

FSM SUPREME COURT APPELLATE DIVISION

MARCELO PETERSON, in his official capacity)
as Governor for the State of Pohnpei,)
CASIANO SHONIBER, in his official capacity)
as Administrator, Office of Fisheries and)
Aquaculture for Pohnpei State Government,)
and the POHNPEI STATE GOVERNMENT,)

APPEAL CASE NO. P16-2016

Petitioners,)

vs.)

MAYCELEEN JD ANSON, Temporary Justice,)
Supreme Court of the Federated States of)
Micronesia,)

Respondent,)

MWOALEN WAHU ILEILE EN POHNPEI)
through ISO NAHNKEN NETT SALVADOR)
IRIARTE, CONSERVATION SOCIETY OF)
POHNPEI, and YOUNG SUN)
INTERNATIONAL TRADING CO.,)

Real Parties in Interest.)

ORDER DENYING WRIT OF PROHIBITION

Larry Wentworth
Associate Justice

Decided: October 17, 2016

APPEARANCE:

For the Petitioners: Judah C. Johnny
Acting Attorney General
Pohnpei Department of Justice
P.O. Box 1555
Kolonia, Pohnpei FM 96941

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HEADNOTES

Mandamus and Prohibition – When May Issue

A party seeking the extraordinary and exceptional remedy of a writ of prohibition must show that the party's right to the writ is clear and indisputable and that all of the following five elements are satisfied: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must

be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to have performed that act; and 5) there must be no other adequate legal remedy available. Peterson v. Anson, 20 FSM R. 657, 658-59 (App. 2016).

Courts – Recusal – Judicial Statements or Rulings

Generally, a judge's adverse rulings in the course of judicial proceedings do not provide grounds to disqualify a judge. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

Courts – Recusal – Bias or Partiality

Factors disqualifying a justice for bias or prejudice generally must be established as coming from an extrajudicial source. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

Courts – Recusal; Mandamus and Prohibition – When May Issue

A writ of prohibition clearly should not be granted based on a judge's adverse ruling that did not even remain adverse when the justice changed her mind and on factors that arose as part of the give and take during a contentious oral hearing on a controversial topic. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On August 23, 2016, Marcelo Peterson, Casiano Shoniber, and the Pohnpei State Government, filed, through counsel, their Petition for Writ of Prohibition with a supporting affidavit, seeking a writ prohibiting FSM Supreme Court Temporary Justice Mayceleen JD Anson from presiding over FSM Supreme Court Civil Action No. 2016-014. The petition is denied.

The petitioners contend that they are entitled to a writ of prohibition directed to Justice Mayceleen JD Anson barring her from presiding over Civil Action No. 2016-014 because: 1) she conveys distrust of the petitioners and their counsel; 2) she had a "predetermined mind" that she would grant the injunction in that case; 3) she "conveys a personal interest" that the defendants do not harvest sea cucumbers; and 4) her responses were "capable of formulating in the minds of the listening public present in the hearing" that the petitioners' counsel, the Pohnpei Acting Attorney General, and the petitioners cannot be trusted. The petitioners base these contentions on Justice Anson's statement that "there is no guarantee that they are not going to harvest," which was made during a hearing at which the defendants "volunteered to stipulate not to do any sea cucumber harvest" pending the appellate court's ruling on (an earlier) petition for a writ of prohibition (by other counsel representing a different party – Young Sun International Trading Co.). They contend that this statement conveys "an inner mind of the justice." The petitioners also base these contentions on Justice Anson's initial rejection of the Pohnpei Acting Attorney General's suggestion that she had the legal power to further extend the current temporary restraining order if all the parties stipulated to the extension and her later acceptance of that same proposition when opposing counsel also stated that the court had the legal jurisdiction to extend a temporary restraining order further if all parties agree. Justice Anson then extended the temporary restraining order.

A party seeking the extraordinary and exceptional remedy of a writ of prohibition must show that the party's right to the writ's issuance is clear and indisputable and that all of the following five elements are satisfied: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to

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perform the act; 4) the respondent must have failed or refused to have performed that act; and 5) there must be no other adequate legal remedy available. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The respondent is a judicial officer. In this case, the act to be compelled is non-discretionary and ministerial and Justice Anson had a clear legal duty to perform it, if, and only if, it is clearly shown that Justice Anson's impartiality might reasonably be questioned or that she has a personal bias or prejudice against the petitioners or their counsel.

Generally, a judge's adverse rulings in the course of judicial proceedings do not provide grounds to disqualify a judge. FSM v. Waitit, 13 FSM R. 293, 295 (Chk. 2005). Here, the judge's adverse ruling (that the parties could not stipulate to a TRO extension) did not even remain adverse when Justice Anson changed her mind and granted a TRO extension based on the parties' stipulation to an extension. Furthermore, factors disqualifying a justice for bias or prejudice generally must be established as coming from an extrajudicial source. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 585 (App. 2007) (speculation about judge's subconscious misgivings insufficient to support judge's disqualification). Here, the petitioners only cite factors that arose as part of the give and take during a contentious oral hearing on a controversial topic.

Accordingly, as I am "[t]he [only] remaining article XI, section 3 justice(s) of the Federated States of Micronesia Supreme Court, acting as the appellate division," and since I am "of the opinion that the writ clearly should not be granted," the petition is therefore denied. FSM App. R. 21(b). This case is closed.

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