The
16 panel indicated that it was inclined not to consider evidence from the CNMI court cases that
17 formed the basis of Respondent's disbarment and would restrict itself to the record from
18 representations in this District and the Ninth Circuit. After argument from Respondent and
19 Prosecuting Counsel, the Court took the matter under advisement.
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21 Since then, more than two years have passed, and only now is the Court issuing its
22 decision and order. The Court is mindful of the irony of judging one of its own lawyers for
23 failure to attend promptly to his client's matters when it has failed to promptly tend to this one.
24 That failure is a disservice to Respondent, Complainant, and Prosecuting Counsel, who worked
25 long hours pro bono on the case. In the meantime, other disciplinary cases involving
26 Respondent have made their way through the Commonwealth and federal courts. It is against
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1 that background that this panel must decide how best to fairly bring the instant matter to a
2 conclusion.

3 II. RECIPROCAL DISCIPLINE CASES

4 On June 7, 2013, Respondent was disbarred by the Commonwealth Superior Court. *See*
5 Disciplinary Action: Disbarment, *In the Matter of Woodruff*, Civil Case No. 13-0017 (Commw.
6 Super. Ct. June 7, 2013), *available at* [https://www.cnmilaw.org/pdf/superior/13-06-07-CV13-](https://www.cnmilaw.org/pdf/superior/13-06-07-CV13-0017.pdf)
7 0017.pdf. The disbarment order was affirmed by the Commonwealth Supreme Court on
8 December 9, 2015. *In the Matter of Woodruff*, 2013-SCC-0030-CIV, 2015 MP 11, 2015 WL
9 8488972, 2015 N. Mar. I. LEXIS 12 (N. Mar. I. 2015). On December 24, 2015, this Court
10 issued to Respondent a Notice of Intent to Impose Reciprocal Discipline and Order to Show
11 Cause (Case No. 13-CV-00004, ECF No. 75).¹ On January 22, 2016, the Commonwealth
12 Supreme Court denied Respondent's petition for rehearing and ordered the mandate to issue on
13 January 26. (No. 13-CV-00004, ECF No. 87-3.) On February 10, Respondent filed an Update
14 (ECF No. 87) notifying the Court of his intention to petition for certiorari to the United States
15 Supreme Court.
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19 When the Court became aware that no petition had ever been filed, it lifted its stay on
20 reciprocal discipline proceedings (Order, Dec. 8, 2016, ECF No. 88). After a hearing, the Court
21 found that reciprocal discipline was warranted and, under LDR 17, disbarred Respondent from
22 the practice of law in this district (Order Imposing Reciprocal Discipline of Disbarment, Mar. 9,
23 2017, ECF No. 104). After an independent review of the Commonwealth record, the Court
24 found that in the CNMI disciplinary proceedings deserved a presumption of correctness because
25 (1) respondent was not deprived of due process, (2) there was sufficient proof of misconduct,
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28 ¹ The reciprocal discipline case was assigned to Hon. Frances Tydingco-Gatewood, Chief Judge, District of Guam.

1 and (3) no grave injustice would result from the imposition of reciprocal discipline. *See Selling*
2 *v. Kramer*, 243 U.S. 46, 50–51 (1917); *In re Kramer*, 193 F.3d 1131, 1132 (9th Cir. 1999).

3 Also in 2017, the Ninth Circuit was considering whether to reciprocate the discipline
4 imposed by the CNMI courts and disbar Woodruff from federal appellate practice. On October
5 13, 2017, the Ninth Circuit’s Appellate Commissioner issued a report finding that the CNMI
6 disciplinary proceedings against Woodruff did not offer Woodruff fair notice and an
7 opportunity to be heard, that evidence was improperly considered, and that disbarment would
8 do a grave injustice. (Report and Recommendation, No. 13-80077, Oct. 13, 2017, docketed in
9 D. N. Mar. I. No. 13-MC-00004, ECF No. 116-1.) Although he found that none of the *Selling*
10 factors had been met, the Appellate Commissioner recognized that Woodruff had a history of
11 difficulty meeting deadlines in Ninth Circuit cases, sometimes with the result that an appeal was
12 dismissed. He recommended 18 months’ probation, allowing Woodruff to complete pending
13 appeals but not take on new appeals during the probationary period.

14 On October 26, Woodruff submitted the Appellate Commissioner’s report as an exhibit
15 supporting a motion for relief from this Court’s judgment of reciprocal discipline. In the motion
16 (ECF No. 116), he asked the Court to rescind his disbarment and impose the same discipline as
17 the Ninth Circuit. While that motion was pending, on November 15, the Ninth Circuit issued an
18 order adopting the Report and Recommendation in all respects, except for the prohibition on
19 bringing new cases, which the Ninth Circuit declined to impose. (Order, Nov. 15, 2017, No. 13-
20 80077, docketed D. N. Mar. I. No. 13-MC-00004, ECF No. 117.) On March 28, 2018, the Court
21 heard the motion for relief from judgment and granted it in part, suspending Woodruff for one
22 year (until March 28, 2019), permitting him to resume representation in cases that were pending
23 at the time of his disbarment but forbidding him from taking new cases. (Order Modifying
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1 Discipline, ECF No. 123.) The Court noted that it had a “firm conviction that reciprocal
2 discipline was warranted” but deferred to the Ninth Circuit’s determination that CNMI
3 disciplinary proceedings did not comport with due process and therefore modified discipline.
4 The Court gave Woodruff leave to apply for reinstatement after six months and one day, i.e., no
5 earlier than September 29, 2018.
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7 **III. DISCUSSION**

8 In light of the Ninth Circuit’s determination in its own reciprocal discipline case, the
9 Court does not consider as aggravating factors the nine disciplinary charges on which the CNMI
10 disbarment was based. Nor will it consider ten other complaints received by the CNMI Bar
11 Disciplinary Committee and submitted by Prosecuting Counsel (*see* Dispo. Memo., ECF No.
12 46, p. 14 *et seq.*). The Court cannot ignore, however, a series of cases in this district where the
13 previous Chief Judge issued orders taking note of Respondent’s deficient performance. In
14 *Prematilaka v. Camacho*, No. 05-CV-00045, the Court dismissed a Title VII complaint with
15 prejudice when Respondent, representing the plaintiff, failed to prosecute the case for more than
16 seven months. (Order, Aug. 10, 2006, ECF No. 3.) Failure to serve defendants or ask for
17 additional time to effect service eventuated in a dismissal in *Santos v. Winner Corporation*.
18 (Order, No. 08-CV-00023, Mar. 27, 2009, ECF No. 5.) In *Feliciano v. Eastern Hope*
19 *Corporation*, No. 08-CV-00001, the Court dismissed a case with prejudice when Respondent
20 failed to show up for trial. (Order, Dec. 1, 2008, ECF No. 17.) The Court noted a history of
21 missed deadlines by Respondent and directed respondent “to notify his client in writing . . . that
22 he may have a cause of action against Mr. Woodruff for failure to meet minimum professional
23 standards in client representation . . .” (*Id.*) It is not only the former Chief Judge of this District
24 who observed this tendency to miss deadlines and court dates. The Chief Judge of the District of
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1 Guam, sitting here by designation, noted that Respondent had missed crucial deadlines in his
2 own reciprocal discipline case and offered up weak excuses for doing so. She wrote,
3 “Respondent’s failure to attend to his own disciplinary cases mirrors the misconduct alleged in
4 [the CNMI’s disciplinary complaint].” (Order, No. 13-CV-00004, Mar. 9, 2017, ECF No. 104,
5 at 8.)
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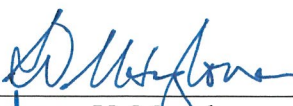
7 The panel draws attention to this related conduct only to show why it does not give
8 much credit to Respondent’s protestations that he has a history of managing his case load
9 competently and diligently. What the panel saw in the evidence was an attorney who, for
10 whatever reasons, was taking on more than he could handle, not just for a short period of acute
11 stress but over the course of many years.
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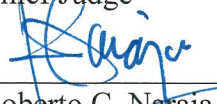
13 IV. DISCIPLINARY ACTION

14 Under LDR 3, attorney discipline in this District may consist of disbarment, suspension
15 by a period of up to five years, public censure, or private reprimand. Were it still 2016, the
16 Court would likely impose disbarment or a period of suspension starting 30 days from now,
17 pursuant to LDR 17(c). Much time has passed, however. The Court recognizes that it would be
18 unfair to make an attorney start serving a term of discipline in late 2018 that, but for the Court’s
19 inaction, might have already ended. For this reason, the Court hereby imposes on Respondent
20 the same discipline that was imposed in Case No. 13-MC-00004: Respondent is suspended from
21 practice in this District for a period of one year. The suspension shall run concurrently with the
22 suspension in No. 13-MC-00004, i.e., from March 28, 2018, the date of the Order Modifying
23 Discipline (ECF No. 123). Respondent may continue representing clients in any open cases,
24 which the Court understands to be only the plaintiff in *Ramsey v. Muna*, No. 14-CV-00021. He
25 is not permitted to enter appearances in new cases during the period of suspension. Pursuant to
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1 LDR 18(b), he may apply for reinstatement after the expiration of at least one-half of the period
2 of suspension.

3 SO ORDERED this 4th day of September, 2018.

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6 Ramona V. Manglona
7 Chief Judge

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9 Roberto C. Naraja
10 Designated Judge

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12 Teresa Kim-Tenorio
13 Designated Judge
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