

IN THE SUPREME COURT
TERRITORY OF GUAM

IN RE:

**HAIM HABIB,
FRANCIS L. GILL,
LEON G. MAQUERA.**

Civil Case No. CVA96-007
Filed: November 15, 1996
Cite as: 1996 Guam 7

Amended Motion to Assume Jurisdiction

Argued and Submitted 30 October 1996
Agana, Guam

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OPINION

BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and MONESSA G. LUJAN, Associate Justices.

WEEKS, J.:

[1] Petitioner, Guam Bar Ethics Committee moves this Court to assume jurisdiction over attorney disciplinary proceedings currently pending before the Superior Court. For the following reasons, we deny Petitioner's motion.

hearings in Habib's and Gill's cases. In Maquera's case, the Superior Court has already conducted a hearing and issued its judgment. Maquera and Petitioner have both filed Motions to Alter or Amend the Judgment in Maquera's case.¹

BACKGROUND

[2] Haim Habib, Leon G. Maquera, and Francis L. Gill are respondents to disciplinary proceedings pending before the Superior Court pursuant to the rules of the Guam Bar Ethics Committee governing Discipline, and the Superior Court of Guam Rules for the Discipline of Attorneys. Both sets of rules provide for a procedure by which the Guam Bar Ethics Committee, after conducting an adversarial hearing, submits its findings, along with disciplinary recommendations, to the Superior Court. The Superior Court conducts a hearing on the merits of the Ethics Committee's recommendation and then issues a judgment within thirty days. The Superior Court received findings and recommendations from the Ethics Committee in all three respondents' cases but has not yet constituted three judge panels for

¹Maquera filed two motions, one under Rule 59, and another under Rule 60(b) of the Guam Rules of Civil Procedure. The Rule 59 motion challenges the findings and legal conclusions of the Superior Court, and the Rule 60(b) motion alleges fraud on the part of Petitioner in procuring a judgment that includes language the parties had previously agreed to eliminate. Petitioner also filed a Rule 60(b) motion, admitting that the language of the judgment Petitioner submitted to the Superior Court contained incorrect language but claiming that this was the result of an honest mistake.

[3] Petitioner first filed with this Court a Motion to Assume Jurisdiction over Habib's case, and subsequently filed an Amended Motion to Assume Jurisdiction over the pending matters of all three respondents. The court set a hearing for oral arguments and noticed all three respondents. Habib and Maquera were noticed personally, and Gill was noticed through his attorney Kevin J. Fowler.

[4] At the hearing, Attorney Curtis Van De Veld appeared before the Court on behalf of Haim Habib and requested that oral arguments be continued. Upon learning that Van De Veld was representing Habib, and that Van De Veld had received notice only a few hours prior to the hearing, the Court agreed to allow Van De Veld additional time to submit a written opposition. The Court notes with dismay that Haim Habib failed to notify his attorney of the hearing despite the fact that notice was mailed to Habib more than two weeks prior to the hearing date.

[5] The Court heard arguments from David J. Highsmith, Trial Counsel for Guam Bar Ethics Committee, from Leon G. Maquera, and from Kevin J. Fowler, attorney for Francis L. Gill. At the conclusion of the arguments, Attorney Van De Veld

stated that he would join in the oral arguments presented by Maquera and Fowler and requested an additional seven days to submit the written opposition on behalf of Haim Habib. The Court granted Van De Veld's request, but no such written opposition was ever filed.

DISCUSSION

[6] Petitioner's motion to assume jurisdiction is based on the position that the Supreme Court has been granted jurisdiction over matters of attorney discipline and that the Supreme Court has evidenced an intent to exercise authority over such matters immediately. Petitioner acknowledges that 7 G.C.A. ' 9104 provides that the Supreme Court's powers over attorneys and the Bar shall not become effective until the Court has adopted rules to effectuate that power. Nonetheless, according to Petitioner, the Supreme Court has issued an order continuing the effect of the rules currently governing the procedural conduct of the inferior courts (including the Rules of Civil, Procedure, Rules of Court, Traffic Court Rules, Family Court Rules, Rules of the Small Claims Court, etc.), and has promulgated Rules for Judicial Reform and Revision. Although, according to Petitioner, no specific mention has been made of the Rules Governing Disciplinary Proceedings. The Supreme Court's intention to satisfy the conditions of

' 9104 and to immediately assume control over disciplinary matters is implicit in the Court's order [7] In opposition to Petitioner's motion, Maquera argues first that the legislature only gave the Supreme Court appellate jurisdiction over attorney discipline. Maquera cites 7 G.C.A. ' 3107(b), which provides in part that "the Supreme Court has appellate jurisdiction over attorney disciplinary matters." Although, Maquera argues, ' 9101 gives the Supreme Court power of over attorney ethics, admission to, expulsion from and governance of the bar, this is a grant of rule making authority and not of original jurisdiction. According to Maquera, the Guam Legislature never intended to remove original jurisdiction over such matters from the Superior Court.

[8] Maquera also argues that if the Supreme Court assumes jurisdiction as requested by Highsmith, parties to these matters, such as Maquera, will lose the right of appeal that existed when these cases were first filed with the Superior Court. Maquera can only attack an adverse Supreme Court judgment by seeking a grant of certiorari from the Ninth Circuit.

[9] Finally, Maquera claims that the adverse judgment issued against him by the Superior Court was

continuing the effect of the other procedural rules.

erroneous. According to Maquera, by submitting to trial *de novo* before the Supreme Court, he may be waiving his right to raise objections to the errors that he claims the Superior Court committed.

[10] Gill also opposes the transfer of jurisdiction over these matters to the Supreme Court. Before the Supreme Court can exercise any jurisdiction over attorney and judicial ethics, Gill argues, the Court must satisfy two prerequisites: (1) The Chief Justice must certify that the Court is ready to accept its jurisdiction (7 Guam Code Ann. ' 1103(e)); and (2) The Court must promulgate rules to effectuate its power over attorney and judicial ethics (7 Guam Code Ann. ' 9104). According to Gill, because the Supreme Court has not promulgated the rules required by ' 9104, the Court has not yet completed the steps necessary to activate its jurisdiction over attorney and judicial ethics.²

²It appears that none of the parties that submitted briefs, either in favor or in opposition to this motion, are aware of a 17 May 1996 Order from the Supreme Court that provides as follows:

1. The Board of Law Examiners consists of the Justices of the Supreme Court.

2. The chief Justice shall administer the oath of attorney.

All other Rules of Admission and Discipline remain in effect until further order of this Court. The intent of this Order was to satisfy the requirements of ' 9104 without having to first promulgate an entirely new set of rules governing attorney and judicial ethics.

[11] Gill further argues that, even if all the required steps have been taken, 7 G.C.A. ' 1102 provides that no part of Title 7 is to be retroactive, and that all proceedings pending in any Guam court are to continue in that court until final judgment. Therefore, according to Gill, regardless of the nature of the Supreme Court's power over attorney and judicial ethics, and regardless of the specific date on which it became effective, such power would not apply to cases pending in the Superior Court **before** that effective date.

[12] We agree with Gill's interpretation of 7 G.C.A. ' 1102 and we deny Petitioner's motion on this basis. Section 1102 provides as follows:

(a) No part of this Title is retroactive. No action or proceeding commenced before this Title takes effect and no right accrued are

[13] The provisions of ' 1102 are unambiguous. Subsection (a) provides that Title 7 does not apply to proceedings commenced before Title 7 takes effect. This applies to "court proceedings pending in any court of Guam." Subsection (b) requires that pending proceedings in any court are to remain with that court until final judgment by that

affected by its provisions, but the procedure therein must conform to the requirements of this Title as far as applicable.

(b) All court proceedings pending in any court of Guam, or in the Appellate Division of the District Court of Guam, shall continue to final judgment in such court. Appeals from decisions of the Superior Court of Guam (including from the Small Claims, Traffic and Family Divisions of the Superior Court) shall be taken to the Supreme Court of Guam and in the manner prescribed by the law affecting appeals in effect at the time the appeal is taken.

court.³ We find no basis for excluding Superior Court proceedings from these requirements.⁴

³Subsection (b) further provides that appeals from Superior Court judgments in these pending cases are to be taken to the Supreme Court.

⁴The Legislature accomplishes

In compliance with 7 G.C.A. ' 1102, we decline to assume jurisdiction over attorney disciplinary proceedings pending in the Superior Court prior to the time that the Supreme Court's power over attorney and judicial ethics became effective.

[14] The disciplinary proceedings at issue in Petitioner's motion were commenced before any of the Justices of the Supreme Court had even been sworn in. The proceedings against Gill, case numbers **SP92-85-11A** and **SP0134-93**, were commenced on 8 October 1992, and 12 July 1993 respectively. Habib's case, **SP0237-93**, was commenced on 22 December 1993, and Maquera's case, **SP0075-94**, was commenced on April 1994. Even the most recent of these cases, Maquera's, was commenced more than a full year before the Justices took the oath of office. These matters were pending, therefore, at a time when the Supreme Court did

this same goal elsewhere in Title 7. Specifically, ' 3111 provides that all appeals pending in the District Court Appellate Division, and in the United States Court of Appeals for the Ninth Circuit shall continue to final determination in that court.

not yet exist. They clearly fall within the purview of ' 1102 and must remain with the Superior Court until final judgment by the court.

[15] Having found, under ' 1102, that the pending attorney disciplinary proceedings at issue in the instant motion must continue in the Superior Court, we need not address any of the parties' remaining contentions.

CONCLUSION

[16] Based upon the foregoing, Petitioner's Amended Motion to Assume Jurisdiction is hereby DENIED. The attorney disciplinary proceedings at issue shall remain in the Superior Court, as required by 7 G.C.A. ' 1102(b), until final judgment by the court.

SO ORDERED this **15th** day of November, 1996.

JANET HEALY WEEKS
Associate Justice

MONESSA G. LUJAN
Associate Justice

PETER C. SIGUENZA
Chief Justice

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