IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff,

v.

MIASIRO I. JOHNNY a.k.a.
JOHNNY I. MIASIRO,
Defendant.

VINCENT A. AKIMOTO, M.D.,
Plaintiff,

v.

CARL T.C. GUTIERREZ, in his personal capacity; THERESE M. HART; and JOHN DOES A-M,
Defendants.

Supreme Court Case No. CRQ06-001
Superior Court Case Nos. CM0867-05
CV1011-02

OPINION

Filed: August 25, 2006

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Certified questions from the Superior Court of Guam
Submitted on February 23, 2006

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; ROBERT J. TORRES, JR., Associate Justice.

PER CURIAM:

[1] This matter comes before the court for review on questions of law regarding the ability of Superior Court judges to rule on objections made against them presiding over cases. We have accepted certification of two questions of law pursuant to Rule 20(a) of the Guam Rules of Appellate Procedure. We hold that Superior Court judges may strike a statement of objection that is procedurally defective without referring the matter to another judge. We further hold that a challenged judge may strike a statement of objection that is legally insufficient without referring such matter to a recusal judge.

I.

[2] The instant matter arose over objections to Superior Court Judge Steven S. Unpingco presiding over *People v. Johnny*, Superior Court Case No. CM0867-05, and *Akimoto v. Gutierrez*, Superior Court Case No. CV1011-02.

[3] Attorney Delia Lujan, a partner with Lujan, Aguigui & Perez, filed a motion to disqualify Judge Unpingco from presiding over *Johnny* on behalf of Miasiro I. Johnny. The motion alleged that: (1) Judge Unpingco's impartiality might reasonably be questioned because the Lujan Aguigui and Perez firm had previously represented Judge Unpingco's wife; (2) Judge Unpingco had consistently taken an adversarial position against the Lujan, Aguigui and Perez firm; and (3) Judge Unpingco has a personal bias against the Lujan, Aguigui and Perez firm. Judge Unpingco denied the motion without referring the matter to a recusal judge on the grounds that the objection was untimely and legally insufficient.

[4] Attorney Anthony Perez, also a partner with Lujan, Aguigui & Perez, filed a motion to disqualify Judge Unpingco from presiding over *Akimoto* for similar grounds on behalf of Carl

T.C. Gutierrez. Judge Unpingco denied that motion for lack of verification and legal insufficiency, again without referring the matter to a recusal judge.[1] Judge Unpingco also struck an "Erratum" filed by Gutierrez in an attempt to verify the motion to disqualify.

[5] Judge Unpingco subsequently submitted three questions for certification regarding whether his actions in *Johnny* and *Akimoto* were authorized under 7 GCA § 6107. This court accepted certification for two of the proposed questions.[2]

II.

[6] This court has jurisdiction over questions of law submitted by the Superior Court for certification pursuant to 7 GCA § 4105 (2005). *People v. Anson*, 1998 Guam 11 ¶ 6.

III.

[7] This court accepted certification for the following two questions:

1. Do Guam Superior Court judges subject to a Motion to Disqualify have the power to dismiss such motions upon procedural grounds such as lack of timeliness, improper service, or improper verification, instead of referring such matters to a recusal judge?

2. Do Guam Superior Court judges subject to a Motion to Disqualify have the power to dismiss such motions upon the grounds of legal insufficiency of the facts alleged, instead of referring such matters to a recusal judge?

IV.

[8] "Normal standards of review do not apply when addressing certifications of law; instead, the court addresses the matters in the context in which they arise and as if they were presented to the court in the first instance." *Anson*, 1998 Guam 11 ¶ 6 (citing *State v. Anderson*, 697 A.2d 379, 382 (Del. 1997)).

[1] Judge Unpingco stated that his orders denying the motions for disqualification would alternatively serve as an answer under 7 GCA § 6107 to the objections filed in both *Johnny* and *Akimoto*.

[2] This court declined to accept certification of the following question: "Do the facts alleged here by the parties moving to disqualify this court rise to the level of legal sufficiency?" Submission of Questions for Certification, Feb. 23, 2006.

V.

[9] We note at the outset that, although many parties file a "Motion for Disqualification," a statement of objection is not a motion. *Urias v. Harris Farms Inc.*, 285 Cal. Rptr. 659, 662 (Ct. App. 1991). "Thus, the determination of a judge's disqualification is outside the usual law and motion procedural rules." *Id.*

1. Whether a Challenged Judge May Strike Formally Defective Statements of Objection

[10] The first issue for our review is whether a challenged judge may strike a statement of objection that is formally defective. We hold that a challenged judge may strike statements of objection which fail to meet the statutory requirements set forth in 7 GCA § 6107.

[11] Section 6107 provides that whenever a judge "neglects or fails to declare his or her disqualification . . . any party to such action or proceeding . . . may present to the court and file with the clerk a written statement . . . setting forth the fact or facts constituting the ground of the disqualification of such Justice or Judge." 7 GCA § 6107 (2005).[3] By its terms, section 6107

[3] Title 7 GCA § 6107 states in pertinent part:

> **§ 6107. Objection to competency; procedure.** Whenever a Justice or Judge who shall be disqualified under the provisions of this Chapter to sit or act as such in any action or proceeding pending before him or her neglects or fails to declare his or her disqualification in the manner provided by this Chapter, any party to such action or proceeding who has appeared therein may present to the court and file with the clerk a written statement objecting to the hearing of such matter or any trial of any issue of fact or law in such action or proceeding before such Justice or Judge, and setting forth the fact or facts constituting the ground of the disqualification of such Justice or Judge. Copies of such written statement shall forthwith be served by the presenting party on each party, or his or her attorney, who has appeared in the action or proceeding and on the Justice or Judge alleged in such statement to be disqualified.
>
> Within ten (10) days after the service of such statement as above provided, or ten (10) days after the filing of any statement, whichever is later in time, the Justice or Judge alleged therein to be disqualified may file with the clerk his or her consent in writing that the action or proceeding continue without him or her, or may file with the clerk his or her written answer admitting or denying any or all of the allegations contained in such statement and setting forth any additional fact or facts material or relevant to the question of his or her disqualification. The clerk shall forthwith transmit a copy of the Justice's or Judge's consent or answer to each party or his or her attorney who shall have appeared in such action or proceeding. Every such statement and every answer shall be verified in the manner prescribed for the verification of pleadings. The statement of a party objecting to the Justice or Judge on the ground of his or her disqualification shall be presented at the earliest practicable opportunity after his or her appearance and discovery

requires that statements of objection (1) "be served . . . on the Justice or Judge alleged in such statement to be disqualified," (2) "be verified in the manner prescribed for the verification of pleadings," and (3) "be presented at the earliest practicable opportunity . . . ." *Id.* A party's failure to comply with any of these requirements constitutes sufficient grounds to strike or disregard the statement of objection. *See e.g. Long Term Credit Bank of Japan v. Superior Court*, 2003 Guam 10 ¶ 43 (observing that "because service was deficient, the [challenged judge] was not required to file an answer.").

[12] The question before this court, however, is whether a challenged judge may strike a formally defective statement of objection or must refer the matter to another judge. Section 6107 provides that "[n]o Justice or Judge who shall deny his or her disqualification shall hear or pass upon the question of his or her own disqualification, but in every case the question of the Justice's or Judge's disqualification shall be heard and determined by some other Judge." 7 GCA § 6107 (2005). This language prohibits a challenged judge or justice from ruling on the merits of a statement of objection. The threshold determination of whether a statement of objection complies with the statutory requirements set forth in 7 GCA § 6107 is, however, separate and independent from an evaluation of the alleged grounds for a judge's disqualification. A judge who strikes or disregards a formally defective statement of objection has not "[heard] or [passed] upon the question of his or her own disqualification . . . ." *Id.*

> of the facts constituting the ground of the Justice's or Judge's disqualification, and in any event before the commencement of the hearing of any issue of fact in the action or proceeding before such Justice or Judge.
>
> No Justice or Judge who shall deny his or her qualification shall hear or pass upon the question of his or her own disqualification, but in every case the question of the Justice's or Judge's disqualification shall be heard and determined by some other Judge.

7 GCA § 6107.

Section 6107, therefore, does not mandate that a challenged judge refer formally defective statements to another judge.

[13] Our interpretation of 7 GCA § 6107 is consistent with California case law.[4] The California Court of Appeals observed in *People v. Ladd*, 181 Cal. Rptr. 29 (Ct. App. 1982) that a party may file a statement of objection, but "[i]f such a statement is not verified, it is formally defective and may be stricken out or disregarded." *Id.* at 30 (citing *Bompensiero v. Super. Ct.*, 281 P.2d 250 (Cal. 1950)). Furthermore, courts have held that a challenged judge may strike a statement of objection if it is not presented at "the earliest practicable opportunity." *People v. Berman*, 4 P.2d 226, 228 (Cal. Dist. Ct. App. 1931) (Conrey, J., concurring); *Woolley v. Super. Ct.*, 66 P.2d 680, 684 (Cal. Dist. Ct. App. 1937); *People v. Sweet*, 65 P.2d 899 (Cal. Dist. Ct. App. 1937).[5] As section 6107 is derived from a California statute, this court will not deviate from California case law absent compelling reason to do so. *See Cruz v. Cruz*, 2005 Guam 3 ¶ 9.

[14] We believe that no reason exists to warrant departing from California case law. To the contrary, policy concerns weigh in favor of a rule permitting challenged judges to strike a formally defective statement of objection. Put simply, it is inefficient to force parties to wait unnecessarily for the resolution of a statement of objection that would ultimately be rejected for failure to comply with the statutory requirements.

[15] This court has held that section 6107 requires an objecting party to personally serve its statement of objection upon the challenged judge or justice. *Long Term Credit Bank of Japan*, 2003 Guam 10 ¶ 37. Furthermore, we have determined that statements of objection must be

[4] Section 6107 is derived from former Cal. Civ. Proc. Code § 170 (West 1981) and thus California cases interpreting section 170 are persuasive authority. *Cruz v. Cruz*, 2005 Guam 3 ¶ 9.

[5] The California Supreme Court has held that a party's failure to file a timely statement of objection constituted a waiver under section 170. *See Caminetti v. Pac. Mut. Life Ins. Co.*, 139 P.2d 930, 933 (Cal. 1943).

verified in the manner set forth in 6 GCA § 4308. *Id.* at ¶ 42 n. 16. This court has not had occasion to announce a standard for timeliness; however, section 6107 explicitly requires that a party file its statement of objection "at the earliest practicable opportunity."[6] 7 GCA § 6107. Under our holding, whenever a party files a statement of objection that fails to comply with the service, verification or timeliness requirements, the challenged judge may strike the statement without referring it to another judge.

2. Legal Sufficiency

[16] We now address whether a challenged judge may evaluate a statement of objection and strike such statement if the judge determines it is legally insufficient.

[17] The language of section 6107 is ambiguous on this issue. "It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself." *Sumitomo Constr. Co., Ltd. v. Gov't of Guam*, 2001 Guam 23 ¶ 17. In contrast to the timeliness, verification and service requirements discussed above, section 6107 does not explicitly require that statements of objection be legally sufficient. Furthermore, section 6107 provides that "[n]o Justice or Judge who shall deny his or her qualification shall hear or pass upon the question of his or her own disqualification, but in every case the question of the Justice's or Judge's disqualification shall be heard and determined by some other Judge." 7 GCA § 6107. It is arguable that striking a statement of objection for lack of legal sufficiency would involve at least a cursory evaluation of the alleged grounds of disqualification and a challenged judge would have to refer a statement of objection that complied with the formal requirements of section 6107 to another judge.

[6] We note that parties and judges may refer to relevant California case law for guidance on this issue. *See e.g. Berman*, 4 P.2d at 227; *Woolley*, 66 P.2d at 687-9; *Rohr v. Johnson*, 150 P.2d 5, 7 (Cal. Dist. Ct. App. 1944); *Baker v. Civil Serv. Comm'n*, 125 Cal. Rptr 162, 165 (Ct. App. 1975).

[18] California case law takes a contrary position. California courts have read an implicit requirement that parties file a legally sufficient statement of objection to be afforded review by another judge. *See People v. Hooper*, 61 P.2d 370, 372 (Cal. Dist. Ct. App. 1936) ("[I]t is only where an appropriate issue of fact is raised concerning the disqualification of the trial judge, that he is prevented from passing 'upon the question of his own disqualification' under the above-mentioned section."). The California Supreme Court has held that "[a] statement that contains nothing but conclusions and sets forth no facts constituting a ground of disqualification may be ignored or stricken from the files by the trial judge. Where the statement is insufficient the judge can so determine, whereupon the procedure provided by section 170 is not applicable." *People v. Sweeny*, 357 P.2d 1049, 1053 (Cal. 1961) (citations omitted).

[19] Upon closer review, the California approach is supported by section 6107. First, section 6107 requires that parties file a statement of objection "setting forth the fact or facts constituting the ground of the disqualification of such Justice or Judge." 7 GCA § 6107. We believe that this language creates a requirement that statements of objection allege one of the grounds of disqualification found in 7 GCA § 6105 (2005). Accordingly, a statement of objection which fails to allege any facts that would serve as grounds for disqualification under Guam law is defective. A challenged judge has not "[heard] or [passed] upon the question of his or her own disqualification . . ." by striking such a statement because, as a matter of law, no "question" of the judge's disqualification has been raised. 7 GCA § 6107. Therefore, section 6107 does not require the judge to refer the matter to another judge.

[20] The standard for reviewing the legal sufficiency of a statement of objection adequately preserves section 6107's purpose of protecting a party's right to a fair and impartial judge. Judge Unpingco properly stated that the standard for a recusal judge reviewing the merits of a statement of objection is an objective one. *See Dizon v. Superior Court*, 1998 Guam 3 ¶ 8

(holding that "a reasonable person standard must be applied to determine whether recusal is necessary"); *Ada v. Gutierrez*, 2000 Guam 22 ¶ 12. However, when a party files a statement of objection, the challenged judge's review of the sufficiency of the statement is limited to whether it alleges any of the grounds for disqualification found in 7 GCA § 6105. If the statement of objections meets all of the statutory requirements discussed above and, on its face, alleges one of the grounds found in 7 GCA § 6105, then the challenged judge may not strike the statement but must follow the procedure set forth in 7 GCA § 6107.

3. Writ of Prohibition is an Appropriate Method of Review

[21] Furthermore, recognizing the purpose of section 6107, we hold that a party may seek review of a judge's decision to strike a statement of objection through a writ proceeding. Guam's writ statutes collectively set forth three requirements for the proper issuance of a writ of prohibition: (1) the proceedings are without or in excess of a tribunal's jurisdiction; (2) the petitioner is without a plain, speedy, and adequate remedy at law; and (3) the petitioner is a beneficially interested party. 7 GCA §§ 31301, 31302 (2005). *See also People v. Superior Court (Laxamana)*, 2001 Guam 26 ¶ 8. A challenged judge would be acting in excess of its jurisdiction if it improperly refused to refer a statement of objection to another judge. *Laxamana*, 2001 Guam 26 ¶ 16 (observing that a court has acted in excess of its jurisdiction when it exceeds its authority "'whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis' . . .") (quoting *Abelleira v. Dist. Ct.*, 109 P.2d 942, 948 (Cal. 1994)). This court has also previously held that a writ of prohibition is a proper channel for reviewing the qualifications of a judge to preside over a case. *Dizon*, 1998 Guam 3 ¶ 6 (citing *Topasna v. Superior Court*, 1996 Guam 5 ¶ 5). "For [a petitioner] to have to wait for the completion of a trial . . . before being able to appeal the case on [the] same issue leaves him without a plain, speedy, adequate

remedy." *Id.* We agree with the reasoning in *Dizon* that a post-trial appeal of a decision to strike a statement of objection would be inadequate. Therefore, it would be proper for parties to institute a writ proceeding to review a judge's decision to strike a statement of objection because of the legal sufficiency of the statement or failure to comply with the statutory requirements set forth in 7 GCA § 6107.

VI.

[22] We hold that a judge may strike a statement of objection if it fails to comply with the strict requirements set forth in 7 GCA § 6107 without referring it to another judge. Furthermore, a judge may strike a statement of objection if it does not allege sufficient grounds for disqualification under Guam law. If, however, a party files a statement of objection that meets all of the statutory requirements and, on its face, alleges one of the grounds of disqualification found in 7 GCA § 6105, the judge may not act on the statement and must refer the matter to another judge.