

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**JESUS C. TUDELA, ADMINISTRATOR OF ESTATE
OF ANGEL MALITI, ET AL.,**
Petitioner,

v.

**THE SUPERIOR COURT OF THE COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**
Respondent,

**ROSA MALITE, LOURDES M. RANGAMAR, ROMBERT M. SINOUNOU, AND
JIMMY SABLAN**
Respondents-Real Parties in Interest.

SUPREME COURT NO. CV-07-0014-OA
SUPERIOR COURT NO. 97-0369

Cite as: 2007 MP 18

Decided September 7, 2007

Antonio M. Atalig, Saipan, Commonwealth of the Northern Mariana Islands, and Reynaldo O. Yana, Saipan, Commonwealth of the Northern Mariana Islands, for Petitioner.

BEFORE: JOHN A. MANGLONA, Associate Justice; F. PHILIP CARBULLIDO, Justice Pro Tem; ROBERT J. TORRES, Justice Pro Tem

PER CURIAM:

¶ 1 Petitioner seeks a writ of mandamus: (1) instructing the trial court to vacate its order disqualifying Judge Juan T. Lizama from presiding over *In Re Estate of Angel Maliti*, Civil Action No. 97-0369; and (2) ordering Judge Lizama be reinstated. Because we find petitioner has not met the exacting standards of *Tenorio v. Superior Court*, 1 NMI 1, 9-10 (1989), his mandamus action must fail. Accordingly, the petition for a writ of mandamus is DENIED.

I

¶ 2 On June 7, 2006, certain separately represented heirs in *In Re Estate of Angel Maliti* filed a motion to disqualify Judge Juan T. Lizama. The motion to disqualify was assigned to Judge David A. Wiseman. After a hearing on the matter, Judge Wiseman granted the motion and disqualified Judge Lizama. The underlying case was then reassigned to Judge Wiseman but Judge Wiseman recused himself, citing allegations of bias publicized after his order disqualifying Judge Lizama which he felt brought his impartiality into question.

¶ 3 Based on these allegations of bias, petitioner now seeks mandamus relief vacating Judge Lizama's disqualification, and an order reinstating him. Petitioner argues Judge Wiseman should have recused himself from hearing the motion to disqualify Judge Lizama because he had previously expressed disapproval over an attorney fees award Judge Lizama granted in the same proceeding. Petitioner argues: (1) Judge Wiseman's comment regarding attorney fees gives rise to the appearance of bias, for which 1 CMC § 3308(a)¹ requires recusal; and (2) Judge Wiseman's failure to recuse himself renders his order disqualifying Judge Lizama void for defective jurisdiction, thereby justifying mandamus.

¶ 4 We have jurisdiction over mandamus petitions pursuant to Article IV, Section 3, of the NMI Constitution. *Bank of Saipan v. Martens*, 2007 MP 5 ¶ 5; *Kevin Int'l Corp. v. Superior Court*, 2006 MP 3 ¶ 11.

II

Tenorio Factors Applicable to Claims of Jurisdictional Defect

¶ 5 At the outset we address petitioner's argument that the five-factor test for mandamus we adopted in *Tenorio*, 1 N.M.I. at 9-10, is not implicated when mandamus is predicated on jurisdictional defect. Petitioner reads *Tenorio* as outlining a bifurcated mandamus test; jurisdictional flaws automatically trigger mandamus, but the five-factor test controls in the

¹ "A justice or judge of the Commonwealth shall disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned." 1 CMC § 3308(a).

absence of jurisdictional defect. Petitioner derives his argument from *Tenorio's* reliance on *Will v. United States*, 389 U.S. 90 (1967). He claims *Will* “introduced [mandamus] guidelines . . . where it did not find any exceptional circumstances amounting to judicial usurpation of power” Petition at 19. Petitioner’s tortured reading of *Will*, however, is untenable. *Will* does not support petitioner’s assertion; it precludes it:

The peremptory writ of mandamus has traditionally been used in the federal courts only “to confine an inferior court to a lawful excursive of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” While the courts have never confined themselves to an arbitrary and technical definition of “jurisdiction,” *it is clear that only exceptional circumstances amounting to a judicial “usurpation of power” will justify the invocation of this extraordinary remedy.*

Will, 389 U.S. at 95 (citations omitted) (emphasis added).

¶ 6 Neither may our decision in *Tenorio* be understood as supporting petitioner’s dualistic approach to mandamus. In *Tenorio* we noted the historic purpose of mandamus was ensuring a lower court acts within, or when required by, its prescribed authority. 1 NMI at 7. However, no direct correlation exists between jurisdictional defect and mandamus relief. “If a rational and substantial legal argument can be made in support of the questioned jurisdictional ruling, the case is not appropriate for mandamus . . . even though on normal appeal a reviewing court might find reversible error.” *Id.* at 8. Recognizing the need for principled and consistent application of the broad powers attendant to mandamus, we adopted the five-factor test articulated by the Ninth Circuit in *Bauman v. United States Dist. Ct.*, 557 F.2d 650, 654-55 (1977). *Id.* at 8-9. The five factors inject a level of objectivity into “the general admonitory language found in *Will*” that “a judicial ‘usurpation of power’” is necessary for mandamus relief. *Id.* at 9 (quoting *Will*, 389 U.S. at 95).

¶ 7 Petitioner’s claim that the *Tenorio* factors are applicable only in the absence of extra-jurisdictional action is incorrect. The *Tenorio* factors apply with equal force regardless of the allegations upon which mandamus is premised. The factors provide guidance any time this Court is called on to determine whether the lower court’s actions were so incompatible with its authority as amounting to judicial usurpation of power.

Petitioner Has Not Stated a Claim Sufficient for Mandamus

¶ 8 “A Writ of Mandamus is an extraordinary writ, reserved for the most dire of instances when no other relief is available.” *Bank of Saipan*, 2007 MP 5 ¶ 16. When approaching a mandamus petition, we consider whether: (1) the party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired; (2) petitioner will be damaged or prejudiced in a way not correctable on appeal; (3) the lower court’s order is clearly erroneous as a

matter of law; (4) the lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and (5) the lower court's order raises new and important problems, or issues of law of first impression. *NMI Scholarship Board v. Superior Court*, 2007 MP 10 ¶ 4; *Tenorio*, 1 NMI at 9-10. These factors do not provide a bright line between cases justifying mandamus and those falling short, but are instead "cumulative and require this Court to determine the degree to which each is implicated." *Maliti v. Tudela*, 2007 MP 3 ¶ 9. The factors must be "balanced and weighed against the costs of issuing a writ, such as interfering with trial court proceedings prior to final adjudication." *Commonwealth v. Pua*, 2006 MP 19 ¶ 19.

¶ 9 The first two *Tenorio* factors are similar and may be considered together. *Shaffer v. Superior Court*, 2007 MP 15 ¶ 9. Accordingly, we determine whether petitioner has adequate means to attain relief outside mandamus and whether he will suffer damage not correctable on appeal if mandamus is denied. We conclude petitioner has a sufficient alternative to mandamus.

¶ 10 To the extent petitioner is legally entitled to his requested relief, he may obtain it within the proceedings below. Because the underlying case has been reassigned, petitioner may seek review of Judge Wiseman's order disqualifying Judge Lizama before the newly assigned judge. Certain jurisdictions consider orders rendered by a disqualified judge voidable. *Borders v. City of Huntsville*, 875 So.2d 1168, 1175 (Ala. 2003); *Pierce v. Pierce*, 2001 OK 97 ¶ 23. Others consider them void. *State v. Am. TV & Appliance of Madison, Inc.*, 151 Wis.2d 175, 179 (1989); *Buckholts Independent School District v. Glaser*, 632 S.W.2d 146, 149 (Tex. 1982) ("[A]ny order involving judicial discretion by a constitutionally [as opposed to statutorily] disqualified judge is 'absolutely void,' 'a nullity.'"). However, even if Judge Wiseman's order disqualifying Judge Lizama is vacated, petitioner's remedy is limited to a rehearing of the motion to disqualify. Petitioner has no right to a particular judge, *United States v. Cabassa*, 376 F.3d 20, 23 (1st Cir. 2004); *Sinto v. United States*, 750 F.2d 512, 515 (6th Cir. 1984) (listing cases), and the authority to distribute Superior Court business lies solely with the Presiding Judge. 1 CMC § 3204(b).² Although a judge may be reinstated *as a function of* the denial of a motion to disqualify, petitioner is not entitled to an order reinstating a specific judge, even one wrongly disqualified. Nor does the judge to whom the case is now assigned have the authority to reinstate Judge Lizama. Thus, even if petitioner is entitled to have Judge Lizama's disqualification motion reheard, he is not entitled, and may not obtain, an order reinstating Judge Lizama. As such, petitioner will not be damaged in a manner uncorrectable on appeal from the denial of mandamus.

² "The Presiding Judge shall distribute the business of the Superior Court among the judges of the Superior Court and prescribe the order of business." 1 CMC § 3204(b).

¶ 11 Petitioner admits that *Tenorio* factors four and five are not implicated, Petition at 20-21, and we refuse to consider factor three – whether Judge Wiseman’s decision to disqualify Judge Lizama was clearly erroneous – because even an affirmative answer will not justify mandamus on the current facts. Petitioner has a remedy outside mandamus. He will suffer no prejudice in the absence of a writ, so it is immaterial to our analysis whether Judge Wiseman erred in disqualifying Judge Lizama.

III

¶ 12 Petitioner has failed to demonstrate that this case warrants mandamus. Accordingly, the petition is DENIED.