IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE ESTATE OF OF LARRY LEE HILLBLOM, Deceased.	)	Civil Action No. 95-626 **ORDER RE: (1) TRUST'S MOTIONS TO REVOKE LUJAN'S PRO HAC VICE ADMISSION AND FOR ORDER TO SHOW CAUSE AND FOR SANCTIONS; (2) LUJAN'S MOTION TO STRIKE AND MOTION FOR SANCTIONS**

Peter J. Donnici, as Chairman of the Board of Trustees of The Larry Hillblom Charitable Trust ("Trust") brought this motion on May 11, 1998 seeking an order from this Court imposing sanctions and revoking the *pro hac vice* status of attorney David Lujan, counsel for Naoko Imeong, guardian *ad litem* for Junior Larry Hillbroom.

The basis of the motion is attorney Lujan's alleged violation of a March 26, 1997 order of the Supreme Court in Original Action No. 97-001, which stated in relevant part: "Mr. Lujan will be allowed to continue in this case so long as he behaves with the civility that is required by him as an attorney practicing in the CNMI." The Supreme Court order was a result of David Lujan's criticism of two justices for their failure to recuse themselves over alleged conflicts of interest. The quoted portion of the March 26, 1997 Order was immediately preceded by the finding that "Mr. Lujan's unfounded accusations and innuendos against Justice Villagomez's and Justice Atalig's character shows a general lack of civility and disrespect for the Court. His declarations made under oath were inaccurate, misleading, and without **[p. 2]** evidential or factual foundations." At the proceeding to show cause that resulted in the March 26, 1997 order, the Trust moved to file a Supplemental Memorandum containing additional complaints regarding Mr. Lujan's behavior. The Supreme Court, however, denied leave to file the Supplemental Memorandum and the Trust was not a party to the Supreme Court proceeding.

The Trust complains that attorney Lujan has violated the terms of the March 26, 1997 Order of

the Supreme Court by repeatedly including within his pleadings filed with this Court intemperate, offensive and misleading language attacking and ridiculing the Charitable Trustees, their counsel and the California Attorney General. The Trust catalogues seven filings by Lujan in Civil No. 95-626 dating from June 30, 1997 through May 8, 1998 and extracts from these a number of "uncivil" remarks, most of which are directed at the movant, Peter J. Donnici.[1]

Lujan moved to strike the Trust's motion on the basis that it did not conform to the procedural requirements of Rule 11 of the Commonwealth rules of Civil Procedure. He then filed a cross motion for Rule 11 sanctions against the Trust for bringing its motion, claiming that the motion was retaliatory, tactical and in bad faith.

On August 27, 1998 the Trust filed a second motion requesting an order to show cause and an evidentiary hearing to consider sanctions against attorneys David Lujan and Barry Israel. The basis of the motion were remarks attributed to Barry Israel in a press publication suggesting that someone from Junior Hillbroom's legal team surreptitiously collected a DNA sample from the decedent's mother Helen Anderson without her permission while she was hospitalized in California.

A hearing was held on all motions on September 18, 1998, at which the Court requested further briefing from the parties on the issue of the Trust's standing to move for the revocation of counsel's *pro hac vice* status. Supplemental briefs having been received by the parties on October 9, 1998, the Court now issues its decision.

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I. Motion to Strike and the Issue of Standing

There are two traditional reasons militating against the standing of the Trust to enforce the March 26, 1997 Order of the CNMI Supreme Court. First of all, the general rule recognized in all common law jurisdictions is that the court against which a contempt is committed is the court having jurisdiction to try the contempt, and that one court is not authorized to punish contempts against another court unless the latter

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[1]The last filing on May 8, 1998 was actually signed by Mr. Lujan's co-counsel Barry Israel, although attorney Lujan's name appears at the head of the document and counsel admit that it was collaboratively drafted. A partial recount of disparaging remarks include comments that: (the California Attorney General) "[has] a great deficiency of mental prowess", "has been assimilated and incorporated", is "pitiful", "a disgrace" and a "stuffed turkey"; (Joseph Waechter) is "completely dishonest", "a man who would do funny things for money"; (Donnici and DHL "insiders") are "scoundrels", "ignoble fiends" and "business men of the most despicable form whose lives have been devoted to manipulation, fraud, crimes and chicanery".

is an agency or part of the punishing court. *Ex Parte Bradley*, 74 U.S. 364, 372-373 (1868). Secondly, to be authorized to enforce a court order, a person must be the one for whose benefit the order was issued, a successor in interest to such person, or possess another legally recognized interest in the order. Com. R. Civ. P., Rule 71; *Bessette v. W.B. Conkey Co.*, 194 U.S. 324, 328; 24 S. Ct. 665, 667 (1941).

The order to show cause that resulted in the Supreme Court's March 26, 1997 Order was concerned with Lujan's public and in court statements about the justices. The Trust was not a party to that proceeding and it was denied the opportunity to file a memorandum. The March 26, 1997 Order only addressed Lujan's conduct toward the justices and, more significantly, did not instruct the Superior Court in its enforcement. The Superior Court will not imply a delegation of the contempt authority of the Supreme Court, nor will it otherwise expand the Order by implication beyond the meaning of its terms when considered in the light of the issues and purpose for which the Supreme Court proceeding was held. *Terminal Railroad Assoc. of St. Louis v. United States, et al.*, 266 U.S. 17, 29 (1924). This Court concludes that the March 26, 1997 Order of the CNMI Supreme Court conferred no standing upon the Trust to seek sanctions from the Superior Court for a violation of the Order.

On the other hand, as a party to the present action, the Trust does have standing to request this Court to invoke its inherent power to impose sanctions for attorney misconduct occurring in the course of these proceedings. *In re Villanueva*, 1 C.R. 952, 959 (D. NMI App. Div., 1984); *United States v. Wunsch*, 84 F.3d 1110, 1114 (9th Cir. 1996). The Court will therefore consider the motion as an original request for sanctions rather than as an enforcement matter.

Respondent has moved to strike the Trust's motion on the basis that it is a motion that should have been brought pursuant to Rule 11 of the Commonwealth Rules of Civil Procedure, but which **[p. 4]** fails to comply with the procedural requirements of Rule 11. Lujan claims to be particularly disadvantaged by the failure of the motion to comply with the provisions of Rule 11(c)(1)(A), allowing the respondent nine days within which to withdraw or correct the offending documents. It is pointed out that Rule 11 is designed to address the very subject matter of the Trust's motion; i.e., documents signed by an attorney and filed with the court that are alleged to be harassing and untruthful in content.

Rule 11, however, does not supplant the inherent power of the court to impose sanctions for bad faith conduct. Sanctions which could have, and even should have been sought pursuant to a rule or statute

may also be justified under the inherent power of the court. This power may be invoked when bad faith is exhibited, when a party or counsel has acted "vexatiously, wantonly or for oppressive reasons." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991). Because the sanction requested is not precluded by the Trust's failure to follow the procedure set forth in Rule 11, the motion to strike is DENIED.

II. Motion to Revoke *Pro Hac Vice* Status

Neither party has presented authority directly addressing the issue raised: revocation of counsel's *pro hac vice* status as a sanction for hostile comments contained in pleadings that are directed at opposing counsel, a party or a witness. In his defense, attorney Lujan argues the distinction between attacks upon the judiciary and attacks directed at a party, and also points to recent federal appellate decisions that have applied an expanded constitutional protection to an attorney's public statements impugning either opposing counsel or particular judges. *United States v. Wunsch*, *supra*, 84 F.3d at 1116; *Standing Committee v. Yagman*, 55 F.3d 1430 (9th Cir. 1995).

It is correct that remarks by an attorney that falsely impugn the integrity of the judiciary are an offense of a different category from that caused by the same kind of remarks directed at a party or counsel. The reason is that the former, but not the latter, may cause public disillusionment in the institution of the courts. *In re Sawyer*, 360 U.S. 622, 632 (1959). The matter presently at issue, however, does not concern Lujan's extrajudicial public statements, but rather the content of his papers filed before this Court. There can be no doubt that this Court has the inherent authority to sanction counsel when it is necessary to preserve the dignity and decorum of the proceedings. *Chambers v. NASCO, Inc.*, *supra*, 501 U.S. at 43.

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The Trust's motion is similar to a motion to disqualify counsel, in that revocation of David Lujan's *pro hac vice* status would effectively remove him as lead trial counsel for Petitioner Naoko Imeong. The Court would be remiss if it did not consider the possibility that such a motion may be inserted for tactical reasons and if it did not carefully examine its foundations.[2] *Optyl Eyeware Fashion*

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[2] Page 7 of the Trust's Reply in support of its motion contains a heading stating that the Trust's motivation for filing this motion is "[i]rrelevant." The Court disagrees with this statement. See *Mark Industries, Ltd. v. Sea Captain's Choice, Inc.*, 50 F.3d 730, 732 (9th Cir. 1995).

International Corp. v. Style Companies, Ltd., 760 F.2d 1045, 1050 (9th Cir. 1985).

Accumulating and reciting instances of the various hostile and derogatory remarks that have appeared in Imeong's court papers over the course of a full year makes for a forceful presentation and powerful indictment of Lujan's lack of professionalism, but it also fails to allow the respondent an opportunity to withdraw or correct his remarks when made and does not afford proper notice that a sanction tantamount to removal will be imposed at a time of his adversary's choosing. The warning issued to Lujan in the Supreme Court proceeding based upon his comments impugning the justices is not fairly extended to cover his intemperate characterizations of a party to these proceedings. Due process requires a more precise warning from this Court prior to imposing such an extreme sanction. For these reasons, the Trust's motion to revoke the *pro hac vice* status of attorney David Lujan and for sanctions is DENIED.

Attorney Lujan, his co-counsel, and for that matter, all other counsel shall forbear from using any of the so-called "colorful and vituperative" language quoted by the Trust in its motion at any point in proceedings before this Court. Any violation of this order will subject the offending counsel to a monetary sanction and/or revocation of their admission to appear *pro hac vice* before this Court. This order will be enforced upon oral motion or *sua sponte* without the need for further motion.

III. Motion for Rule 11 Sanctions

Counsel for Naoko Imeong move for sanctions against counsel for the Trust pursuant to Rule 11 of the Commonwealth Rules of Civil Procedure. The basis is that the Trust's motion against Lujan (1) is not procedurally proper under Rule 11; (2) lacks a foundation in the law based upon the authority cited in the motion; and (3) was filed for an improper purpose. The procedural issue was disposed of **[p. 6]** in the denial of the motion to strike the Trust's motion. Although the cases cited in the Trust's motion are all distinguishable from the legal and factual circumstances now presented, these cases were not misrepresented by the Trust in its motion and are not irrelevant to the motion. *Tenorio v. Superior Court*, 1 N.M.I. 112, 127 (1990). A motion seeking the revocation of opposing counsel's *pro hac vice* status as a sanction of first resort may legitimately be viewed with suspicion, but the Court is reluctant in this case to find bad faith in the Trust's reaction to attorney Lujan's sustained and vigorous verbal assault. *Id.* The

motion for Rule 11 sanctions against the counsel for the Trust is therefore DENIED.

IV. Trust's Motion for Order to Show Cause (Supplement to Motion)

It cannot escape the Court's attention that renewed negotiations between the parties in this proceeding invariably are accompanied by a flurry of motions and cross-motions, many of which are continued and/or withdrawn prior to hearing. At the administrative hearing on October 15, 1998, the Court denied a request by counsel for Imeong and for the Trust to defer ruling on these cross-motions which had already been taken under advisement by the Court. Motions for evidentiary hearings and for orders to show cause directed at parties and counsel have recently become a popular recourse. None of these motions have resulted in an evidentiary hearing, but the threat of compulsory appearance and cross-examination by three to seven trial counsel has an obvious tactical value to the moving party or counsel. For this reason, as with the prior motion to revoke David Lujan's *pro hac vice* status, the Court will carefully examine the foundations of any such request. *Optyl Eyeware Fashion International Corp. v. Style Companies, Ltd.*, *supra*, at 1050.

Imeong still had a Motion for Order to Show Cause Against Trustees scheduled when the Trust filed this Motion for Issuance of Order to Show Cause Re Procurement of DNA Samples. The Trust's motion asks for an order to show cause why Imeong's counsel David Lujan and Barry Israel should not appear "and testify concerning their involvement in the apparently criminal act of battery upon Helen Anderson." The motion is based upon statements attributed to Barry Israel in an article in the August 1998 issue of Gentlemen's Quarterly magazine implying that "someone from Lujan's team" had gathered DNA evidence from the decedent's mother without her knowledge while she was hospitalized in California in the Spring of 1997. The Trust requests the Court to conduct an **[p. 7]** investigation of this alleged battery for the purpose of assessing sanctions against Imeong's counsel for their professional misconduct and possible breach of a pre-settlement order of this Court prohibiting unauthorized DNA testing of Hillblom samples.

The Trust also demands as a sanction that the counsel should be forced to pay back all attorney fees received pursuant to the Settlement Agreement and should even be denied fees under their private

agreements with their client.[3] The only supporting affidavit filed along with the moving papers was a declaration of Trust's counsel Paul Lawlor purporting to authenticate page 168 of the August issue of Gentleman's Quarterly magazine.

The Court does not find that the present motion presents a sufficient legal and factual basis for the Court to set an evidentiary hearing and conduct an investigation into counsels' conduct. The Trust, in its Motion to Revoke *Pro Hac Vice* Status of David Lujan, stated that a copy of the motion had been forwarded to the Disciplinary Committee of the CNMI Bar Association for investigation of possible violations of Disciplinary Rules. The allegations of misconduct alleged in this motion are even better suited to the administrative jurisdiction of the Disciplinary Committee, rather than to a hearing before this Court. *Tenorio*, *supra*, 1 N.M.I. at 127-128. The Court's purpose is to preside over the administration of the Estate of Larry Lee Hillblom and to ensure to its best ability that the Estate is efficiently marshaled and correctly distributed by the Executor to the beneficiaries of the Estate as expeditiously as justice will allow. The requested investigation does not have the relevance to these proceedings that would justify the distraction that it would entail, particularly when there is an alternative forum available for the investigation of attorney misconduct. The Trust's motion for issuance of an order to show cause is DENIED.

So ORDERED this 12th day of November, 1998.

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO, Judge Pro Tem

[3] The renewed settlement negotiations, and Imeong's own Motion for Order to Show Cause Against the Trustees, involve a challenge to the Trust's right to attorney fees under the Settlement Agreement.