

**JEFFREY RECHETUKER,**  
**Petitioner,**

**v.**

**MINISTRY OF JUSTICE and BUREAU**  
**OF PUBLIC SAFETY,**  
**Respondents.**

SPECIAL PROCEEDING NO. 09-002  
Civil Action No. 02-255

Supreme Court, Appellate Division  
Republic of Palau

Decided: November 3, 2009

[1] **Appeal and Error:** Writ of  
Mandamus

The proper procedural mechanism to seek a writ of mandamus in the Appellate Division is by petition captioned as a special proceeding.

[2] **Appeal and Error:** Writ of  
Mandamus

A petition seeking a writ of mandamus is not an appeal, even where the petition seeks a writ ordering a trial judge to reverse a decision. A petition for a writ of mandamus is a request for a separate, extraordinary remedy, available only when a petitioner lacks adequate alternative means to obtain relief.

[3] **Appeal and Error:** Jurisdiction

A court has the power and the duty to examine and determine, *sua sponte* if need be, whether it has jurisdiction over a matter presented to it.

**[4] Appeal and Error: Jurisdiction**

The Appellate Division of the Supreme Court's jurisdiction is constitutionally limited to review of lower court decisions.

Counsel for Petitioner: David W. Pugh

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

PER CURIAM:

Before the Court is Jeffrey Rechetuker's motion for a writ of mandamus in Civil Appeal No. 04-019. For the reasons set forth below, his motion shall be treated as a petition for a writ of mandamus in a newly-captioned Special Proceeding and dismissed for lack of jurisdiction.

### BACKGROUND

On April 2, 2001, Rechetuker, an officer employed by the Bureau of Public Safety, Ministry of Justice ("MOJ"), received a Notice of Adverse Action terminating his employment in ten days' time. The charges set forth in the letter stemmed from several incidents that occurred in the early morning hours of March 30, 2001.<sup>1</sup> Rechetuker challenged his termination before a Grievance

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<sup>1</sup> These incidents have been recited previously, and, as they are not pertinent to the matter at hand, the Court will not again repeat them. For a more detailed account, consult *Rechetuker v. Ministry of Justice*, 11 ROP 31, 32-33 (2003).

Panel. The Grievance Panel recommended, and then later commanded, reinstatement. The MOJ challenged the Grievance Panel's order of reinstatement in the Trial Division. In the course of its lifespan, the litigation has taken two previous trips to the Appellate Division, first in *Rechetuker v. Ministry of Justice*, 11 ROP 31 (2003) ("*Rechetuker v. MOJ I*") and then more recently in *Ministry of Justice v. Rechetuker*, 12 ROP 43 (2005) ("*MOJ v. Rechetuker II*").

*MOJ v. Rechetuker II* resulted in remand back down the chain to the Grievance Panel for further decision. According to Rechetuker, the Grievance Panel conducted further proceedings and concluded closing arguments on April 24, 2006, but has yet to reach a decision. He now seeks a writ of mandamus ordering the Grievance Panel to issue a decision.

### DISCUSSION

Rechetuker has moved, under the caption of Civil Appeal No. 04-019,<sup>2</sup> for a writ of mandamus. Rechetuker's request suffers from a number of deficiencies—it employs the wrong procedural mechanism in the wrong action before the wrong court.

**[1, 2]** First, the proper procedural mechanism to seek a writ of mandamus in the Appellate Division is by petition, not motion. *See* ROP R. App. P. 21. Second, petitions for writs of mandamus in the Appellate Division are captioned as special proceedings, not appeals. *See, e.g., Wolff v. Ngiraklsong*, 9

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<sup>2</sup> Civil Appeal No. 04-019 blossomed into the *MOJ v. Rechetuker II* opinion.

ROP 20 (2001) (captioned as “Special Proceeding No. 01-02”). Quite simply, petitions for writs of mandamus are not appeals. Even where the petition seeks a writ ordering a trial judge to reverse a decision, a petition for a writ of mandamus is not an appeal of the decision below, but a request for a separate, “extraordinary remedy” available only when a petitioner lacks adequate alternative means to obtain relief. *See, e.g., Ngirmeriil v. Armaluuk*, 11 ROP 122, 123 (2004). If a petitioner could seek relief by appeal, a writ of mandamus would neither be necessary nor appropriate.

Rechetuker’s motion for a writ of mandamus comes under the caption of Civil Appeal No. 04-019. That appeal, however, is closed. The Appellate Division disposed of that appeal on January 7, 2005, when it reversed the Trial Division and instructed it to remand the case back to the Grievance Panel. *MOJ v. Rechetuker II*, 12 ROP at 45, 47. This mis-captioning, however, is not per se fatal, and shall be corrected by re-captioning the matter as a Special Proceeding.

[3] This mis-captioning, however, betrays Rechetuker’s greater error—one that is not so easily remedied. Because this request for mandamus is not, as Rechetuker would have it, part-and-parcel of *MOJ v. Rechetuker II*, Rechetuker must demonstrate an independent source of jurisdiction for this Court to entertain his request for a writ of mandamus. Although his motion is silent in that regard, this Court is duty-bound to pay heed—sua sponte as the case may be—to this issue: “[A] court has the power and duty to examine and determine whether it has jurisdiction of a matter presented to it.” *Roman Tmetuchl Family Trust v. Ordome Hamlet*, 11 ROP

158, 160 (2004) (*quoting* 20 Am. Jur. 2d *Courts* § 60 (1995)).

[4] This Court has previously made plain that it has jurisdiction over actions pursuant to ROP Const. Article X, Section 6. *See Koror State Gov’t v. W. Caroline Trading Co.*, 2 ROP Intrm. 306, 307 (1991). That Section states: “The appellate division of the Supreme Court shall have jurisdiction to review all decisions of the trial division and all decisions of lower courts.” ROP Const. art. X, § 6. The remand of Civil Appeal No. 04-019 placed the ball back in the Trial Division’s court for purposes of reviewing the Grievance Panel’s action (or, as is alleged, inaction).

A read of *Koror State Gov’t* is instructive. In that case, the plaintiff in the Trial Division filed a petition for a writ of mandate in the Appellate Division seeking an order compelling the defendant to open its records to the plaintiff. *Koror State Gov’t*, 2 ROP Intrm. at 306-07. The Appellate Division granted the respondent’s motion to dismiss for lack of jurisdiction because jurisdiction was vested solely in the Trial Division at that time. *Id.* at 310. The Court set forth a well-reasoned demonstration that the provisions of the Rules of Appellate Procedure—namely ROP R. App. P. 21 governing writs of mandamus—did nothing (and could do nothing) to enlarge its constitutionally-defined limited jurisdiction. *Id.* at 308-10. Similarly here, the Constitution provides that jurisdiction is vested solely in the Trial Division. ROP Const. art. X, § 5 (“In all other cases, the National Court shall have original and concurrent jurisdiction with

the trial division of the Supreme Court.”).<sup>3</sup> This Court resolved the appeal before it over four years ago and jurisdiction does not linger.<sup>4</sup> Rechetuker’s request is better addressed to the Trial Division, where his case is currently pending.<sup>5</sup>

### CONCLUSION

For the above-stated reasons, Rechetuker’s motion for a writ of mandamus is treated as a petition for a writ of mandamus, re-captioned as a Special Proceeding, and DISMISSED for lack of jurisdiction in the Appellate Division.

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<sup>3</sup> Because the National Court is currently inactive, the Trial Division of the Supreme Court presently maintains *de facto* exclusive jurisdiction.

<sup>4</sup> To be sure, the Appellate Division is not devoid of jurisdictional authority to issue writs of mandamus under the appropriate circumstances. Consistent with the Constitution’s grant of jurisdiction, the Appellate Division may, for instance, issue writs of mandamus reviewing actions of the lower courts. *See* ROP Const. art. X, § 6.

<sup>5</sup> Should Rechetuker choose to pursue his request elsewhere, it would be prudent of him to be mindful of whether, dependent on the procedural mechanism chosen, the Grievance Panel should be named as a party to the request.