

ROP v. Asanuma & Malsol, 3 ROP Intrm. 48 (1991)
REPUBLIC OF PALAU,
Plaintiff,

v.

FRANCISCO ASANUMA and LUCIUS MALSOL,
Defendants.

CRIMINAL APPEAL NO. 5-91
Criminal Case No. 23-91

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: September 6, 1991

Counsel for Plaintiff: David Webster, ROP Special Prosecutor

Counsel for Defendant Malsol: Carlos H. Salii

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;
and ARTHUR NGIRAKLSONG, Associate Justice

PER CURIAM:

An Order denying Defendant Malsol's Application for a Writ of Mandamus or Alternatively, for a Writ of Prohibition was issued by this Court at 8:30 a.m. on September 5, 1991 in order to enable the trial court proceeding to continue as scheduled. This Opinion sets forth the legal grounds for the Order denying Defendant Malsol's application.

On September 4, 1991, at 1:40 p.m., Defendant Malsol filed a motion to disqualify the Trial Judge in Criminal Case No. 23-91 because the Trial Judge was aware that a material prosecution witness had passed a polygraph examination. The Trial Judge denied **149** Defendant Malsol's motion. Later that afternoon, Defendant Malsol applied to this Court for a writ of mandamus, directing the Trial Judge to disqualify himself, or for a writ of prohibition to prevent the Trial Judge from presiding over Defendant Malsol's criminal case.

Defendant Malsol's application contains no legal support or citations to persuade this Court that either of these extraordinary writs is warranted. In fact, basic legal research should have revealed to the Defendant that neither a writ of mandamus nor a writ of prohibition is appropriate under the present circumstances.

A writ of mandamus will not issue in doubtful cases, but only where there is:

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- 1) a specific, incontrovertible right in the petitioner to have the act in question performed;
- 2) a corresponding ministerial duty to be performed by the respondent; and
- 3) no other specific and adequate relief, such as appeal, available. *Senate, et al., v. Etpison*, Civ. Act. No. 562-90 (Dec. 1990); 52 Am.Jur.2d., *Mandamus*, sec. 31.

Mandamus is a proper remedy as to discretionary duties only where there is a showing of abuse of discretion or of arbitrary and capricious action on the part of the public official. *Id.*, at sec. 79.

Defendant Malsol has the burden of establishing that the L50 prerequisites for mandamus relief have been met, yet he has proffered no evidence or legal argument to show that mandamus is appropriate. In a mandamus proceeding against a public officer, such as a judge, it is presumed that official duties were regularly, or will be properly, performed. *Senate, et al., v. Etpison, supra*, at pg. 11. Defendant Malsol has not even argued, let alone established, that 4 PNC § 304, regarding disqualification of justices, has been violated, or that the Code of Judicial Conduct, which applies in Palau pursuant to 4 PNC § 303, has been infringed.

It is apparent to this Court, as it should have been to Defendant Malsol, that mandamus is neither warranted nor appropriate to compel the Trial Judge to disqualify himself in this case.

The same is true of Defendant Malsol's application for a writ of prohibition. Again, basic legal research should have made clear to Defendant's counsel that a writ of prohibition issues to prevent a lower court from exceeding its jurisdiction or from exercising jurisdiction over matters not within its cognizance. 63 Am.Jur.2d., *Prohibition*, 2. A writ of prohibition is issued only in cases of extreme necessity, and only when each of the following elements have been clearly established:

- 1) That the lower court is about to exercise judicial or quasi-judicial power;
- 2) That the exercise of such power is unauthorized by L51 law; and
- 3) That the exercise of such power will result in injury for which there is no other adequate remedy. *Id.*, at sec. 6.

A writ of prohibition will not issue to prohibit a court from acting in the proper exercise of its powers and within its jurisdiction. It will not issue to review and correct errors and irregularities of a lower court, or where there is another legally adequate remedy. *Id.*

Defendant Malsol's application makes no attempt to establish the essential elements required for issuance of a writ of prohibition. Because the grounds set forth in Defendant's motion to disqualify do not relate in any way to the Trial Court's jurisdiction over Criminal Case No. 23-91, it is difficult to imagine how the Defendant could justify a request for a writ of prohibition.

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It should now be clear to Defendant Malsol that, even if he could establish legal grounds for disqualification of the Trial Judge, he has asked this Court for completely inappropriate relief by applying for a writ of mandamus or a writ of prohibition.

152 As stated in our ORDER of September 5, 1991, based on the above points of law, Defendant Malsol's application for a writ of mandamus or a writ of prohibition is Denied.