

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NETSPHERE, INC.,	§	Civil Action No. 3-09CV0988-F
MANILA INDUSTRIES, INC., and	§	
MUNISH KRISHAN,	§	
Plaintiffs.	§	
	§	
v.	§	
	§	
JEFFREY BARON, and	§	
ONDOVA LIMITED COMPANY,	§	
Defendants.	§	

**MOTION TO DISQUALIFY RAYMOND J. URBANIK, COUNSEL
FOR DANIEL J SHERMAN AND BRIEF IN SUPPORT**

TO THE HONORABLE ROYAL FURGESON, U.S. DISTRICT COURT JUDGE:

COMES NOW, Jeffrey Baron, Appellant, and moves for the disqualification of Mr. Urbanik as counsel for Mr. Sherman because his continued advocacy before this Court is unethical and a violation of the Texas Disciplinary Rules of Professional Conduct.

1. A District Court is obliged to take measures against unethical conduct occurring in connection with any proceeding before it. *Woods v. Covington Cty. Bank*, 537 F. 2d 804, 810 (5th Cir. 1976). A motion to disqualify counsel is the proper method for a party-litigant to bring the issues of a breach of ethical duties to the attention of the court. *McCuin v. Texas Power & Light Co.*, 714 F. 2d 1255, 1264 (5th Cir. 1983).

2. Rule 3.08(a) of the Texas Disciplinary Rules of Professional Conduct expressly prohibits continued employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client.

3. Prior to today, Mr. Urbanik has received the benefit of the doubt that his advocacy before this tribunal fell within the scope of exception 4 to the rule applying to a lawyer who is a party to the action. However, Mr. Urbanik has now made clear that he is not a party and is not appearing as a party. Accordingly, the exception to Rule 3.08(a) does not apply.

4. Mr. Urbanik has established by sworn declaration that he is a witness to the substantive matters involved in this case and the motion for stay pending appeal of the appointment of the receiver. Mr. Urbanik's sworn declaration was the only declaration offered by Mr. Sherman in response to Mr. Baron's motion. Mr. Urbanik's sworn testimony (offered on behalf of his advocated position opposing stay of the receivership order) includes that:

- a. He has **personal knowledge of the facts** stated in his declaration.
- b. He is familiar based on a review of records the asset structure Jeffrey Baron established, and such structure is accurately reflected in a chart offered by Mr. Urbanik.

- c. According to his claimed personal knowledge, immediately subsequent to the appointment of the Receiver, steps had to be taken to stop the transfer of valuable property, including 300,000 internet domain names, to a foreign entity outside of the jurisdiction of the federal courts.
- d. He claims personal knowledge that Mr. Baron's assets are substantially located in the Cook Islands, and that such location is notorious for asset protection and non-compliance with United States law.
- e. He claims personal knowledge that the entities located in the Cook Islands are controlled by Mr. Baron.
- f. He claims personal knowledge that Mr. Baron has used a total of seventeen attorneys, three of whom did not formally enter an appearance.
- g. He claims personal knowledge that Mr. Baron has hired and filed numerous attorneys since the Trustee's appointment, through the related entities.

5. The need for maintaining a clear differentiation between the role of witness and the role of advocate are particularly significant in this case where the motion against Mr. Baron came after he objected to a fee application made by Mr. Urbanik.

Accordingly, Mr. Baron respectfully moves for the disqualification of Mr. Urbanik as counsel for Mr. Sherman because his continued advocacy before this Court is unethical.

Respectfully submitted,

/s/ Gary N. Schepps
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**APPELLATE COUNSEL FOR
JEFFREY BARON**

CERTIFICATE OF SERVICE

This is to certify that this was served on all parties who receive notification through the Court's electronic filing system.

/s/ Gary N. Schepps
Gary N. Schepps

CERTIFICATE OF CONFERENCE

This is to certify that the undersigned conferred with Mr. Raymond J. Urbanik, attorney for DANIEL J. SHERMAN, Trustee for ONDOVA LIMITED COMPANY, and they opposed the motion.

/s/ Gary N. Schepps
Gary N. Schepps

Rule 3.08 Lawyer as Witness

(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(3) the testimony relates to the nature and value of legal services rendered in the case;

(4) the lawyer is a party to the action and is appearing pro se; or

(5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the matter and disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer believes that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer's client, unless the client consents after full disclosure.

(c) Without the client's informed consent, a lawyer may not act as advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by paragraphs (a) or (b) from serving as advocate. If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.

Exhibit A