Ngerketiit Lineage v. Ngirarsaol, 8 ROP Intrm. 50 (1999)

NGERKETIIT LINEAGE,
Appellant,

v.

GEORGE NGIRARSAOL, et al.,
Appellees.

CIVIL APPEAL NO. 98-57
Civil Action Nos. 121-94,108-94

NGERKETIIT LINEAGE
Appellant,

v.

ROMAN TMETUCHL,
Appellee.

CIVIL APPEAL NO. 99-05
Civil Action No. 98-308

Supreme Court, Appellate Division
Republic of Palau

Decided: October 14, 1999

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

PER CURIAM:

Appellant Ngerketiit Lineage has filed motions seeking to disqualify Justices Beattie, Miller, and Michelsen from further participation in these appeals. We can discern two possible bases for the motion, neither of which is meritorious. We therefore deny the motion.[1]

The first possible basis is the fact that each of the undersigned Justices was a member of the appellate panels that previously heard and decided appeals between the parties to the current appeals. *See Ngerketiit Lineage v. Ngerukebid Clan* , 7 ROP Intrm. 38 (1998); *Tmetuchl v.*

[1] Ordinarily, a motion to recuse directed at an appellate judge is decided by that judge. *E.g., In re Bernard*, 31 F.3d 842, 843 (9th Cir. 1994) (J. Kozinski). Because the instant motion raises legal issues common to each of the undersigned, we have determined to issue a joint opinion. Justice Miller joins in the opinion only as to Civil Appeal No. 98-57. Justice Michelsen joins in the opinion only as to Civil Appeal No. 99-05.

Ngerketiit Lineage, 7 ROP Intrm. 91 (1998). Civil Appeal No. 98-57 is an appeal from the denial of Ngerketiit Lineage's motion to set aside part of the judgment in the *Ngerukebid* case pursuant to ROP Civ. Pro. R. 60(b). Civil Appeal No. 99-05 is an appeal from an order dismissing Ngerketiit's collateral attack on the judgment issued following the appeal in the *Tmetuchl* case. It is Ngerketiit's contention that -- as to both appeals -- it "is faced with presenting its case not to an impartial panel, but rather adversaries who quite naturally wish to defend their earlier decisions." Motion for Judicial Disqualification at 11-12.

We see no basis for that assertion. Ngerketiit rightly concedes that "the available facts do not establish a personal bias or prejudice against Ngerketiit Lineage or in favor of another opposing party." *Id*. at 6. But neither is there any appearance of partiality or anything at all unusual in the fact that a judge who sat on one appeal may sit on a ⊥51 subsequent appeal in the same or a related case. In the ordinary course, a Rule 60(b) motion to set aside a judgment will be ruled upon by the judge who originally rendered that judgment. [2] The fact that that judge is familiar with the case is regarded as beneficial, [3] and certainly not as a basis for finding an appearance of partiality. But if the same judge is presumed to be capable of following the law and deciding whether his or her own judgment must be set aside, surely there is no basis for disqualifying appellate judges merely because it is their second time around.

Ngerketiit makes a second argument for recusal, but we are at a loss to understand its applicability -- even if correct -- to the Justices to whom these motions are addressed. Ngerketiit argues that the same constitutional [4] and statutory [5] provisions that bar a judge or justice from sitting on the appeal of a case he or she has decided also "prohibit a judge or justice from consideration of any aspect of a controversy where that judge or justice heard or decided any aspect of a controversy between parties in a different division of the Supreme Court." Motion for Judicial Disqualification at 12-13. That argument would perhaps have been pertinent to motions to disqualify Justice Miller or Michelsen from sitting as Trial Division judges in the cases now on appeal, but Ngerketiit disclaims any intention "to recuse the trial judge after the fact." But Ngerketiit's proposed rule has no relevance to our participation in these appeals. As noted above, although Justice Beattie has been involved in the appellate proceedings between the parties to both of the current appeals, he has never heard or decided any aspect of the controversy

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[2] *See* 11 Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* §2865 at 377 (1995) ("Relief under Rule 60(b) ordinarily is obtained by motion in the court that rendered the judgment."); 12 *Moore's Federal Practice 3d* §60.60 at 60-190 (1998) ("[T]he court that rendered the judgment is the court in which the Rule 60(b) motion for relief from that judgment should be filed.").

[3] *See Federal Practice and Procedure, supra* note 2, at 378 ("[T]he rendering court ordinarily will be far more familiar with the case and the circumstances that are said to provide grounds for relief from the judgment."); *Moore's Federal Practice*, *supra* note 2, at 60-191 ("This rule makes perfect sense. The court that rendered the judgment is in the best position to judge the equities as to whether it should be set aside.").

[4] Article X, Section 2, provides: "No justice may hear or decide an appeal of a matter heard by him in the trial division."

[5] Title Four of PNC § 304 provides: "No justice or judge shall hear or determine, or join in hearing or determining an appeal from the decision of any case or issue decided by him."

between those parties as a Justice sitting in the Trial Division. Likewise, Justice Miller has not considered as a trial judge the controversy in No. 98-57, and Justice Michelsen has not considered as a trial judge the controversy in No. 99-05. [6] Accordingly, Ngerketiit's argument, which we leave to another day, provides no basis for recusal here.

⊥52 The motion for judicial disqualification, as addressed to the undersigned, is accordingly denied.

[6] As Ngerketiit recognizes, Justice Miller will not be participating in No. 99-05 and Justice Michelsen will not be participating in No. 98-57 for the obvious reason that their own decisions will be on review in those appeals.