

BEFORE: CASTRO, Associate Justice, ATALIG, Justice *Pro Tem*,¹ and LAMORENA, Special Judge²

CASTRO, Associate Justice:

I.

INTRODUCTION

On August 1, 2000 we suspended Theodore R. Mitchell from the practice of law in this jurisdiction, due to his conduct in the underlying petition for writ of mandamus involving the above parties. We must now decide whether that suspension should continue or, alternatively, whether Mitchell should be disbarred. We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, as amended,³ and the Court's inherent authority over matters of attorney misconduct.⁴ Because it is our duty to guard the administration of justice, to maintain the dignity of the courts and the integrity of the profession, and to protect the people of this Commonwealth, we must continue Mitchell's suspension. [p. 3]

¹ Honorable Pedro M. Atalig, retired associate justice of the Commonwealth Supreme Court, sitting by designation.

² Honorable Alberto C. Lamorena III, Presiding Judge of the Guam Superior Court, sitting by designation.

³ N.M.I. Const. art. IV, § 3 was amended by the passage of Legislative Initiative 10-3, ratified by the voters on November 1, 1997 and certified by the Board of Elections on December 13, 1997.

⁴ The courts have the inherent power to regulate the practice of law, whether in or out of court. *See* Com. Disc. R. 1 (declaring "Nothing herein contained shall be construed to deny any Court of the Commonwealth such powers as are necessary for that Court to maintain control over proceedings conducted before it"); *In re the Matter of Villanueva*, 1 CR 952, 956 (Dist. Ct. App. Div. 1984); *In re Kramer*, 193 F.3d 1131, 1132 (9th Cir. 1999); *In re Crayton*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996) (stating, "It is axiomatic that where a . . . court approves an attorney's employment . . . , it has the power to determine actual competence after employment and to regulate the retention of that attorney").

II.

FACTUAL AND PROCEDURAL BACKGROUND⁵

A. Conduct Leading up to Suspension

On July 3, 2000, Petitioners filed with this Court their Petition for Writ of Mandamus and Motion for Stay (“writ petition”). That same day, we issued an Order Granting Motion for Stay and Directing Answer to Writ of Mandamus.

On July 5, 2000, Petitioners moved for a temporary restraining order and preliminary injunction to enjoin Real Party in Interest Juan M. San Nicolas (“San Nicolas”) from disbursing certain funds outside the Commonwealth. The motion was necessitated by San Nicolas’ counsel having levied \$800,056.38 (“subject funds”) in cash from Petitioners’ Saipan bank account on July 3, 2000, a few hours before this Court issued its order granting a stay. It appears from the parties’ statements during oral argument and from the record that counsel for Petitioners attempted to prevent the bank from delivering the subject funds to Mitchell. As of that date, Mitchell had known for two days of Petitioners’ writ petition and motion for stay, because Petitioners had hand-delivered these documents to his office.⁶

On July 6, 2000, this Court issued a temporary restraining order to prevent San Nicolas from spending or disbursing outside the Commonwealth any funds levied pursuant to the Superior Court’s writ of execution, and set a hearing date on Petitioners’ motion for a preliminary injunction.⁷ [p. 4]

⁵ In the absence of any objections, we **GRANT** all requests for judicial notice of the documents presented at the hearing on this matter on November 9, 2000.

⁶ Certificate of Service (July 3, 2000).

⁷ We extended the original hearing date on Petitioners’ motion for preliminary injunction at San Nicolas’ request, to afford him more time to prepare for the hearing. San Nicolas waited until the morning of the hearing, during oral argument, to present an opposition brief to the Court. Just before the hearing, San Nicolas filed a motion to recuse Chief Justice Demapan from the panel.

We held a hearing on Friday, July 14, 2000 at 11:00 a.m.⁸ Later that day, given the urgency of the matter and the approaching weekend, the Court issued its Order Granting Motion for Preliminary Injunction, ordering San Nicolas and his attorneys to turn over the subject funds to the Clerk of the Supreme Court by 12:00 p.m. on Monday, July 24, 2000, to be placed in an interest-bearing account. The Court also ordered San Nicolas and his attorneys to provide an accounting as to any funds not turned over to the Clerk of Court. Lastly, the Court warned that it would issue sanctions for non-compliance.⁹

On July 18, 2000 the Court issued a supplemental order which detailed the Court's factual findings and analysis. The Supplemental Order by its terms was directed to "San Nicolas, his agents, servants, employees, and attorneys, and those persons in active concert or participation with them and each of them." Supplemental Order Granting Motion for Preliminary Injunction ("Supplemental Order") at 3-4 (July 18, 2000). The Supplemental Order made several observations regarding the conduct of Theodore R. Mitchell, counsel for San Nicolas, during the hearing:

Throughout the hearing on Petitioners' motion, Mr. Mitchell, counsel for San Nicolas, displayed highly inappropriate behavior. He became visibly agitated and his voice became unnecessarily loud and threatening while discussing matters preliminary to Petitioners' motion. In response to the Court's inquiry as to what happened to the subject funds, Mr. Mitchell moved towards the bench in a threatening manner, demanded that the Court explain by what authority it asked its question, and refused to answer the Court's direct question.

Supplemental Order at 1. The Supplemental Order concluded:

Failure to comply with this order shall result in sanctions. All parties and their attorneys are placed on notice that any future conduct similar to that of Mr. Mitchell, described above, is subject to sanctions, including disciplinary action by this Court. All persons

⁸ Associate Justice Alexandro C. Castro and Justice *Pro Tem* Pedro M. Atalig presided over the hearing after Chief Justice Miguel S. Demapan recused himself. Special Judge Alberto C. Lamorena III was later appointed to complete the panel.

⁹ Order Granting Motion for Preliminary Injunction (July 14, 2000).

appearing before this Court are expected to display common courtesy and civility, and to avoid engaging in unnecessarily loud or physically threatening behavior.

Id. at 2. [p. 5]

Despite this reprimand, Mitchell filed a Declaration “In Response to” the Supplemental Order on July 20, 2000. The Declaration not only denied the Court’s description of Mitchell’s conduct in the Supplemental Order, but also contained strong language unbecoming of an officer of this Court. Following are several examples of the tone of his declaration:

¶ 18: My “voice” did not become “threatening” at any time, unless by that statement means [sic] that the force of my ideas, my reasoning and my legal argument was perceived as *intellectually threatening to the judges*.

Declaration of Theodore Mitchell in Response to Supplemental Order Granting Motion for Preliminary Injunction (hereinafter “Mitchell Declaration”) at 5 (July 20, 2000) (emphasis added);

¶ 28: I *rightfully demanded* to know on what legal basis Justice Atalig was *interrogating* me on that subject.

Mitchell Declaration at 7-8 (emphasis added);

¶ 52: For the Supreme Court to make such a *false and slanderous statement* [that Mitchell engaged in physically threatening behavior] is *inexcusable, irresponsible* and, in my opinion, it demeans the dignity of the court itself.

¶ 53: [T]hese threatening statements by the Court seem designed to intimidate me from representing my client . . . If it is intended to chill oral advocacy in this case and to put me in fear of sanctions before I have done anything wrong, then it is highly improper for the Court to make such a statement.

Mitchell Declaration at 13-14 (emphasis added). Mitchell’s Declaration also criticized one panel member several times for being argumentative, hostile, biased, openly and frankly impatient, and discourteous. Moreover, Mitchell, admittedly without factual basis, criticized another attorney, not a party to the proceedings, and accused her of improper conduct:

¶25: Justice Atalig, according to my observation, was visibly irritated to hear me argue that he was wrong on these points of law. Furthermore, it appeared to me that he was reading his questions from some written notes on the table before him, notes which, *perhaps*, had been prepared by his law partner and former law clerk, Yoon Chang.

¶26: Throughout the hearing, upon information and belief, Yoon Chang, who was present in the courtroom gallery, was seen nodding her head up and down or side to side in response to various parts of my presentation. *I do not know whether she made those gestures in an attempt to communicate with Justice Atalig, or not.*

Mitchell Declaration at 25-26 (emphases added). [p. 6]

On July 24, 2000, the date and time prescribed for San Nicolas and his attorneys to comply with this Court's Supplemental Order, San Nicolas instead filed a Motion for Review by the Full Court and Motion for Stay ("Motion for Review"), and a "Response" of San Nicolas to the preliminary injunction orders. The documents do not provide any legal authority to justify San Nicolas' or his attorney's refusal to comply with the court order. In his Response, San Nicolas states his attorney advised him against turning the subject funds over to the Clerk of Court or providing an accounting because "I may lose my right to claim that all of the money is rightfully mine." Response of Plaintiff Juan M. San Nicolas to Preliminary Injunctions at 3 (July 24, 2000). The Motion for Review attacks the validity of the Order Granting Motion for Preliminary Injunction and Supplemental Order, but does not explain why San Nicolas should not be required to comply with the Court's order that he deposit the subject funds with the Clerk of Court.

On July 26, 2000 San Nicolas filed his first motions to disqualify Justices Castro and Atalig. In its order denying these motions, the Court found them wholly without merit, designed to harass and intimidate the justices, and instituted for an improper purpose.¹⁰

On August 1, 2000 Mitchell's unjustified refusal to comply with a Court order, his advice to his

¹⁰ Order Denying Motions for Disqualification at 3 (July 31, 2000).

client to similarly refuse, his unprofessional personal attacks on the justices, and his numerous attempts to file procedural roadblocks that would prevent a ruling on the writ petition finally resulted in this Court's Order of Suspension and Order to Show Cause ("Order to Show Cause"), temporarily suspending Mitchell and ordering him to show cause why the suspension should not continue or, alternatively, why he should not be disbarred for the above conduct.¹¹ The Court ordered that Mitchell file a brief responsive to the Order to Show Cause, and that he notify all jurisdictions in which he is licensed to practice of his suspension in the Commonwealth. The Court also gave San Nicolas one last chance to comply with the preliminary injunction and either turn over the subject funds to the Clerk of Court, or provide an accounting.

[p. 7] B. Conduct During Suspension

Since the Court issued its Order to Show Cause, Mitchell has engaged in conduct similar to that which precipitated the Order.

1. Dilatory Conduct

On August 15, 2000 Mitchell¹² filed a motion to stay the proceedings herein pending a Ninth Circuit appeal of several orders, including the Order to Show Cause. The Court subsequently denied this motion.¹³ The Ninth Circuit ultimately dismissed the appeal for lack of jurisdiction.¹⁴

¹¹ Order of Suspension and Order to Show Cause (Aug. 1, 2000).

¹² Although Mitchell stopped signing his Court filings as an attorney for San Nicolas, his associate Jeanne H. Rayphand signed most if not all filings as Mitchell's and San Nicolas' attorney. As the quality and tone of the filings suggests Mitchell continued to draft them, and as his office is still preparing and filing them, we will refer to all documents dated after August 1, 2000 as if Mitchell himself had filed them.

¹³ Order Denying Motion for Stay (Sept. 21, 2000).

¹⁴ *Saipan Lau Lau Dev., Inc. v. Superior Court*, No. 00-16677 (9th Cir. Dec. 11, 2000) (Order).

On August 18, 2000 Mitchell moved to disqualify Special Judge Lamorena for bias.¹⁵ The Court had to appoint a separate justice *pro tem* to hear this unmeritorious motion, which was denied due to an insufficient showing of any basis for disqualification.¹⁶

On August 23, 2000 Mitchell filed another set of motions to disqualify Justices Castro and Atalig. The Court determined these motions to be equally without merit, because Mitchell had again failed to point to any evidence of bias stemming from an extrajudicial source.¹⁷ The Court also noted that, instead of submitting a brief pursuant to the Order to Show Cause, Mitchell elected to prolong [p. 8] his suspension and delay a hearing on the order by filing a federal lawsuit which was ultimately dismissed.¹⁸ The Court subsequently denied a motion for reconsideration of its order.¹⁹

On September 13, 2000 Mitchell filed a motion to continue the hearing on the underlying writ petition, which the Court had scheduled for September 22, 2000.²⁰ The Court denied this motion.²¹

On September 15, 2000 Mitchell attempted to depose the three panel members in this matter. An accompanying Memorandum Regarding the Character of the Mitchell Disciplinary Proceedings failed to cite any legal authority that would permit him to depose a sitting justice. The Court quashed the deposition

¹⁵ Motion for Disqualification of Justice *Pro Tempore* Alberto C. Lamorena III and Notice (Aug. 18, 2000).

¹⁶ Order Denying Motion for Disqualification of Justice *Pro Tempore* Alberto C. Lamorena III (Sept. 8, 2000).

¹⁷ Order Denying Second Motions for Disqualification of Associate Justice Castro and Justice *Pro Tem* Atalig at 3 (Aug. 25, 2000).

¹⁸ *Id.* at 4.

¹⁹ Order Denying Motion for Reconsideration of Order Denying Second Motions for Disqualification of Alexandro C. Castro & Pedro M. Atalig (Sept. 21, 2000).

²⁰ Emergency Motion of San Nicolas and Mitchell for Reconsideration and Motion for Continuance of September 22, 2000 Hearing (Sept. 13, 2000); Order Setting Hearing Re: Petitioners' Motion for Contempt Order and Motion for Sanctions; and Petition for Writ of Mandamus (Sept. 8, 2000).

²¹ Order Denying Motion for Stay at 1 (Sept. 21, 2000); Order Denying Motion for Reconsideration of Order Denying Second Motions for Disqualification at 1 (Sept. 21, 2000).

notices, observing:

Even assuming any authority to depose a sitting justice exists, the panel members' depositions have been conveniently scheduled to interfere with the hearing on the petition for writ of mandamus and Defendants' motion for contempt. Although the deposition times do not conflict with the actual hearing time, the depositions would undoubtedly interfere with preparation for the hearing and deliberation thereof.

Order Quashing Notices of Deposition at 2 (Sept. 20, 2000).

The Court finally held a hearing on the underlying writ on September 22, 2000, three months after Petitioners filed their writ petition. In its September 27, 2000 order the Court observed that San Nicolas had attempted to continue the September 22 hearing on several occasions, including the morning of the hearing. The Court noted that San Nicolas' conduct appeared to be intended to delay [p. 9] the hearing.²² The full panel subsequently affirmed this order following Mitchell's motion for full-court review.²³

On October 11, 2000 Mitchell filed a motion for reconsideration in which he accused Justice Castro of attempting to falsify the record (First Amended Motion for Reconsideration and Review by the Full Court of the September 27, 2000 Order ("Motion for Reconsideration") at 9 (Oct. 11, 2000)). He then speculated that the justices' reported salaries are evidence of their bias against him (Motion for Reconsideration at 23-24), and then criticized Justice Castro:

Taken altogether, the content and quality of Justice Castro's remarks [at a swearing-in ceremony for newly- admitted attorneys] are evidence of *a lack of the kind of serious legal depth of understanding and knowledge that is expected of a justice of the Supreme Court of the Commonwealth.*

Motion for Reconsideration at 24 (emphasis added).

On October 13, 2000 Mitchell filed deposition notices in an attempt to depose two current

²² Order re: Motions for Contempt and Sanctions; and Petition for Writ of Mandamus at 2-3 (Sept. 27, 2000).

²³ Order Affirming Order re: Motions for Contempt and Sanctions; and Petition for Writ of Mandamus (Nov. 7, 2000).

Supreme Court law clerks and one former law clerk.²⁴ The Court subsequently quashed these deposition notices as lacking in merit.²⁵ The Court also denied a motion for reconsideration.²⁶

On October 16, 2000 Mitchell filed a Motion for More Definite Statement with respect to the Court's Order to Show Cause, claiming he could not file a responsive brief in compliance with the [p. 10] Order. The Court denied this motion, noting Mitchell had already filed a responsive brief.²⁷ The full panel subsequently affirmed this order, following the now customary motion for full court review.²⁸

On October 17, 2000 Mitchell filed an amended deposition notice as to a former law clerk,²⁹ as well as deposition notices for a former Supreme Court Chief Justice and opposing counsel in this action.³⁰ The Court quashed all deposition notices as lacking any legal basis.³¹

On October 23, 2000 Mitchell attempted to depose the Chief Justice of this Court, as well as

²⁴ Mitchell's Notice of Deposition on Oral Examination of Karen Klaver (Oct. 13, 2000); Mitchell's Notice of Deposition on Oral Examination of Joann Kim (Oct. 13, 2000); Mitchell's Notice of Deposition on Oral Examination of Yoon Chang (Oct. 13, 2000).

²⁵ Order Quashing Notices of Deposition (Oct. 16, 2000).

²⁶ Order Affirming Orders Quashing Deposition Notices (Nov. 9, 2000).

²⁷ Order Denying Motion for More Definite Statement (Oct. 23, 2000).

²⁸ Order Affirming Order Denying Motion for More Definite Statement (Nov. 9, 2000).

²⁹ Mitchell's Amended Notice of Deposition on Oral Examination of Yoon Chang (Oct. 17, 2000).

³⁰ Mitchell's Notice of Deposition on Oral Examination of Marty W.K. Taylor (Oct. 17, 2000); Mitchell's Notice of Deposition on Oral Examination of Mair, Mair, Spade & Thompson (Oct. 17, 2000).

³¹ Order Quashing Notice of Deposition [regarding former Chief Justice Marty W.K. Taylor] (Oct. 23, 2000); Order Quashing Notice of Deposition [regarding law firm of Mair, Mair, Spade & Thompson] (Oct. 23, 2000).

several of his family members.³² The Court quashed these deposition notices and issued a protective order to prevent Mitchell from further harassing any non-parties to the proceedings herein.³³ The full panel subsequently affirmed this order upon Mitchell's motion.³⁴

On October 26, 2000 this Court issued an Order re: Show Cause Hearing as to procedure and filing deadlines.³⁵ The full panel subsequently affirmed this Order and denied Mitchell's request for a pre-trial conference.³⁶ [p. 11]

On October 26, 2000 Mitchell attempted to subpoena certain records from the Commonwealth Bar Association. The Court granted the Bar Association's motion to quash the subpoena.³⁷ The full panel subsequently affirmed this order.³⁸

On November 2, 2000 Mitchell again moved to disqualify the entire panel. The Court denied this motion.³⁹

On the morning of the show-cause hearing, November 9, 2000 the Court issued several orders,

³² Order Quashing Notices of Deposition; and Protective Order at 2 n.4 (Oct. 25, 2000) (taking judicial notice of fact that following individuals are all related by marriage or blood to Chief Justice Demapan); Mitchell's Notice of Deposition on Oral Examination of Ana T. Sablan (Oct. 23, 2000); Mitchell's Notice of Deposition on Oral Examination of Frances T. Demapan (Oct. 23, 2000); Mitchell's Notice of Deposition on Oral Examination of Soledad T. Tenorio (Oct. 23, 2000); Mitchell's Notice of Deposition on Oral Examination of Jesus R. Sablan (Oct. 23, 2000); Mitchell's Notice of Deposition on Oral Examination of Miguel S. Demapan (Oct. 23, 2000).

³³ Order Quashing Notices of Deposition; and Protective Order (Oct. 25, 2000).

³⁴ Order Affirming Order Quashing Deposition Subpoenas (Nov. 9, 2000).

³⁵ Despite Mitchell's protests to the contrary, we note that procedural due process does not encompass the right to present all desired evidence. *United States v. Engstrom*, 16 F.3d 1006, 1012 (9th Cir. 1994).

³⁶ Order Denying Request for Pretrial Conference (Nov. 9, 2000).

³⁷ Order Quashing Subpoena Duces Tecum (Oct. 27, 2000).

³⁸ Order Affirming October 27, 2000 Order Quashing Subpoena Duces Tecum (Nov. 9, 2000).

³⁹ Order Denying Second and Third Motions to Disqualify the Panel Members (Dec. 1, 2000).

including an order affirming its previous orders quashing various deposition notices and subpoenas.⁴⁰

2. Continued Violation of Court Orders

Mitchell admits he is still “taking new clients, advising old clients and working in his law office.” Motion to Strike Petitioners’ Memorandum Regarding Order to Show Cause Hearing and to Strike Declaration of Joanne T. Guerrero at 10 (Oct. 20, 2000).

There is no evidence that Mitchell has complied with the Order to Show Cause by notifying all clients and jurisdictions in which he is licensed of his interim suspension in the Commonwealth, and Mitchell refused to answer any questions on this issue at the November 9 hearing. At the hearing, Mitchell also refused to explain why he has not turned over the subject funds to the Clerk of Court or provided an accounting, and there is no evidence he has done so. Mitchell has not explained whether or why he wrote the letter attached as an exhibit to the Declaration of Joanne T. Guerrero.

We take judicial notice of the case file in this matter, which reveals the following non-exhaustive list of filings by the parties: **[p. 12]**

⁴⁰ Order Affirming Orders Quashing Deposition Subpoenas (Nov. 9, 2000); Order Affirming Orders Quashing Deposition Notices (Nov. 9, 2000).

Date	Document	Filing Party or Third Party
Jul 3, 2000	Notice/Motion for Emergency Petition for Writ of Mandamus and Motion for Stay (and supporting papers)	Petitioners
Jul 3, 2000	Order Granting Motion for Stay and Directing Answer to Writ of Mandamus	
Jul 5, 2000	Notice of Motion/Motion for Emergency Temporary Restraining Order (and supporting papers)	Petitioners
Jul 7, 2000	Statement of Lack of Service of Motion for Temporary Restraining Order and Preliminary Injunction	San Nicolas
Jul 7, 2000	Order Granting Motion to Shorten Time and Motion for Temporary Restraining Order	
Jul 10, 2000	Motion to Continue Hearing on Preliminary Injunction and Notice	San Nicolas
Jul 10, 2000	Memorandum of Points and Authorities in Support of Petitioners' Motion for Preliminary Injunction	Petitioners
Jul 10, 2000	Order Granting Motion to Continue Hearing on Preliminary Injunction	
Jul 14, 2000	HEARING ON PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION, 11:00 a.m.	
Jul 14, 2000	Real Party in Interest's Motion to Dissolve Temporary Restraining Order and Opposition to Motion for Preliminary Injunction	San Nicolas
Jul 14, 2000	Motion for Disqualification of Chief Justice Miguel S. Demapan and his Law Clerks and Notice (and supporting papers)	San Nicolas
Jul 14, 2000	Order Granting Motion for Preliminary Injunction	
Jul 18, 2000	Supplemental Order Granting Motion for Preliminary Injunction	
Jul 18, 2000	Answer to the Petition for Writ of Mandamus	San Nicolas
Jul 20, 2000	Declaration of Theodore Mitchell in Response to Supplemental Order Granting Motion for Preliminary Injunction	Mitchell
Jul 24, 2000	Motion for Review by the Full Court and Motion for Stay	San Nicolas

Jul 24, 2000	Response of Plaintiff Juan M. San Nicolas to Preliminary Injunctions	San Nicolas
Jul 25, 2000	Notice of Motion and Motion for Imposition of Sanctions (and supporting papers)	Petitioners
Jul 25, 2000	Reply Brief in Support of Petition for Writ of Mandamus and Motion for Stay (and supporting papers)	Petitioners
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Jul 26, 2000	Plaintiff's Motion for Disqualification of Justice <i>Pro Tempore</i> Pedro M. Atalig and Declaration of Theodore Mitchell	San Nicolas
Jul 26, 2000	Plaintiff's Motion for Disqualification of Justice Alexandro C. Castro and Declaration of Theodore Mitchell	San Nicolas
Jul 28, 2000	Petitioners' Memorandum re: San Nicolas' Motion for Disqualification of Justice <i>Pro Tempore</i> Pedro M. Atalig and Associate Justice Alexandro C. Castro	Petitioners
Jul 28, 2000	Petitioners' Memorandum in Opposition to Plaintiff's Motion for Stay and in Support of Request for Order of Contempt	Petitioners
Jul 31, 2000	Order Denying Motions for Disqualification	
Aug 1, 2000	Order Affirming Order Granting Motion for Preliminary Injunction	
Aug 1, 2000	Plaintiff's Opposition to Petitioners' Motion for Imposition of Sanctions	San Nicolas
Aug 1, 2000	Supplemental Answer to the Petition for Writ of Mandamus and Motion for Leave to File	San Nicolas
Aug 1, 2000	Order of Suspension and Order to Show Cause	
Aug 4, 2000	Reply to San Nicolas Supplemental Answer to Petition for Writ of Mandamus and Motion for Leave to File	Petitioners
Aug 14, 2000	Response of Plaintiff Juan M. San Nicolas to Preliminary Injunction	San Nicolas
Aug 14, 2000	Notice of Appeal to the 9th Circuit	San Nicolas/ Mitchell
Aug 15, 2000	Motion for Stay Pending Appeal (and supporting papers)	San Nicolas/ Mitchell
Aug 15, 2000	Request for Oral Argument on Motion for Stay Pending Appeal	San Nicolas/ Mitchell
Aug 16, 2000	Memorandum of Points and Authorities in Opposition to San Nicolas Motion for Stay Pending Appeal	Petitioners

Aug 16, 2000	Notice/Motion for Ex Parte Motion for Order of Contempt Against Real Party and Former Counsel (and supporting papers)	Petitioners
Aug 18, 2000	Motion for Disqualification of Justice <i>Pro Tempore</i> Alberto C. Lamorena III and Notice (and supporting papers)	San Nicolas
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Aug 21, 2000	Letter to Clerk of Court by Theodore Mitchell Re: Compliance with Order of Suspension	San Nicolas/ Mitchell
Aug 23, 2000	Motion for Disqualification of Associate Justice Alexandro C. Castro and Notice	San Nicolas
Aug 23, 2000	Motion for Disqualification of <i>Pro Tem</i> Justice Pedro M. Atalig and Notice	San Nicolas
Aug 25, 2000	Memorandum of Points and Authorities in Opposition to Motion to Disqualify Associate Justice Alexandro C. Castro and Justice <i>Pro Tempore</i> Pedro M. Atalig	Petitioners
Aug 25, 2000	Order Denying Second Motions for Disqualification of Justice <i>Pro Tem</i> Alberto C. Lamorena III	
Aug 25, 2000	Reply to Opposition to Motion for Disqualification of Justice <i>Pro Tem</i> Alberto C. Lamorena III	San Nicolas
Sep 1, 2000	Supplemental Request for Oral Argument on Motion for Stay Pending Appeal	San Nicolas/ Mitchell
Sep 1, 2000	Motion for Reconsideration and Notice	San Nicolas
Sep 6, 2000	Memorandum of Points and Authorities in Opposition to San Nicolas' and Mitchell's Motion for Reconsideration of Motions to Disqualify	Petitioners
Sep 8, 2000	Order Denying Motion for Disqualification of Justice <i>Pro Tempore</i> Alberto C. Lamorena III	
Sep 8, 2000	Order Setting Hearing Re: Petitioners' Motion for Contempt Order and Motion for Sanctions; and Petition for Writ of Mandamus	
Sep 13, 2000	Emergency Motion of San Nicolas and Mitchell for Reconsideration and Motion for Continuance of September 22, 2000 Hearing	San Nicolas/ Mitchell
Sep 14, 2000	Memorandum of Points and Authorities in Opposition to Motion of San Nicolas and Mitchell for Reconsideration and for Continuance of September 22, 2000 Hearing (and supporting papers)	Petitioners
Sep 15, 2000	Memorandum Regarding the Character of the Mitchell Disciplinary Proceedings	San Nicolas/ Mitchell

Sep 15, 2000	Mitchell's Notice of Deposition on Oral Examination of Alexandro C. Castro	San Nicolas/ Mitchell
Sep 15, 2000	Mitchell's Notice of Deposition on Oral Examination of Alberto C. Lamorena III	San Nicolas/ Mitchell
Sep 15, 2000	Mitchell's Notice of Deposition on Oral Examination of Pedro M. Atalig	San Nicolas/ Mitchell

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Sep 19, 2000	Reply in Further Support of Emergency Motion of San Nicolas and Mitchell for Reconsideration and Motion for Continuance of September 22, 2000 Hearing	San Nicolas/ Mitchell
Sep 19, 2000	Order Setting Deadline for Submissions	
Sep 19, 2000	Declaration of Matthew T. Gregory	Petitioners
Sep 20, 2000	Order Quashing Notices of Deposition	
Sep 21, 2000	Motion for Reconsideration of Motion for Disqualification of Justice <i>Pro Tempore</i> Lamorena and Notice	San Nicolas
Sep 21, 2000	Response of Real Parties in Interest to Order Setting Deadline for Submissions Re: Motion for Contempt and Opposition to Motion for Contempt	San Nicolas/ Mitchell
Sep 21, 2000	Declaration of Jeanne H. Rayphand in Response to Filing of Declaration of Matthew T. Gregory	San Nicolas/ Mitchell
Sep 21, 2000	Order Denying Motion for Reconsideration of Order Denying Second Motions for Disqualification	
Sep 22, 2000	HEARING ON PETITION FOR WRIT OF MANDAMUS AND PETITIONERS' MOTION FOR SANCTIONS, 10:00 a.m.	
Sep 27, 2000	Order Re: Motions for Contempt and Sanctions; and Petition for Writ of Mandamus	
Oct 2, 2000	Brief in Response to Court's Order Dated August 1, 2000	Mitchell
Oct 10, 2000	Motion for Reconsideration and Review by the Full Court of the September 27, 2000 Order	San Nicolas/ Mitchell
Oct 10, 2000	Declaration of Jeanne H. Rayphand in Response to Court's Order Dated September 27, 2000	San Nicolas/ Mitchell
Oct 11, 2000	First Amended Motion for Reconsideration and Review by the Full Court of the September 27, 2000 Order	San Nicolas/ Mitchell
Oct 12, 2000	Order Setting Hearing Re: Order to Show Cause	
Oct 13, 2000	Mitchell's Notice of Deposition on Oral Examination of Yoon Chang	San Nicolas/ Mitchell

Oct 13, 2000	Mitchell's Notice of Deposition on Oral Examination of Joann Kim	San Nicolas/ Mitchell
Oct 13, 2000	Mitchell's Notice of Deposition on Oral Examination of Karen Klaver	San Nicolas/ Mitchell
Oct 16, 2000	Mitchell's Motion for More Definite Statement	San Nicolas/ Mitchell

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Oct 16, 2000	Memorandum of Points and Authorities in Opposition to San Nicolas and Mitchell's Motion for Reconsideration and Review by the Full Court	Petitioners
Oct 16, 2000	Order Quashing Notices of Deposition	
Oct 17, 2000	Mitchell's Amended Notice of Deposition on Oral Examination of Yoon Chang	San Nicolas/ Mitchell
Oct 17, 2000	Mitchell's Notice of Deposition on Oral Examination of Mair, Mair, Spade & Thompson	San Nicolas/ Mitchell
Oct 17, 2000	Mitchell's Notice of Deposition on Oral Examination of Marty W.K. Taylor	San Nicolas/ Mitchell
Oct 18, 2000	Memorandum of Points and Authorities in Support of Motion to Quash Subpoena and for Protective Order	Petitioners
Oct 18, 2000	Memorandum Regarding Order to Show Cause Hearing	Petitioners
Oct 18, 2000	Notice of Motion/Emergency Motion to Quash Subpoena	Petitioners
Oct 18, 2000	Declaration of Joanne T. Guerrero	Petitioners
Oct 18, 2000	Motion for Reconsideration and for Review by the Full Court of the October 16, 2000 Order Quashing Notices of Deposition	San Nicolas/ Mitchell
Oct 20, 2000	Mitchell's Opposition to Mair Firm Motion to Quash Subpoena and for Protective Order	San Nicolas/ Mitchell
Oct 20, 2000	Motion to Strike Petitioners' Memorandum Regarding Order to Show Cause Hearing and to Strike Declaration of Joanne T. Guerrero	San Nicolas/ Mitchell
Oct 23, 2000	Order Denying Motion for More Definite Statement	
Oct 23, 2000	Mitchell's Notice of Deposition on Oral Examination of Ana T. Sablan	San Nicolas/ Mitchell
Oct 23, 2000	Mitchell's Notice of Deposition on Oral Examination of Frances T. Demapan	San Nicolas/ Mitchell
Oct 23, 2000	Mitchell's Notice of Deposition on Oral Examination of Soledad T. Tenorio	San Nicolas/ Mitchell

Oct 23, 2000	Mitchell's Notice of Deposition on Oral Examination of Jesus R. Sablan	San Nicolas/ Mitchell
Oct 23, 2000	Mitchell's Notice of Deposition on Oral Examination of Miguel S. Demapan	San Nicolas/ San Nicolas/ Mitchell
Oct 23, 2000	Reply Memorandum Regarding Motion to Quash and for Protective Order	Petitioners

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Oct 23, 2000	Order Quashing Notice of Deposition (re: Marty W.K. Taylor)	
Oct 23, 2000	Order Quashing Notice of Deposition (re: Mair, Mair, Spade & Thompson)	
Oct 25, 2000	Order Quashing Notices of Deposition; and Protective Order (re: Ana T. Sablan, Frances T. Demapan, Soledad T. Tenorio, Jesus R. Sablan, Miguel S. Demapan)	
Oct 26, 2000	Mitchell's Supplemental Motion to Strike Petitioners' Memorandum Regarding Order to Show Cause Hearing and to Strike Declaration of Joanne T. Guerrero	San Nicolas/ Mitchell
Oct 26, 2000	Subpoena Duces Tecum (Re: CNMI Bar Association)	
Oct 26, 2000	Reply Brief Regarding Order to Show Cause Hearing and in Response to Motion to Strike	Petitioners
Oct 26, 2000	Order Denying Motion to Strike	
Oct 26, 2000	Order Re: Show Cause Hearing	
Oct 27, 2000	Motion to Quash Subpoena Duces Tecum (and supporting papers)	CNMI Bar Assoc.
Oct 27, 2000	Order Quashing Subpoena Duces Tecum	
Oct 31, 2000	Respondent Mitchell's Motion for Declaration of Expiration of Order of Suspension and Motion to Dismiss Disciplinary Proceedings	San Nicolas/ Mitchell
Nov 1, 2000	Respondent Mitchell's Motion for Review by the Full Court of the October 23, 2000 Order Denying Motion for More Definite Statement	San Nicolas/ Mitchell
Nov 1, 2000	Motion for Review by the Full Court of the October 23, 2000 and October 25, 2000 Orders	San Nicolas/ Mitchell
Nov 2, 2000	Motion for Review by the Full Court of the October 26, 2000 Order Re: Show Cause Hearing and Request for Pretrial Conference	San Nicolas/ Mitchell
Nov 2, 2000	Motion for Disqualification of Justices Castro, Atalig and Lamorena	San Nicolas/ Mitchell

Nov 2, 2000	Declaration of Juan M. San Nicolas	San Nicolas/ Mitchell
Nov 7, 2000	Order Affirming Order Re: Motions for Contempt and Sanctions; and Petition for Writ of Mandamus	
Nov 7, 2000	Order Affirming Orders Quashing Deposition Notices	
Nov 9, 2000	Order Denying Request for Pretrial Conference	

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Nov 9, 2000	Order Affirming Order Denying Motion for More Definite Statement	
Nov 9, 2000	Order Affirming Orders Quashing Deposition Notices	
Nov 9, 2000	Order Affirming Orders Quashing Deposition Subpoenas	
Nov 9, 2000	Order Affirming October 27, 2000 Order Quashing Subpoena Duces Tecum	
Nov 20, 2000	Petitioners' Post-Hearing Memorandum Regarding November 9, 2000 Hearing Re: Order of Suspension and Order to Show Cause	Petitioners
Nov 20, 2000	Affidavit of David J. Lujan	Petitioners
Nov 20, 2000	Affidavit of June S. Mair	Petitioners
Nov 28, 2000	Respondent Mitchell's Motion to Strike the Lujan Affidavit and for an Evidentiary Hearing in Connection with His Motion to Disqualify the Justices and the Mair Law Firm	San Nicolas/ Mitchell
Dec 1, 2000	Order Denying Second and Third Motions to Disqualify the Panel Members	
Dec 1, 2000	Opinion (Re: Petition for Writ of Mandamus)	
Dec 6, 2000	Respondent Mitchell's Motion to Dismiss the Dicipinary Proceedings Due to Delay by the Court	San Nicolas/ Mitchell
Dec 15, 2000	Petition of San Nicolas for Rehearing	San Nicolas/ Mitchell
Jan 2, 2001	Theodore Mitchell's Settlement Proposal	San Nicolas/ Mitchell
Jan 10, 2001	Petitioners' Response to Mitchell's Settlement Proposal	Petitioners
Jan 17, 2001	Order of Dismissal of Appeal to 9th Circuit	
Jan 19, 2001	Respondent Mitchell's Motion to Disqualify a Supreme Court Law Clerk	San Nicolas/ Mitchell
Jan 19, 2001	Respondent Mitchell's Motion to Strike Petitioners' Response to Mitchell's Settlement Proposal and Request for Sanctions	San Nicolas/ Mitchell

Jan 24, 2001	Opposition to Mitchell's Motion to Strike Petitioners' Response to Mitchell's Settlement Proposal and Request for Sanctions	Petitioners
Jan 25, 2001	Order Denying Petition for Rehearing	[p. 19]

ISSUES AND BURDEN OF PROOF

The main issue before this court is whether Mitchell's suspension, effective August 1, 2000, should continue or, alternatively, whether he should be disbarred from the practice of law in the Commonwealth Courts for violation of the following disciplinary rules:

Com. Disc. R. 2(c) and MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.4(c) (1994)⁴¹ (willful disobedience or violation of court order);

MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.1 (1994) (lack of competence, thoroughness and preparation);

MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7(b) (1994) (conflict of interest due to lawyer's own interests);

MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.1 (1994) (unmeritorious claims and contentions);

MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.2 (1994) (dilatatory practices);

MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.5(c) (1994) (engaging in conduct intended to disrupt a tribunal; and

MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.2 (1994) (false statement as to qualifications of judicial officer).

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence.

⁴¹ See Com. Disc. R. 2(a) (citing as grounds for discipline any violation of American Bar Association's Model Rules of Professional Conduct).

See, e.g., Com. Disc. R. 9(g).

We must also address several preliminary matters. First, prior to the November 9 hearing, Mitchell moved that his suspension be lifted because the Court did not hold a hearing on its Order to Show Cause within 90 days of the suspension.⁴²

Second, at the November 9 hearing, Mitchell orally moved to disqualify the Mair firm from participating in the hearing, characterizing Petitioners' attorneys as prosecutors in a disciplinary proceeding who were disqualified due to a conflict of interest. [p. 20]

Third, after the November 9 hearing, Mitchell filed a motion to dismiss the "disciplinary proceedings" because the Court did not issue a ruling within 20 days after holding the November 9 hearing.⁴³

Fourth, Mitchell made a settlement proposal in which he offered to resign from the Commonwealth bar effective December 31, 2001, giving him one more year to practice law in the Commonwealth before moving to pursue a career elsewhere.⁴⁴ Mitchell subsequently filed a motion to strike Petitioners' opposition to the settlement proposal.⁴⁵

Fifth, Mitchell moved to disqualify a Supreme Court law clerk on the grounds that an unidentified law clerk had allegedly improperly informed a non-party to these proceedings that the Court had issued

⁴² Respondent Mitchell's Motion for Declaration of Expiration of Order of Suspension and Motion to Dismiss Disciplinary Proceedings (Oct. 31, 2000).

⁴³ Respondent Mitchell's Motion to Dismiss the Disciplinary Proceedings Due to Delay by the Court (Dec. 6, 2000).

⁴⁴ Theodore Mitchell's Settlement Proposal (Jan. 2, 2001).

⁴⁵ Respondent Mitchell's Motion to Strike Petitioners' Response to Mitchell's Settlement Proposal and Request for Sanctions (Jan. 19, 2001).

an Order to Show Cause that prohibited Mitchell from practicing law in the Commonwealth.⁴⁶

We deny each of these motions by separate order.⁴⁷ As these matters do not affect our conclusion as to Mitchell's suspension, and as they only serve to distract the Court's focus from the main issue, we will discuss only the suspension in this opinion. [p. 21]

ANALYSIS

C. Mitchell's Suspension Must Be Continued, to Guard the Administration of Justice, Maintain the Dignity of the Courts and the Integrity of the Profession, and to Protect the Public

Inherent powers derive from a judge's absolute need to maintain order and preserve the dignity of the court. The court's inherent powers consist of those which are necessary to the exercise of all others. *Commonwealth v. Borja*, 3 N.M.I. 156, 171 (1992). A court has the well-established inherent authority to suspend or disbar attorneys on its own motion. *In re MacKay*, 416 P. 2d 823, 837 (Alaska 1966). The legislative branch of government may not defeat this power. *Id.* at 837 & n.10; *see Stratmore v. State Bar*, 538 P. 2d 229, 230 (Cal. 1975); *In the Matter of Paguirigan*, 3 Cal. State Bar Ct. Rptr. 936 (1998) (recognizing that state Supreme Court's custom of following established statutory method for disbarment proceedings does not supercede or diminish court's own inherent power to regulate attorneys).

The purpose of suspension or disbarment is not to punish the attorney, but rather to guard the administration of justice, maintain the dignity of the courts and the integrity of the profession, and protect the public. *See Office of Disciplinary Counsel v. Lau*, 900 P.2d 777, 783 (Haw. 1995); *In re Giberson*,

⁴⁶ Respondent Mitchell's Motion to Disqualify a Supreme Court Law Clerk (Jan. 19, 2001).

⁴⁷ Order: (1) Denying October 31, 2000 and December 6, 2000 Motions to Dismiss "Disciplinary Proceedings;" (2) Denying Motion to Disqualify Mair, Mair, Spade & Thompson; (3) Rejecting Settlement Proposal; and (4) Denying Motion to Recuse Law Clerk (filed concurrently with this Opinion and Order).

581 N.W.2d 351, 353 (Minn. 1998). In determining the appropriate sanction, the court considers the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession. *Giberson* at 354. Suspension or disbarment is not a punishment, but rather a necessary measure to protect the public, which has a right to expect that the court will be vigilant in withholding and withdrawing an attorney's certificate of qualification and character upon which the public relies. *Oklahoma Bar Ass'n v. Woodard*, 362 P.2d 960, 963-64 (Okla. 1960) (refusing to reverse suspension where attorney argued it would cause irreparable harm and damage to his practice, observing "[N]one of these facts excuse him of the charge of violating the Canons of Ethics . . .").

An interim suspension followed by a post-suspension hearing satisfies the requirements of due process. *See, e.g., Burleigh v. State*, 643 P.2d 1201, 1204 (Nev. 1982) (noting importance of protecting public through bar discipline and resulting detrimental effect on public confidence in legal [p. 22] profession if court failed summarily to suspend attorneys, and upholding temporary suspension where appellant's continued practice would erode public confidence in legal profession, because facts presented sufficient exigent circumstances to warrant summary suspension).

Here, Mitchell must be suspended for violation of the following disciplinary rules, to protect the courts, the profession, and the people of the Commonwealth.

- 1. Refusal to Comply with Court Orders**

- a. Disobedience of Preliminary Injunction**

A party must comply with a court order until it is reversed by orderly and proper proceedings. *Howat v. Kansas*, 258 U.S. 181, 190, 42 S. Ct. 277, 281, 66 L. Ed. 2d. 550 (1992). The ostensible purpose for such a rule is to prevent a party from making "himself a judge of the validity of orders which

have been issued, and by his own act of disobedience set them aside” *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 450, 31 S. Ct. 492, 501, 55 L. Ed. 797 (1911).

A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.4(c) (1994); *see* Com. Disc. R. 2(c); *Bigelow v. United States*, 267 F.2d 398 (9th Cir. 1959).

In *Bigelow*, the Ninth Circuit declared:

Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper . . . Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide.

Id. at 399 (internal citation omitted).

Here, none of the aforementioned Court orders was invalid on its face. There is no legally cognizable argument that this Court was obviously traveling outside its orbit when it ordered that the parties maintain the status quo pending an outcome on the petition for writ of mandamus. Any legitimate challenge to the preliminary injunction must be made by way of appeal, and not by Mitchell’s own decision to comply or not comply with the Court order as he pleases.

More than six months later, Mitchell still refuses to comply with the Court’s order that he and San Nicolas either turn over the subject funds or provide an accounting. In refusing to even [p. 23] acknowledge that he was subject to this Court’s July 14, 2000 preliminary injunction order, the July 18 supplemental order, and the August 1, 2000 Order to Show Cause, and in violating these Court orders, Mitchell has demonstrated a complete lack of integrity, and an unjustifiable lack of respect for the courts, the legal profession, the public, and his own former client. At a minimum, Mitchell’s ill advice to his then-client severely prejudiced that client’s interests, by misleading San Nicolas into believing he could

legitimately disobey a court order. By this conduct, Mitchell has sufficiently demonstrated why he should not be permitted to continue to do harm to unsuspecting clients who would rely on him to safeguard their property and, indeed, their very lives.

b. Refusal to Comply with Order to Show Cause

A court may sanction an attorney for continued violation of a court order of suspension. *Lau* at 781 (reviewing case law of other jurisdictions that indicates practice of law during period of suspension often warrants suspension or disbarment). Some courts have held that conduct which has the appearance of practicing law may constitute the unauthorized practice of law. *See Burrell v. Disciplinary Bd.*, 777 P.2d 1140, 1143 (Alaska 1989) (suspending attorney who wrote demand letter, even though letter acknowledged attorney's suspension and indicated lawsuit would only follow once attorney was able to again practice law).

In continuing an attorney's suspension, the *Lau* court explained:

Lau's disregard of this court's suspension order and the rules that govern the practice of law can do nothing but add to the growing cynicism about lawyers and the practice of law, encourage disrespect for and noncompliance with court orders, and further denigrate the integrity of the profession and our regulation of it. Such acts undermine the public's confidence in our system of justice and therefore do great harm to the public, the legal system, the profession, and the dignity of the courts. A mere reprimand in this case would encourage others to disregard the orderly processes by which our courts and the legal profession are governed.

Lau at 783.

Here, Mitchell has refused to comply with the Order to Show Cause, by continuing to practice law and by not notifying all jurisdictions in which he is licensed to practice of his suspension in the Commonwealth. [p. 24]

(1) Failure to Notify Other Jurisdictions of Suspension in the Commonwealth

The record indicates that Mitchell has not notified all bar associations of which he is a member that he has been suspended in the Commonwealth. To comply with the Order to Show Cause, Mitchell would have had to send a notification letter to, among others, the United States District Court for the Northern Mariana Islands. He also appears to be licensed in the state of Arizona.⁴⁸ He would then have had to file copies of his notification letters with the Court. Order to Show Cause at 5 n.7.

At the November 9 hearing, Mitchell refused to answer the Court's questions regarding whether he had notified all clients and all jurisdictions in which he is licensed to practice of his suspension in the Commonwealth. He received notice that this would be an issue several times before the November 9 hearing,⁴⁹ and on the day of the hearing. He consistently refused to demonstrate compliance with this provision of the Court order, because he insisted on his right to a full trial. Due process here does not mandate a full trial.⁵⁰ Mitchell's own conscious decision not to show cause why his suspension should not continue, in light of clear evidence of this violation of another court order, did not amount to a denial by this Court of Mitchell's due process rights.

⁴⁸ Mitchell has stated: "If this Court were to sanction me, my license to practice law in Arizona would automatically be put in serious jeopardy and it would seriously jeopardize my ability to obtain admission to the bar of any other jurisdiction." Theodore Mitchell's Settlement Proposal at 6 (Jan. 2, 2001). The Court takes judicial notice of the website for the Arizona state bar, which lists Mitchell as an active member.

⁴⁹ See, e.g., Memorandum Regarding Order to Show Cause Hearing and Declaration of Joanne T. Guerrero (Oct. 18, 2000).

⁵⁰ As the Court explained in its November 9 Order Denying Request for Pretrial Conference, Mitchell is not necessarily entitled to a hearing if the issues have been fully briefed. *Pacific Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000). Rather, the opportunity to brief the issue fully satisfies due process requirements, especially in a case where the judge has witnessed the offenses. *Id.*; see *United States v. Engstrom*, 16 F.3d 1006, 1012 (9th Cir. 1994). Further, procedural due process does not encompass the right to present all desired evidence. *Engstrom* at 1012; *Pacific Harbor* at 1118.

(2) Continued Practice of Law

As a suspended attorney, Mitchell must comply with the terms of his suspension in such a manner that there may be no ground for suspicion on the part of other members of the bar or of the [p. 25] public that the Order to Show Cause is not being exactly observed in its letter and spirit. *In re Mitchell*, 901 F.2d 1179, 1185 (3d Cir. 1990); *id.* at 1184 (describing acts that would constitute practice of law in other jurisdictions, including conduct outside courtroom).

The Order to Show Cause first declares: “Attorney Theodore R. Mitchell shall be and is hereby suspended from the practice of law in the Courts of the Commonwealth of the Northern Mariana Islands.” Order to Show Cause at 4. The order then states: “Within 15 days from the entry of this Order, Mitchell shall notify all clients and all bar associations of which he is a member that he is being *suspended from the practice of law in this jurisdiction.*” Order to Show Cause at 5 (emphasis added).

Mitchell claims the Order to Show Cause only suspends him from “making any actual physical appearance as an attorney on behalf of a client in the Commonwealth courts.” *Saipan Lau Lau Dev., Inc. v. Superior Court*, Orig. No. 00-001 (N.M.I. Sup. Ct. Oct. 20, 2000) (Motion to Strike Petitioners’ Memorandum Regarding Order to Show Cause Hearing and to Strike Declaration of Joanne T. Guerrero at 8). Thus, Mitchell believes he is “entirely free to continue taking new clients, advising old clients and working in his law office, so long as he does not appear in any Commonwealth court, personally or by filing papers.” *Id.* at 10-11.

However, in *San Nicolas v. Atalig*, 00-0023 (D.N.M.I. Aug. 11, 2000) (Complaint), *dismissed*, *San Nicolas v. Atalig*, Civ. No. 00-0023 (D.N.M.I. Aug. 14, 2000) (Order Abstaining and Dismissing With Prejudice and Dismissing Motion to Intervene as Moot), Mitchell demonstrated a different understanding of the terms of his suspension:

68. Defendants Atalig, Castro, and Lamorena knew or should have known that plaintiff Mitchell had a constitutional right to notice and opportunity to be heard prior to being deprived of his *right to practice law*.

* * *

79. The damages suffered by Mitchell as a result of the *suspension of his right to practice law* are [sic] ascertainable in monetary terms and are therefore irreparable.

* * *

87. *If the suspension is allowed to destroy his present law practice*, he will have absolutely no means to attain any new form of livelihood to support himself or his young family. [p. 26]

* * *

90. Without immediate injunctive relief which will allow Mitchell *to carry on his law practice again*, Mitchell's law practice is in danger of being destroyed permanently.

* * *

93. As the proximate result of defendants' wrongful and malicious acts, plaintiff Mitchell *has been deprived of his livelihood* and has suffered, and continues to suffer, substantial losses

The above quotes clearly demonstrate Mitchell's understanding that his suspension was not limited to a physical appearance within the four walls of a courtroom.

In our December 1, 2000 Opinion granting the writ petition, we found that Mitchell was playing "fast and loose" with the courts by engaging in intentional self-contradiction in an effort to obtain an unfair advantage. Opinion at 9. Mitchell is again attempting to mislead the Court by urging a second, contradictory interpretation of the Order to Show Cause. If there was any ambiguity as to the terms of the Order to Show Cause then, at a minimum, a reasonable attorney would have competently researched the issue of what conduct might provoke suspicion on the part of the bar or the public that he was practicing law. Alternatively, a reasonable and competent attorney could have filed a motion requesting that the Court

clarify the type of conduct that would violate its order of suspension. Mitchell, not surprisingly, did neither. He simply chose an interpretation of the Order to Show Cause that was convenient for his purposes.

The record reveals that Mitchell has engaged in the practice of law on at least one occasion, in violation of his Court-ordered suspension. On October 18, 2000 Petitioners filed a declaration indicating that Mitchell had written a demand letter to the Carlsmith firm on behalf of two clients.⁵¹ Mitchell signed the demand letter, dated October 12, 2000, on behalf of three clients involved in a car accident. Mitchell wrote: “I have been engaged by Mr. and Mrs. DeLeon Guerrero and their son Marvin to represent them in connection with the foregoing motor vehicle accident, which involved your insured.” Declaration of Joanne T. Guerrero at Exhibit A (Oct. 18, 2000). The letter continues, “I have instructions from our clients to attempt to settle their claims before filing litigation.” *Id.* The [p. 27] letterhead reads “Law Offices of Theodore R. Mitchell.” The letter bears the same signature as Mitchell has affixed to numerous documents filed with this Court. Mitchell does not acknowledge his suspension, nor does he purport to represent the clients in a non-legal capacity. The letter clearly indicates that Mitchell was representing the clients as an attorney, in blatant violation of the Order to Show Cause.

The Court notes that its Order to Show Cause did not affect Mitchell’s ability to practice law in federal court. Thus, if Mitchell engaged in conduct that would constitute the practice of law in a case over which a federal court would have jurisdiction, then he might not have violated this Court’s Order to Show Cause. However, with respect to Mitchell’s demand letter, there is little chance that a car accident case occurring in the Commonwealth and involving only Commonwealth residents would have been filed in federal court.

⁵¹ Declaration of Joanne T. Guerrero (Oct. 18, 2000).

It is thus clear to this Court that Mitchell has undeniably, unmistakably, and flagrantly violated the Court's Order to Show Cause by engaging in the practice of law in this jurisdiction. We cannot allow him to continue to abuse the trust of potential clients who are unaware of his suspension when they place their property and lives in his incapable hands.

2. Conflict of Interest Between Mitchell and San Nicolas

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7(b) (1994). When a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. *Id.* cmt. 5.

In his October 11, 2000 Motion for Reconsideration, Mitchell squarely identifies the heart of the very conflict of interest of which he claims to be ignorant:

The Mair Firm has taken the position that both Mitchell and San Nicolas must go to jail because *San Nicolas decided* not to make the deposit and the accounting . . . [p. 28] Where, then, is the conflict of interest? There is none. It is Mitchell and Rayphand who are put in jeopardy of sanctions by San Nicolas!

Motion for Reconsideration at 30 (emphasis added). Mitchell argues he cannot have violated the preliminary injunction because it was his former client's decision not to comply. Mitchell fails to acknowledge that he himself was subject to the preliminary injunction, and the he himself refused to at least provide an accounting of the funds he physically withdrew from the bank on behalf of San Nicolas.

Mitchell also ignores the fact that he provided advice to San Nicolas. Not only does Mitchell place all blame for non-compliance on his former client, he had his former client file a Declaration accepting that blame.⁵² The Declaration is particularly suspect in light of a previous document in which San Nicolas indicated he acted on the advice of Mitchell's counsel.⁵³ If the Declaration is false, then Mitchell suborned perjury to exonerate himself, to his former client's detriment. If the declaration is true, a more principled attorney would have withdrawn his representation due to his client's insistence on violating the law, regardless of any attorney fees at stake. Either way, Mitchell's and San Nicolas' interests were diametrically opposed: each could blame the other as an excuse for violating a Court order. Mitchell did just that, by placing all blame for violating the preliminary injunction squarely on the shoulders of his former client. Under these circumstances, no reasonable attorney could have believed the client's representation would not be adversely affected.

At the November 9 hearing, Mitchell refused to explain himself. He had adequate notice and an opportunity to be heard. Indeed, at the hearing, counsel for Petitioners reiterated this conflict, once again putting Mitchell on notice of the exact conflict he was required to explain to this Court. The facts clearly indicate that Mitchell was aware of and refused to remedy this conflict of interest. [p. 29]

3. Mitchell Has Repeatedly Caused Delay, Made Unmeritorious Filings, and Engaged in Abusive and Disruptive Conduct

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous. MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.1

⁵² Declaration of Juan M. San Nicolas (Nov. 2, 2000).

⁵³ Response of Plaintiff Juan M. San Nicolas to Preliminary Injunctions (July 24, 2000).

(1994). A lawyer has a duty not to abuse legal procedure. *Id.* cmt. 1. An action is frivolous if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person, or, if the lawyer is unable to make a good faith argument on the merits of the action taken. *Id.* cmt. 2.

A lawyer shall make reasonable efforts to expedite litigation consistent with the client's interests. MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.2 (1994). Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the lawyer's convenience, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that the bench and the bar often tolerate similar conduct. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. *Id.* cmt. 1.

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.2 (1994).

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.1 (1994). Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. *Id.* cmt. 5.

A lawyer shall not engage in conduct intended to disrupt a tribunal. MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.5(c) (1994) ("MRPC 3.5"). Disruptive conduct is commonly evaluated in light of the totality of the circumstances. *United States v. Engstrom*, 16 F.3d 1006 (9th Cir. 1994)

(reviewing and affirming attorney suspension for violation of MRPC 3.5(c) and 8.4(d), [p. 30] under abuse of discretion standard, for disrespectful and confrontational remarks critical of judge);⁵⁴ *People v. Dalton*, 840 P.2d 351 (Colo. 1992) (accepting stipulation for sanction of public censure)⁵⁵. The contents of court documents may be deemed to violate Rule 3.5(c). *In re Cordova-Gonzalez*, 996 F.2d 1334, 1335 (1st Cir. 1993).⁵⁶ The rule is intended to enforce the standards of decorum and courtesy necessary to promote and maintain an orderly system of justice in which people can have confidence when their rights and obligations are at stake. *Office of Disciplinary Counsel v. Breiner*, 969 P. 2d 1285, 1291 (Haw. 1999). The prohibition against undignified or discourteous conduct is not for the sake of the justices, but for the sake of the offices they hold. As the *Breiner* court noted:

Respect for and confidence in the judicial office are essential to the maintenance of any orderly system of justice. This is not to suggest that a lawyer should be other than vigorous, even persistent in the presentation of a case, nor is it to overlook the reciprocal responsibility of courtesy and respect that the judge owes the lawyer. Unless these respective obligations are scrupulously honored, a trial court will be inhibited in performing two essential tasks: sifting through conflicting versions of the facts to discover where truth lies, and applying the correct legal principles to the facts as found. Under the best of

⁵⁴ *Engstrom* involved conduct similar to that encountered here, including statements in open court such as “You are making a mockery of the judicial process,” and “This is a kangaroo court,” questioning the court’s knowledge of the law, criticizing the court’s rulings, and moving to disqualify the judge because “you have been consistently insulting, irrational, unfair. You have demeaned me in front of the jury and during this proceeding . . . During the trial yesterday, most of the day, you appeared to be dozing off.” *Engstrom* at 1008-09. In suspending the attorney, the court determined the attorney had “resisted [the judge’s] rulings ‘in a disruptive and disrespectful manner that went well beyond the need to preserve issues for appeal’” and “displayed flagrant defiance of [the judge’s] orders.” *Id.* at 1012.

⁵⁵ In *Dalton*, the conduct at issue involved “assert[ing] numerous unwarranted allegations against, and display[ing] disrespect for, the county court judge, the prosecutor, and the court reporter.” Such conduct was “undignified, discourteous and disruptive of the proceedings.” *Dalton* at 352. Additionally, in moving to disqualify the judge in a separate proceeding, the respondent made allegations that were “unwarranted and displayed disrespect for the court.” *Id.* In disciplinary proceedings against him, the respondent charged a complaining witness with filing a frivolous and groundless action, and claimed the witness was liable for damages and attorney fees, despite a statutory grant of immunity. *Id.* The respondent stipulated his conduct violated Disciplinary rule 7-106(C)(6), which is analogous to MRPC 3.5(c). *Id.*

⁵⁶ In *Cordova-Gonzalez*, the First Circuit affirmed the disbarment of an attorney for, among other things, filing pleadings “containing vitriolic slurs on judges and lawyers that were ‘degrading to the law, the bar and the Court.’” *In re Cordova-Gonzalez* at 1335 (internal citation omitted).

circumstances these tasks are difficult; without an orderly environment they can be rendered impossible.

Unless order is maintained in the courtroom and disruption prevented, reason cannot prevail and constitutional rights to liberty, freedom and equality under the law cannot be protected. The dignity, decorum and courtesy [that] have traditionally characterized the courts of civilized nations are not empty formalities. They are essential to an atmosphere in which justice can be done. [p. 31]

Id. (internal citation omitted). These observations are equally applicable to an appellate court, where the court must sift through conflicting arguments, apply the correct standard of review to conflicting facts, and apply the correct legal principles to those facts.

In *Breiner*, the court recognized that “vigorous and zealous advocacy is a necessary component of our judicial system. Likewise, ‘[r]espect for and confidence in the judicial office [is] essential to the maintenance of any orderly system of justice.’” *Id.* at 1289-90 (internal citation omitted). However, the court distinguished an attorney’s overzealous representation from contemptuous behavior: “While every counsel has the right to pursue every claim, if a ruling is unfavorable, ‘it is not counsel’s right to resist it or to insult the judge – [the attorney’s] right is only respectfully to preserve his point for appeal.’” *Id.* at 1290 (internal citation omitted).

Here, Mitchell’s conduct was not limited to that inside the courtroom. From the moment Petitioners filed their petition for writ of mandamus, Mitchell began filing motions in this Court that distracted our attention from the simple question of whether a writ should issue. It began with a motion to continue the hearing on Petitioners’ motion for preliminary injunction. It progressed with the filing of countless disqualification motions, only one of which had any shred of merit, and the first of which was filed on the morning of the hearing on Petitioners’ motion for preliminary injunction. Mitchell then filed a declaration in “Response” to the Court’s preliminary injunction, containing vitriolic slurs that were degrading to the law,

the bar and the Court. Indeed, Mitchell did not limit his insults to the Court and the parties; he also leveled an accusation at a non-party who observed the hearing on the motion for preliminary injunction.

Even after his suspension, Mitchell continued to disrupt the Court's ability to rule on the simple matter of whether a writ should issue. He filed a premature appeal to the Ninth Circuit of several of the Court's orders.⁵⁷ He moved to stay the proceedings pending disposition of the appeal. He filed another round of motions for disqualification of the entire panel. Then, after the Court set a hearing on its Order to Show Cause, in a display of particularly egregious and disruptive conduct, [p. 32] Mitchell attempted to delay the hearing by first moving to continue, then by attempting to depose each panel member, two Supreme Court law clerks and a former law clerk, a former Chief Justice, the current Chief Justice, and several of his family members. Mitchell has also sharply and unjustifiably criticized a Supreme Court law clerk whom he cannot even prove worked on this case. In response to each order denying Mitchell's meritless motions, Mitchell consistently made an equally meritless motion for reconsideration or for full-panel review. He did all this to the detriment of his former client, who has been forced to endure proceedings that have delayed a final judgment on his entitlement to a jury verdict of \$1.5 million.

While we do not wish to discourage a competent attorney from zealously representing his or her client, Mitchell's conduct cannot be viewed as anything more than a transparent attempt to disrupt the orderly disposition of the proceedings before this Court. With each of Mitchell's dilatory tactics, the Court was forced to expend its limited resources in discussing in person or by various forms of inter-island communication,⁵⁸ researching and preparing responsive orders.⁵⁹ These delays not only distracted the

⁵⁷ The appeal has since been dismissed. *Saipan Lau Lau Dev., Inc. v. Superior Court*, No. 00-116677 (9th Cir. Jan. 4, 2001).

⁵⁸ It should be noted that one of the panel members has an active private practice, and another of the panel members resides on the island of Guam. Communication among the panel members thus requires more effort than if all members

Court's focus from the writ petition in this case, but also undoubtedly disrupted the orderly disposition of the Court's entire docket, all at great expense to his unfortunate former client. Again, suspension is the only effective means of preventing such abusive conduct.

D. Suspension Is an Appropriate Sanction

In imposing a sanction after finding attorney misconduct, a court should consider: (a) the duty violated, (b) the attorney's mental state, (c) the actual or potential injury caused by the misconduct, and (d) any aggravating or mitigating factors. STANDARDS FOR IMPOSING LAWYER SANCTIONS 3.0 [p. 33] (1991). Mitigating factors include, among other things, the absence of a prior disciplinary record, and the existence of personal or emotional problems. STANDARDS FOR IMPOSING LAWYER SANCTIONS 9.32 (1991). It is no excuse that the client did not complain of injury or harm, nor is it an excuse that "the client made me do it." STANDARDS FOR IMPOSING LAWYER SANCTIONS 9.4 (1991).

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party, or interference or potential interference with a legal proceeding. STANDARDS FOR IMPOSING LAWYER SANCTIONS 6.22 (1991); *see, e.g., In the Matter of Vincenti*, 458 A.2d 1268, 1274 (N.J. 1983).⁶⁰ The suspension may provide for automatic reinstatement, or may require

worked in the same building as the sitting Supreme Court justices.

⁵⁹ Indeed, if a single law clerk were to handle this case, we estimate that the law clerk would have spent most of his or her days for the past eight months reviewing a case file which at times expanded every day, conducting legal research which Mitchell himself failed to provide in his Court filings, and drafting orders addressing each and every meritless Court filing Mitchell has made. It should be noted that, unless a law clerk was involved in the Superior Court proceedings giving rise to the underlying writ petition, there is no rule or law and Mitchell has identified none that would prohibit a law clerk from working on this case.

⁶⁰ The *Vincenti* court explained:

We are not confronted here with an isolated example of loss of composure brought on by the emotion of the moment; rather, the numerous instances of impropriety pervaded the proceedings over a period

a showing of rehabilitation, compliance with all applicable discipline or disability orders or rules, and fitness to practice law, by clear and convincing evidence. STANDARDS FOR IMPOSING LAWYER SANCTIONS 2.3 (1991).

Here, Mitchell has undeniably committed numerous acts of professional misconduct. He has presented no rational explanation for his behavior, despite the opportunity to do so, as he apparently believes he is merely doing his job. Mitchell's refusal to recognize a serious and irreparable conflict of interest with his client, his advice and his own participation in the violation of at least two separate Court orders, his continuing attempts to interfere with the proceedings and the operation of this Court, and his continued disrespect for anyone remotely or only possibly involved in this case, all compel this Court's order of continued suspension. [p. 34]

CONCLUSION

The foregoing egregious conduct would certainly justify disbarment. Mitchell began by defying a Court order not just once, but several times. He complicated matters by advising his then-client to disobey a Court order, then by having the client exonerate him of any wrongdoing. Mitchell's refusal to acknowledge a conflict of interest with his then-client, and his insistence on continuing to handle this case in the disruptive, disrespectful manner in which he has, further underscores his complete lack of integrity, and his ineptitude in handling this simple writ petition. At no time during the pendency of this proceeding has Mitchell exhibited the slightest hint of remorse, or acknowledged that his conduct was an unprofessional

of three months. They are susceptible of no other interpretation than that respondent was attempting to intimidate, threaten, and bully those whose interests did not coincide with his own or his client's.

In the Matter of Vincenti, 458 A.2d 1268, 1274 (N.J. 1983).

and unnecessary component of competent legal representation. Indeed, Mitchell has apparently acknowledged the gravity of his unprincipled conduct by offering to permanently resign from the Commonwealth bar to avoid a formal suspension or disbarment.⁶¹

Nevertheless, the Court notes that Mitchell has engaged in approximately 40 years of practice within the Commonwealth, and appears to have fallen victim to a serious illness. The Court therefore chooses to exercise its discretion in favor of suspension instead of disbarment, solely out of sympathy for Mitchell, and not because Mitchell has offered any meaningfully mitigating circumstances. Again, while we choose suspension for Mitchell, we cannot over-emphasize the fact that there comes a time where a court's sympathy for an attorney must not undermine the court's duty to guard the administration of justice, maintain the dignity of the courts and the integrity of the profession, and protect the public. Accordingly, [p. 35]

IT IS HEREBY ORDERED that Theodore R. Mitchell's interim **SUSPENSION** shall hereby **CONTINUE** for a period of three years, beginning on August 1, 2000. After eighteen months have elapsed, Mitchell shall be permitted to apply for re-instatement. Should he choose to so apply, Mitchell shall comply with Com. Disc. R. 16. Additionally, as a condition of reinstatement, Mitchell shall take and pass the Multi-State Professional Responsibility Examination within one year of his application for reinstatement.

IT IS FURTHER ORDERED that all other pending motions raised herein by Mitchell and not addressed by separate order are hereby **DENIED**.

Dated this 08th day of March 2001.

⁶¹ Theodore Mitchell's Settlement Proposal at 4 (Jan. 2, 2000).

/s/
ALEXANDRO C. CASTRO, Associate Justice

/s/
PEDRO M. ATALIG, Justice *Pro Tem*

/s/
ALBERTO C. LAMORENA III, Special Judge