

Not for Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN THE MATTER OF THE MOTION TO)	
PERMIT AND AUTHORIZE MICHAEL)	S. Ct. BA No. 2009-0220
MOTYLINSKI, ESQUIRE AS AN)	
ASSISTANT ATTORNEY GENERAL TO)	
APPEAR IN THE SUPREME COURT OF)	
THE VIRGIN ISLANDS AND ALL)	
INFERIOR COURTS IN THE)	
PERFORMANCE OF HIS OFFICIAL)	
DUTIES.)	

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IN THE MATTER OF THE APPLICATION)	S. Ct. BA. No. 2012-0106
OF:)	Re: Super. Ct. Civ. No. 588/2010 (STT)
)	
MICHAEL MOTYLINSKI)	
)	
FOR PRO HAC VICE ADMISSION TO THE)	
VIRGIN ISLANDS BAR.)	
)	
)	
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Considered and Filed: March 14, 2013

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

ORDER OF THE COURT

PER CURIAM.

THESE MATTERS are before the Court pursuant to responses to this Court’s February 12, 2013 Order filed by Michael Motylinski, Esq., Adam Gusman, Esq., and Disciplinary Counsel. In its February 12, 2013 Order, this Court noted that a December 7, 2012 Order entered by the Supreme Court of Ohio had been brought to the attention of this Court, which

suspended Motylinski from the practice of law in Ohio for six months for violating Rules 1.4(a)(4), 1.4(b), and 5.5(a) of the Ohio Rules of Professional Conduct, but stayed execution of that sanction contingent on him paying restitution and court costs within 30 days of the date of its decision (hereafter the “December 7, 2012 Suspension Order”). The underlying charges stem from misconduct that the Ohio Supreme Court found occurred between August 2009 and February 2010, while Motylinski was a specially admitted attorney in the Virgin Islands. For the reasons that follow, we refer this matter to the Ethics and Grievance Committee to issue recommendations as to (1) whether this Court should impose identical reciprocal discipline on Motylinski for the ethical misconduct found by the Ohio Supreme Court, and (2) whether Motylinski or Gusman should be disciplined for the purported misconduct that Disciplinary Counsel alleges they have committed.

This Court, in an October 19, 2009 Order entered in S.Ct. BA No. 2009-0220, granted the motion of Douglas L. Dick, Esq., to specially admit Motylinski as a member of the Virgin Islands Bar pursuant to Supreme Court Rule 202(a) so that he may serve as an Assistant Attorney General with the Virgin Islands Department of Justice. Motylinski’s special admission became effective on October 22, 2009, when the oath of office was administered to him. This Court, in a February 14, 2012 Order entered in that matter, formally recognized that Motylinski’s status as a specially admitted attorney terminated when the Department of Justice notified this Court that he had resigned his position as an Assistant Attorney General effective May 19, 2011. However, pursuant to Supreme Court Rule 202(c), the special admission automatically terminated on the date Motylinski ceased his employment with the Department of Justice.

On May 24, 2012, Gusman, a regular member of the Virgin Islands Bar, filed a motion to admit Motylinski *pro hac vice* in *Sorber v. Glacial Energy VI, LLC, et al.*, Super. Ct. Civ. No.

588/2010 (STT), which this Court docketed as S.Ct. BA No. 2012-0106. Both the motion—completed by Gusman—and the accompanying questionnaire—completed by Motylinski and filed by Gusman—represent that Motylinski has never been disbarred or suspended from the practice of law in any jurisdiction. This Court, in an August 16, 2012 Order, granted the motion, but stated that Motylinski’s *pro hac vice* admission would not be effective until he executed the oath of office. However, Motylinski never executed the oath of office, and thus his *pro hac vice* admission never became effective.

In its February 12, 2013 Order, this Court observed that specially admitted members of the Virgin Islands Bar are subject to this Court’s discipline and contempt jurisdiction regardless of whether the disciplinary action is taken before or after termination of the special admission. *See* V.I.S.CT.R. 201(a)(4); 207.1.2(b)(1). The Court further noted that although the December 7, 2012 Suspension Order was issued after Motylinski’s special admission terminated, the underlying misconduct occurred while he was specially admitted. Therefore, Motylinski, having been “subjected to public discipline by . . . a court of any state, territory, commonwealth or possession of the United States,” possessed an obligation to “promptly inform the clerk of this court of such action,” for Supreme Court Rule 203(c)(2) requires that this Court, after receiving a certified copy of the order imposing public discipline, initiate an inquiry as to whether reciprocal discipline should be imposed by this Court.

This Court also observed in its February 12, 2013 Order that *pro hac vice* applicants, attorneys admitted *pro hac vice*, and the regularly admitted attorneys who sponsor *pro hac vice* applications are also subject to this Court’s discipline and contempt jurisdiction. *See* V.I.S.CT.R. 201(a)(4); 207.1.2(b)(1). Both Motylinski—as an applicant for *pro hac vice* admission—and Gusman—as an attorney moving for Motylinski’s *pro hac vice* admission—were required,

pursuant to Model Rule of Professional Conduct 8.1(b), to inform this Court that the representation in the initial *pro hac vice* application and motion that Motylinski was never suspended or disbarred, while accurate at the time those documents were filed, was no longer accurate. But although nearly two months have passed since the Ohio Supreme Court issued the December 7, 2012 Suspension Order, neither Gusman nor Motylinski ever moved to amend either document, or otherwise notified this Court of the Ohio Supreme Court's decision. Consequently, this Court vacated the August 16, 2012 Order entered in S.Ct. BA No. 2012-0106 and required Gusman and Motylinski to show cause as to why *pro hac vice* admission should not be denied and why this matter should not be referred for additional proceedings before the Ethics and Grievance Committee. Additionally, this Court permitted Disciplinary Counsel to provide her position on the matter.

In his response, Gusman argues that he never received actual knowledge of the December 7, 2012 Suspension Order, and therefore committed no misconduct by failing to disclose it to this Court. While Motylinski—who identifies himself as “corporate counsel” for Glacial Energy—acknowledges that he was aware of the Ohio Supreme Court's decision, he argues that this Court lacks jurisdiction over him—notwithstanding his status as a *pro hac vice* applicant and the fact that the misconduct found by the Ohio Supreme Court occurred while he was a specially admitted attorney—and therefore cannot impose any discipline, reciprocal or otherwise. The sole legal authority Motylinski cites for this proposition is Supreme Court Rule 207.1.2(b)(1), which defines the term “Respondent” for purposes of proceedings before the Ethics and Grievance Committee. In the alternative, Motylinski argues that he did not fail to report the December 7, 2012 Suspension Order to this Court in a timely manner because, although more than two months had passed since its issuance, the deadline to pay costs had not yet lapsed.

In her response, Disciplinary Counsel argues that this Court possesses jurisdiction over Motylinski, that it should impose reciprocal discipline, and alleges that Motylinski (1) committed additional misconduct by engaging in the private practice of law while employed as an Assistant Attorney General and not disclosing the December 7, 2012 Suspension Order in a timely manner; and (2) is presently engaged in the unauthorized practice of law by serving as “corporate counsel” to Glacial Energy without being a member of the Virgin Islands Bar. While Disciplinary Counsel does not explicitly take a position as to whether Gusman may have committed misconduct by failing to report the December 7, 2012 Suspension Order, she implies that Gusman may have committed misconduct by knowingly assisting Motylinski in acting as Glacial Energy’s “corporate counsel.”

This Court agrees with Disciplinary Counsel that it possesses jurisdiction over Motylinski. While Motylinski relies exclusively on the definition of “Respondent” in Rule 207.1.2(b)(1), he ignores that Rule 207 is intended to limit the powers *of the Ethics and Grievance Committee*, not the jurisdiction of this Court. It should go without saying that, by seeking *pro hac vice* admission from this Court, Motylinski voluntarily subjected himself to this Court’s jurisdiction. *See* V.I.S.CT.R. 201(a)(4) (stating that applicants “shall be subject to the disciplinary and contempt jurisdiction of this Court”). More importantly, Rule 207.1.2(b)(1) itself provides that “[a] Respondent under these Rules may be . . . any formerly admitted attorney with respect to acts committed prior to resignation . . . or with respect to acts subsequent thereto which amount to the practice of law.” It is undisputed that the misconduct found by the Ohio Supreme Court, as well as Disciplinary Counsel’s allegation that he exceeded the scope of his special admission and violated Virgin Islands law by engaging in the private practice of law, occurred before Motylinski resigned his status as a specially admitted attorney. Moreover,

Disciplinary Counsel's allegation that Motylinski is presently engaging in the unauthorized practice of law, if substantiated, would constitute "acts subsequent thereto which amount to the practice of law" within the intendment of Rule 207.1.2(b)(1). Consequently, this Court possesses jurisdiction over Motylinski with respect to all of these matters.

Ordinarily, when a current or former attorney is publicly disciplined by another court, this Court will determine whether to impose reciprocal discipline without the involvement of the Ethics and Grievance Committee. *See* V.I.S.CT.R. 203(c). However, as Disciplinary Counsel notes in her response, the factual findings of the Ohio Supreme Court, if adopted by this Court, may establish additional ethical violations that were not the subject of the Ohio Supreme Court's inquiry. Moreover, Disciplinary Counsel has identified an additional issue—whether Motylinski, facilitated by Gusman, is presently engaged in the unauthorized practice of law in the Virgin Islands—that was not even contemplated by this Court's February 12, 2013 Order. Importantly, pursuant to this Court's decision in *In re Doe*, S.Ct. Civ. No. 2012-0134, 2013 WL 143457, at *2 (V.I. Jan. 10, 2013), Disciplinary Counsel is permitted to *sua sponte* initiate an investigation into Motylinski and Gusman without a formal referral from this Court.

Under these unusual circumstances—in which the issues of whether to impose reciprocal discipline and grant or deny *pro hac vice* admission are intertwined with accusations of misconduct that Disciplinary Counsel desires to investigate—this Court concludes that this entire matter would benefit from a referral to the Ethics and Grievance Committee, for the limited purpose of holding a hearing and issuing recommendations as to (1) whether this Court should adopt the findings of the Ohio Supreme Court and impose reciprocal discipline as to Motylinski pursuant to Supreme Court Rule 203(c); and (2) whether Motylinski or Gusman have committed any of the additional ethical violations alleged by Disciplinary Counsel. While the Committee

shall follow the procedure set forth in Rule 207 as closely as is practical, we emphasize, since these issues came to this Court's attention in connection with proceedings arising under Supreme Court Rules 201(a) and 203(c)—matters in which the Committee typically has no involvement—that the Committee's recommendations shall be non-binding, and that this Court shall make the ultimate decision with regard to (1) whether the motion for *pro hac vice* admission should be granted or denied, and (2) what sanctions, if any, should be imposed. Accordingly, the premises having been considered, it is hereby

ORDERED that this matter is **HEREBY REFERRED** to the Ethics and Grievance Committee so that it may, **on an expedited basis**, conduct a hearing and issue recommendations to this Court as to (1) whether this Court should adopt the findings of the Ohio Supreme Court and impose reciprocal discipline as to Michael Motylinski, Esq., pursuant to Supreme Court Rule 203(c); and (2) whether Motylinski or Adam Gusman, Esq., have committed any of the additional ethical violations that Disciplinary Counsel has alleged. It is further

ORDERED that this matter **SHALL BE HELD IN ABEYANCE** and a final decision by this Court **DEFERRED** pending the issuance of recommendations by the Ethics and Grievance Committee; and it is further

ORDERED that, **no later than two (2) days after issuance**, the Ethics and Grievance Committee, through the Chair of its St. Thomas Subcommittee, **SHALL FILE** the recommendations with this Court; and it is further

ORDERED that copies of this Order be served on the appropriate parties.

SO ORDERED this 14th day of March, 2013.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court