

Since the appellants in Appeal Case No. K5-2013 seek relief from a final order sanctioning their attorneys and interlocutory relief in the nature of relief usually sought by a petition for a writ of prohibition, NOW THEREFORE IT IS HEREBY ORDERED that the two are deemed to be two separate appellate cases with the appeal on the merits of the attorney sanctions proceeding on the usual course of an appeal on the merits and with the petition for a writ of prohibition proceeding separately on the Rule 21 expedited procedure pertinent to that form of relief.

IT IS THEREFORE FURTHER ORDERED that the clerk shall assign the next available docket number to the petition for a writ of prohibition and all filings related to that petition shall be assigned that docket number and placed in that file.

IT IS FURTHER ORDERED that the matter of the attorney sanctions shall proceed under the current docket number (K5-2013) with all filings related thereto assigned that docket number and with the sanctioned attorneys who are appealing listed as the appellants under docket number K5-2013. A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 17 FSM Intrm. 613, 616 (App. 2011); FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 463 (App. 2004); FSM Dev. Bank v. Yinug, 12 FSM Intrm. 450, 453 (App. 2004); In re Sanction of Woodruff, 9 FSM Intrm. 374, 375 (App. 2000); In re Sanction of Berman, 7 FSM Intrm. 654, 656 (App. 1996).

AND IT IS FURTHER ORDERED that the August 1, 2013 stay will remain in effect until further order in both the case that retains docket number K5-2013 and the petition that is assigned the next available docket number.

* * * *

FSM SUPREME COURT TRIAL DIVISION

ELIORY ALEXANDER,)	CIVIL ACTION NO. 2008-039
)	
Plaintiff,)	
)	
vs.)	
)	
POHNPEI STATE GOVERNMENT,)	
)	
Defendant.)	
_____)	

DENIAL OF REQUEST TO ORDER REPROGRAMMING

Martin G. Yinug
Chief Justice

Hearing: August 9, 2013
Decided: September 9, 2013

APPEARANCES:

For the Plaintiff: Marstella E. Jack, Esq.
P.O. Box 2210
Kolonias, Pohnpei FM 96941

For the Defendant: Monaliza Abello-Pangelinan, Esq.
Assistant Attorney General
Pohnpei Department of Justice
P.O. Box 1555
Kolonias, Pohnpei FM 96941

* * * *

HEADNOTES

Debtors' and Creditors' Rights – Orders in Aid of Judgment

The procedure for issuing an order in aid of judgment is governed by statute. The court, after notice to the opposite party, must hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

The trial court cannot issue an order in aid of judgment without first making a finding about the debtor's ability to pay, which, in the case of a governmental debtor, must include the debtor's legal ability to pay, that is, whether money has been appropriated that can legally be applied to that debt. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

Attachment and Execution – Garnishment; Civil Rights

In civil rights cases, the FSM Supreme Court has ordered garnishment of civil rights judgments from state funds held by the national government when civil rights judgments have gone unpaid for a long period of time. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

In the usual case, the payment of a money judgment against a state must abide a legislative appropriation since due respect must be given to the constitutional separation of powers. Alexander v. Pohnpei, 19 FSM R. 133, 135-36 (Pon. 2013).

Attachment and Execution – Garnishment; Debtors' and Creditors' Rights – Orders in Aid of Judgment

The usual first step for an order in aid of judgment against a state when there are no appropriated funds available for that purpose is to order the state executive to submit an appropriation bill, and since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and be given further opportunity to meet its obligation in some other manner before a plaintiff can resort to a writ of garnishment. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

Since the payment of judgments is not a representation expense in the course of the Pohnpei Governor's official public relations, the court cannot issue an order in aid of judgment to use those funds to pay a judgment. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

A request to order the Pohnpei Governor to reprogram funds or to use his representation funds to pay a judgment will be denied. The judgment holder must await the outcome of the legislative process. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This came before the court on August 9, 2013, to hear the plaintiff's motions for an order in aid of judgment. The plaintiff, Eliory Alexander, asks that the judgment-debtor, the State of Pohnpei, be required to make, starting in October 2013, monthly payments of \$1,000 until the judgment is paid in full. Pohnpei asserts that it cannot pay the judgment in that manner because the Pohnpei Legislature has not appropriated any money to pay judgments but that an appropriation bill which including a request for the funds to pay this judgment has been submitted to the Legislature and it is expected that the bill would come up for consideration during the Legislature's September budget session.

Alexander contends that, even though there has not been an appropriation for it, Pohnpei can be ordered to make the payments she requests by using the Governor's ability to reprogram funds. On August 20, 2013, Alexander submitted her brief on Pohnpei's reprogramming authority. She contends that since, under the proposed Pohnpei Budget Act for fiscal year 2014, Title 1, § 1-4, the Governor can, after consultation with the activity heads of the affected programs and on written notice to various officials, reprogram funds of up to 15% or \$20,000, whichever is less, in or out of line item appropriations other than those for personnel, travel, or representation funds, the court can order the Governor to reprogram \$1,000 a month until her judgment is paid.

On August 23, 2013, Pohnpei submitted a copy of the bill introduced in the Pohnpei Legislature that would, if enacted, appropriate money from the Pohnpei General Fund to pay several judgments including Alexander's.

The procedure for issuing an order in aid of judgment is governed by statute. The court, after notice to the opposite party, must "hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding." 6 F.S.M.C. 1409. Thus, the trial court cannot issue an order in aid of judgment without first making a finding about the debtor's ability to pay, which, in the case of a governmental debtor, must include the debtor's legal ability to pay, that is, whether money has been appropriated that can legally be applied to that debt. See Albert v. O'Sonis, 15 FSM Intrm. 226, 233 (Chk. S. Ct. App. 2007) (interpreting identical state order in aid of judgment statute); Chuuk v. Andrew, 15 FSM Intrm. 39, 43 (Chk. S. Ct. App. 2007).

This is a civil rights case. The court has ordered garnishment of civil rights judgments from state funds held by the national government when civil rights judgments have gone unpaid for a long period of time. Chuuk v. Davis, 13 FSM Intrm. 178, 186 (App. 2005); see also Davis v. Kutta, 11 FSM Intrm. 545, 549 (Chk. 2003); Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 541-42 (Chk. 2003). That is not the case here and Alexander has not shown that Pohnpei has ever failed to pay a judgment against it so resort to garnishment is premature.

In the usual case, the payment of a money judgment against a state must abide a legislative appropriation. Barrett v. Chuuk, 12 FSM Intrm. 558, 562 (Chk. 2004); Estate of Mori v. Chuuk, 12

FSM Intrm. 3, 9 (Chk. 2003); Estate of Mori, 11 FSM Intrm. at 541. Due respect must be given to the constitutional separation of powers. The usual first step for an order in aid of judgment against a state when there are no appropriated funds available for that purpose is to order the executive to submit an appropriation bill. Barrett v. Chuuk, 14 FSM Intrm. 509, 511 (Chk. 2006); *see also* Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002). Pohnpei has done that. Since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and be given further opportunity to meet its obligation in some other manner before a plaintiff can resort to a writ of garnishment. Tipingeni v. Chuuk, 14 FSM Intrm. 539, 543 (Chk. 2007).

The Pohnpei Governor’s authority to reprogram funds apparently allows the Governor a certain amount of flexibility if expenses do not quite come out the way the Legislature envisioned when it enacted the budget and the appropriation bills. The proposed act allows the Governor "to reprogram a cumulative total of not more than 15 percent, or \$20,000, whichever is less." § 1-4. To order the Governor to reprogram \$12,000 (\$1,000 a month) of that \$20,000 (or less) would deprive him of the flexibility and the discretion that the proposed budget act would grant him. Furthermore, this is only a bill before the Pohnpei Legislature, not yet law.

Alexander also contends that the Governor could be ordered to use the money in his representation fund, as created by 3 Pon. C. § 10-101, to help pay her judgment. The court concludes that the payment of judgments is not a representation expense in the course of official public relations and therefore those funds cannot be used to pay Alexander’s judgment.

Accordingly, the request to order the Governor to reprogram funds or to use his representation funds to pay this judgment is denied. Alexander shall await the outcome of the legislative process.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

GINN P. NENA,)	APPEAL CASE NO. K7-2013
)	(KSC Civil Action No. 39-2013)
Appellant,)	
)	
vs.)	
)	
HAMLIN SAIMON, JOSHAIA)	
SAIMON, and LENORA T. SIGRAH,)	
)	
Appellees.)	
)	

ORDER DENYING DISMISSAL

Martin G. Yinug
Chief Justice

Decided: September 10, 2013