

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, CRIMINAL DIVISION
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 2009CF009771AMB
DIVISION "W"

STATE OF FLORIDA

vs.

DALIA A DIPPOLITO,

Defendant.

STATE OF FLORIDA'S REPLY IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER AND REVOCATION OF PRO HAC VICE STATUS

The State of Florida has filed the above-referenced motion (the "Motion"), seeking to prevent further efforts to improperly influence the jury pool in advance of a June 2017 retrial and to revoke the pro hac vice status of an out-of-state attorney who has participated in those efforts and acted in a manner inconsistent with the administration of justice. Defendant filed a response (the "Response"), to which the State hereby replies. The hearing on the State's Motion is set for Friday, March 3, 2017, at 11:30 a.m.

Background

Defense counsel devoted much of the Response to irrelevant and unfounded attacks upon past and present employees of the State Attorney's Office. Defense counsel never denies that they have retained a public relations firm to issue press releases about the ongoing prosecution, never suggests that they will discontinue or limit this practice; and, most significantly, never explains what legitimate purpose is being served by their ongoing publicity campaign.

Analysis

Motion for Protective Order

The response Defendant filed relies upon *Rodriguez ex rel. Posso-Rodriguez v. Feinstein*, 734 So. 2d 1162 (Fla. 3d DCA 1999), and *E.I. Du Pont de Nemours and Co. v. Aquamar, S.A.*, 33 So. 3d 839 (Fla. 4th DCA 2010). In *Rodriguez*, the appellate court wrote: “There was no evidence presented or findings made that any extra-judicial statements or proposed extra-judicial statements made to the media by counsel or the parties posed a substantial and imminent threat to a fair trial.” 734 So. 2d at 1165. Similarly, in *Aquamar*, “there was no evidence presented and there were no findings made that any out-of-court publicity posed a substantial and imminent threat to the fairness of the trial proceedings.” 33 So. 3d at 841.

As the Fourth District Court of Appeal recognized in *Aquamar*, this Court may impose limitations on communications between the media and lawyers “for good cause to assure fair trials.” 33 So. 3d at 841. For all the allegations made in the Response, no explanation is offered for the press releases issued after the mistrial, which included (a) the accusation that the State Attorney’s Office is wasting public funds on a politically motivated prosecution that is concerned only with winning, and (b) the claim that Ms. Dippolito has “already done the time,” because she has been on house arrest for a longer period than the minimum prison sentence under the sentencing guidelines. These extrajudicial comments serve but one, improper purpose: to precondition the jury pool. The jurors in the June 2017 retrial must not decide the case based on anger toward the prosecutors, sympathy for Ms. Dippolito, or any consideration of the sentence.

Defendant further complains that the proposed “gag order” is “untethered in temporal scope” and too broad. In case there is any confusion over the relief sought: the State is asking this Court to order *all* counsel, including the prosecutors, to refrain from extrajudicial comments

to the media until the case has been tried to a verdict; which is expected to occur in less than four months.

Motion to Revoke Pro Hac Vice Status

The Response cites several cases that did not involve counsel appearing pro hac vice. As the State pointed out in its Motion, an out-of-state lawyer appears at the grace of the court. He “has no absolute right to appear as counsel in Florida. When consent to such appearance is given, the only control over such counsel’s conduct is in the hands of the trial judge.” *State Indus., Inc. v. Jernigan*, 751 So. 2d 680, 682 (Fla. 5th DCA 2000). “The right of an attorney of another state to practice is permissive and subject to the sound discretion of the court to which he applies for the permission. The right to revoke this permission is inherent in the right to grant it.” *Brooks v. AMP Servs. Ltd.*, 979 So. 2d 435, 439 (Fla. 4th DCA 2008) (quoting *Parker v. Parker*, 97 So. 2d 136, 137 (Fla. 3d DCA 1957)).

In *Prewitt Enterprises, LLC v. Tommy Constantine Racing, LLC*, 185 So. 3d 566 (Fla. 4th DCA 2016), this Court denied an out-of-state attorney’s pro hac vice motion, based on an improper comment made, and a Bar complaint filed, in the attorney’s home state. The Court specifically found that the attorney’s appearance would adversely affect the administration of justice. 185 So. 3d at 570. The Fourth District Court of Appeal affirmed. *Id.* at 571. This Court is provided guidance through the Florida Bar Rules of Professional Conduct 4-3.6. Mr. Claypool has a prior history of making improper extrajudicial comments herein: almost exactly one year ago, he made a comment that impugned the integrity of this Court. Mr. Claypool has directed his latest attacks toward the State Attorney’s Office. Mr. Claypool’s intolerable behavior warrants revocation of his pro hac vice status.¹

¹ Ms. Dippolito will still have Mr. Rosenfeld, a member of her trial team since January 27, 2016, to represent her at the retrial. Moreover, she has adequate time to locate and retain additional counsel, if

WHEREFORE, for the reasons set forth in the Motion and herein, the State asks that this Court grant its Motion for Protective Order and Revocation of Pro Hac Vice Status.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-SERVICE to GREG ROSENFELD, ESQ at GREG@ROSENFELDLEGAL.COM, and BRIAN CLAYPOOL at Brian@Claypoollawfirm.com, this 28th day of February, 2017.

Respectfully submitted,

DAVID ARONBERG
STATE ATTORNEY

/s/

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deemed necessary, during the next four months. Past experience suggests that Ms. Dippolito will have no difficulty doing so.

