

2022 NOV 29 PM 2: 58

CLERK OF COURT

BY: 

IN THE SUPERIOR COURT OF GUAM

RSA-TUMON, LLC,

Plaintiff,

v.

PITT COUNTY MEMORIAL HOSPITAL,
INC. & SHERIF ANTOUN PHILLIPS, M.D.

Defendants.

Civil Case No. CV0453-20

**DECISION AND ORDER
REINFORCING DENIAL OF
DEFENDANT'S MOTION
OF RECUSAL & DISQUALIFICATION**

INTRODUCTION

This Court sits as the court designated to review and determine the Motion for Reconsideration of Decision and Order Denying Defendant's Motion of Recusal & Disqualification of Judge Elyze M. Iriarte ("Motion for Reconsideration") filed by Defendant Sheriff Antoun Phillips, M.D. ("Defendant"). Having again found no grounds to disqualify Judge Iriarte, the Court **DENIES** Defendant's Motion for Reconsideration.

BACKGROUND

On March 28, 2022, Defendant Sherif Antoun Phillips, M.D. ("Defendant") filed his Motion of Recusal & Disqualification. Defendant claims he will not receive a fair trial under Judge Iriarte, as she has a demonstrated history of making errant rulings favoring the Plaintiff. See Motion of Recusal & Disqualification at 3 (Mar. 28, 2022). Defendant further contends these rulings were made despite Judge Iriarte's court having no jurisdiction over Defendant. Id. at 1-3.

On April 1, 2022, Judge Iriarte filed her Answer to Motion of Recusal & Disqualification. Judge Iriarte argued that Defendant failed to meet the burden of proof required for a disqualification, and that none of her decisions in this case demonstrate bias for or against a particular party. See Answer to Motion of Recusal & Disqualification at ¶ 9 (Apr. 1, 2022).

1 The undersigned Judge Lamorena, III was assigned to review the Defendant's Motion of
2 Recusal & Disqualification. See Notice of Assignment of Recusal Judge (May 23, 2022). Judge
3 Lamorena, III subsequently denied Defendant's Motion of Recusal & Disqualification, due to
4 Defendant's lack of specificity in alleging the existence of bias, and because the jurisdictional
5 determination should be reviewed by an appellate judge (rather than a Superior Court judge). See
6 Decision and Order (Jul. 11, 2022).

7 On August 22, 2022, Defendant filed his Motion for Reconsideration. Defendant once again
8 argued that the Guam Superior Court lacks jurisdiction over the case due to lack of personal
9 jurisdiction. See Motion for Reconsideration at ¶23 (Aug. 22, 2022). Specifically, Defendant
10 claims he is neither domiciled in Guam nor does he have sufficient minimum contacts to Guam. Id.
11 at ¶ 23-24. Defendant also continues to allege general bias from Judge Iriarte's courtroom,
12 supposedly demonstrated by rulings going against him. See Motion for Reconsideration at ¶ 9
13 (Aug. 22, 2022).

14 On August 31, 2022, Judge Iriarte filed her Answer to Second Motion for Recusal &
15 Disqualification. Judge Iriarte claimed that Defendant failed to flesh out any claims of her
16 courtroom engaging in retaliation, fraud, or favoritism. See Answer to Second Motion at 3 (Aug.
17 31, 2022). Judge Iriarte insisted that her rulings were consistent with the law and based only on the
18 facts presented. Id. at 3.

19 On September 13, 2022, Defendant filed his Reply to the Court ("Reply"). Defendant again
20 challenged the Court's jurisdiction over his case, arguing lack of personal jurisdiction. See Reply at
21 3-4 (Sep. 13, 2022).

22 The undersigned Judge Lamorena, III was assigned to review the Defendant's Motion for
23 Reconsideration. See Notice of Assignment of Recusal Judge (Sep. 14, 2022).

24 DISCUSSION

25 **I. Defendant Provides No Reason Why Judge Iriarte's Impartiality May Reasonably Be** 26 **Questioned.**

27 A judge is disqualified from presiding over a matter in which her impartiality may
28 reasonably be questioned or where she possesses a personal bias or prejudice concerning a

1 party. See 7 G.C.A. § 6105(a)-(b)(1). In interpreting the substantive grounds for
2 disqualification, “what matters is the appearance of bias, not actual bias.” See *People v.*
3 *Camaddu*, 2015 Guam 2 ¶ 74 (internal quotation marks omitted) (citing *Van Doox v. Superior*
4 *Court*, 2008 Guam 7 ¶ 32). Thus, a judge who is in fact unbiased, must still disqualify
5 themselves if the public can reasonably question the fairness of the legal proceedings. See
6 *Dizon v. Superior Court of Guam*, 1998 Guam 3 ¶ 15 (“[t]he standard is whether a
7 reasonable person could doubt [the judge’s] ability to be impartial”).

8 If a party believes a judge is disqualified based on earlier rulings, the party must
9 demonstrate the judge’s behavior “was so extreme as to display clear inability to render a fair
10 judgment.” See *People of Guam v. Tennessen*, 2010 Guam 12 ¶ 34 (citing *Bayliss v.*
11 *Barnhart*, 427 F.3d 1211, 1214-15 (9th Cir. 2005)). “On the other hand, ‘expressions of
12 impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what
13 imperfect men and women ... sometimes display’ do not establish bias.” Id. (citing *Liteky v.*
14 *U.S.*, 510 U.S. 540, 555-556 (1990)).

15 Here, the Defendant generally alleges that Judge Iriarte has demonstrated bias by
16 issuing “all of her rulings... against the defendant after the defendant asked to transfer his
17 case to the Federal Court.” See Motion for Reconsideration at ¶9 (Aug. 22, 2022).
18 However, Defendant fails to point to language in any of Judge Iriarte’s rulings that
19 demonstrates bias. An issue being decided adversely against a party does not alone prove the
20 existence of bias. Defendant fails to specify any particular language conveying bias, even
21 after his failure to do so led to the Court denying his original Motion of Recusal &
22 Disqualification. Absent any particular language conveying bias, the Court accepts Judge
23 Iriartes’ explanation that deep-seated favoritism for or antagonism against the Defendant
24 have not influenced her decisions.

25 **I. Defendant Can Appeal Any Jurisdictional Determinations Judge Iriarte Has Made To**
26 **The Guam Supreme Court.**

27 Defendant also tries to prove the existence of bias by challenging the Court’s personal
28 jurisdiction over himself. Id. at ¶ 23.

1 Personal jurisdiction can be obtained in a number of ways. While state of domicile is
2 one way to establish personal jurisdiction, personal service in the forum state (also known as
3 transient jurisdiction or tag jurisdiction) also establishes personal jurisdiction. See *Burnham v.*
4 *Superior Court of California*, 495 U.S. 604, 606 (1990). Here, Defendant was served
5 personally in Guam, so the Superior Court of Guam and Judge Iriarte's courtroom did
6 originally have jurisdiction over this case. See Declaration of Personal Service (Jul. 8, 2020).
7 The Court retains the ability to exercise transient jurisdiction, regardless of whether the
8 Defendant's state of domicile is in Guam or in Florida.

9 Additionally, jurisdictional determinations, if appealed, are legal issues for the Guam
10 Supreme Court to consider. Superior Court of Guam Judges are not appellate judges
11 authorized to alter jurisdictional determinations made by their peers. If Defendant truly
12 believes the Court does not have jurisdiction over him, then he should appeal that issue to the
13 Guam Supreme Court rather than trying to shoehorn the issue into a Motion for Recusal. The
14 fact that Defendant disagrees with whether personal jurisdiction exists does not itself prove the
15 existence of bias.

16 CONCLUSION

17 For the reasons stated above, the Court **DENIES** Defendant's Motion. This Court returns
18 this matter to Judge Iriarte for further disposition.

19
20 **IT IS SO ORDERED** this Nov. 29, 2022



21
22
23 **HONORABLE ALBERTO C. LAMORENA, III**
24 **Presiding Judge, Superior Court of Guam**

25 **SERVICE VIA E-MAIL**

26 I acknowledge that an electronic
27 copy of the original was e-mailed to:

28 Berman, Arrigo,

Sherif Phillips

Date: 11/29/22 Time: 3:09PM

DN

Deputy Clerk, Superior Court of Guam