Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:	)	**S. Ct. Civ. No. 2014-0024**
	)	
KENTH W. ROGERS,	)	
Petitioner.	)	
	)	

On Petition for Writ of Mandamus
Considered and Filed: May 27, 2014

BEFORE: **RHYS S. HODGE**, Chief Justice; **IVE ARLINGTON SWAN**, Associate Justice; and **ROBERT A. MOLLOY**, Designated Justice.[1]

APPEARANCES:

Kenth W. Rogers
St. Thomas, U.S.V.I.
Pro se.

OPINION OF THE COURT

PER CURIAM.

On April 14, 2014, Kenth W. Rogers, a disbarred attorney, filed a petition with this Court requesting that we issue a writ of mandamus compelling the Office of Disciplinary Counsel and the Virgin Islands Bar Association to provide him with various documents. For the reasons that follow, we deny the petition.

I. BACKGROUND

On October 26, 2012, this Court suspended Rogers from the practice of law for numerous instances of ethical misconduct stemming from his representation of Petronella Semper without her consent. *See In re Suspension of Rogers*, S. Ct. Civ. No. 2012-0059, 2012 V.I. Supreme LEXIS 79 (V.I. Oct. 26, 2012) (unpublished). On December 23, 2012, Rogers directed a

[1] Associate Justice Maria M. Cabret is recused from this matter. The Honorable Robert A. Molloy, a judge of the Superior Court of the Virgin Islands, has been designated in her place pursuant to title 4, section 24(a) of the Virgin Islands Code.

document to the Office of Disciplinary Counsel, captioned as a "Subpoena Duces Tecum," requesting that he receive "all records relating to requests for [his] suspension . . . for failure to pay annual bar dues between the years 1995-2000." It does not appear that the Office of Disciplinary Counsel responded to this document.

Approximately a year later, this Court proceeded to disbar Rogers as a sanction for (1) knowingly making false statements of fact about a judge; (2) knowingly violating multiple court orders; and (3) engaging in the unauthorized practice of law while suspended for failure to comply with mandatory continuing legal education requirements. *See In re Disbarment of Rogers*, S. Ct. Civ. No. 2013-0079, __ V.I. __, 2013 V.I. Supreme LEXIS 95 (V.I. Dec. 12, 2013). After this Court issued its final judgment, Rogers again mailed numerous documents to the Office of Disciplinary Counsel. In a document captioned "Subpoena Duces Tecum" and dated January 8, 2014, Rogers, citing Supreme Court Rule 207.2.8, reiterated his request for copies of all "bar records, in particular all disciplinary proceedings from 1995 to 2002, for non-payment of annual bar dues." In another document, dated January 13, 2014, and bearing no caption, Rogers requested "copies of the manner of service and any acknowledgement of receipt by Kenth Rogers or others acting for him of the Order dated September 12, 2011, in Walters v. Walters, S. Ct. Civ. No. 2010-0040." In a third document, dated January 13, 2014, also captioned as a "Subpoena Duces Tecum," Rogers demanded "that the Virgin Islands Bar Association produce a copy of the notice provided to [him] demanding the completion of 24 hours of continuing legal education within 90 days."

In letters dated January 13, 2014, and January 15, 2014, the Office of Disciplinary Counsel acknowledged receipt of Roger's December 23, 2012, January 8, 2014, and January 13, 2014 correspondence. In those letters, Disciplinary Counsel informed Rogers that she did not

consider Rogers's self-made subpoenas valid or enforceable since they were not issued by an attorney or the clerk of any court, and in any event were not related to any pending matter in which he was entitled to conduct discovery. Rogers, by letter dated January 16, 2014, responded that he objected to Disciplinary Counsel's decision, but failed to respond to the particular points raised in the January 13, 2014 and January 15, 2014 letters.

Afterwards, Rogers began to direct numerous documents to the Virgin Islands Bar Association, all captioned as a "Freedom of Information Request." In the first such document, dated March 6, 2014, Rogers requested copies of his attendance record at a conference held at the District Court of the Virgin Islands in 2010 that he purportedly attended, copies of the dates the Virgin Islands Bar Association received notice of his attendance from the District Court, copies of the method used to attain proof of attendance for all other attendees, and "all records of court proceedings against [him] for failure to pay annual bar fees between 1999 and 2003." On April 1, 2014, Rogers submitted another "Freedom of Information Request," to the Virgin Islands Bar Association, this time requesting copies of "all records pertaining to the Notice of Failure to Complete Mandatory Continuing Legal Education mailed to [him]," as well as all records relating to the Semper grievance. In both documents, Rogers maintained that production of these materials was required by "the Virgin Islands Freedom of Information Act (FOIA) 3 V.I.C. [§] 882 and the [federal] Electronic Freedom of Information Act Amendments of 1996." It does not appear that the Virgin Islands Bar Association responded to either document.

Rogers filed a petition for writ of mandamus with this Court on April 14, 2014. In his petition, Rogers states that he intends to file a petition for writ of certiorari with the Supreme Court of the United States challenging this Court's disbarment decision, and that he needs the requested documents to prepare his certiorari petition. Consequently, Rogers requests that this

Court direct both Disciplinary Counsel and the Bar Association to provide him with copies of those documents.[2]

II. DISCUSSION

This Court possesses jurisdiction over original proceedings for extraordinary writs, such as a writ of mandamus. *See* 4 V.I.C. § 32(b). To obtain a writ of mandamus, "a petitioner must establish that it has no other adequate means to attain the desired relief and that its right to the writ is clear and indisputable." *In re People of the V.I.*, 51 V.I. 374, 382 (V.I. 2009) (citing *In re LeBlanc*, 49 V.I. 508, 517 (V.I. 2008)). However, "even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *In re Joseph*, S. Ct. Civ. No. 2013-0015, 2013 V.I. Supreme LEXIS 14, *8 (V.I. Apr. 5, 2013) (unpublished) (quoting *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004)).[3]

We conclude that Rogers has failed to meet his burden of establishing any of these three factors. First, we note that several of the materials requested pertain to transcripts and other documents that were filed with either this Court or the Superior Court in numerous disciplinary proceedings and other matters in which Rogers was the respondent. Because these materials were

[2] In his petition, Rogers also requests that this Court vacate its disbarment order. This Court's mandamus jurisdiction, however, cannot be invoked to relitigate issues that were conclusively resolved in a prior proceeding. *See In re People of the V.I.*, 51 V.I. 374, 382 (V.I. 2009) (holding mandamus relief only available if there is "no other adequate means to attain the desired relief")*; see also In re West*, No. 04-5080, 2004 WL 1167408, at *1 (D.C. Cir. May 25, 2004) (unpublished) (denying mandamus when "[t]he petition is largely an attempt to relitigate issues that were decided against petitioner in his direct criminal appeal"); *State v. Tompkins*, 663 N.E.2d 639, 641 (Ohio 1996) ("Where a plain and adequate remedy at law has been unsuccessfully invoked, the extraordinary writ of mandamus will not lie either to relitigate the same question or as a substitute for appeal."). Accordingly, we limit our analysis solely to Rogers's demand for the Office of Disciplinary Counsel and the Virgin Islands Bar Association to provide him with the requested documents.

[3] Pursuant to this Court's rules, "[i]f the panel of the Supreme Court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents . . . ." V.I.S.CT.R. 13(b). Because we find Rogers's petition to be wholly without merit, we deny the petition without requiring an answer from Disciplinary Counsel or the Virgin Islands Bar Association.

filed in either this Court or the Superior Court, they are public records which may be obtained by any individual by filing a request with the Clerk of the Supreme Court or the Clerk of the Superior Court, as the case may be, and paying any required copying or record retrieval fees. *See* 3 V.I.C. §§ 881-82. Consequently, even if Disciplinary Counsel and the Virgin Islands Bar Association have these documents in their possession, the availability of obtaining the materials directly from the pertinent courts precludes mandamus relief.

As to the materials that were not filed with a court, we conclude that Rogers also failed to establish that his right to production of those documents is clear and indisputable. We agree with Rogers that, since both the Office of Disciplinary Counsel and the Virgin Islands Bar Association serve as arms of this Court, they possess a special obligation to comply with the law. *See In re Petition to Amend Bylaws*, S. Ct. Misc. No. 2013-0035, __ V.I. __, 2013 V.I. Supreme LEXIS 93, at *9 (V.I. Dec. 11, 2013); *In re Attorney Doe*, 58 V.I. 219, 222 (V.I. 2013). Nevertheless, Rogers has provided us with no citation to any legal authority to support his broad discovery requests. As Disciplinary Counsel advised Rogers in her January 13, 2014 and January 15, 2014 letters, Supreme Court Rule 207.2.8—the rule invoked in all the documents captioned "Subpoena Duces Tecum"—is clearly limited solely to cases currently pending before the Ethics and Grievance Committee. Moreover, even with respect to pending matters, Rule 207.2.8 does not authorize a respondent to unilaterally issue a subpoena, but requires the approval of the panel assigned to the matter. V.I.S.CT.R. 207.2.8(a). Therefore, the Office of Disciplinary Counsel was under no obligation to provide Rogers with these materials pursuant to his purported subpoena even if they were within its possession.

Likewise, we conclude that the "Freedom of Information Request" documents directed to the Virgin Islands Bar Association lacked any significance. Although the Virgin Islands Bar

Association is an arm of this Court, it is well established that it is not a government agency. *Bylaws*, 2013 V.I. Supreme LEXIS 93, at *19. Rather, the Virgin Islands Bar Association, like other integrated bar associations, is more akin to a compulsory labor union. *Keller v. State Bar of Cal.*, 496 U.S. 1, 12-13 (1990). Consequently, since the Virgin Islands Bar Association is not a government agency, neither the local nor federal Freedom of Information Acts applies to it. *See Barnard v. Utah State Bar*, 804 P.2d 526, 529-30 (Utah 1991) (integrated state bar was a nongovernmental agency—and exempt from state freedom of information act—when ultimate authority over the legal profession rested with the Supreme Court, and "[t]he Bar's participation in these regulatory functions is as a private organization which aids this Court by rendering advisory services").

Finally, Rogers has also failed to establish that a writ of mandamus is appropriate under the circumstances. Rogers states in his mandamus petition that the requested materials are necessary to prepare a petition for writ of certiorari with the Supreme Court of the United States. To the extent a certiorari petition remains an available option,[4] we note that the vast majority of these materials are wholly irrelevant to the issues adjudicated in our October 26, 2012 and December 12, 2013 Opinions. For instance, it is not clear how any of the Bar Association's records pertaining to Rogers's payment of bar dues between 1995 and 2003 are in any way relevant to the serious ethical misconduct that resulted in Rogers's initial suspension and later disbarment. Moreover, with the exception of a single issue not implicated by Rogers's request, all the matters addressed in the October 26, 2012 and December 12, 2013 Opinions were

[4] Pursuant to United States Supreme Court Rule 13, "a petition for writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . is timely filed when it is filed with the Clerk of this Court within 90 days after entry of judgment." Thus, it appears that the time for Rogers to file a timely certiorari petition in his suspension and disbarment cases may have expired.

resolved on a default basis due to Rogers's failure to participate in the disciplinary proceedings, resulting in this Court accepting all factual allegations against him as true. *See Rogers*, 2013 V.I. Supreme LEXIS 95, at *10-11; *Rogers*, 2012 V.I. Supreme LEXIS 79, at *8-10. To allow Rogers, through a mandamus petition filed long after the underlying disciplinary cases have closed, to obtain discovery that he could have obtained by simply participating in those proceedings would effectively do away with this Court's waiver rules and undercut the finality of those decisions. In addition, doing so would be wholly inconsistent with the well-established common law view that "mandamus is applied prospectively only; it will not be granted to undo an act already done." *In re Commonwealth*, 677 S.E.2d 236, 239 (Va. 2009) (citing cases). Unquestionably, condoning such a practice would not "protect the public and the administration of justice from lawyers," like Rogers, "who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to the clients, the public, the legal system, and the legal profession." *V.I. Bar v. Brusch*, 49 V.I. 409, 419 (V.I. 2008) (quoting STANDARDS FOR IMPOSING LAWYER SANCTIONS § III.A., Std. 1.1).

III. CONCLUSION

For the foregoing reasons, we deny the petition for writ of a mandamus.

Dated this 27th day of May, 2014.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court