

STATE OF MICHIGAN  
COURT OF APPEALS

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EUSEBIO SOLIS, JR.,

Plaintiff-Appellant,

v

CALHOUN COUNTY PROSECUTOR,

Appellee.

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UNPUBLISHED

February 1, 2007

No. 263733

Calhoun Circuit Court

LC No. 05-000749-AS

Before: Murray, P.J., and Fitzgerald and Owens, JJ.

FITZGERALD, J. (*concurring*).

The majority properly concludes that a complaint for superintending control is not the proper procedure to challenge a district court's order resulting from a ruling in a preliminary examination. Such an order should be appealed to the circuit court. However, I do not believe that this case involves an appeal of a district court order. Although plaintiff's complaint for superintending control occurred after, and perhaps was attributable to, the district court's order granting the prosecutor's motion to disqualify plaintiff in a criminal action, the complaint for superintending control challenged the enforceability of a joint memorandum of the chief district court judge and chief circuit judge that was issued after the Calhoun County Prosecutor made a "Request for Determination of Conflict of Interest."<sup>1</sup> An unusual situation is presented in this case, however, because both the district court and the circuit court issued the joint memorandum. The circuit court has superintending control over inferior courts, but not over the circuit court. Plaintiff should have filed his complaint for superintending control in the Court of Appeals. Thus, whether this case is considered an appeal of a district court order, or as an action for superintending control, the complaint was properly dismissed on procedural grounds.

The result of affirming the circuit court's dismissal of the complaint on procedural grounds is that the joint memorandum still exists. I am concerned with this result because I believe that the January 28, 2005, memorandum is unenforceable because the lower courts did not have jurisdiction over issues concerning plaintiff's compliance with the Michigan Rules of Professional Responsibility (MRPR). "Jurisdiction is a court's power to act and its authority to

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<sup>1</sup> The district court's decision to disqualify plaintiff was premised upon the joint memorandum.

hear and decide a case.” *City of Riverview v Sibley Limestone*, 270 Mich App 627, 636; 716 NW2d 615 (2006). “Jurisdiction deals with the power of a court to hear a class of cases or the authority of a court to bind the parties.” *Omne Financial, Inc v Shacks, Inc*, 226 Mich App 397, 402; 573 NW2d 641 (1997). Our Supreme Court has held that

[t]he circuit court is a court of record, acting through a judge or judges *only in suits that are properly begun by the filing of appropriate pleadings*. The court can only act judicially. Judicial power is the power of the court to decide and pronounce its judgment and to carry it into effect between persons and parties who bring a case before it for decision. [*Goetz v Black*, 256 Mich 564, 569-570; 240 NW 94 (1932) (emphasis added).]

In this case, the prosecuting attorney requested a determination of conflict of interest from the probate, district, and circuit courts. However, he did not institute any proceedings against plaintiff, and he did not file any pleadings. Thus, he failed to invoke the courts’ jurisdiction. See *Kent Prosecuting Attorney v Kent Circuit Judges*, 110 Mich App 404, 407; 313 NW2d 135 (1981). Consequently, there was no controversy before the judges necessitating judicial action. Because the memorandum was issued without jurisdiction, the memorandum is void. See *In the Matter of Hague*, 412 Mich 532, 544; 315 NW2d 524 (1982); *Tingley v Kortz*, 262 Mich App 583, 589; 688 NW2d 291 (2004).

Furthermore, even if the prosecuting attorney had instituted proceedings against plaintiff, the lower courts did not have jurisdiction to enforce the MRPC under the circumstances in this case. MCL 600.605 provides that:

Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, *except where exclusive jurisdiction is given in the constitution or by statute to some other court* or where the circuit courts are denied jurisdiction by the constitution or statutes of this state. [Emphasis added.]

MCL 600.904 confers exclusive jurisdiction to discipline members of the State Bar to the Supreme Court. It reads:

The supreme court has the power to provide for the organization, government, and membership of the state bar of Michigan, and to adopt rules and regulations concerning the conduct and activities of the state bar of Michigan and its members, the schedule of membership dues therein, the discipline, suspension, and disbarment of its members for misconduct, and the investigation and examination of applicants for admission to the bar.

Thus, “[t]he power to discipline members of the State Bar, save a proper adjudication of contempt, particularly the power to limit or preclude an attorney from practicing law in any courtroom of the state, is reserved to the Supreme Court.” *In the Matter of Hague, supra* at 560. Because exclusive jurisdiction to discipline members of the State Bar is given to the Supreme Court, neither the district court nor the circuit court had original jurisdiction over this matter. Thus, the courts erred in summarily deciding that plaintiff was precluded from representing criminal defendants in all proceedings involving the Calhoun County prosecutor’s office or the sheriff’s department.

Moreover, the lower courts lacked subject matter jurisdiction over this matter. Subject matter jurisdiction describes the types of cases and claims that a court has authority to address. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 375; 689 NW2d 145 (2004). A court that lacks subject matter jurisdiction cannot adjudicate the parties' claims. *Id.* When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void. *Fox v Board of Regents of University of Michigan*, 375 Mich 238, 242; 134 NW2d 146 (1965).

It is well established that it is the judiciary's prerogative to regulate judicial proceedings. *Attorney Gen v Pub Service Comm*, 243 Mich App 487, 491; 625 NW2d 16 (2000). Moreover, the Michigan Code of Judicial Conduct, Canon 3(B)(3), provides that "[a] judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware." However, our Supreme Court has held that "[u]nder the new State Bar disciplinary procedure, there is no role for the circuit courts or for the Court of Appeals." *Sternberg v State Bar of Michigan*, 384 Mich 588, 593; 185 NW2d 395 (1971). "When an attorney violates . . . the Michigan Rules of Professional Conduct, MRPC 1.0 *et seq.*, . . . that attorney is subject to the professional disciplinary process." *Grievance Administrator v Deutch*, 455 Mich 149, 157-158; 565 NW2d 369 (1997) (emphasis added). See also MCR 9.104(A)(4) (conduct that violates the MRPC is considered misconduct and is grounds for discipline). Accordingly, if a judge believes that a lawyer has violated the MRPC, the judge should disclose such information to the Attorney Grievance Commission for investigation. *Lockhart v Lockhart*, 149 Mich App 10, 15; 385 NW2d 709 (1986).

In this case, the judges had reason to believe that plaintiff had violated, or would violate, a disciplinary rule under the MRPC. The judges should have disclosed that information to the Attorney Grievance Commission for investigation. *Lockhart, supra*. The alleged misconduct, plaintiff's representation of criminal defendants in cases where he had a conflict of interest, would have subjected plaintiff to the professional disciplinary process set forth in MCR 9.100 *et seq.* MCR 9.104(A)(4); *Grievance Administrator, supra* at 157-158. Plaintiff's alleged failure to comply with the requirements of the MRPC did not, however, give rise to a cause of action for enforcement of the rules. MRPC 1.0(b); *Watts v Polaczyk*, 242 Mich App 600, 607 n 1; 619 NW2d 714 (2000). The appropriate context for consideration of this type of attorney misconduct appears to be proceedings by the attorney discipline board. See *In re Green Charitable Trust*, 172 Mich App 298; 431 NW2d 492 (1988).

/s/ E. Thomas Fitzgerald