## In Re the Matter of Antono P. VILLANUEVA

## Disciplinary Case No. 1-82 Civil Action No. 83-9001 District Court NMI Appellate Division

#### Decided April 2, 1984

## As Amended on September 11, 1984

#### 1. Attorneys - Discipline

Disciplinary matters for attorneys and trial assistants are unique proceedings within the inherent authority and control of the courts to regulate the practice of law, whether in or out of court.

## 2. Appeal and Error - Jurisdiction of Appellate Division

The Appellate Division of the District Court has jurisdiction of the decisions of the Disciplinary Panel of the Commonwealth Trial Court. 1 CMC §3301.

### 3. Attorneys - Discipline

While the Disciplinary Panel is free to interpret existing rules of practice on a case-by-case basis, it may not modify, redefine or expand those rules without following constitutionally mandated procedure.

#### 4. Attorneys - Discipline

The Disciplinary Panel has broad discretion in prescribing terms of discipline.

#### 5. Attorneys - Discipline

The Trial Court, to control the conduct of its own affairs and to maintain its own dignity, has the inherent power, independent of statute, to deal with any alleged misconduct in a just and equitable manner.

## 6. Attorneys - Discipline

The exercise by the trial court of its inherent power to govern the practice of law within its jurisdiction will not be disturbed where the action taken has a rational connection to the public interest.

## 7. Attorneys - Discipline

Where trial assistant was placed on probation by District Court of Guam in connection with a criminal matter, trial court's discipline order suspending license to practice in the Commonwealth for period of probation was rationally related to public interest and would be upheld.

### 8. Attorneys - Ethics

Professional responsibility is the basic requirement for all attorneys, trial assistants, and other officers and administrators of the court in order to maintain the highest possible level of morality in the judicial system.

#### 9. Attorneys - Trial Assistants

Trial assistant, even though not educated as a lawyer, is held to same standard of ethical competence.

## 10. Attorneys - Discipline

Order of Disciplinary panel requiring trial assistant to pass the Professional Responsibility Examination before suspension of license to practice is lifted was reasonable. [As Amended]

## 11. Attorneys - Discipline - Trial Assistants

Limitations in disciplinary order that clarify existing rules applicable to trial assistants were proper. NMI Const., Art. IV, §8; P.L. 1-5, §3.

# 12. Attorneys - Trial Assistants - Limitations

Limitation in disciplinary order that purported to restrict trial assistant to trial work and prevent him from conducting a general law practice was invalid under existing Rules of Criminal Procedure. NMI Const., Art. IV, §8; Trust Territory Rule Crim. Pro. 3(f).

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2	Elatrict Court
3	APR 02 1984
4	IN THE DISTRICT COURT For The Northern Pariana Islands
5	FOR THE (Decuty Cipre)
6	NORTHERN MARIANA ISLANDS
7	APPELLATE DIVISION
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9	IN RE THE MATTER OF ANTONIO P. ) DISCIPLINARY CASE NO. 1-82 VILLANUEVA, ) DCA CASE NO. 83-9001
10	Trial Assistant/Appellant. ) <u>OPINION</u>
11 12	,
13	Appeal from the Disciplinary Panel of the
14	Commonwealth Trial Court for the Northern Mariana Islands Argued and Submitted January 20, 1984
15	Judges Hefner, Soll, and Moore, Presiding
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17	BEFORE: Judges LAURETA, KEEP and LANE.*
18	LANE, Judge Designate:
19	The appellant has appealed from a three-judge Disci-
20	plinary Panel Order of the Trial Court of the Commonwealth of the
21	Northern Mariana Islands.
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24	*Honorable Alan L. Lane, Associate Justice, Supreme Court of the
25	*Honorable Alan L. Lane, Associate Justice, Supreme Court of the Republic of Palau, designated by the Chief Judge of the Common- wealth Trial Court in accordance with P.L. 1-5 and sitting on this paped in completence with the requirements of 68 USC \$166(b)
26	this panel in compliance with the requirements of 48 USC §1694b.
AO 72 (Rev 8/82)	
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1	The Disciplinary Panel ordered among other things not
2	subject to this appeal, that appellant be suspended from practic-
3	ing law as a trial assistant in the Commonwealth for his con-
4	viction of 28 U.S.C., 952(a) and 960. The period of suspension
5	follows the term of probation imposed in Criminal Case No. 83-
6	00022, District Court, Guam. In addition to the foregoing, the
7	Panel ordered that appellant take and pass the Frofessional
8	Responsibility Examination administered by the Commonwealth Trial
9	Court before he may again commence to practice as a trial
10	assistant. The Panel also placed certain restrictions on ap-
11	pellant's practice of law after his term of suspension is lifted.
12	Appellant's conduct leading to the disciplinary action taken by
13	the Panel is not in issue.
14	The issues presented for review are:
15	l. Does the District Court of Appeals for the
16	Northern Mariana Islands have jurisdiction in this matter?
17	2. Did the Disciplinary Panel err by placing re-
18	strictions on appellant's practice when and if he practices law
19	as a trial assistant after his suspension is lifted?
20	3. Was appellant's term of suspension an abuse of
21	discretion?
22	4. Was the requirement that appellant take and pass
23	the Professional Responsibility Examination before his suspension
24	will be lifted an abuse of discretion?
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AO 72 (Rev.8/82)

#### APPELLATE JURISDICTION

2 Appellee challenges the jurisdiction of this Court to 3 hear an appeal from the Disciplinary Panel Order of the Common-4 wealth Trial Court. It is argued that the Disciplinary Panel's 5 action is an administrative proceeding, the results of which must 6 be confirmed by the Commonwealth Trial Court before the issue may 7 be appealed to this Court. Appellee contends that appellant must 8 first file such an action with the Trial Court before any deci-9 sion may be considered final for purposes of appellate review. 10 We disagree.

11 Disciplinary matters for attorneys and trial assistants ΓIJ 12 are unique proceedings within the authority and control of the 13 The courts have the inherent power to regulate the courts. 14 practice of law, whether in or out of court. The question 15 presented here is whether or not the Disciplinary Panel's Order 16 is considered a final judgment of the Trial Court which may be 17 appealed to this Court.

18 The Commonwealth Trial Court, pursuant to Public Law 121 19 No. 1-5 and the Constitution, along with its inherent power, has prescribed Rules of Court for disciplinary cases. 20 These Rules create a procedure whereby the matter of discipline is heard and 21 decided by a panel of three Commonwealth Trial Court judges. 22 The Rules do not limit the Panel's scope of inquiry or power of en-23 forcement. 24

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AO 72 (Rev.8/82) Since the Rules confer the matter of discipline on a panel of three trial court level judges, all decisions reached are to be considered final for purposes of appellate review. A further proceeding at the trial level would be redundant and of no consequence as jury trials are not afforded in such cases. Therefore, this Court has jurisdiction.

#### LIMITATIONS OF PRACTICE

9 [3] The issue involving the purported "rule making" by the 10 Disciplinary Panel is misleading in that the limitations imposed 11 pertain only to appellant, although there is language in the 12 Panel's Order to the effect that all trial assistants are on 13 notice that the Panel is defining the guidelines. limitations. 14 and restrictions on trial assistants. It is clear that the Panel has imposed a condition of readmission on appellant by restrict-15 16 ing his practice of law. This proviso cannot be construed as 17 "rule making" for all trial assistants.

18 In its Order, the Panel refers to existing Rules and 19 Orders of the Trust Territory High Court with respect to trial assistants and their limitations. The problem surfaces when the 20 Panel attempts to redefine or expand upon these already existing 21 22 Rules. Interpreting the Rules on a case by case basis is one 23 thing, but to read additional limitations into those Rules based on modern local needs is another. The limitation of practice 24 cannot be considered a sanction as there is no definite term, nor 25 can it be probation, for the same reason. 26

AO 72 (Rev. 8/82)

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1 We are of the opinion that the Disciplinary Panel, in 2 its Order, attempted to enhance and expand the limitations placed Ì on trial assistants by the Trust Territory High Court. Article 4 IV, § 8 of the Commonwealth Constitution provides: 5 "Section 8: Rule-Making Power. The judiciary of the Commonwealth may pro-6 pose rules governing civil and criminal procedure, judicial ethics, admission 7 to and governance of the bar of the Commonwealth, and other matters of judi-8 cial administration. A proposed rule shall be submitted promptly to the legis-9 lature and shall become effective sixty days after submission unless disapproved 10 by a majority of the members of either house of the legislature. Until rules are 11 established under this section, the rules of the High Court of the Trust Territory 12 of the Pacific Islands shall apply in the Commonwealth courts." 13 14 To attempt an expansion of the existing Rules by Panel Order 15 would circumvent the constitutional mandate of Article IV, § 8. 16 If it is necessary to further restrict and redefine the 17 role of the trial assistant in the Commonwealth, the Trial Court 18 should enact its own Rules of Admission and Practice in ac-19 cordance with the Constitution and the laws of the Commonwealth. 20 With respect to the instant case, the restrictions of practice 21 placed on appellant after his suspension is lifted should be 22 stricken from the Order. 23 111 111 24 25 111 26 111 AO 72 (Rev.8'82)

#### TERM OF SUSPENSION

2 Appellant's term of suspension from practicing law as a [45] 3 trial assistant is related to the term of probation ordered in 4 his criminal case. The Disciplinary Panel has broad discretion 5 in prescribing terms of discipline as it is in the public inter-6 est to insure that attorneys and trial assistants meet the high-7 est possible standards in the legal profession. The Court, to 8 control the conduct of its own affairs and to maintain its own 9 dignity, has the inherent power, independent of statute, to deal 10 with any alleged misconduct in a just and equitable manner. 11 Finch v. State Bar of California (1981) 28 Cal.3d 659, 170 Cal. 12 Rptr. 629, 621 P.2d 253. The purpose of such discipline is to 13 protect the public and those charged with the administration of 14 justice, rather than punish the attorney or trial assistant.

15 1671 The four year suspension, or suspension for the term of 16 probation in the criminal case, appears to have a rational con-17 nection to the public interest in preventing an officer of the 18 court from practicing law when his integrity has been tainted 19 while on criminal probation. Of course, the Panel in its Order expressly left open the possibility of modification of the term 20 21 of suspension at a future time. We, therefore, hold that the term of appellant's suspension is reasonable, 22

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AO 72 (Rev.8/82)

PLOTESSIONAL	RESPONSIBILITY	EXAMINATION

[01-8] The last question presented involves the requirement that appellant take and pass the Professional Responsibility Examination before his suspension is lifted. This issue may be answered by similar rationale as stated in the previous section entitled Term of Suspension. Professional responsibility is the basic requirement for all attorneys, trial assistants, and other officers and administrators of the court in order to maintain the highest possible level of morality in the judicial system. It is recognized, as appellant points out, that he is not educated as a lawyer. He is, however, held to the same ethical standards as a lawyer. In order to maintain this level of ethical competence, a trial assistant must be familiar with and comply with those standards. Therefore, in view of the present violation of this ethical responsibility, it is reasonable to require that appellant pass the Professional Responsibility Examination before his suspension is lifted.

AO 72

### CONCLUSION

The Order of the Disciplinary Panel is modified by striking the restrictions of practice imposed on appellant after his term of suspension is satisfied. With this modification included, the Order of the Disciplinary Panel is affirmed.

ALFRED LAURETA District Judge

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District Judge

ALAN L. LANE Judge Designate

AO 72 (Rev.8/82)

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2	For The Nonthern Maricha Islands	
3	(By (Bery Der.))	
4	IN THE DISTRICT COURT FOR THE	
5	NORTHERN MARIANA ISLANDS	
6	APPELLATE DIVISION	
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8	IN RE THE MATTER OF ANTONIO ) DISCIPLINARY CASE NO. 1-82 P. VILLANUEVA, ) DCA CASE NO. 83-9001	
10	Trial Assistant/Appellant.) DECISION RE MOTION FOR REHEARING	
11		
12	BEFORE: Judges LAURETA, KEEP and LANE*	
13	PER CURIAM:	
14	We have considered the petition for rehearing and amend	
15	our opinion of April 2, 1983 as follows:	
16	Page 1, line 11: Insert the word "AMENDED" before the	
17	word "OPINION".	
18	Page 4: Delete the entire paragraph that commences with	
19	the word "Since" on line 1 and ends with the word "jurisdiction."	
20	on line 6, and substitute therefore the following paragraph:	
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22		
23	*Honorable Alan L. Lane, Associate Justice, Supreme Court of the	
25	Republic of Palau, designated by the Chief Judge of the Common- wealth Trial Court in accordance with P.L. 1-5 and sitting on	
26	this panel in compliance with the requirements of 48 U.S.C. § 1694b.	
AO 72 (Rev.8/82)		

1 "The statute regarding the appellate jurisdiction of 2 this Court (1 CMC § 3301) provides for jurisdiction of "all 3 appeals from final judgments, final orders, and final decrees in 4 criminal cases and civil cases and proceedings." On its face, 5 the statute appears to be drafted as broadly as possible. There 6 are no exceptions and no other appellate tribunals. To adopt 7 appellees argument would be to deprive a class of persons such as 8 appellant review of what is readily termed a "proceeding" of the 9 trial court. There is no indication of such intent in the 10 statute nor in the structure of the Commonwealth judicial system. 11 Accordingly, this Court has proper jurisdiction to hear this appeal." 12

Page 5: Delete the entire paragraph that commences with
the word "If" on line 16 and ends with the word "order." on line
and substitute therefore the following six paragraphs:

16 [J] "In its Order, the Disciplinary Panel attempts to
17 define the existing rules applicable to the legal practice of
18 trial assistants in several respects. We address each in turn in
19 order to ensure the clarity of our opinion.

"First, the Panel orders that trial assistants are to
be bound by the rules and regulations in existence at the time of
the adoption of P.L. 1-5. There trial assistants are so bound is
clearly indicated in Art. IV, § 8 of the Constitution and in
Section 3 of P.L. 1-5 and is beyond dispute. The order is
nothing more than a reiteration of existing rules.

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"Second, the Order requires that trial assistants use

AD 72

1 galy the designation "Trial Assistant" in the performance of 2 their functions. Under Rule 3(f) of the Rules of Criminal Proce-3 dure (reprinted in Trust Territory Code (1965 revision) at pre-4 face pages 73-74) "a person ... listed as a trial assistant shall 6 not represent to anyone that he is a lawyer or an attorney-at-6 law, but may state that he is a duly authorized trial assistant." 7 This limitation is applicable in civil proceedings as well under 8 Rule 23 of the Rules of Civil Procedure (reprinted in Trust 9 Territory Code (1965 revision) at preface pages 63-64). These 10 rules of the High Court apply in the Commonwealth by way of the 11 transitional provisions of Art. IV, § 8. Accordingly, the 12 identical limitation reasserted in the Order is proper.

13 "Third, the Panel limits the criminal practice of trial 14 assistants to misdemeanors. Under "Amendment No. 1 to Standards of Admission for Attorneys to Practice in the Courts of the Trust 15 16 Territory", "no Trial Assistants will be permitted to prosecute or defend any criminal case in the Trial Division or Appellate 17 Division of the High Court." This order limited the practice, 18 then, of trial assistants to the Trust Territory district courts. 19 By an Order of the High Court dated May 5, 1978 all felony cases 20 were to be filed in the High Court. Thus, the practice of trial 21 assistants was effectively limited to misdemeanor cases. The 22 Panel's Order is a proper clarification. 23

24 [12] "Fourth, the Order allows a judge to remove a trial
25 assistant from further participation in a case if it appears to
26 the judge that a party cannot be adequately represented by a

AQ 72 (Rev.8/82)

1	trial assistant. Again, this limitation originally appeared in
2	"Amendment No. 1", supra, and is appropriate.
3	"Lastly, the Panel's Order includes the following:
4	The very term "Trial Assistant" indicates that the services to be
5	performed are trial oriented and he
6	may not conduct a general law practice such as the drafting of wills, deeds, contracts, or the
7	giving of legal advice.
8	However, the only existing rules state:
9	f. Trial Assistants. Any person who is not a lawyer and who
10	wishes to act as counsel in more
11	than one or two cases a year in the Trust Territory Courts, shall be examined personally by the Trial
12	Division of the High Court, which
13	shall make such investigations as it deems necessary of the person's
14	character and training. If he is found suitable, the Trial Division
15	of the High Court shall order him listed in the Clerk of Courts'
16	office in the District in which he wishes to act principally as a
17	wishes to act principally as a "trial assistant," upon his signing and swearing to the oath set forth
18	in the preceding paragraph. His signed oath, with the certificate
19	of the official administering the oath, shall be filed in the Clerk's
20	office where the trial assistant is listed, and no court having know-
21	ledge of this shall require him to take the oath over again except for
22	special cause. A person so listed as a trial adsistant shall not
23	represent to anyone that he is a lawyer or an attorny-at-law, but
24	may state that he is a duly autho- rized trial assistant.
25	Rules of Criminal Procedure 3(f), supra. We are of the opinion
. 26	that while the limitation sought to be imposed may well be a
AQ 72 (Rev.8/82)	

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necessary and desirable regulation of the practice of trial assistants, it is nonetheless a limitation which exceeds any reasonable construction of existing rules. Thus, to be of legal effect, it must be promulgated in accordance with Art. IV, § 8 of the Constitution. Accordingly, this restriction on appellant is lifted and the general limitation is stricken from the Order."

Page 8: Delete the paragraph commencing with the word "The" and ending with the word "affirmed." and substitute therefore the following paragraph:

"The Order of the Disciplinary Panel is affirmed with the modification set forth in this opinion."

JUDGE ALFRED LAURETA

JUDGE JUDITH N. KEEP

JUDGE ALAN L. LANE

AO 72 (Rev 8/82)