

FSM Dev. Bank v. Christopher Corp.
20 FSM R. 225 (Chk. 2015)

The fact that the same Judge hears different cases involving the same party/parties or related issues, does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). FSM v. Wainit, 11 Intrm. 424, 432 (Chk. 2003); Hartman v. Bank of Guam, 10 FSM Intrm. 89, 97 (App. 2001).

Furthermore, the mere fact that this presiding Justice happens to be a "Palau Justice," ruling on a matter in the FSM, is inconsequential, as a movants' unsupported allegation that the Jurist may not be privy to supposed peculiar nuances of FSM law concerning repayment of loans to banking institutions, constitutes rank speculation and is insufficient to support the Justice's disqualification. Damarlane v. Pohnpei Legislature, 14 FSM Intrm. 582, 585 (App. 2007).

This Court therefore concludes, that Defendants have not depicted a factual basis to depict an appearance of impropriety, in terms of overseeing two separate cases involving the same party or a lack of competency, with respect to ruling on FSM matters and as a result, this argument fails.

Accordingly, this Court finds no basis upon which to grant the motion to disqualify and hereby DENIES Defendants' Motion to Disqualify.

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FSM SUPREME COURT APPELLATE DIVISION

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| FOOK CHIANG LEE, |) | APPEAL CASE NO. K7-2014 |
| |) | (KSC Criminal Case No. 73-2014) |
| Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| STATE OF KOSRAE, |) | |
| |) | |
| Appellee. |) | |
| _____ |) | |

ORDER DENYING PETITION FOR REHEARING

Decided: October 20, 2015

BEFORE:

Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court
Hon. Bealeen Carl-Worswick, Associate Justice, FSM Supreme Court
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court*

*Chief Justice, Chuuk State Supreme Court, Weno, Chuuk

APPEARANCE:

For the Appellant: Harry Seymour, Esq.
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HEADNOTES

Appellate Review – Rehearing

A petition for rehearing must be filed within fourteen days of entry of the judgment, but the court may, by order, enlarge (or shorten) that time. Lee v. Kosrae, 20 FSM R. 229, 230 (App. 2015).

Appellate Review – Rehearing

A rehearing petition filed after the time to file a petition for rehearing has expired is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition, and may be denied in its entirety as untimely filed. Lee v. Kosrae, 20 FSM R. 229, 230 (App. 2015).

Appellate Review – Rehearing

An appellate court will grant a petition for rehearing only if it has overlooked or misapprehended points of law or fact, and then only if the misapprehended or overlooked point might alter the outcome. Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

Appellate Review – Rehearing

Ordinarily, an appellate court will summarily deny a petition for rehearing, but, when clarification may be helpful, it may give some reasons. Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

Foreign Investment Laws; Marine Resources

A Kosrae Island Resource Management Authority sea cucumber permit is the only sea cucumber permit needed so as not to violate either Kosrae State Code § 13.523(5) or § 13.523(6). A foreign citizen also needs a foreign investment permit to engage in a sea cucumber (or any other) business, and the lack of a foreign investment permit or the violation of one or more of its conditions would be charged under the foreign investment statutes, not under § 13.523(5) or § 13.523(6). Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

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COURT'S OPINION

PER CURIAM:

Our Opinion in which we affirmed Fook Chiang Lee's convictions for Counts I and II (unauthorized procurement of aquatic life in violation of Kos. S.C. § 13.523(5) and Kos. S.C. § 13.523(6) respectively) and reversed his conspiracy conviction (Count III), and the accompanying Judgment were entered on September 17, 2015. On October 1, 2015, Fook Chiang Lee tried to e-file Appellant's Petition for Rehearing. That filing was properly done except that Lee's attorney, apparently inadvertently, neglected to sign the petition. Once the attorney received the Chief Clerk's return e-mail notifying him of the omission, Lee's attorney signed and again e-mailed the petition the next day.

The rehearing petition, although this time it was sent to the wrong e-mail address, was eventually properly filed with an October 2, 2015 date. Since, to be timely filed, a petition for rehearing must be filed within fourteen days of entry of the judgment, FSM App. R. 40(a), the petition was filed one day late. We may, by order, enlarge (or shorten) the time to petition for a rehearing. *Id.*; FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004). A rehearing petition filed after the time to file a petition for rehearing has expired is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition, and may be denied in its entirety as untimely filed. Berman v. College of

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Micronesia-FSM, 15 FSM R. 612, 613 (App. 2008). However, in the exercise of our discretion, we decline to deny the rehearing petition for its apparently inadvertent one-day late filing. We instead, by this order, grant Fook Chiang Lee a one-day enlargement of the time to file the petition.

We now turn to consideration of the petition itself. We will grant a petition for rehearing only if we have overlooked or misapprehended points of law or fact, and then only if the misapprehended or overlooked point might alter the outcome. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014). Ordinarily, we summarily deny petitions for rehearing, but, when clarification may be helpful, we may give some reasons. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

We have carefully considered Lee's petition and conclude that we have neither misapprehended nor overlooked points of law or fact. We would summarily deny this petition except for one point that may bear reiteration or further emphasis and possibly clarification.

Lee repeats his arguments that his foreign investment permit was the only permit that he needed to commercially harvest, process, or export sea cucumbers from Kosrae, and that therefore he did not violate either Kosrae State Code § 13.523(5) or § 13.523(6). Lee further contends that his due process rights were violated either when we misapprehended the law by concluding that his conviction rested, at least in part, on a violation of a condition of his foreign investment permit by not getting a Kosrae Island Resource Management Authority (KIRMA) permit or when the Information was not amended to include allegations that he had violated his foreign investment permit conditions.

Lee misunderstands our affirmance of his convictions. We affirmed his convictions for processing sea cucumbers without a permit and for processing more than five sea cucumbers without a permit because he did not have a KIRMA permit. We did not hold that he was convicted of violating the conditions of his foreign investment permit. We only noted that since his foreign investment permit required that he comply with all applicable laws, Lee should have been on notice that his foreign investment permit may not be enough for him to lawfully engage in the sea cucumber business.

To put it clearly, a KIRMA sea cucumber permit is the only sea cucumber permit needed so as not to violate either § 13.523(5) or § 13.523(6). A foreign citizen also needs a foreign investment permit to engage in a sea cucumber (or any other) business, and the lack of a foreign investment permit or the violation of one or more of its conditions would be charged under the foreign investment statutes, not under § 13.523(5) or § 13.523(6).

Accordingly, Fook Chiang Lee's rehearing petition is denied. We further order that time be shortened and that the mandate issue herewith. FSM App. R. 41.

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