

7-15-99

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

OFFICE OF THE ATTORNEY
GENERAL and DIVISION OF
IMMIGRATION SERVICES,

Petitioners,

v.

ZHU, ZHE-WEN

Respondent.

OFFICE OF THE ATTORNEY
GENERAL and DIVISION OF
IMMIGRATION SERVICES,

Petitioners,

v.

YIN, YONG-NAN,

Respondent.

Civil Action No. 98-358
Civil Action No. 98-1026

OKDEK GKANTINC IN PART
AND DENYING IN PART
PETITIONEKS' MOTION FOK
RJXONSIDERATION

I. PROCEDURAL BACKGROUND

This matter came before the Court on June 22, 1999 in Courtroom A on Petitioners' motion for reconsideration. Michael W. Dotts, Esq. appeared on behalf of non-party movants Joe Hill, Jenny Chen, and the Joe Hill Law Office. Robert Goldberg, Esq. appeared on behalf of Petitioners. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

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FOR PUBLICATION

II. FACTS

2 On March 2, 1999, the Office of the Attorney General and Division of Immigration Services
3 (“Petitioners”) served Respondent’s attorney Joe Hill with two subpoenas for deposition testimony and
4 documents in order to obtain information as to the whereabouts of Respondents Zhu Zhe-Wen and Yin
5 Yong-Nan. Petitioners also served Mr. Hill’s legal assistant, Jenny Chen, with similar subpoenas as
6 well as served the Joe Hill Law Office with a subpoena duces tecum.

7 On March 4, 1999, Joe Hill, Jenny Chen and the Joe Hill Law Office jointly moved the Court
8 to quash all subpoenas.

9 On May 12, 1999, the Court granted the motion to quash and awarded sanctions to the non-
10 party movants. Subsequently, on June 22, 1999, Petitioners moved the Court to reconsider its Order
11 awarding sanctions.

III. ISSUES

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13 1. Whether the Court should reconsider its Order awarding sanctions to Respondent?

IV. ANALYSIS

14 15 A. Com.R.Civ.P.45

16 Rule 45(c)(1) of the Commonwealth Rules of Civil Procedure states:

17 “A party or an attorney responsible for the issuance and service of a subpoena shall take
18 reasonable steps to avoid imposing undue burden or expense on a person subject to that
19 subpoena. The court shall enforce this duty and impose upon the party or attorney in breach
of this duty an appropriate sanction, which may include, but is not limited to, lost earnings
and a reasonable attorneys’ fee.”

20 Com.R.Civ.P.45(c)(1). Sanctions are appropriate under Rule 45 if the subpoenaing party fails to take
21 reasonable steps to avoid imposing an undue burden on a third party. High Tech Medical
22 Instrumentation, Inc. v. New Image Industries, Inc., 161 F.R.D. 86, 88 (S.D.Cal. 1995); United
23 States v. C.B.S., 666 F.2d 364, 371-372 (9th Cir.1982).

2 Here, the Court affirms its prior Order awarding sanctions. The subpoenas were served on
3 Mr. Hill in March 1999, well after the Court had ordered that Respondents be deported.' Therefore.
4 at a minimum, the government should have sought leave from the Court before subpoenaing Mr. Hill
5 for deposition. See e.g., Swinglehurst v. Busiel, 150 A. 485, 486 (N.H.1930)(depositions may not
6 be taken after judgment but before petition for new trial); Verdier v. Superior Court, 199 P.2d 325.
7 330 (Cal. Dist. Ct. App.1948)(deposition of a witness not a party to the action can only be taken during
8 pendency of the action). Moreover, had Petitioners addressed the merits of the underlying motion
9 to quash in its opposition instead of reserving its right to address the merits at a later time, the instant
10 motion for reconsideration would have likely been unnecessary.^{2/} The sanctions here are designed to
11 enforce our Rules of Civil Procedure to bring litigation to a speedy and inexpensive resolution instead
12 of diverting the Court's energies and attention away from more deserving cases. With that in mind,
13 the Court also notes that although the language of Rule 45(c)(1) is mandatory, the sanctions to be
14 imposed are not limited to a reasonable attorney's fee.' Therefore, the Court will not impose the
15 amount of sanctions requested in non-party movants' memorandum of fees and costs, but will impose
16 a nominal sanction not as punishment but as a warning to counsel to abide by the Commonwealth
17 Rules of Civil Procedure.

18 In the future, if any party feels the need to be "creative", the matter should be brought before
19 the Court for its prior approval.'" Such a precautionary measure would have prevented all of the
20 expense and time devoted to this collateral issue.

21 ^{1/}See Attorney General v. Zhu, Zhe-Wen, Order of Deportation, filed July 6, 1998; Attorney General
22 v. Yin, Yong-Nan, Stipulated Order of Deportation, filed October 26, 1998.

23 ^{2/}At oral argument, counsel for Petitioners could not cite to any rule providing for such a self-provided
24 reservation of rights.

25 ^{3/}See Com.R.Civ.P.45(c)(1), which provides that:
26 "The court shall impose upon the party or attorney an appropriate sanction which may
include, *but is not limited to*, a reasonable attorney's fee." (emphasis added).

27 ^{4/}At oral argument, counsel for Petitioners admitted that the use of the subpoenas was a creative
28 method for enforcing the bench warrants issued for Respondents

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V. CONCLUSION

For all the reasons stated above, Petitioners' motion for reconsideration is **GRANTED** in part and **DENIED** in part. The Court affirms its prior Order awarding sanctions against Petitioners. However, the Court will not impose the amount of sanctions requested in the non-party movants' memorandum of fees and costs. Petitioners shall pay \$400 to the Clerk of the Commonwealth Superior Court within ten (10) days of the date of this Order.

So ORDERED this 15 day of July, 1999.


TIMOTHY H. BELLAS, Associate Judge