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

IN THE MATTER OF ANNE-MARIE ROY[1]

SUPREME COURT NO. TR-06-0039-GA
SUPERIOR COURT NO. 06-00005

Cite as: 2007 MP 28

Decided December 6, 2007

Ann-Marie Roy and Kevin Lynch (argued), Assistant Attorney Generals, Commonwealth of the Northern Mariana Islands for Respondent.

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[1] This matter originated from former Assistant Attorney General Ann Marie Roy's participation in Commonwealth v. Shao Yong Wu, TR-06-0039-GA. As this opinion deals exclusively with Roy's conduct and does not consider the underlying case, the caption is changed to be consistent with the subject mater herein.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

PER CURIAM:

¶ 1 Assistant Attorney General Anne-Marie Roy ("the prosecutor") is the attorney responsible for the instant case on behalf of the Commonwealth. The prosecutor's brief was due March 27, 2007, but it was not filed. On May 9, 2007, the prosecutor requested permission to file a late brief. The prosecutor's request was granted and she was given until June 11, 2007, to file. More than four months passed without the prosecutor filing a brief or requesting additional time. On October 23, 2007, we ordered the prosecutor to show cause why she should not be sanctioned for failing to file the appellate brief. Additionally, the order to show cause required the prosecutor to file her opening brief by October 29, 2007.

¶ 2 On October 29, 2007, instead of filing an opening brief, the prosecutor filed a response to the order to show cause and submitted the case on the record. In her response, the prosecutor stated that: (1) in nineteen years of practice, no disciplinary action or sanction had ever been imposed against her; (2) failing to file a brief was simply an oversight on her part in a "relatively minor case" that "fell through the cracks;" (3) she intended to file a one page document submitting the case on the record instead of a brief, but neglected to do so; and (4) she was overworked in an office with insufficient resources, and the problem would continue to occur if more resources were not allocated to the Attorney General's Office.

¶ 3 Every attorney in the Commonwealth is subject to this Court's disciplinary jurisdiction. Com. Disc. R. & P. 1. Discipline may consist of "[d]isbarment, suspension, public censure, private reprimand, and/or any other sanction that is deemed appropriate." *Id.*, 3(a). We have "the inherent authority to impose sanctions that are not specifically addressed by rule." *Tenorio v. Superior Court*, 1 NMI 112, 127 (1990); *see Saipan Lau Lau Dev. Inc. v. Superior Court*, 2001 MP 2 ¶ 37 ("Inherent powers derive from a judge's absolute need to maintain order and preserve the dignity of the court."); *Sonoda v. Villagomez*, 3 NMI 535, 541 (1993) ("The court has the inherent judicial power to enforce its promulgated rules and may impose sanctions upon attorneys who violate the rules."); *see also Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 19 ("A court may rely upon its inherent power to regulate the conduct before it . . . even when specific statutes and rules regulating the conduct are in place.").

¶ 4 "The purpose of suspension or disbarment is not to punish the attorney, but rather to guard the administration of justice, maintain the dignity of the courts and the integrity of the profession, and protect the public." *Saipan Lau Lau Dev. Inc.*, 2001 MP 2 ¶ 38; *see In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 15 ("Attorney sanctions exist not to punish the

offending attorney . . . ."); *In re Brehmer*, 620 N.W.2d 554, 561 (Minn. 2001) (determining that attorney discipline is needed to protect the legal profession and the public, and to guard the administration of justice). "In short, courts impose sanctions with an eye toward other attorneys who are considering violating the ethical canons of our profession." *Rhodes*, 2002 MP 2 ¶ 16.

¶ 5 However, to comply with due process, "[n]otice and an opportunity to respond must always be given before sanctions can be imposed. The opportunity for a hearing must also be given in those situations where a hearing would assist the court in its decision as to whether sanctions should be imposed or not." *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 NMI 343, 363 (1992); *see Sonoda*, 3 NMI at 541 (stating that before the court may exercise its inherent power to impose sanctions, the court must give the attorney fair notice and a hearing on the record).

¶ 6 An opportunity to respond in writing to an order to show cause regarding sanctions and a chance to be heard at a hearing provide adequate due process. *Matsunaga*, 2001 MP 11 ¶¶ 25-26. For example, in *People of the Territory of Guam v. Palomo*, 35 F.3d 368, 375 (1994) (overruled on other grounds), an attorney argued that the trial court violated due process for sanctioning him after an order to show cause for the tone and content of his briefs and for a comment he made during oral argument. The Ninth Circuit held that the trial court did not abuse its discretion because the order to show cause was specific and detailed and the attorney was provided with adequate notice and an opportunity to respond. *Id.* at 376; *see Milne v. Lee*, 2001 MP 16 ¶ 32 (finding no due process violation because the attorney was given a hearing). Here, due process is satisfied because the prosecutor was given similar notice and an opportunity to be heard.[2]

¶ 7 We have the inherent authority and jurisdiction to regulate the conduct of attorneys practicing before us, and the prosecutor, as a member of the bar, is subject to our jurisdiction. "In determining the appropriate sanction, the court considers the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession." *In re Giberson*, 581 N.W.2d 351, 354 (Minn. 1998). We look to other cases involving similar attorney misconduct for guidance. In *In re Disciplinary Proceeding Against Lopez*, 153 Wash. 2d 570, 583-84, 597 (2005), an attorney received a sixty day suspension after he repeatedly failed to file an appellate brief even after the Ninth Circuit ordered the attorney to do so. The Washington Supreme Court held that the attorney's actions violated a disciplinary rule requiring lawyers to act with reasonable diligence and promptness and breached an additional rule requiring lawyers to

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[2] Assistant Attorney General Kevin A. Lynch represented the prosecutor at the hearing on November 21, 2007.

make reasonable efforts to expedite litigation.[3] *Id.* at 583-84. Nonetheless, we decide the instant case, like each case, on its unique circumstances and facts. *In re McCoy*, 447 N.W.2d 887, 890 (Minn. 1989).

¶ 8 Based on the prosecutor's response through counsel at the hearing, and her response to our order to show cause, we are not persuaded that her actions are an isolated occurrence. Even a "relatively minor case" in the prosecutor's view requires the same attention to detail and deadlines as other cases. Assuming, arguendo, that one instance of neglect can be overlooked, this is not the first time the prosecutor failed to properly monitor her caseload. As we recently noted in *Commonwealth v. Andrew*, 2007 MP 25 ¶ 1 n.1, the prosecutor also failed to file a brief on appeal despite the Court granting her additional time to do so. As a result, the prosecutor was not permitted to argue at oral argument. *Id.*

¶ 9 In direct violation of our order to file an appellate brief, the prosecutor filed only a single paragraph submission on the record. According to the prosecutor, she "intended to file a one page document submitting the case on the record," but "neglected to do so." Appellee's Response to Order to Show Cause at 2. If the prosecutor believed the case warranted briefing, as evidenced by her May 9, 2007 motion and signed declaration to file an out-of-time brief, then she was professionally obligated to submit one. If the prosecutor believed the case unworthy of briefing, or believed the issues sufficiently clear so as not to require briefing, she could have submitted the case on the record initially, and not wasted the Court's and appellant's time.

¶ 10 Moreover, in her motion to file an out-of-time brief, the prosecutor stated "[t]his case presents complex legal issues that are important to the Commonwealth, and which deserve thorough research and briefing." Appellee's Mot. to File Out of Time Brief On Appeal at 1. However, in her response to the order to show cause, the prosecutor explained that she did not file a brief because the case was "relatively minor." While we understand this language was likely boilerplate and we do not believe that misrepresentation to the Court was intentional, such inaccuracy cannot be ignored. Once an attorney signs a document, boilerplate or otherwise, the attorney is responsible for its contents. This is especially true where, as in the present situation, the information was proffered in support of a request to waive procedural filing requirements.

¶ 11 Finally, and most importantly, the prosecutor maintains that failing to file a brief is "likely to recur" in the future. Based on the prosecutor's two previous failings to file briefs, we find her statement inexcusable. The prosecutor needs to ensure that such conduct will not happen again. No person in the Commonwealth should have their appeal delayed because of

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[3] There are numerous other cases where attorneys were disciplined for failing to file briefs. *See, e.g.*, *Kentucky Bar Ass'n v. Quesinberry*, 203 S.W.3d 137, 138-39 (Ky. 2006); *Patrick v. State*, 238 Ga. 497 (1977) (per curiam).

irresponsible and unprofessional conduct from the Attorney General's Office. Nor should the Attorney General's Office act with such blatant defiance of this Court's requirements. The prosecutor's argument that she is overworked in an office with insufficient resources is not an excuse for noncompliance with this Court's rules. The prosecutor had ample time to request another extension of time to file a late brief pursuant to Com. R. App. P. 31(d), but did not do so. We remind the prosecutor that "[u]nless the court relieves an attorney of his or her responsibility to the client on appeal, as an officer of the court, the attorney is required to file the appropriate documents and briefs." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Lesyshen*, 712 N.W.2d 101, 105 (Iowa 2006). If an attorney fails to comply with appellate filing deadlines, such conduct is prejudicial to the administration of justice. *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Daggett*, 653 N.W.2d 377, 380 (Iowa 2002).

¶ 12 The prosecutor was obligated to abide by our order issued in a case pending before the Court. For failing to file appellate briefs in defiance of this Court's order pursuant to Com. Disc. R. & P. 2(c), the prosecutor must be suspended in order to protect the courts, the legal profession, and the people of the Commonwealth.[4] "A mere reprimand in this case would encourage others to disregard the orderly process by which our courts and the legal profession are governed." *Rhodes*, 2002 MP 2 ¶ 16 n.1 (quoting *Office of Disciplinary Counsel v. Lau*, 79 Haw. 201, 207 (1995)). Accordingly, through our broad power under the disciplinary rules, and good cause appearing, IT IS HEREBY ORDERED that:

(1) Assistant Attorney General Anne-Marie Roy is immediately suspended from appearing before the Commonwealth courts for ninety days. *See* Com. Disc. R. & P. 15(c) (providing that orders imposing suspension shall be effective thirty days after entry).

(2) After her ninety day suspension the prosecutor may file a petition for reinstatement with this Court. *Id.* 16(a).

Concurring:
Demapan, C.J., Castro, J., Manglona, J.

[4] We also note the prosecutor's disrespect for this Court during the order to show cause hearing. At the hearing, the prosecutor repeatedly turned to face onlookers in the courtroom and mouthed words to them. Upon completion of the hearing, the prosecutor stormed out of the courtroom, made loud remarks to seated onlookers as she left, and slammed the door before the justices exited the courtroom.