



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

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

IN RE THE MATTER OF:)	CIVIL ACTION NO. <u>08-0055(E)</u>
)	DISCIPLINARY CASE NO. <u>2007-02</u>
)	
REYNALDO O. YANA,)	ORDER OF ATTORNEY DISCIPLINE
Attorney at Law)	
)	
Respondent.)	

This matter was referred to this Court by way of case assignment on February 8, 2008.

This Court has jurisdiction over this matter pursuant to 1 CMC § 3401 and the *Disciplinary Rules and Procedures for Persons Practicing Law in the Courts of the Commonwealth*, which rules lawfully govern the professional conduct of lawyers practicing before the Commonwealth courts. Every practicing lawyer in the Commonwealth is bound by the Commonwealth Disciplinary Rules and Procedure. Com. Dis. R. 1. The disciplinary rules provide a comprehensive procedure to discipline attorneys for professional misconduct.

The court appointed attorney Thomas E. Clifford to prosecute the case. Pursuant to Disciplinary Rule 9 (c), he made an application to the Court for the charges to be deemed admitted in Court, because Respondent Reynaldo O. Yana did not respond to the Complaint within the time allowed, after having been duly served, and therefore, is deemed to have admitted the charges.

1 Having reviewed the application of the prosecutor accompanied by supporting exhibits the Court
2 issued the order deeming the charges admitted.

3 A Court must be extremely diligent in protecting and upholding the integrity and decorum of the
4 judicial system. The public's confidence in the judicial system depends on it. A main factor in pursuing
5 this constant diligence is to regulate the attorneys who practice law before the Court to assure that
6 attorneys do not engage in conduct that disparages the administration of justice. The court has set forth
7 disciplinary rules and procedures for persons practicing law in the courts of the CNMI and have adopted
8 the Model Rules of Professional Conduct (MRPC).

9 The charges deemed admitted by Respondent, Reynaldo O. Yana, in this matter constitute
10 violations of the sections of the MRPC as stated below.

11 Under MRPC 3.3(a), a lawyer has a duty of candor toward the court, and this includes disclosure
12 of all material facts where the non-disclosure of such facts is inherently misleading and deceptive.

13 Under MRPC 3.3(d), in an *ex parte* proceeding, this duty is broadened, and the lawyer must
14 disclose all material facts that would be helpful to the tribunal, and this is true under 3.3(d) regardless of
15 whether the non-disclosure would be inherently misleading or deceptive.

16 Under MRPC 3.5(d), a lawyer shall not engage in conduct designed to disrupt the court.

17 Under MRPC 8.4(c), a lawyer shall not engage in conduct that involves dishonesty, fraud, deceit
18 or misrepresentation.

19 Under MRPC 8.4(d), a lawyer shall not engage in conduct that is prejudicial to the administration
20 of justice.

21 Under MRPC 8.4(e), a lawyer shall not state or imply an ability to influence the court or to
22 achieve results by means that violate the applicable law or rules of professional conduct.

23 The said rules were violated by Respondent's actions which began when Respondent, Reynaldo
24 O. Yana moved to disqualify Commonwealth Superior Court Associate Judge Govendo from hearing
25 eleven adoption cases. (Mr. Yana later withdrew his motion as to one case, and so his motion, and this

1 Complaint relate to the remaining ten cases.)

2 The Presiding Judge denied the motion in his July 17, 2006 *Order Denying Petitioners'*
3 *Consolidated Motions to Disqualify Judge Kenneth L. Govendo* (the "Denial Order").

4 Mr. Yana and his clients did not appeal the Denial Order to the Supreme Court.

5 On January 31, 2007, Mr. Yana filed a Notice of Hearing purporting to set the ten cases for
6 hearing on the island of Rota before Commonwealth Superior Court Associate Judge Lizama.

7 Mr. Yana telephoned Judge Lizama's clerk, Samantha Salas, and inquired whether Judge Lizama
8 was going to hear cases on Rota on February 2, 2007. Ms. Salas confirmed that February 2nd was in fact
9 a date on which Judge Lizama would hear cases on Rota.

10 During this conversation with Ms. Salas, Mr. Yana never informed Ms. Salas that he had
11 purported to notice the ten adoption cases for hearing on Rota.

12 During this conversation with Ms. Salas, Mr. Yana never informed Ms. Salas that he had
13 previously moved to disqualify Judge Govendo from hearing the ten cases and that the Presiding Judge
14 had denied the motion.

15 More broadly, in the course of his purporting to notice the ten adoption cases for hearing on Rota
16 before Judge Lizama, Mr. Yana never informed anyone at the Commonwealth Superior Court that: a)
17 the cases were before Judge Govendo; b) Mr. Yana had moved to disqualify Judge Govendo from
18 hearing the ten cases; c) the Presiding Judge had issued a written order denying the motion; or d) the
19 Denial Order had never been appealed or otherwise contested.

20 On February 2, 2007, on Rota, Judge Lizama called the ten adoption cases on for hearing. The
21 court granted six of the adoptions and continued the other four cases to March 2, 2007.

22 Upon the Clerk of Court informing the Presiding Judge that the ten adoption cases had been
23 noticed for hearing on Rota, the Superior Court ordered that the four remaining adoption cases be taken
24 off calendar and rescheduled to the Saipan Family Court Docket calendar before Judge Govendo.

25 Mr. Yana subsequently purported to withdraw the four remaining adoption cases.

1 Mr. Yana then re-filed the four cases on the Rota docket with new numbers indicating the cases
2 were Rota cases. Mr. Yana also filed two new adoption cases as Rota cases even though the parties to
3 the case were residing on Saipan at the time.

4 Mr. Yana admitted to the foregoing facts during the course of the Disciplinary Committee's
5 investigation.

6 Mr. Yana also admitted that he did not inform Judge Lizama of the Denial Order.

7 **The Disciplinary Committee Investigation**

8 The Disciplinary Committee investigated the matter and determined that Mr. Yana had violated a
9 number of Model Rules of Professional Conduct.

10 The Disciplinary Committee referred the matter to the Presiding Judge for further action on
11 November 25, 2007.

12 The Presiding Judge assigned the case to the undersigned in a February 8, 2008 *Case Assignment*
13 *Order*.

14 Under MRPC 8.4(e), a lawyer shall not state or imply an ability to influence the court or to
15 achieve results by means that violate the applicable law or rules of professional conduct.

16 Mr. Yana's conduct, as set forth herein, violated this and several other rules as set forth below.

17 The Superior Court denied Mr. Yana's motion to recuse Judge Govendo. The Denial Order was
18 the 'law of the case,' and as such, the Denial Order affirmed that the cases were before Judge Govendo
19 (and implicitly that they were Saipan cases, just as they had been filed).

20 Mr. Yana's clients then had a number of options. One was to move for reconsideration. Another
21 was to appeal the Denial Order to the Commonwealth Supreme Court.

22 It was not, however, a legally permissible or ethical option for Mr. Yana to ignore the Denial
23 Order, wait approximately six months for the issue to become less visible, and then notice the cases for
24 hearing two days later on another island and before another judge, all without ever disclosing to any of
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1 the Superior Court personnel involved in the matter that Mr. Yana was doing this because, despite the
2 Denial Order, Judge Govendo was “legally unavailable” to hear the cases.

3 Mr. Yana’s failure to disclose the circumstances regarding the noticing of the cases for Rota was
4 inherently deceptive and misleading, and as such a violation of MRPC 3.3(a) and 3.3(d).

5 Mr. Yana’s actions constitute an effort, as he admits, to circumvent the effect of the Denial
6 Order. This effort was designed to and in fact did disrupt the conduct of the Superior Court, and as such,
7 was a violation of MRPC 3.5(d).

8 Mr. Yana had no authority to overrule or ignore the Superior Court’s Denial Order. His actions
9 in ignoring the Superior Court’s Denial Order were deceitful and misleading, prejudicial to the
10 administration of justice and, at a minimum, imply an ability to improperly ‘work’ the Superior Court to
11 obtain the results he wanted when he claimed that a judge was “legally unavailable” even though the
12 Superior Court had already considered that issue on a motion and issued an order ruling that the judge
13 was in fact available. This improper gaming of the system was a violation of MRPC 8.4(c), 8.4(d) and
14 8.4(e).

15 For the reasons stated above and as further supported by the record in this matter, Mr. Yana’s
16 conduct violated MRPC 3.3(a), 3.3(d), 3.5(d), 8.4(c), 8.4(d) and 8.4(e).

17 The Court cannot and will not tolerate such blatantly improper conduct by an attorney practicing
18 in the Commonwealth Superior Court, as was practiced by Mr. Yana. A message must be sent to the
19 legal community and to the public that such conduct will be punished.

20 **IT IS HEREBY ORDERED** that Respondent, Reynaldo O. Yana, be disciplined as follows:

- 21 1. Respondent, Reynaldo O. Yana, is hereby suspended from the practice of law in the
22 Commonwealth Superior Court for a period of thirty (30) days commencing on the date
23 of this Order.
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