

**Electronically Filed
Supreme Court
SCPW-15-0000098
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SCPW-15-0000098

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Petitioner,

vs.

THE HONORABLE RANDAL K.O. LEE, Judge of the Circuit Court of the
First Circuit, State of Hawai'i, Respondent Judge,

and

TRACY T. YOSHIMURA, EUGENE M. SIMEONA, JR., MICHAEL D.
MILLER, MICHAEL A. MADALI, JR., CLAYTON SIMEONA,
DESIREE U. HAINA, QUENTIN D.R. CANENCIA, GARY G. DANLEY, JR.,
and ALEXANDER R. ALEJANDRO, Respondents.

ORIGINAL PROCEEDING
(CR. NO. 14-4-0717)

CONCURRENCE BY MCKENNA, J., WITH WHOM WILSON, J., JOINS

I concur in the order of the court granting the petition for writ of mandamus, including the bases stated in the order. I write separately because I believe a mandamus petition regarding disqualification of attorneys is also subject to the standard generally applicable to writs of mandamus, which does not require a showing of "irreparable and immediate harm," but instead requires "a lack of other means adequately to redress the alleged wrong or obtain the requested action." As stated by this court

in Straub Clinic & Hospital v. Kochi:

A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates: (1) a clear and indisputable right to relief; and (2) a lack of other means adequately to redress the alleged wrong or obtain the requested action. Tanaka v. Nagata, 76 Hawai'i 32, 35, 868 P.2d 450, 453 (1994). Such writs are not meant to supersede the legal discretionary authority of the lower courts, nor are they meant to serve as legal remedies in lieu of normal appellate procedures. State ex rel. Marsland v. Town, 66 Haw. 516, 668 P.2d 25 (1983). Where a trial court has discretion to act, mandamus clearly will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which it is subject to a legal duty to act. State ex rel. Marsland v. Ames, 71 Haw. 304, 307, 788 P.2d 1281, 1283 (1990). This court has determined that a petition for a writ of mandamus and/or prohibition is an appropriate vehicle for reviewing an order of disqualification. Chuck v. St. Paul Fire and Marine Ins. Co., 61 Haw. 552, 606 P.2d 1320 (1980). "[W]here the basis upon which the trial court has rested its order of disqualification is clearly insufficient, and a convincing showing is made in the petition that irreparable and immediate harm would otherwise be the necessary consequence, the petitioner's application for a writ of mandamus will be granted." Id. at 558, 606 P.2d at 1324 (emphasis added).

81 Hawai'i 410, 414, 917 P.2d 1284, 1288 (1996) (per curiam).

The Straub case arose from a petition for writ of mandamus to overturn the disqualification of a law firm. 81 Hawai'i at 411, 917 P.2d at 1285. This court applied the Chuck standard concerning orders of disqualification quoted above in denying the petition, ruling that petitioners failed to demonstrate that "the basis upon which the trial court rested its order of disqualification" was not "clearly insufficient." 81 Hawai'i at 417, 917 P.2d at 1291. In Straub, this court did not decide whether "irreparable and immediate harm would otherwise be the necessary consequence" because the "clearly insufficient" prong

had not been met. 81 Hawai'i at 418, 917 P.2d at 1292.

The quote above from Straub, however, is in its "Standard of Disposition" section. 81 Hawai'i at 414, 917 P.2d at 1288.

Although this court applied the Chuck standard, it also cited to the general standard governing writs of mandamus. In this case, I believe the State has demonstrated (1) a clear and indisputable right to relief; and (2) a lack of other means adequately to redress the wrongful disqualification of counsel.

Thus, although I believe the Chuck standard has been met in this case, I also believe the petition should be granted based on the general standard governing mandamus petitions.

DATED: Honolulu, Hawai'i, July 7, 2015.

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

