



By Order of the Court, Judge Pro Tempore ELYZE M. IRIARTE

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**FOR PUBLICATION**



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**CNMI SUPERIOR COURT**  
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N/A

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

**IN RE THE MATTER OF :**  
  
**MICHAEL A. WHITE,**  
  
**Respondent.**

**CIVIL ACTION NO. 19-0278**  
  
**ORDER DISMISSING ATTORNEY  
MICHAEL A. WHITE'S MOTION FOR  
A NEW TRIAL FOR LACK OF  
JURISDICTION AND IN THE  
ALTERNATIVE, FINDING THE  
SMALL CLAIMS COURT DID NOT  
ERR IN HOLDING WHITE IN  
CONTEMPT**

**I. INTRODUCTION**

**THIS MATTER** came before the Court on February 12, 2021 at 10:00 a.m. in Courtroom 202. Judge Pro Tempore Elyze M. Iriarte presided over the matter via video conference. Attorney Michael A. White was present in the courtroom and represented himself.

The Court heard the testimony of Rebecca White, Eva Calvo, Michael Evangelista, and White. The Court admitted into evidence Exhibit 1 – a transcript of the proceedings on June 3, 2019 prepared by Rebecca White, and Exhibit 2 - a diagram of Courtroom A. After the hearing, the Court permitted White to file a Memorandum on the matter, which he filed on February 24, 2021.

Based on a careful review of the record, arguments, applicable law and for the reasons set forth herein, the Court **DISMISSES** this proceeding brought under Commonwealth Rule of Civil Procedure 83(j) for lack of jurisdiction and alternatively rules that even if jurisdiction exists, the Small Claims Court did not err in holding White in contempt.

1 **II. PROCEDURAL AND FACTUAL BACKGROUND**

2 This matter arises out of the small claims proceeding, *The Financial & Insurance Services*  
3 *Group, Inc. v. Janerlinse S. Sablan*, Small Claim Action Number 12-0328 and consolidated case S.C.  
4 No. 12-0580.<sup>1</sup> In these cases, White represented the plaintiff and received a favorable judgment in  
5 both cases. *See* Judgment, S.C. No. 12-0580 (Jan 23, 2013); Judgment, S.C. No. 12-0328 (Aug. 1,  
6 2012).  
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8 During a post-judgment hearing on June 3, 2019, the Small Claims Court sanctioned White  
9 for “his knowing and willful use of profanity made in open court ... and for thereafter twice denying  
10 having made any such statement.” *See Financial & Insurance Services Group, Inc., v. Janerlinse S.*  
11 *Sablan*, Small Claim Case No. 12- 0328 (NMI Super. Ct., Aug. 16, 2020) (Order Finding Attorney  
12 Michael A. White Guilty of Contempt of Court and Imposing a \$200.00 sanction) (unpublished)  
13 (hereinafter “Contempt Order”). Prior to issuing the Contempt Order, the Small Claims Court issued  
14 an Order to Show Cause as to why White should not be adjudged guilty of and punished for contempt  
15 of court. On July 1, 2019, White filed a written response to the Show Cause Order. Although a hearing  
16 was scheduled on August 5, 2019, White rested on his written filings. On August 16, 2019, the Small  
17 Claims Court issued the Contempt Order which found Respondent guilty of contempt of court and  
18 imposed a two-hundred-dollar (\$200.00) sanction--one-hundred dollars (\$100.00) for White’s  
19 response to the Small Claims Court, and one-hundred dollars (\$100.00) for twice denying made the  
20 statement.  
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25 The Contempt Order first noted that although White has an “accomplished legal reputation,”  
26 at times his demeanor “rises to an unacceptable level” and that the “disruptive episodes are  
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<sup>1</sup> Since the appeal, the debt in the underlying small claims action has been paid, satisfied, and discharged in full. On February 8, 2021, to properly reflect the parties of the case, the Court recaptioned the case from *The Financial & Insurance Services Group, Inc. v. Janerlinse S. Sablan*, Civil Action Number 19-0278 to *In re the Matter of Michael A. White*, Civil Action Number 19-0278.

1 unpredictable.” Contempt Order at 2. The Contempt Order also noted that White had been cautioned  
2 before both verbally and in writing that his “behavior in the courtroom at times appears out of control  
3 and is contemptuous and should stop.” Contempt Order at 2-3. The Contempt Order also mentioned  
4 two such examples in which it warned White about his behavior that approached contempt. *See*  
5 Contempt Order at 3, n.2 (citing *The Financial & Insurance Services Group, Inc. v. Piyalmi* No. 16-  
6 065 (NMI Sup. Ct. January 9, 2019) (Minute Order) and *Northern Marianas Housing Corp. v.*  
7 *Kapileo*, No. 17-0126 (NMI Sup. Ct. August 29, 2018) (Order Setting Aside Court Cost and  
8 Prejudgment Damages Awarded in Default) (reminding White of his duty of candor)).  
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10  
11 The Small Claims Court then summarized what occurred on June 3, 2019:

12  
13 At a June 3, 2019 hearing, Counsel was unsatisfied with a decision of  
14 this Court and at first made various disparaging arguments about how  
15 the Court’s decision was absolutely wrong. Counsel then used a  
16 disrespectful and belligerent tone to challenge this Court’s final ruling.  
17 Following the concluding announcement of this Court’s decision,  
18 Counsel made a disrespectful and profane remark about the decision to  
19 the open gallery, which was heard by the below signed Judge and the  
20 Court’s staff. Counsel’s behavior and words interfered with the work  
21 and duties of this Court to maintain order and effective control of its  
22 proceedings that this Judge was left with no other option than to inform  
23 Counsel that an order to show cause as to why he should not be found  
24 in contempt of court would be issued . . . .

25 Contempt Order at 3.

26 The Court also addressed White’s arguments that the Court misheard him. The Court  
27 acknowledged that the Court’s “audio recording . . . is less than ideal,” but even the less than ideal  
28 quality of the recording “confirm[ed] Counsel’s profane response to an unfavorable ruling.”

Contempt Order at 4.

Finally, the Court ruled that White’s behavior affected the administration of justice.

As counsel himself admits, his rejoinder was . . . intended to once again challenge the Court’s authority and impugn its dignity. (Counsel’s Response at 2.) Counsel’s comment was directed at the gallery, meant to degrade the spectators’ view of the Court and was loud enough for the Judge and Court staff to hear. The heated discussions between the

1 Court and Counsel as a result of his disrespectful comment directly  
2 affected the Court's proceedings by delaying them that day and casting  
3 an aggressive and hostile tone within the Courtroom. As the remaining  
4 parties and counsels on the docket that afternoon appeared before the  
5 Court after this incident, repeated apologies had to be given and  
6 assurances made that their legal proceedings would not be prejudiced  
7 by what they had just witnessed.

8 Contempt Order at 5.

9 White filed an appeal to this Court and a trial de novo under the Small Claims rules.<sup>2</sup> He  
10 claims the Court did not hear what he said and even if he did say the disrespectful word, it was not  
11 contemptuous.

12 On February 12, 2021, this Court held a hearing on the matter. During the hearing, White's  
13 secretary/office manager and daughter, Rebecca White, testified that she prepared a transcript of the  
14 June 3, 2019 hearing based on a compact-disk (CD) provided by the Commonwealth's Clerk of  
15 Court's Office. The prepared transcript indicates the following exchange:

16 JUDGE BOGDAN: . . . I don't have the information in front of me, do  
17 I?

18 MR. WHITE: Does the Court have the judgment? Where's the  
19 mistake?

20 JUDGE BOGDAN: I'm sorry?

21 MR. WHITE: Where's the mistake?

22 JUDGE BOGDAN: I couldn't hear you, Mr. White. What?

23 MR. WHITE: Where's the mistake, your honor?

24 JUDGE BOGDAN: Where is the mistake? I don't know. I haven't  
25 got the information in front of me, do I?

26 MR. WHITE: Thank you, your honor.

27 JUDGE BOGDAN: You're welcome. Alright, do you have any other  
28 questions?

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<sup>2</sup> White does not challenge the sanction's dollar amount.

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MR. WHITE: I don't believe this. Ssh...

Defendant: No, thank you. Thanks so much.

JUDGE BOGDAN: Thank you. I'm sorry, you don't need what?

MR. WHITE: I'm sorry, your honor?

JUDGE BOGDAN: I'm sorry, you don't need what?

MR. WHITE: I don't need anything.

JUDGE BOGDAN: I think I heard something that you didn't need any more of?

MR. WHITE: No your honor.

JUDGE BOGDAN: Okay.

Ex. 1 at 12-13. The transcript indicates that the Small Claims Court brought up the issue again later that day and asked Attorney Michael Evangelista if he heard White say he "didn't have to take this shit." Evangelista replied he did not hear it. Ex. 1 at 14. According to the transcript, White again denied using profane language. Ex. 1 at 14-15.

The second witness, Eva Calvo, testified that she served as a court staffer during the June 3, 2019 hearing. Calvo did not recall Respondent turning around to talk to another attorney in the gallery. Furthermore, Calvo did not recall Respondent saying the word "shit" but stated that the remarks did not disrupt the remainder of the proceedings that afternoon.

The third witness, Michael Evangelista, testified that he was seated in the gallery. Evangelista testified that he could not tell what Respondent uttered and to whom he addressed his remarks. Although Evangelista testified that he did not know what was said, he stated that he did not hear the Respondent say "shit." Evangelista testified that the comments did not delay the remainder of the afternoon docket or disrupt the proceedings. Evangelista testified that the comment did not prevent or hinder the Court from the orderly administration of the rest of the afternoon docket.

1 Finally, White testified in the form of a narrative. He listed his qualifications and outlined his  
2 fifty-one years of practicing law in the Northern Mariana Islands. He noted that throughout his  
3 distinguished career, he has never been held in contempt of court. He then displayed a diagram of the  
4 courtroom as configured on June 3, 2019, and provided measurements to showcase the distance  
5 between the presiding Judge and where he made the comments while facing the gallery. Ex. 2. He  
6 also stated the distance between himself and the various witnesses who were present in the  
7 Courtroom. He claims there was no one in the gallery except for Evangelista. He noted that a loud  
8 fan was in the Courtroom and the only microphone in the room was on the Judge's table, though the  
9 microphone was only for recording purposes and not a microphone for amplification.  
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12 White claims that when he reacted to the Small Claims Court's ruling, he did so because the  
13 judge made a ruling that was inconsistent with well-established laws and rules. White testified that  
14 he did not make the remarks out loud and did not speak to the Judge. White testified that when he  
15 reacted, he turned away from the bench and spoke to Evangelista in a low voice. He testified that he  
16 told Evangelista "I don't believe this."<sup>3</sup>  
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19 During the hearing before this Court, White stated "I should not have done what I did, I'm  
20 sorry that I did, and I apologized to Judge Bogdan. But I did not say what Judge Bogdan thinks that  
21 I said." When the Court asked questions about the apology, Respondent stated that the apology was  
22 a general apology--not for this specific incident, and not done immediately but rather, at some later  
23 date.  
24

25 When asked about being cautioned by the Small Claims Court in previous hearings, White  
26 stated that he "wouldn't say those were cautions but [he] will not argue with what Judge Bogdan  
27 characterizes it as." When asked if his behavior was disrespectful and belligerent during the June 3,  
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<sup>3</sup> Respondent previously explained that it was actually "an exhalation of breath, made with [his] teeth clenched..." See Contempt Order.

1 2019 hearing, White stated “the Court can read the transcript ... I don’t believe I was disrespectful.”  
2 When asked about other Court staff who heard the comment, White stated that “Mr. [Anthony] Aguon  
3 was present ... [but] was [seated] further away from Ms. Calvo, who didn’t hear me say a bad word.”  
4 In addition, he testified that the impact of the comment did not degrade the spectators’ view of the  
5 Court. Finally, White claimed that his actions in question were well within the bounds of acceptable  
6 argument and representation for his client.  
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8  
9 In considering this matter, the Court also reviewed the audio recording of the June 3, 2019  
10 hearing.<sup>4</sup> The recording appears to have picked up White’s voice in the background uttering “*I don’t*  
11 *need this shit.*” In other words, based on this Court’s review of the recorded proceedings, the audio  
12 recording confirms what the Small Claims Court heard during the hearing.  
13

### 14 III. JURISDICTION OF THIS COURT

15 The Court always has a duty to evaluate its jurisdiction because “without jurisdiction, the  
16 court cannot proceed at all in any cause,” and “when [jurisdiction] ceases to exist, the only function  
17 remaining to the court is that of announcing the fact and dismissing the cause.” *Steel Co. v. Citizens*  
18 *for a Better Env’t*, 523 U.S. 83, 94 (1998); *see also Cody v. N. Mariana Islands Ret. Fund*, 2011 MP  
19 16 ¶ 10 (citing *D’Lil v. Best W. Encina Lodge & Suites*, 538 F.3d 1031, 1035 (9th Cir. 2008)) (“[B]oth  
20 the Supreme Court and this Court have held that whether or not the parties raise the issue, federal  
21 courts are required sua sponte to examine jurisdictional issues”; holding that lower court was required  
22 to raise jurisdictional issue of standing sua sponte”). Under Rule 12(h)(3) of the Commonwealth  
23 Rules of Civil Procedure, whenever it appears by suggestion of the parties or otherwise that the court  
24 lacks jurisdiction of the subject matter, the court shall dismiss the action. COM. R. CIV. P. 12(h)(3).  
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<sup>4</sup> The transcript admitted into evidence was prepared by White’s employee and family member. This Court therefore found it necessary to consult the recording to verify the contents of the court record.

1 White appeals the Order of Contempt pursuant to the provisions of Rule 83(j) of the  
2 Commonwealth Rules of Civil Procedure and seeks a trial *de novo*. Not. Appeal (Sep. 4, 2019) (citing  
3 Rule 83(j)). Under Rule 83(j), “[a]ny party may appeal an adverse judgment to the Superior Court  
4 ....” COM. R. CIV. P. 83(j) (emphasis added).<sup>5</sup> The Supreme Court has explained the public policy  
5 for Rule 83 as follows:  
6

7 The public policy rationale for small claims court differentiates it from  
8 the rest of the judiciary. The Commonwealth Rules of Civil Procedure  
9 state that the rationale behind the small claims procedure is “to enable  
10 small claims to be justly decided and fully disposed of with less  
11 formality, paperwork, and expenditure of time than is required by the  
12 ordinary procedure for larger claims.” NMI R. Civ. P. 83(b). To require  
13 claimants to file an appeal with the Supreme Court for these matters  
14 would require a substantial record, far more than what is required for  
15 small claims matters. A small claims court record consists solely of a  
16 “small claims docket card for each case. The entries on the docket card  
17 shall ordinarily constitute the entire record and no further information  
18 need be recorded or kept.” *Id.* Furthermore, the trial court will  
19 determine if the appeal for a new trial is “frivolous or for the purpose  
20 of delay,” a finding that is both inappropriate and onerous for the  
21 Supreme Court to determine.

22 *Chen’s Corporation v. Hambros*, 2007 MP 4 ¶ 5.

23 Here, White does not seek relief from an adverse small claims judgment and also is not a  
24 party; rather, White seeks relief from an Order of Contempt. While the conduct underlying the  
25 contempt occurred during a small claims procedure, the Order of Contempt is distinct and separate  
26 from the small claims matter.  
27

28 First, Rule 83(j)--the section controlling the Court’s jurisdiction over appeals--must be read  
in accordance with the full context of Rule 83. Subsection (a) indicates that the scope of the Rule 83  
is limited to “any civil action within the jurisdiction of the court, involving a claim the value of which

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<sup>5</sup> The Court notes that certain aspects of the Administrative Order 2015-ADM-0003-RUL that amended the section of Rule 83 governing appeals from adverse judgments in small claims court mitigates towards the Court having jurisdiction. For instance, the amendment removed the use of “new trial” and replaced “small claims judgment” with “adverse judgment.” However, in *Atkins Kroll v. Ferrera*, 2019 MP 10, a case decided following the 2015 Amendment, the Supreme Court instructed that the “[s]ubsequent amendment to the rule’s language did not substantively alter the procedure for small claims appeals in the Superior Court.”



1 is five thousand (\$5,000.00) dollars or less, exclusive of interest, attorneys’ fees and costs.” In  
2 contrast, issuing an Order involving criminal contempt--that is, contempt that occurs in the presence  
3 of the court--is governed by Rule 42 of the Commonwealth Rules of Criminal Procedure.<sup>6</sup> Since  
4 Rule 83 is limited to civil actions, an Order for Criminal Contempt falls outside of its scope, even if  
5 the contempt arises out of a small claims procedure.  
6

7           Second, the standard of review for an appeal from a small claims judgment and an order of  
8 contempt are fundamentally different. An appeal from a small claims judgment brought under Rule  
9 83 is treated as a new trial and the evidence is reviewed *de novo*. See *Hambros*, 2007 MP 4 ¶ 5; See  
10 also *Atkins Kroll Inc.*, 2019 MP 10 ¶ 10 (“[D]e novo trial’ means a new trial, not simply de novo  
11 review of legal determinations.”). *De novo* review permits “the lower court an opportunity to make  
12 a ruling based on more formal rules of evidence and procedure’ and ‘make any resulting appeal to  
13 the Supreme Court more capable of setting forth an adequate record.” *Atkins Kroll*, 2019 MP 10 ¶ 8  
14 (citing *Hambros*, 2007 MP 4 ¶ 5). Comparatively, the imposition of contempt sanctions is reviewed  
15 for an abuse of discretion, which does not permit the reviewing court to consider evidence not  
16 contained in the record. See *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 3; see also *Murphy v.*  
17 *Weintraub*, 2018 MP 16 ¶ 11 (“An abuse of discretion exists if the court base[s] its ruling on an  
18 erroneous view of the law or on a clearly erroneous assessment of the evidence.”). Adjudicating  
19 whether previously committed behavior is contemptuous under a *de novo* standard pursuant to Rule  
20 83(j) contradicts how *Matsunaga* dictates such reviews should occur.  
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25           Third, the appeal rights under Rule 83 belong to “any party.” In contrast, White is not a party  
26 but rather a participating attorney. The Order of Contempt applies to him in his role as an attorney  
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<sup>6</sup> The Small Claims Court did not label its finding of contempt as “criminal contempt” and did not cite Rule 42. However, the type of contempt found meets the definition of criminal contempt under Rule 42.

1 and pertains to his professional conduct before the Court. On its plain language, therefore, Rule 83's  
2 appeals procedure does not apply in this circumstance.

3  
4 Finally, construing Rule 83 to imply that this Court has jurisdiction for an Order of Contempt  
5 arising out of a small claims procedure does not further any of the public policy that the Supreme  
6 Court announced for Rule 83. In the matter before the Small Claims Court, the court heard the conduct  
7 constituting the contempt, held a hearing on an Order to Show Cause, and then issued an Order.  
8 Nothing about the contempt procedure employed by the Small Claims Court involved reduced  
9 formalities, paperwork or time as expected in small claims proceedings. *See Hambros*, 2007 MP 4 ¶  
10 5.

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12 In summary, Rule 83 does not vest this Court with jurisdiction to review an appeal of an Order  
13 of Criminal Contempt issued in the course of a small claims case. For that reason the Court  
14 **DISMISSES** this proceeding for lack of jurisdiction. COM. R. CIV. P. 12(h)(3).

#### 15 16 **IV. DISCUSSION ON SANCTIONS AND FINDING OF CONTEMPT**

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18 Even if this Court has jurisdiction to hear this appeal, the Court would nonetheless affirm the  
19 August 19, 2019 Order Finding Attorney Michael A. White Guilty of Contempt of Court and  
20 Imposing a \$200.00 Sanction (“Contempt Order”) rendered by the Small Claims Court.

21  
22 On review of a contempt order, the reviewing court “is technically limited to questions of  
23 jurisdiction, such as whether the trial court had the authority to impose the punishment inflicted, and  
24 whether the acts for which the punishment was imposed constitute a contempt.” *Matsunaga*, 2001  
25 MP 11 ¶ 15. The former is reviewed *de novo* and the latter is reviewed for an abuse of discretion. *Id*  
26 at ¶ 3. White concedes that the finding of contempt is to be reviewed for abuse of discretion. *See*  
27 Memorandum at 7 (Feb. 24, 2021).  
28

1 In line with *Matsunaga*, this Court first reviews whether the Small Claims Court had  
2 jurisdiction to impose contempt and second, whether the acts for which the punishment was imposed  
3 constituted contempt.  
4

5 **A. The Superior Court’s Small Claims Court has the jurisdiction to impose sanctions**  
6 **against Attorney White.**

7 The Small Claims Court found that it had inherent authority to regulate the conduct of  
8 attorneys before it and used that authority to hold White in contempt; White does not contest the  
9 jurisdiction of the Small Claims Court to hold him in contempt.  
10

11 Indeed, the Superior Court has the inherent power to regulate the conduct of lawyers appearing  
12 before it . . . even when specific statutes and rules regulating the conduct are in place.” *Id.* ¶ 19. The  
13 Superior Court may exercise its inherent power to “regulate the practice of law both in and out of  
14 courts.” *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 25. The Court’s inherent power includes the authority to  
15 sanction professional misconduct occurring before it. *Matsunaga*, 2001 MP 11 ¶ 19. The  
16 Commonwealth’s disciplinary rules do not “limit a trial judge’s inherent power to maintain the  
17 integrity and decorum of his or her courtroom.” *Antonio M. Atalig and Reynaldo O. Yana v.*  
18 *Commonwealth Superior Court*, 2008 MP 19 ¶ 24 (invoking the “inherent power to sanction attorneys  
19 who engaged in contemptuous, dishonest, or otherwise unjustified conduct before this Court.”). The  
20 Court’s inherent authority can be used to sanction or find someone in contempt. *Id.* at 12.  
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23 The Small Claims Court cited its inherent power to regulate an attorney’s conduct—  
24 specifically, to determine that White’s conduct constituted contempt and merited sanctions. The  
25 exercise of its powers was fully within its inherent authority and jurisdiction.<sup>7</sup>  
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28 <sup>7</sup> While White does not claim the court violated his due process, this Court notes the abundance of procedural safeguards taken by the Small Claims Court. After White’s remarks on June 3, 2019, the Small Claims Court provided White with several opportunities to clarify. The Small Claims Court also issued a Show Cause Order for White to file a written response and be heard. The Small Claims Court even rescheduled the hearing upon White’s request. The Small Claims Court exercised extreme caution and provided due process, even more process than what is outlined in similar proceedings, such as under Rule 11. Overall, the Small Claims Court provided White with due process, fair notice and an opportunity to be heard, before finding him in contempt of court.

1           **B.       The Court did not abuse its discretion when it sanctioned Attorney White for his use**  
2           **of profanity in court and for twice denying have made any such statements when the**  
3           **Judge requested clarification.**

4           “An abuse of discretion exists if the court base[s] its ruling on an erroneous view of the law  
5 or on a clearly erroneous assessment of the evidence.” *Murphy*, 2018 MP 16 ¶ 11. The court does not  
6 need to find bad faith before sanctioning an attorney for conduct that is not in the normal course of  
7 litigation. *Id.* ¶ 12.

8           Firsts the Court reviews whether the Small Claims Court committed any errors of law. Here,  
9 the Small Claims Court correctly cited *Matsunaga* and explained that contempt occurs when one  
10 embarrasses, hinders, or obstructs the administration of justice or acts to lessen the court’s dignity or  
11 authority. Contempt Order at 4. The Small Claims Court understood that a court has an inherent  
12 power and duty to regulate the practice of law and the conduct of the lawyers appearing before it.  
13 *Matsunaga*, 2001 MP 11 ¶ 19. Moreover, attorney conduct that may be regulated includes when an  
14 attorney lies to the court or engages in unprofessional conduct. *Id.* ¶ 19; *Murphy*, 2018 MP 16 ¶ 12.

15           White retorts by providing several cases that hold that an isolated remark cannot justify a  
16 finding of contempt. These cases, which derive from the U.S. Supreme Court and several  
17 jurisdictions, do require more than an isolated remark to warrant a finding of contempt. *See, e.g.,*  
18 *Williams v. Williams*, 681 A.2d 181, 183 (Pa. Super. 1996) (inappropriate conduct that causes just a  
19 transient delay in proceedings is not contempt). The Court, however, finds these cases distinguishable  
20 for other reasons.

21           White cites *Commonwealth v. Diamond*, 703 N.E.2d 1195 (Mass. App. 1999), for the  
22 proposition that the use of profanity by one attorney to another does not rise to the level of contempt.  
23 However, the particular issue in that case was whether summary contempt proceedings were  
24 necessary. The Massachusetts Appeals Court found that summary proceedings were not warranted  
25 for an attorney’s use of the term “ass.” Instead, if an attorney uses crude and unprofessional language,  
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1 a judge could initiate a contempt proceeding; refer the matter for disciplinary action; or deliver a  
2 public or private admonition. Because here the Small Claims Court did not utilize summary  
3 proceedings to hold White in contempt, much of the analysis in *Diamond* fails to apply.  
4

5 White also cites *Eaton v. Tulsa*, 415 U.S. 697 (1974), *Davila v. State*, 100 So.3d 262 (Fl. App.  
6 2012), and *Woods v. State*, 987 So.2d 669 (Fla. App. 2007). In each of those cases, the person  
7 speaking the profanity was a party—not an attorney. That makes a difference here because White is  
8 an attorney and bound by the Rules of Professional Conduct. Moreover, in *Eaton*, the statement was  
9 not directed at the judge, and the judge’s contempt decision was based only on the use of an expletive.  
10 415 U.S. at 698-99. That differs from the current situation in which White’s comment was in reaction  
11 to a court ruling and the Court relied not only on White’s remark but his tone and his earlier displays  
12 of borderline contemptuous conduct. The Court also notes that the Florida court’s decision in *Woods*  
13 to reverse a finding of contempt was based on an insufficient preservation of the proceedings—again,  
14 which did not occur here. Finally, in *Davila*, the Court did not hear the offensive remark at all.  
15  
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17 Overall, isolated remarks may not constitute contempt; but the Small Claims Court justifiably  
18 relied on other factors including a pattern of contemptuous conduct. On two prior occasions, the Court  
19 noted White’s professional misconduct. First, in *The Financial & Insurance Services Group, Inc. v.*  
20 *Piyalmi* No. 16-065 (NMI Sup. Ct. January 9, 2019) (Minute Order), the Small Claims Court  
21 requested information on to verify the underlying agreement or loan documents. *Id.* White informed  
22 the Small Claims Court that “it was unnecessary for the Court to review those documents, and,  
23 moreover, informed the Court that he did not believe the Court had the authority to require the  
24 production of any such documents.” *Id.* at 2. The Small Claims Court noted Respondent’s defiance  
25 to the order as “somewhat outrageous and borderline contemptuous” and warned Respondent that his  
26 continued refusal to provide the Court with this information would be considered contempt for failure  
27 to comply with the Court’s lawful order. *Id.*  
28

1           Second, in *Northern Marianas Housing Corp. v. Kapileo*, the Court reminded Respondent of  
2 his duty of candor to the tribunal. *Northern Marianas Housing Corp. v. Kapileo*, No. 17-0126 (NMI  
3 Sup. Ct. August 29, 2018) (Order Setting Aside Court Cost and Prejudgment Damages Awarded in  
4 Default). The Small Claims Court found White’s litigation strategy to be “borderline sanctionable  
5 and extremely troubling” because it “attempted [to] manipulat[e] ... the judicial process to get  
6 prejudgment interest.” *Id.* at 6.  
7

8           The Court relied not just on this history involving this attorney, but also the manner in which  
9 White conducted himself. “Counsel then used a disrespectful and belligerent tone to challenge this  
10 Court’s final ruling . . . Counsel’s behavior and words interfered with the work and duties of this  
11 Court to maintain order and effective control of its proceedings.” Contempt Order at 3. Finally, the  
12 Small Claims Court cited White’s denials that he made the remark.  
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15           Given not just its reliance on the one remark uttered by White, but the history of borderline  
16 contemptuous behavior before the court, the disrespectful manner with which he conducted himself,  
17 and White’s violation of his duty of candor, the Small Claims Court did not err on any legal grounds  
18 in finding that contempt was warranted.  
19

20           The Court is also satisfied that the Small Claims Court did not engage in an erroneous view  
21 of the evidence. As already stated, in a typical review of a contempt order, the Court limits its review  
22 to evidence in the record, which would consist of the recording. Under the guise of a Rule 83 new  
23 trial, however, White brought forth witnesses whose testimony was not preserved before the Small  
24 Claims Court to contest the Small Claims Court’s statement that “[t]his Judge (and the Court’s staff)  
25 unequivocally heard the offensive comment made by Counsel in open court.” Contempt Order at 4.  
26 He has also pointed to a loud fan that obstructed sound and a microphone that did not amplify his  
27 statements. Even if the Court were to consider this additional evidence, this Court returns to the audio  
28 recording that preserved what White said that day. The courtroom microphone may not have

1 amplified White’s voice, but it captured it. The recording supports the Small Claims Court’s finding  
2 that Respondent used disrespectful and profane language before the tribunal when he uttered “*I don’t*  
3 *need this shit*” in response to a ruling against his client’s interests.  
4

5 Respondent argues that he vehemently advocated for his client and maintains that his conduct,  
6 turning around to another attorney and saying “I don’t believe this,” are well within the bounds of  
7 acceptable argument and representation for his client. The Court is not convinced. Usually, arguments  
8 are made while facing the judge, not while facing the gallery. In addition, arguments are presented to  
9 the judge, not whispered to another attorney seated in the gallery. In viewing the evidence, this Court  
10 cannot conclude that the Small Claims Court abused its discretion in making a finding that White  
11 used profane language on June 3, 2019.  
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13  
14 Additionally, although White and his witnesses perceived that the remark did not hinder or  
15 interfere with the duties of the Court, the Small Claims Court adequately explained that it had to  
16 repeatedly apologize to other court patrons that their proceedings would not be prejudiced by what  
17 they had just witnessed. This Court finds no abuse of discretion by the Small Claims Court’s  
18 explanation of the impact of a profane statement uttered to a judge when others are present in the  
19 courtroom.  
20

21 Moreover, White willfully disobeyed a court order to truthfully explain what he uttered.  
22 White’s continual cover-up of the incident provides the Court with notable explanations, such as “I  
23 don’t believe this” or “I don’t believe this shhh” or it was “an exhalation of breath, made with [his]  
24 teeth clenched ...”. Despite these explanations, White repeatedly fails to acknowledge his behavior  
25 was disrespectful to the tribunal. As the Court treads through the inconsistencies, one thing remains  
26 clear – Respondent’s cover-up falls short of his duty of candor to the tribunal. MODEL RULES OF  
27 PROF’L CONDUCT R. 3.3(a) (1983).  
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**V. CONCLUSION**

In accordance with the foregoing, the Court **DISMISSES** this matter for lack of jurisdiction. White remains responsible to pay the outstanding fine of \$200 as ordered by the Small Claims Court.

**IT IS SO ORDERED** this 10<sup>th</sup> day of June, 2021.

/s/  
**ELYZE M. IRIARTE**, Judge Pro Tempore