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

OFFICE OF THE ATTORNEY GENERAL )  
and DIVISION OF IMMIGRATION )  
SERVICES )  
Petitioners, )  
v. )  
ROGELIO F. AGLUBA, )  
Respondent. )

Civil Action No. 96-939

ORDER GRANTING MOTION  
FOR SANCTIONS

I. PROCEDURAL BACKGROUND

This matter came before the Court on June 23, 1999, in Courtroom A on Petitioners' motion for sanctions. Robert Goldberg, Esq. appeared on behalf of Petitioners. Michael W. Dotts, Esq. appeared on behalf of non-party Respondent Joe Hill. 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

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## II. FACTS

On March 2, 1999, counsel for Respondent Joe Hill served a subpoena duces tecum on Secretary of Labor and Immigration Mark Zachares and the Chief of Enforcement Major John Taitano seeking their testimony in an impending motion to set aside Respondent's order of deportation.

On March 8, 1999, Petitioners filed a motion to quash the subpoenas. Subsequently, on March 18, 1999, the Court heard the motion to set aside the deportation order. Neither Zachares nor Taitano appeared at this hearing.

On March 30, 1999, the Court heard the motion to quash. Since Zachares and Taitano did not appear at the hearing on the motion to set aside, Respondent considered the matter moot and did not oppose the motion to quash.

On April 6, 1999, the Court granted both Respondent's motion to set aside the deportation order and Petitioners' motion to quash.

On May 14, 1999, Petitioners filed a motion for sanctions under Com.R.Civ.P.45(c)(1) contending that Respondent and his counsel should be sanctioned for imposing an undue burden on Mr. Zachares and Mr. Taitano or, in the alternative, for failing to oppose the underlying motion to quash which requested sanctions.

## III. ISSUES

1. Whether counsel for Respondent should be sanctioned for serving subpoenas on Mr. Zachares and Mr. Taitano?

2. Whether sanctions should be awarded by default for failure to oppose the motion to quash?

## IV. ANALYSIS

### 1. Com.R.Civ.P.45

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

"A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that 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."

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

5 Here, the Court finds that subpoenaing Mr. Zachares a n d Mr. Taitano to testify at  
6 Respondent's hearing to set aside the deportation order was not sanctionable conduct under Rule 45  
7 as the testimony sought by Respondent was factually relevant to his deportation case. As noted by  
8 Respondent's counsel, Mr. Zachares was subpoenaed to testify in regard to an alleged agreement to  
9 allow Respondent to voluntarily depart the Commonwealth. Likewise, Mr. Taitano was subpoenaed  
10 to testify in regard to documents he allegedly signed releasing Respondent's travel documents in order  
11 for Respondent to depart per the Zachares agreement.

## 12 2. Opposition

13 Petitioners contend that sanctions should be granted against Respondent and his counsel  
14 because Respondent failed to oppose Petitioners' motion to quash. In opposition, Respondent  
15 contends that Petitioners are not entitled to sanctions since such relief was not requested in the motion  
16 to quash.

17 Petitioners filed their motion to quash on March 8, 1999 and served Respondent's counsel with  
18 the motion the same day. However, on March 18, 1999, the Court heard Respondent's motion to set  
19 aside the order deporting him. Despite being subpoenaed for this hearing, neither Mr. Zachares nor  
20 Mr. Taitano appeared. On March 30, 1999, the Court heard the motion to quash. Since neither  
21 Zachares nor Taitano appeared at the March 18<sup>th</sup> hearing, counsel for Respondent considered the  
22 motion to quash moot and thus, never filed an opposition.<sup>1/</sup> The Court subsequently granted the  
23 motion to quash.<sup>2/</sup>

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25 <sup>1/</sup>Pursuant to Com.R.Prac.8(a), the opposition was due 5 days preceding the hearing, or March  
26 25, 1999.

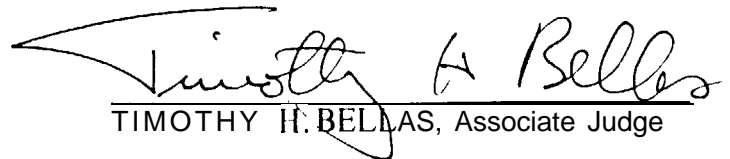
27 <sup>2/</sup>See Order, filed April 6, 1999

1 Here, the Court finds that an award of sanctions is appropriate. First, the motion to quash was  
2 filed before the hearing on Respondent's motion to set aside the deportation order. Therefore, it was  
3 incumbent upon Respondent to either oppose the motion or risk being subjected to the relief requested  
4 therein. Second, the motion to quash did request sanctions.<sup>3</sup> In order to manage and control its ever  
5 increasing caseload, the Court has the inherent power to sanction the defaulting party or an attorney.  
6 Lindsey v. United States, 693 F.Supp. 1012, 1025 (W.D.Okl. 1988). Likewise, the Court finds that  
7 the sanctions will serve to enforce our Rules of Civil Procedure to bring litigation to a speedy and  
8 inexpensive resolution instead of diverting the Court's energies and attention away from more  
9 deserving cases. With that in mind, the Court also notes that although the language of Rule 45 (c)(1)  
10 is mandatory, the sanctions to be imposed are not limited to a reasonable attorney's fee.<sup>4</sup> Therefore,  
11 at this time the Court is imposing a nominal sanction which is not intended as punishment but as a  
12 warning to counsel to follow the Commonwealth Rules of Civil Procedure.

### 13 V. CONCLUSION

14 For all the reasons stated above, Petitioners' motion for sanctions is **GRANTED**. Counsel  
15 for Respondent shall pay \$400 to the Clerk of Court of the Commonwealth Superior Court within 10  
16 (ten) days of the date of this Order.

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18 So ORDERED this 15 of July, 1999.

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21 TIMOTHY H. BELLAS, Associate Judge

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25 <sup>3</sup>See Notice and Motion to Quash, filed March 8, 1999, at 2-3

26 <sup>4</sup>See Com.R.Civ.P.45(c)(1):

27 "The court shall impose upon the party or attorney an appropriate sanction, which may  
28 include. *but is not limited to*, a reasonable attorney's fee."(emphasis added).