

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

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**IN RE AMBROSIO T. OGUMORO,**  
*Petitioner.*

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**Supreme Court No. 2014-SCC-0025-PET**  
Superior Court No. 12-0134

**OPINION**

**Cite as: 2015 MP 10**

Decided December 4, 2015

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Edward C. Arriola, Saipan, MP, for Petitioner.

George L. Hasselback, Saipan, MP, for Respondent.

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BEFORE: JOHN A. MANGLONA, Associate Justice; ROBERT J. TORRES, Justice Pro Tem; HERBERT D. SOLL, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Petitioner Ambrosio T. Ogumoro (“Ogumoro”) seeks a writ to prohibit the trial court from appointing a special prosecutor. Ogumoro argues the trial court improperly authorized the appointment of a special prosecutor without an evidentiary hearing to determine the appropriateness of the Office of the Attorney General’s disqualification. For the reasons following, we DENY the petition.<sup>1</sup>

### I. FACTS AND PROCEDURAL HISTORY

¶ 2 On August 13, 2012, the Office of the Public Auditor’s legal counsel, George Hasselback (“Hasselback”), filed an ex parte petition for his appointment as a special prosecutor in *Commonwealth v. Buckingham*, Crim. No. 12-0134, the case against former Attorney General Edward T. Buckingham (“Buckingham”). Shortly thereafter, the trial court granted the appointment to allow Hasselback to investigate and prosecute “matters or persons that are connected or relevant to the charges filed in [*Buckingham*].” *Buckingham*, Crim. No. 12-0134 (NMI Super. Ct. Aug. 17, 2012) (Granting Ex Parte Pet. for Appointment of Special Prosecutor at 4) [hereinafter Appointment of Special Prosecutor]. On March 20, 2013, Hasselback filed charges against Ogumoro.

¶ 3 Less than two months later, the Office of the Attorney General (“OAG”) petitioned this Court to stay this case along with cases against Buckingham’s other alleged co-conspirators. The OAG requested an evidentiary hearing on the disqualification or, alternatively, a writ to prohibit the trial court from proceeding with the cases and other related actions filed subsequent to the petition.

¶ 4 On June 28, 2013, we issued *In re San Nicolas*, in which we ordered the trial court to hold a hearing on the OAG’s disqualification. 2013 MP 8 ¶ 24. The trial court scheduled a hearing where only the OAG and the Office of the Public Auditor (“OPA”) were permitted to present arguments. The hearing was later canceled because the parties stipulated to the continued designation of the special prosecutor.

¶ 5 After the trial court scheduled this matter for a jury trial, Ogumoro moved to dismiss for lack of jurisdiction “because the [Attorney General] violated the separation of powers by delegating general prosecutorial powers to members of an agency with no [legislative authority].” Pet. 6. The trial court denied the motion based on its inherent authority to appoint the special prosecutor.

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<sup>1</sup> This opinion is consistent with the order denying the petition issued on September 11, 2015.

¶ 6 Ogumoro now petitions this Court to prevent the trial court from appointing a special prosecutor.

## II. JURISDICTION

¶ 7 We have jurisdiction over a petition for a writ of prohibition. NMI CONST. art. IV, § 3; 1 CMC § 3102(b).

## III. DISCUSSION

¶ 8 Ogumoro petitions for a writ to prohibit the trial court's appointment of a special prosecutor.

¶ 9 A writ of prohibition is "granted only in the 'most dire of instances.'" *In re San Nicolas*, 2013 MP 8 ¶ 9 (quoting *In re Buckingham*, 2012 MP 15 ¶ 7). In determining whether to grant a writ, we weigh the following factors: whether (1) the petitioner has no other adequate means, such as a direct appeal, to achieve the desired relief; (2) the petitioner will sustain damage or prejudice that cannot be remedied on appeal; (3) the trial court's decision is clearly erroneous; (4) the trial court often repeats the error or demonstrates a "persistent disregard" of pertinent rules; and (5) the trial court's decision raises novel and important matters, or issues of first impression. *Id.* ¶ 9 (quoting *In re Cushnie*, 2012 MP 3 ¶ 7). Absent a showing of clear error, a writ will not be granted. *In re Buckingham*, 2012 MP 15 ¶ 10. Because a finding of clear error is dispositive, we first turn to this threshold factor. *In re Commonwealth*, 2015 MP 7 ¶ 9.

¶ 10 "We will only find clear error if no 'rational and substantial legal argument can be made in support of the questioned . . . ruling even though on normal appeal a reviewing court may find reversible error.'" *In re San Nicolas*, 2013 MP 8 ¶ 9 (quoting *In re Buckingham*, 2012 MP 15 ¶ 10). "In applying this factor, we give 'high deference' to the trial court's decision." *In re Buckingham*, 2012 MP 15 ¶ 10 (citing *Xiao Ru Liu v. Super. Ct.*, 2006 MP 5 ¶ 17).

¶ 11 Ogumoro argues the trial court clearly erred in appointing a special prosecutor without first holding a hearing to determine the appropriateness of the OAG's disqualification, as ordered in *In re San Nicolas*, 2013 MP 8 ¶ 24. He claims the hearing would have afforded a proper determination on whether the entire OAG had to be disqualified or whether prosecutors were properly screened.

¶ 12 Against this backdrop, we consider whether there is a rational and substantial legal argument that supports the trial court's appointment of a special prosecutor.<sup>2</sup> Here, the trial court appointed Hasselback as the special prosecutor to "ensure the fair administration of justice" and limited his duties

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<sup>2</sup> Ogumoro argues, without citing to legal authority, that the due process arguments advanced by the OAG in *In re San Nicolas* apply here. However, Ogumoro was not a party to the disqualification proceeding and does not have the right to select who prosecutes this matter.

“to the investigation and prosecution of matters or persons . . . connected or relevant to the charges filed” in *Buckingham*. Appointment of Special Prosecutor at 4.

¶ 13 In *In re San Nicolas*, we assessed whether the trial court had the authority to disqualify the OAG from prosecuting criminal actions involving Buckingham’s alleged co-conspirators. 2013 MP 8 ¶ 11. First, we considered the OAG’s constitutional authority to “prosecut[e] violations of Commonwealth law.” *Id.* ¶ 12 (quoting NMI CONST. art. III, § 11). Next, we turned to 1 CMC § 7847(b), which authorizes the Public Auditor to use the legal counsel for the OPA to investigate and prosecute criminal violations by the governor or attorney general as necessary. *In re San Nicolas*, 2013 MP 8 ¶ 13. We held the trial court had the inherent authority to disqualify the OAG in narrow instances based on § 7847(b), “the court’s inherent authority and duty to safeguard justice,” and precedent from other jurisdictions. *Id.* ¶ 20. Further, we ordered the trial court to hold a hearing because the record failed to adduce details on the “steps the OAG took to screen attorneys representing or consulting on Buckingham’s case from those not involved” and to develop other facts. *Id.* ¶ 23.

¶ 14 Following our decision, the OAG filed with the trial court a notice of designation and stipulation to take the evidentiary hearing off calendar and attached as an exhibit its letter to Hasselback concerning the need for a special prosecutor in the Buckingham-related matters. The notice and stipulation indicated that Hasselback’s designation as a special prosecutor was proper because then-Attorney General Joey P. San Nicolas (“San Nicolas”) was “unsatisfied” that former Attorney General Buckingham “took steps sufficient to screen any attorneys . . . from [the] imputation of conflict stemming from the OAG’s representation of [Buckingham].” *Commonwealth v. Ogumoro*, Crim. No. 12-0134 (NMI Super. Ct. July 17, 2013) (Notice of Designation & Stipulation to Take Matter Off Calendar at 2).<sup>3</sup> The letter to Hasselback also emphasized San Nicolas’s desire to avoid “the appearance of any impropriety in the investigation and prosecution of Buckingham and his alleged co-conspirators,” to prevent “tarnish[ing] the public’s perception” of the OAG, and to have Hasselback continue with the prosecution of the cases. *Ogumoro*, Crim. No. 12-0134 (NMI Super. Ct. July 17, 2013) (Notice of Designation & Stipulation to Take Matter Off Calendar Ex. A at 1–2). The notice and stipulation concluded with a request that the trial court take the hearing off calendar.

¶ 15 Given these circumstances, the trial court took the hearing off calendar because the dispute concerning Hasselback’s appointment as the special prosecutor was moot. Thus, we now determine whether there is a rational and substantial legal argument supporting the trial court’s decision.

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<sup>3</sup> The OAG filed the same notice in other Buckingham-related matters. For purposes of this opinion, only the filing in this matter is cited.

¶ 16 Though Ogumoro claims the trial court violated the Court's order by failing to hold a hearing, the trial court took the hearing off calendar because the parties assented to the need for a special prosecutor. Prior to canceling the hearing, the trial court considered the OAG's assessment of former AG Buckingham's failure to take the steps necessary to properly screen attorneys from conflicts. There is a rational and substantial argument that a hearing was unnecessary based on the OAG's evaluation of the circumstances. Therefore, the trial court did not clearly err by taking the hearing off calendar because the OAG made the critical determination mandated in *In re San Nicolas*. We need not address the other factors because this factor is dispositive. *In re Commonwealth*, 2015 MP 7 ¶ 9.

#### IV. CONCLUSION

¶ 17 Accordingly, we DENY Ogumoro's petition for a writ of prohibition.

SO ORDERED this 4th day of December, 2015.

/s/ \_\_\_\_\_  
JOHN A. MANGLONA  
Associate Justice

/s/ \_\_\_\_\_  
ROBERT J. TORRES  
Justice Pro Tem

/s/ \_\_\_\_\_  
HERBERT D. SOLL  
Justice Pro Tem