Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

RICARDO MITCHELL, Appellant/Petitioner, v. **RICK T. MULLGRAV, DIRECTOR OF THE BUREAU OF CORRECTIONS,**[1] Appellee/Respondent.	**S. Ct. Civ. No. 2015-0038** Re: Super. Ct. Civ. No. 120/2014 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Robert A. Molloy

Considered and Filed: November 4, 2015

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

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court pursuant to responses to this Court's August 18, 2015 show cause order filed by J.M. Raffauf, a Georgia attorney seeking *pro hac vice* admission to the Virgin Islands Bar, as well as two members of the Virgin Islands Bar, Eszart A. Wynter, Sr., Esq., and Yohana M. Manning, Esq. For the reasons that follow, we deny the *pro hac vice* motion, and refer Raffauf and Wynter to the appropriate authorities for further investigation into, and, if necessary, prosecution of their apparent unauthorized practice of law.

[1] Although this action was originally brought against Julius Wilson as the Director of the Virgin Islands Bureau of Corrections, Wilson is no longer in office. Accordingly, he was automatically substituted with his successor in office pursuant to Supreme Court Rule 34(c).

I. BACKGROUND

On May 5, 2015, Ricardo Mitchell, represented by Manning as his retained counsel, filed a notice of appeal with this Court, seeking review of an April 21, 2015 Superior Court opinion and order denying his petition for writ of habeas corpus. The Clerk of this Court, in a May 20, 2015 scheduling order, set June 29, 2015, as the deadline for Mitchell to file his brief and the Joint Appendix. Five days before that deadline, Manning sought a 30-day extension of time due to "vacation as well as attending to other personal family business with limited access to the internet." (Ext. Mot. 1.) The Clerk, in a June 25, 2015 order, granted the motion, and extended the deadline to July 29, 2015. However, on July 26, 2015, Manning requested an additional extension of time because he wished to visit his brother, who had been recently hospitalized in Texas.

Before the Clerk could rule on Manning's motion, Wynter conventionally filed a notice of appearance on behalf of Mitchell on July 28, 2015, as well as a motion for Raffauf's *pro hac vice* admission. Wynter's notice of appearance was not signed by Manning or Mitchell, as is required for notices of substitution or discharge of counsel, *see* V.I.S.CT.R. 36(d)(2)-(3), and neither document referenced Manning's pending motion for an extension of time. Later that same day, Wynter and Raffauf conventionally filed a brief and Joint Appendix, ostensibly on behalf of Mitchell. The cover of both documents identified Raffauf as the "*pro hac vice* Attorney for Appellant/Petitioner," and the brief and Joint Appendix were jointly signed by both Wynter and Raffauf, who again identified himself as "*pro hac vice* Attorney for Appellant/Petitioner." The certificate of service reflects that none of these documents were served on Manning.

The Clerk, apparently unaware that Wynter and Raffauf had conventionally filed a brief and the Joint Appendix, granted Manning's motion for extension of time on July 31, 2015. However, this Court, in an August 18, 2015 order, noted that Raffauf had never been granted *pro*

hac vice admission to appear as counsel in this matter, and that the act of signing and filing a brief, as well as holding himself out as Mitchell's "*pro hac vice* Attorney," may violate the prohibition on unauthorized practice of law. Consequently, this Court ordered Raffauf, Wynter, and Manning to show cause, in writing, as to why their conduct should not constitute the unauthorized practice of law, or aiding and abetting the unauthorized practice of law, and be referred to the Board on Unauthorized Practice of Law, the Office of Disciplinary Counsel, the Virgin Islands Attorney General, or other authorities for further investigation and prosecution. The August 18, 2015 order also held the briefing schedule in this appeal in abeyance pending its disposition of the unauthorized practice issue. Raffauf, Manning, and Wynter filed their responses, respectively, on August 24, 2015, September 1, 2015, and September 3, 2015.

II. DISCUSSION

This Court, as the highest court of the Virgin Islands, possesses both the statutory and inherent authority to regulate the practice of law in the Virgin Islands. 4 V.I.C. § 32(e); *In re Rogers*, 56 V.I. 618, 623 (V.I. 2012). This authority encompasses jurisdiction over admission to the Virgin Islands Bar, *see In re Application of Shea*, 59 V.I. 552, 556 (V.I. 2013), the power to discipline attorneys, *see In re Suspension of Adams*, 58 V.I. 356, 361 (V.I. 2013), and to adjudicate claims that an individual has engaged in the unauthorized practice of law in the Virgin Islands. *See In re Campbell*, 59 V.I. 701, 709 (V.I. 2013). "While this Court may, in appropriate cases, refer such matters to the [Board on Professional Responsibility], the Committee of Bar Examiners, or the [Board on Unauthorized Practice of Law], issues relating to whether *pro hac vice* admission should be granted, denied, or revoked are ordinarily resolved by this Court in the first instance when the underlying facts are undisputed and this Court need only consider a pure question of law." *In re Application of Gonzalez*, 59 V.I. 862, 865 (V.I. 2013).

"This Court has repeatedly emphasized that holding oneself out as a licensed Virgin Islands attorney, or the doing of acts ordinarily done only by a member in good standing of the Virgin Islands Bar Association, constitutes the unauthorized practice of law in the Virgin Islands." *In re Application of Nevins*, 60 V.I. 800, 803 (V.I. 2014) (collecting cases). Significantly, section 443 of title 4 of the Virgin Islands Code, which defines the unauthorized practice of law, prohibits "the preparation and/or filing of pleadings or other legal papers" by an unlicensed attorney, 4 V.I.C. § 443(a), as well as holding oneself out as a member of the Virgin Islands Bar when one is not. V.I.S.CT.R. 211.5.5(b)(2) ("An individual who is not admitted to practice in this jurisdiction shall not . . . hold out to the public or otherwise represent that he or she is admitted to practice law in this jurisdiction."); *see also Nevins*, 60 V.I. at 804; *In re Application of De Luna*, 60 V.I. 683, 686 (V.I. 2014); *In re Motylinski*, 60 V.I. 621, 644-45 (V.I. 2014); *Gonzalez*, 59 V.I. at 865.

In his response, Wynter acknowledges that his conduct was wrongful, and admits that "he failed to follow proper procedures." (Wynter Resp. 2.) In contrast, Raffauf appears to believe that his conduct was authorized, in that he states that he filed an application for *pro hac vice* admission, and submitted a receipt from the Virgin Islands Bar that he purports "acted as verification of membership." (Raffauf Resp. 1.) However, Supreme Court Rule 201 expressly provides that *pro hac vice* admission is not granted as of right, but "on motion" filed with this Court. V.I.S.CT.R. 201(a). Significantly, the motion to admit Raffauf *pro hac vice* specifically invokes Rule 201 and "request[s] that J.M. Raffauf[ ] be admitted in this case *pro hac vice*," (*Pro Hac Vice* Mot. 1), thus indicating that Raffauf and Wynter were aware that Court approval was required to effectuate his admission. Moreover, this Court's rules, as well as its precedents, establish that no member of the Virgin Islands Bar—whether regularly admitted, specially admitted, or admitted *pro hac vice*—"may exercise any of the privileges or responsibilities of that position" until and unless he or she

is administered the Oath or Affirmation of Admission to the Virgin Islands Bar. V.I.S.CT.R. 204(i); *Nevins*, 60 V.I. at 802; *De Luna*, 60 V.I. at 686-87; *Gonzalez*, 59 V.I. at 864-65. Consequently, because Raffauf engaged in the unauthorized practice of law by signing court documents and holding himself out as a "*pro hac vice* Attorney," we deny the motion for *pro hac vice* admission, and refer Raffauf and Wynter to the appropriate authorities for further investigation.[2] *Nevins*, 60 V.I. at 804-05.

We decline, however, to make such a referral with respect to Manning. In his response, Manning states that he was unaware that Raffauf or Wynter had ever been retained, and had continued to work on the brief until he had discovered that Raffauf and Wynter had filed one. In fact, Manning maintains that to this date he has still not spoken with Wynter about this case. That Raffauf and Wynter's responses make no mention of Manning, as well as the fact that the *pro hac vice* motion and other documents did not include him on the certificate of service, corroborates Manning's claim he was unaware of Raffauf's unauthorized practice. Accordingly, the order to show cause shall be discharged as to Manning.

III. CONCLUSION

For the foregoing reasons, we deny the motion to admit Raffauf *pro hac vice* to the Virgin Islands Bar, and refer Raffauf and Wynter to the Office of Disciplinary Counsel, the Board on Professional Responsibility, and the Virgin Islands Attorney General for the purpose of taking any additional action which they may find appropriate. We also lift the abeyance ordered by our August

[2] Although we conclude that Raffauf engaged in the unauthorized practice of law, our decision to refer Wynter for further investigation should not be construed as a holding that Wynter actually aided and abetted Raffauf's unauthorized practice. Pursuant to Supreme Court Rule 201, "[t]he regularly admitted attorney of record shall be accountable to the Supreme Court for . . . compliance with all applicable rules." V.I.S.CT.R. 201(a)(4). The extent of Wynter's responsibility for Raffauf's conduct—if any—is a matter for the Office of Disciplinary Counsel to determine in the first instance.

18, 2015 order, reject the brief and Joint Appendix that were prepared and signed by Raffauf, and direct Wynter and Manning to advise this Court within the next 21 days as to which of them is authorized to represent Mitchell in this appeal. To the extent Manning or Wynter have been discharged or intend to withdraw as counsel, the notice must comply with Supreme Court Rule 36(d). Once Wynter and Manning have filed the requisite notice with this Court, the Clerk shall issue a new briefing schedule.

Dated this 4th day of November, 2015.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court