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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellant,

v.

LOT NO. 218-5 R/W, 218-6 R/W, and LUISA B. QUITUGUA,
Defendants-Appellees.

SUPREME COURT NO. 2013-SCC-0006-CIV
SUPERIOR COURT NO. 96-1158-CV

OPINION

Cite as: 2013 MP 5

Decided May 21, 2013

Attorney General Joey P. San Nicolas and Assistant Attorney General Charles Brasington, Saipan, MP,
Respondents, Pro Se

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice.

Castro, C.J.:

¶ 1 On March 6, 2013, we ordered Attorney General Joey P. San Nicolas ("San Nicolas") and Assistant Attorney General Charles E. Brasington ("Brasington") to show cause why they should not be sanctioned for the Commonwealth's misrepresentation in the certification section of their emergency motion that there was inadequate time to file a motion in the Superior Court before filing an emergency motion with the Supreme Court. *Commonwealth v. Lot No. 218-5 R/W*, No. 2013-SCC-0006-CIV (NMI Sup. Ct. Mar. 6, 2013) (Order to Show Cause at ¶¶ 2-3) ("OSC"). For the reasons stated below, San Nicolas and Brasington are sanctioned $500, jointly and severally. Similar future conduct will result in harsher sanctions, including possible suspension or revocation of counsels' admissions to practice law in the Commonwealth, whether provisional or not.

I. Facts and Procedural History

¶ 2 On Friday, March 1, 2013, the Superior Court issued a Writ of Execution against the Commonwealth for "all monies up to the amount necessary to satisfy the [trial court's] judgment." *Commonwealth v. Lot No. 218-5 R/W*, Civ. No. 96-1158 (NMI Super. Ct. Mar. 1, 2013) (Writ of Execution at 3). It then directed "all monies and [other Commonwealth] proceeds" located in local banks "up to the amount necessary to satisfy the judgment" delivered to Luisa B. Quitugua ("Quitugua"), through her attorney. *Id.* And, finally, it ordered several local banks to release "the monies held in [their] bank[s] belonging to the Commonwealth of the Northern Mariana Islands . . . ." *Id.* at 4.

¶ 3 Concerned about the broad language of the directive towards the local banks, the next day, Saturday, March 2, 2013, San Nicolas and Brasington filed an emergency motion on behalf of the Commonwealth with the Superior Court to stay that Writ. Late Monday, March 4, 2013, the Commonwealth also filed an emergency motion under NMI Supreme Court Rule 27-2, requesting we stay the Superior Court's Writ of Execution.

¶ 4 The latter motion alleged that the Superior Court's Writ "would force the Commonwealth into insolvency." *Commonwealth v. Lot No. 218-5 R/W*, No. 2013-SCC-0006-CIV (NMI Sup. Ct. Mar. 4, 2013) (Emergency Motion under Rule 27-2 for Stay at 2) ("Emergency Motion"). But did *not* disclose that the Commonwealth had already filed a similar motion with the Superior Court. To the contrary, the Commonwealth's motion claimed it had not filed a stay with the Superior Court: "The grounds cited in support of this Emergency Motion were not first submitted to the Superior Court . . . ." Emergency Motion at 2. The Commonwealth likewise failed to mention that the Superior Court had already stayed its Writ by the time the Commonwealth filed its emergency motion with the Supreme Court. *Commonwealth v. Lot No. 218-5 R/W*, Civ. No. 96-1158 (NMI Super. Ct. Mar. 4, 2013) (Order

Shortening Time for Motion to Stay) (e-filed by the Superior Court on March 4, 2013, at 3:46 p.m.); Emergency Motion (filed by the Commonwealth with the Supreme Court on March 4, 2013, at 3:58 p.m.).

¶ 5 Relying on San Nicolas and Brasington's certification, as well as the purportedly urgent nature of the motion, we issued a stay of the Superior Court's Friday, March 1, 2013 Writ of Execution after an emergency session early Monday evening. *Commonwealth v. Lot No. 218-5 R/W*, No. 2013-SCC-0006-CIV (NMI Sup. Ct. Mar. 5, 2013) (Order Staying Writ of Execution). However, we dissolved our stay the next morning after discovering the Superior Court had already acted on the Commonwealth's original emergency motion before the Commonwealth had even filed its motion with us, *Commonwealth v. Lot No. 218-5 R/W*, No. 2013-SCC-0006-CIV (NMI Sup. Ct. Mar. 5, 2013) (Order Lifting Stay), and then we issued an Order to Show Cause why San Nicolas and Brasington should not be sanctioned. OSC ¶ 3.

¶ 6 In their response to the Order to Show Cause, San Nicolas and Brasington explained that they failed to review the pertinent parts of their brief before filing it. Specifically, when they drafted the Emergency Motion they did not intend to file in the Superior Court too. Written Response to Order to Show Cause at 2. Later, however, they decided to file there as well because Quitugua allegedly attempted to enforce the Superior Court's Writ. *Id.* They then "failed to review the Certification Section of the Emergency Motion" before filing it with us. *Id.*

¶ 7 After explaining how the mistake happened, San Nicolas and Brasington conceded they made a "material misrepresentation" to the Court that was "egregious and wholly unacceptable." *Id.* at 3. And highlighted that "[i]n response to this series of events, the Office of the Attorney General . . . instituted a mandatory policy of peer review." *Id.*

II. Jurisdiction

¶ 8 "We have the inherent authority and jurisdiction to regulate the conduct of attorneys practicing before us." *In re Roy*, 2007 MP 28 ¶ 7. That authority encompasses not only court appearances, but also "'the preparation of papers that are to be filed in court on another's behalf and that are otherwise incident to a lawsuit.'" *In re Admission of Nisperos*, 2007 MP 33 ¶ 9 (quoting *Toledo Bar Ass'n v. Joelson*, 872 N.E.2d 1207, 1208-09 (Ohio 2007)).

III. Discussion

A. Emergency Motion Certification Section

¶ 9 When filing an emergency motion with the Supreme Court, the party must include a Rule 27-2 Certificate. NMI SUP. CT. R. 27-2(a)(3). That Certificate requires the filing party to set forth "facts showing the existence and nature of the claimed emergency." NMI SUP. CT. R. 27-2(a)(3)(b). In setting forth the facts in an emergency motion, attorneys have an enhanced duty of candor because the opposing party typically does not have an opportunity to respond before the Court acts on the motion. *See* MODEL

RULE OF PROF'L CONDUCT R. 3.3(d) (imposing additional requirements on lawyers in ex parte proceedings, including "inform[ing] the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, *whether or not the facts are adverse*") (emphasis added). The emergency motion rules also mandate that the party declare whether they have already made the same arguments to the Superior Court. NMI SUP. CT. R. 27-2(a)(4). If not, they must demonstrate why we should not deny or remand the motion. *Id.*

¶ 10 Here, San Nicolas and Brasington did not meet the heightened candor requirement imposed by the emergency motion rule. Their brief unequivocally told us that the Commonwealth had not filed an emergency motion with the Superior Court to stay the Superior Court's Writ. Emergency Motion at 2 (certifying that "[t]he grounds cited in support of this Emergency Motion were not first submitted to the Superior Court."). But, in fact, the Commonwealth had done exactly that. Their brief then suggested the Superior Court's decision would have grievous consequences for the Commonwealth if we did not act immediately, Emergency Motion at 5 (alleging the Superior Court's Writ "would force the Commonwealth into insolvency"), even though the Superior Court had already stayed its Writ pending a hearing on the emergency motion filed by the Commonwealth in the lower court. *Commonwealth v. Lot No. 218-5 R/W*, Civ. No. 96-1158 (NMI Super. Ct. Mar. 4, 2013) (Order Shortening Time for Motion to Stay at 1).

B. Sanctions

¶ 11 When attorneys seriously deviate from the high standards required of legal practitioners, they may be sanctioned. *Matsunaga v. Cushnie*, 2012 MP 18 ¶ 35 (Opinion, Dec. 28, 2012); *In re Roy*, 2007 MP 28 ¶ 7. For example, attorneys may not misrepresent information to the courts. *See id.* ¶ 39 (issuing an order to show cause because an attorney "misrepresented key information"); *see also* MODEL RULES OF PROF'L CONDUCT R. 3.3(a)(1) ("A lawyer shall not knowingly make a false statement of fact . . . or fail to correct a false statement of material fact . . . previously made to the tribunal by the lawyer."). In such situations, sanctions exist "'to protect the public and to maintain the integrity of the profession and the dignity of the courts.'" *In re Rhodes*, 2002 MP 2 ¶ 15 (quoting *Office of Disciplinary Counsel v. Lau*, 900 P.2d 777, 783 (Haw. 1995)). They also serve to deter similar behavior from other attorneys. *Id.* ¶ 16.

¶ 12 San Nicolas and Brasington seriously deviated from the high standards of the legal profession. They came perilously close to violating the first half of Rule 3.3(a)(1) of the Model Rules of Professional Conduct, which prohibits "knowingly mak[ing] a false statement of fact." What saves them is that the record indicates they filed the emergency motion with inexcusable neglect rather than knowledge of the misrepresentations.

¶ 13 They similarly came within a blade's edge of violating the second half of Rule 3.3(a)(1), which forbids "knowingly . . . fail[ing] to correct a false statement of material fact . . . previously made to the

tribunal by the lawyer." When opposing counsel brought the misrepresentations to light, Brasington claimed the misrepresentation was "[a] minor, immaterial oversight," *Commonwealth v. Lot No. 218-5 R/W*, No. 2013-SCC-0006-CIV (NMI Sup. Ct. Mar. 5, 2013) (Response to Jennifer Dockter's Notice of Hearing in the Superior Court on Emergency Motion under Rule 27-2 for Stay at 2); a serious and troubling understatement. Opposing counsel's swift correction of the record demonstrates that Brasington could have cured his misrepresentation, but simply did not. However, nothing in the record indicates knowledge of this critical mistake, so we cannot find a violation of Rule 3.3(a)(1).

¶ 14 Notwithstanding that the misrepresentations do not violate Rule 3.3 of the Model Rules of Professional Conduct, San Nicolas and Brasington's emergency motion fell well short of the high standards required of legal practitioners in the Commonwealth. First, they seriously misled this Court. Neglect is never an acceptable reason for misrepresenting facts, especially when the filer had two days to review their brief before filing. That is doubly true, as we will explain further below, when filing an emergency motion. Second, their argument that the Supreme Court needed to stay the Superior Court's Writ to prevent the Commonwealth from sliding into insolvency was unfounded speculation. Contrary to counsels' alarmist rhetoric, the Commonwealth will survive long after this case has receded from memory. And, third, they abused the emergency motion process. That process relies on the truthfulness of the party filing the motion because the opposing party often has no opportunity to respond to the motion before we act on it. That is because NMI Supreme Court Rule 27-2 expects the entire Court to immediately halt their regular business until they either grant or deny the motion. As a result, the misrepresentation—which San Nicolas and Brasington acknowledge—is wholly unacceptable and egregious.

¶ 15 Because San Nicolas and Brasington's emergency motion did not meet the high standards required of legal practitioners, we must sanction them. In determining the proper sanction, as is our established practice, we consider "'the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession.'" *In re Roy*, 2007 MP 28 ¶ 7 (quoting *In re Giberson*, 581 N.W.2d 351, 354 (Minn. 1998)).

¶ 16 Less than two years ago, this Court sanctioned a previous Attorney General for, among other things, repeatedly missing deadlines and not providing this Court with updated counsel of record in pending cases. Based upon mitigating factors, such as genuine contriteness, a history of proper attorney conduct, and a plan to resolve these problems, this Court issued a $300 sanction. *Commonwealth v. Sebuu*, No. 2008-SCC-0005-CRM (NMI Sup. Ct. Sept. 9, 2011) (Order).

¶ 17 As we detailed above, the attorney misconduct involved here is considerable and serious. By comparison to *Sebuu*, San Nicolas and Brasington's conduct is much more troubling than missing deadlines or not properly updating court records. A light punishment would wrongly suggest to the public

that material misstatements of fact to their highest court by the Office of the Attorney General, especially when the Court must rely upon those misrepresentations, do not constitute grave sins. They are.

¶ 18 At the same time, we recognize that the Attorney General has taken ameliorative steps to prevent future misrepresentations before this Court. The post hoc creation of a mandatory peer review process, however, does little to cure the error in this case. Indeed, it reinforces the egregiousness by highlighting that the legal representatives of the Commonwealth thought it appropriate to file motions with courts, even emergency motions before the highest court in the land, prior to some form of peer review. That the practice was apparently widespread is worrisome. In the future, the Attorney General may want to review all of the Office of Attorney General's submissions to this Court before filing them.

¶ 19 Because we cannot tolerate misrepresentations from attorneys, especially misrepresentations in emergency motions, we sanction San Nicolas and Brasington $500, jointly and severally. Hereafter, similar future conduct by either party will result in harsher sanctions, including possible suspension or revocation of counsels' admissions to practice law in the Commonwealth, whether provisional or not.

IV. Conclusion

¶ 20 For the reasons stated above, San Nicolas and Brasington are sanctioned $500, jointly and severally. The amount is payable to the Commonwealth Treasury, with a receipt given to the Supreme Court Clerk of Court, within thirty days from the issuance of this Order.

SO ORDERED this 21th day of May, 2013.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice