

IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN )  
MARIANA ISLANDS, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FELIPE Q. ATALIG, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Criminal Case No. 99-0098

**ORDER**

**I. PROCEDURAL BACKGROUND**

This matter came before the court for a bench trial on June 14, 2000, at 1:30 p.m. on Rota, MP. Assistant Attorney General Marvin J. Williams, Esq., appeared on behalf of the Commonwealth. Michael W. Dotts, Esq., appeared on behalf of the Defendant, Felipe Q. Atalig. The court, having heard the testimony of the witnesses and having considered the evidence adduced at trial, enters the following written order.

**II. FINDINGS OF FACT**

On or before March 10, 1999, Ms. Mina L. Muna (Ms. Muna) was informed that she was to go on a trip to Rota with other employees of the Coastal Resources Management Office (CRM) for the purpose of attending functions related to the Rota Beautification Project. These functions included a "Trash-a-thon" and an official dinner. Employees attending the functions on behalf of CRM included the director of CRM, Felipe Q. Atalig (Defendant), Ms. Muna, Mr. Martin B. Castro, and Mr. Joaquin D. Salas ("Jack Salas"). Defendant, as the director of CRM, made the decision as to which CRM employees would travel to Rota.

Ms. Muna was informed that arrangements had been made for her to stay at the Rota Resort and Country Club (Rota Resort) in a suite with two males and a female. Ms. Muna expressed to another CRM [p. 2] employee that she was not comfortable staying in a suite with people she did

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not know. Ms. Muna knew, however, that Mr. Martin B. Castro would be staying at the Sunrise Hotel and therefore intended to make arrangements to stay at that same hotel.

On March 11, 1999, Ms. Muna encountered Defendant at the airport on Saipan prior to departing for Rota. Defendant informed Ms. Muna that he was scheduled to arrive on Rota approximately thirty minutes after Ms. Muna's arrival on Rota.

Ms. Muna arrived on Rota in the early evening and awaited transportation from the airport to the Sunrise Hotel. Ms. Muna was offered transportation to the Sunrise Hotel from an employee of the Office of the Mayor of Rota, but declined as she knew Defendant would arrive within the hour.

Defendant arrived approximately one hour after Ms. Muna and upon seeing her took it upon himself to rent a car for her use on Rota. The court finds that the act of renting a car for Ms. Muna was not part of a preconceived plan but rather was a spontaneous act performed after learning that Ms. Muna did not have transportation. The court does find, however, that later in the evening the Defendant concocted a plan to separate Ms. Muna from the other CRM employees, specifically Mr. Martin Castro, who was staying at the Sunrise Hotel and the reason for this separation was for his own improper purposes.

Defendant led Ms. Muna, who traveled in the separate rental car, to the Sunrise Hotel, whereupon the Defendant made arrangements for Ms. Muna to view a room. Ms. Muna indicated that the room was acceptable, yet the Defendant insisted that they proceed to the Rota Resort Hotel to view alternative accommodations. The court finds that the Defendant specifically intended to give Ms. Muna the impression that she had a choice of accommodations, even though he was in fact making the choice that she should stay at the Rota Resort, away from Mr. Martin B. Castro and other CRM employees.

While at the Sunrise Hotel the Defendant made arrangements for a private dinner to be served later that evening at the Sunrise Hotel. Defendant had inquired whether Ms. Muna had tried the local food on Rota and she had responded that she had not. The court finds that it was not improper for Defendant to arrange to have dinner with an employee but that it was improper to do so as part of a greater plan to isolate Ms. Muna from the other employees for improper purposes.

[p. 3] The Defendant and Ms. Muna then proceeded, in Defendant's rental car driven by Defendant, to the Rota Resort and parked in front of the hotel restaurant and bar. Defendant and Ms. Muna went inside and each ordered a drink before proceeding, by car, to the area immediately next to the lobby and reservation desk. Defendant then left Ms. Muna in the car while he went to the reservation desk. Defendant returned and handed Ms. Muna an envelope containing a room key. The room key had originally been reserved for Lieutenant Governor Jesus Sablan, as indicated by the name on the envelope. Ms. Muna told Defendant that she was unsure if it would be proper to stay in a room reserved for the Lieutenant Governor, but Defendant reassured her that it would be okay. The court finds that the Defendant improperly used his position as Director of CRM to obtain the room for Ms. Muna for the purpose of separating her from other CRM employees, specifically Mr. Martin B. Castro. Defendant and Ms. Muna then went to the room and Ms. Muna indicated that the room was acceptable even though she preferred the Sunrise Hotel because that was where Mr. Martin B. Castro was staying.

Defendant and Ms. Muna then returned to the Sunrise Hotel where a meal had been prepared for them at Defendant's expense. The meal was presented to Defendant and Ms. Muna in a small, private, "Totot Dining" bungalow away from the main dining area. Defendant and Ms. Muna were seen eating at the bungalow by a Mr. Joseph S. Inos. Ms. Muna testified that after the meal was finished and the two of them were leaving the bungalow, Defendant turned off the light and attempted to kiss her and place his tongue in her mouth. Defendant, however, testified that such an incident did not occur.

Defendant and Ms. Muna then proceeded by rental car to two poker parlors and a karaoke bar. At the karaoke bar, Defendant sang two songs dedicated to Ms. Muna. Defendant and Ms. Muna then left the karaoke bar and proceeded in a car driven by Defendant to the Sunset Vilia where Defendant ordered some more drinks. Defendant and Ms. Muna did not stay long at the Sunset Vilia because Defendant believed there were "too many people," and so they left the Sunset Vilia and proceeded to the Rota Resort. Ms. Muna testified that on the way to the Rota Resort Defendant twice took Ms. Muna's hand and placed it on his mid-thigh area. Defendant, however, testified that no such incident took place.

[p. 4] Also on the way to the Rota Resort, Ms. Muna offered some chewing gum to Defendant, who indicated that he would like some gum but that he preferred that she chew the gum prior to giving it to him. Ms. Muna initially declined to do so, but later agreed after Defendant persisted in his request.

Upon arrival at the Rota Resort, Defendant took Ms. Muna's baggage to the front door. Ms. Muna opened the door and entered the suite and carried her bags to one of the bedrooms. After placing her bags in the room Defendant went to the door of the room where Ms. Muna was standing. Defendant grabbed Ms. Muna and kissed her on the mouth while at the same time placing his hands on the sides of her face. Defendant attempted to force his tongue inside Ms. Muna's mouth, but Ms. Muna resisted. Defendant, while continuing to hold Ms. Muna and kiss her ear and nose, said: "open your vagina to me, I am licking your clitoris." Defendant then took his hand and forcibly lifted up Ms. Muna's blouse and bra, exposing her left breast, which he proceeded to place in his mouth to suck the nipple. Ms. Muna told the Defendant: "stop, you are my boss, if you continue to do this I can no longer work at CRM." Defendant replied: "I'm not so stupid to try this in the office," then grasped Ms. Muna's right hand and placed it on his erect penis. Ms. Muna pulled her hand back and pushed Defendant away. Defendant then grasped Ms. Muna's wrists and suggested that they move to the couch, but Ms. Muna resisted. Defendant then ceased approaching Ms. Muna and informed her that he would return to the room in the morning to pick her up. Defendant also asked if he could have the key in case she was still asleep in the morning when he arrived. Ms. Muna refused to give him the room key and promptly locked the door to the suite and to the bedroom after Defendant departed.

On March 12, 1999, at approximately 5:30 to 6:30 a.m., Defendant returned to the suite at Rota Resort, ostensibly to transport Ms. Muna to that day's functions related to the Rota Beautification Project. Ms. Muna opened the main door to the suite for Defendant who then grasped Ms. Muna and attempted to kiss her on the mouth. Ms. Muna pushed Defendant away and went inside a bathroom in the suite to retrieve some personal items. Defendant followed Ms. Muna into the bathroom and proceeded to remove a hair dryer from the wall and dry Ms. Muna's hair. Ms.

Muna allowed Defendant to dry her hair, then took the dryer from Defendant's hand and placed it back on the wall.

[p. 5] Defendant and Ms. Muna then proceeded to Defendant's rental car which he then drove to the Sunrise Hotel where the rental vehicle he had procured for Ms. Muna was located. Defendant told Ms. Muna to return to the Rota Resort and remain there until 2:00 p.m., when he would return to pick her up so that he might take her sightseeing. Defendant also told Ms. Muna that she did not have to attend the "Trash-a-thon" function if she did not wish to do so.

Ms. Muna returned to the hotel and made arrangements to leave Rota. At approximately 8:30 a.m. Ms. Muna left Rota and returned to Saipan. Upon arriving on Saipan, Ms. Muna related the incidents involving Defendant to her husband and to several co-workers.

### III. ISSUE

Whether the Commonwealth presented testimony and evidence proving beyond a reasonable doubt the essential elements of each of the offenses alleged in Counts I through VIII of the Information.

### IV. ANALYSIS

#### A. Count I / Assault and Battery

The court finds that the Commonwealth failed to present testimony and evidence proving beyond a reasonable doubt the essential elements of Assault and Battery, in violation of 6 CMC § 1201(a), as alleged in Count I of the Information.

Count I of the Information alleges that Defendant had sexual contact with Ms. Muna without her consent on March 11, 1999. Specifically, the Commonwealth alleges that after the dinner at the Sunrise Hotel, Defendant turned off the light and attempted to kiss Ms. Muna and force his tongue into her mouth.

The court finds that insufficient testimony and evidence were presented to prove beyond a reasonable doubt that such an incident occurred. As such, Defendant is hereby adjudged **NOT**

**GUILTY** of the charge of Assault and Battery, in violation of 6 CMC § 1201(a), as alleged in Count I of the Information.

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B. Count II /Assault and Battery.

The court finds that the Commonwealth failed to present testimony and evidence proving beyond a reasonable doubt the essential elements of Assault and Battery, in violation of 6 CMC § 1201(a), as alleged in Count II of the Information.

Count II of the Information alleges that the Defendant had sexual contact with Ms. Muna without her consent on March 11, 1999. Specifically, Defendant is alleged to have twice taken Ms. Muna's hand and placed it on his mid-thigh while driving from the Sunset Vilia hotel to the Rota Resort. The court finds that insufficient testimony and evidence were presented to prove beyond a reasonable doubt that such an incident occurred. As such, Defendant is hereby adjudged **NOT GUILTY** of the charge of Assault and Battery, in violation of 6 CMC § 1201(a), as alleged in Count II of the Information.

C. Count III /Assault and Battery.

The court finds that the Commonwealth presented testimony and evidence proving beyond a reasonable doubt the essential elements of Assault and Battery, in violation of 6 CMC § 1201(a), as alleged in Count III of the Information. Assault and Battery is a crime made punishable by law at 6 CMC § 1202, which states:

(a) A person commits the offense of assault and battery if the person unlawfully strikes, beats, wounds, or otherwise does bodily harm to another, **or has sexual contact with another without the other person's consent.**

(b) A person convicted of assault and battery may be punished by imprisonment for not more than one year.

6 CMC § 1202 (emphasis added).

Count III of the Information alleges that Defendant had sexual contact with Ms. Muna without her consent on March 11, 1999. Specifically, the Commonwealth alleges that Defendant grabbed Ms. Muna and kissed her on the mouth, attempted to force his tongue inside Ms. Muna's

mouth, kissed her ear and nose, forcibly lifted up Ms. Muna's blouse and sucked on the nipple of her left breast, and grasped Ms. Muna's right hand and placed it on his erect penis, all without Ms. Muna's consent.

[p. 7] To sustain a conviction for assault and battery involving non-consensual sexual contact, the court must find that Defendant's actions constituted "sexual contact" and that such contact was made without Ms. Muna's "consent."

1. Sexual Contact.

The court finds, after examining the evidence presented and determining the credibility of the witnesses, that Ms. Muna testified truthfully and correctly that on March 11, 1999, Defendant grabbed her and kissed her on the mouth, attempted to force his tongue inside her mouth, kissed her ear and nose, forcibly lifted up her blouse and sucked on the nipple of her left breast, and grasped her right hand and placed it on his erect penis.

To sustain a conviction for assault and battery involving non-consensual sexual contact, the court must find that Defendant's above actions constituted "sexual contact." "Sexual contact" is defined at 6 CMC § 102(r) and 6 CMC § 1341(b), which state that: "[s]exual contact" means any touching of the sexual or intimate parts of a person done for the purpose of gratifying the sexual desire of either party." 6 CMC § 102(r); 6 CMC § 1341(b). To establish "sexual contact," therefore, the court must find that Defendant touched a "sexual" or "intimate" part of Ms. Muna's body and that such touching was for the "purpose of gratifying the sexual desire of either party." "The requirement of a particular purpose to arouse or gratify sexual desire distinguishes sexual imposition from ordinary assault and from non-criminal touching." *Commonwealth v. Bergonia*, 3 N.M.I. Page 27, 38, citing 1 A.L.I. Model Penal Code and Commentaries Part II § 213.4 at 400 (1980).

Here, Defendant touched a "sexual" or "intimate" part of Ms. Muna, her left breast. In addition, Defendant touched Ms. Muna's breast for the purpose of gratifying his own sexual desire as indicated by his testimony that he had an erection after such contact and that he had been interested in making love to Ms. Muna. As such, the court finds that court finds that Defendant's actions constituted "sexual contact" as contemplated by 6 CMC § 102(r) and 6 CMC § 1341(b).

2. Consent.

To sustain a conviction for assault and battery involving non-consensual sexual contact, the court must find that the “sexual contact” was initiated by Defendant without the “consent” of Ms. Muna. The court [p. 8] finds, after examining the evidence presented and determining the credibility of the witnesses, that Ms. Muna testified truthfully and correctly that when Defendant forcibly lifted her blouse and bra and placed her left breast in his mouth to suck the nipple, she responded by saying: “stop, you are my boss, if you continue to do this I can no longer work at CRM.” The court finds that Ms. Muna’s statement was a clear declaration that she did not consent to Defendant’s actions. As such, Defendant’s continued touching of the left breast and subsequent placing of Ms. Muna’s hand on his erect penis was made without “consent.”

For the foregoing reasons, the court finds that Defendant’s actions constituted “sexual contact” with another, Ms. Muna, without her “consent.” As such, Defendant is hereby adjudged **GUILTY** of the offense of Assault and Battery, in violation of 6 CMC § 1201(a), as alleged in Count III of the Information.

D. Count IV /Assault and Battery.

The court finds that the Commonwealth failed to present testimony and evidence proving beyond a reasonable doubt the essential elements of Assault and Battery, in violation of 6 CMC § 1201(a), as alleged in Count IV of the Information. Count IV of the Information alleges that Defendant had sexual contact with Ms. Muna without her consent on March 12, 1999. Specifically, the Commonwealth alleges that Defendant grasped Ms. Muna and forcibly kissed her while attempting to force his tongue into her mouth.

The court finds that insufficient testimony and evidence were presented to prove beyond a reasonable doubt that such an incident occurred. The court heard reliable testimony and evidence showing that Defendant grasped Ms. Muna and made an “attempt” to kiss her on the mouth. The court finds that such an “attempt” did not constitute assault and battery. As such, Defendant is hereby adjudged **NOT GUILTY** of the charge of Assault and Battery, in violation of 6 CMC § 1201(a), as alleged in Count IV of the Information. [p. 9]

E. Count V /Disturbing the Peace.

The court finds that the Commonwealth failed to present testimony and evidence proving beyond a reasonable doubt the essential elements of Disturbing the Peace, in violation of 6 CMC § 3101(a), as alleged in Count V of the Information. As such, Defendant is hereby adjudged **NOT GUILTY** of the charge of Disturbing the Peace, in violation of 6 CMC § 3101(a), as alleged in Count V of the Information.

F. Count VI /Disturbing the Peace.

The court finds that the Commonwealth presented testimony and evidence proving beyond a reasonable doubt the essential elements of Disturbing the Peace, in violation of 6 CMC § 3101(a), as alleged in Count VI of the Information.

Pursuant to 6 CMC § 3101:

(a) A person commits the offense of disturbing the peace if he or she unlawfully and willfully does any act which unreasonably annoys or disturbs another person so that the other person is deprived of his or her right to peace and quiet, or which provokes a breach of the peace.

(b) A person convicted of disturbing the peace may be punished by imprisonment for not more than six months.

6 CMC § 3101. Here, Count VI of the Information alleges that on March 12, 1999, Defendant unlawfully and willfully made non-consensual contact with the face and head of Ms. Muna and that such act unreasonably annoyed or disturbed Ms. Muna thereby depriving her of her right to peace and quiet.

The court finds, after examining the evidence presented and determining the credibility of the witnesses, that Ms. Muna testified truthfully and correctly that on March 12, 1999, Defendant grasped her and “attempted” to kiss her on the mouth and that she pushed Defendant away and went inside a bathroom in the suite to retrieve some personal items.

To sustain a conviction for disturbing the peace the court must find that Defendant’s attempted kiss was an “unlawful” act, “willfully” done by Defendant, and that such act “unreasonably annoyed or disturbed” Ms. Muna in such a manner as to deprive her of her right to peace and quiet.

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1. Unlawful Act.

The court finds that Defendant's attempt to kiss Ms. Muna was unlawful in that it constituted an attempted assault and battery. Pursuant to 6 CMC § 301(a), "[a] person commits the offense of attempt if, with intent to commit an offense, he does an overt act which constitutes a substantial step in a course of conduct planned to culminate in the commission of that offense." Pursuant to 6 CMC § 1202(a), "[a] person commits the offense of assault and battery if the person . . . has sexual contact with another without the other person's consent." 6 CMC § 1202(a). Here, Defendant grasped Ms. Muna and pulled her to him with the intent of kissing her. The grasping of Ms. Muna was an overt act constituting a substantial step in a course of conduct whereby Defendant intended to make sexual contact with Ms. Muna without her consent. As such, the court finds that Defendant committed an unlawful act by attempting to kiss Ms. Muna on March 12, 1999.

Pursuant to 6 CMC § 301(b), "[i]t is an affirmative defense to a charge of attempt that the offense was not committed because the defendant desisted voluntarily and in good faith abandoned his or her intention to commit the offense without causing any of the effects proscribed by this title." 6 CMC § 301(b). Here, Defendant did not voluntarily and in good faith abandon his intention to commit assault and battery. Defendant only ceased his actions after being physically pushed back by Ms. Muna.

2. Willful Act.

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids. *See Screws v. United States*, 325 U.S. 91, 101, 65 S.Ct. 1031, 1035, 89 L.Ed 1495 (1945). Here, Defendant voluntarily and intentionally grasped Ms. Muna and pulled her towards him with the specific intention of kissing her without her consent. As such, the court finds that Defendant's attempt to kiss Ms. Muna was done "willfully."

3. Unreasonably Annoy and Disturb.

Ms. Muna reacted to Defendant's attempt to kiss her by immediately pushing him away. Ms. Muna's later reaction to the attempted kiss was to leave Rota ahead of her scheduled departure. The

court finds that Ms. Muna's reactions to the attempted kiss indicate that Defendant's conduct unreasonably disturbed Ms. Muna in such a manner as to deprive her of her right to peace and quiet.

[p. 11] For the foregoing reasons, the court finds that Defendant's attempted kiss was an "unlawful" act, "willfully" done by Defendant, and that such act "unreasonably annoyed or disturbed" Ms. Muna in such a manner as to deprive her of her right to peace and quiet. As such, Defendant is hereby adjudged **GUILTY** of the offense of Disturbing the Peace, in violation of 6 CMC § 3101(a), as alleged in Count VI of the Information.

#### G. Count VII /Misconduct in Public Office.

The court finds that the Commonwealth presented testimony and evidence proving beyond a reasonable doubt the essential elements of Misconduct in Public Office, in violation of 6 CMC § 3202, as alleged in Count VII of the Information.

Pursuant to 6 CMC § 3202:

Every person who, being a public official, does any illegal act under the color of office, or wilfully neglects to perform the duties of his or her office as provided by law, is guilty of misconduct in public office, and upon conviction thereof may be imprisoned for a period of not more than one year, or fined not more than \$1,000, or both.

6 CMC § 3202. Count VII of the Information alleges that on March 11, 1999, Defendant committed an illegal act under color of office. Specifically, the Commonwealth alleges that Defendant, while the director of CRM, initiated unlawful non-consensual intimate contact with Ms. Muna.

To sustain a conviction for Misconduct in Public Office, the court must find beyond a reasonable doubt that Defendant was a "public official" who performed an "illegal act under color of office."

##### 1. Public Official.

Evidence adduced at trial determined that the Defendant was the director of CRM and that he held that position from January 1999, through March-April 1999. Although the term "public official" is not defined in the Commonwealth Code, it has been given an expansive definition by Commonwealth Courts. In *Commonwealth v. Pangelinan*, the court held that police officers are

“public officials” within the meaning of 6 CMC § 3302. *See Commonwealth v. Pangelinan*, 3 C.R. 839, 851 (D.N.M.I. App. Div. 1989), *see also Commonwealth v. Kaipat*, 2 N.M.I. 322, 333 (1991) (affirming the *Pangelinan* holding). [p. 12] In finding that a police officer is a “public official,” the *Pangelinan* court noted that police officers are entrusted with the safety and welfare of the citizenry and are required by the Commonwealth Constitution to take an oath to support the laws and constitutions of the Commonwealth and the United States. *Id.*, *citing* NMI Const. art. XVII, § 1.

Here, Defendant was the director of CRM at the time of the non-consensual sexual contact with Ms. Muna on March 11, 1999. Pursuant to Executive Order 94-3 § 509(a), “all officials at or above the level of division director, or the equivalent by whatever title known, shall be appointed by and serve at the pleasure of the Governor . . . .” Executive Order 94-3 § 509(a). Pursuant to the Commonwealth Constitution:

All members of the legislature and officers and employees of the Commonwealth and its political subdivisions taking office shall take and subscribe to the following oath or affirmation:

I do solemnly affirm (or swear) that I will support and defend the Constitution and laws of the Commonwealth of the Northern Mariana Islands, the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the applicable provisions of the Constitution, laws and treaties of the United States of America, and that I will faithfully discharge my duties to the best of my ability (so help me God).

N.M.I. Const. art. XVII, § 1. Here, Defendant was an official appointed by the Governor and sworn to support the Constitution and laws of the Commonwealth. As such, the court finds that Defendant was a “public official” on March 11, 1999, within the meaning of 6 CMC § 3202.

## 2. Illegal Act.

Pursuant to the foregoing findings of the court, Defendant has been adjudged guilty of Assault and Battery as alleged in Count III of the Information. Assault and Battery is an illegal act prohibited by law at 6 CMC § 1201(a) and made punishable by 6 CMC § 1201(b). As such, the court finds that Defendant committed an “illegal act” on March 11, 1999.

The court notes that the fact that Defendant could be held criminally liable for Misconduct in Public Office for the same conduct for which he has been convicted of Assault and Battery implicates the double jeopardy clauses of the Commonwealth and United States Constitutions which

prohibit multiple punishments for the same offense. *See Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 [p. 13] (1932). “Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact the other does not.” *Id.*, at 284 U.S. 304. Here, Defendant has been adjudged guilty of Assault and Battery, in violation of 6 CMC § 1202(a). Defendant is also charged with Misconduct in Public Office, in violation of 6 CMC § 3202. To sustain a conviction for assault and battery the court found that Defendant’s actions constituted “sexual contact” and that such contact was made without Ms. Muna’s “consent.” To sustain a conviction for Misconduct in Public Office, the court must find that Defendant was a “public official” who performed an “illegal act under color of office.” The second charge, Misconduct in Public Office, requires proof of an additional fact which the first charge, Assault and Battery, does not. To sustain a conviction for Misconduct in Public Office the court must find proof that Defendant’s actions were done “under color of office,” an additional fact which has no bearing on a charge of Assault and Battery. As such, the court finds that the fact that Defendant can be held criminally liable for Misconduct in Public Office for the same conduct for which he has been convicted of Assault and Battery does not violate the double jeopardy clauses of the Commonwealth and United States Constitutions.

### 3. Under Color of Office.

To sustain a conviction for misconduct in public office, the court must find that the “illegal act” committed by Defendant was done “under the color of office.” It is not enough, therefore, to only find that Defendant committed an “illegal act” during a time in which he was a “public official.” Rather, it must be shown that the “illegal act,” in this case assault and battery, was committed through misuse of Defendant’s position as director of CRM.

The court finds, after examining the evidence presented and determining the credibility of the witnesses, that Ms. Muna testified truthfully and correctly that on March 11, 1999, Defendant handed Ms. Muna an envelope containing a room key for a room that had originally been reserved for Lieutenant Governor Jesus Sablan, as indicated by the name on the envelope. The court finds that the Defendant improperly used his position as director of CRM to obtain the room for Ms. Muna for

the purpose of separating her from other CRM employees, specifically Mr. Martin B. Castro, in order that he may attempt to achieve sexual gratification at her expense. On March 11, 1999, Defendant used this room to grasp Ms. [p. 14] Muna's breast without her consent, an act which the court has found to constitute the crime of assault and battery. As such, the court finds that Defendant committed an illegal act, assault and battery, under color of his office by using his position as the director of CRM to obtain a room for Ms. Muna which was away from other CRM employees for the improper purpose of committing assault and battery on a subordinate employee while traveling on a government trip on official CRM business. As such, Defendant is hereby adjudged **GUILTY** of Misconduct in Public Office, in violation of 6 CMC § 3302, as alleged in Count VII of the Information

#### H. Count VIII /Misconduct in Public Office.

The court finds that the Commonwealth presented testimony and evidence proving beyond a reasonable doubt the essential elements of Misconduct in Public Office, in violation of 6 CMC § 3302, as alleged in Count VIII of the Information.

Count VIII alleges that on March 12, 1999, Defendant committed an illegal act under color of office. Specifically, the Commonwealth alleges that Defendant, while the director of CRM, initiated unlawful non-consensual intimate contact with Ms. Muna.

To sustain a conviction for Misconduct in Public Office, the Commonwealth bears the burden of proving beyond a reasonable doubt that Defendant was a "public official" who performed an "illegal act under color of office."

##### 1. Public Official.

Pursuant to the foregoing findings of the court, Defendant has been determined to have been a "public official" on March 12, 1999, within the meaning of 6 CMC § 3302.

##### 2. Illegal Act.

Pursuant to the foregoing findings of the court, Defendant has been adjudged guilty of Disturbing the Peace as alleged in Count VI of the Information. Disturbing the Peace is an illegal act

prohibited by law at 6 CMC § 3101(a) and made punishable by 6 CMC § 3101(b). As such, the court finds that Defendant committed an “illegal act” on March 12, 1999.

**[p. 15]** The court again notes that the fact that Defendant could be held criminally liable for Misconduct in Public Office for the same conduct for which he has been convicted of Assault and Battery implicates the double jeopardy clauses of the Commonwealth and United States Constitutions. See *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). “Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact the other does not.” *Id.*, at 284 U.S. 304. Here, Defendant has been adjudged guilty of Disturbing the Peace, in violation of 6 CMC § 3101(a). Defendant is also charged with Misconduct in Public Office, in violation of 6 CMC § 3202. To sustain a conviction for Disturbing the Peace the court found that Defendant’s attempted kiss was an “unlawful” act, “willfully” done by Defendant, and that such act “unreasonably annoyed or disturbed” Ms. Muna in such a manner as to deprive her of her right to peace and quiet. To sustain a conviction for Misconduct in Public Office, the court must find that Defendant was a “public official” who performed an “illegal act under color of office.” The second charge, Misconduct in Public Office, requires proof of an additional fact which the first charge, Disturbing the Peace, does not. To sustain a conviction for Misconduct in Public Office the court must find proof that Defendant’s actions were done “under color of office,” an additional fact which has no bearing on a charge of Disturbing the Peace. As such, the court finds that the fact that Defendant can be held criminally liable for Misconduct in Public Office for the same conduct for which he has been convicted of Disturbing the Peace does not violate the double jeopardy clauses of the Commonwealth and United States Constitutions.

### 3. Under Color of Office.

To sustain a conviction for misconduct in public office, the court must find that the “illegal act” committed by Defendant was done “under the color of office.” It is not enough, therefore, to only find that Defendant committed an “illegal act” during a time in which he was a “public official.”

Rather, it must be shown that the “illegal act,” in this case disturbing the peace, was committed through misuse of Defendant’s position as director of CRM.

The court finds, after examining the evidence presented and determining the credibility of the witnesses, that Ms. Muna testified truthfully and correctly that on March 11, 1999, Defendant handed Ms. [p. 16] Muna an envelope containing a room key for a room that had originally been reserved for Lieutenant Governor Jesus Sablan, as indicated by the name on the envelope. The court finds that the Defendant improperly used his position as director of CRM to obtain the room for Ms. Muna for the purpose of separating her from other CRM employees, specifically Mr. Martin B. Castro, in order that he may attempt to achieve sexual gratification at her expense. On March 12, 1999, Defendant used this room to attempt to kiss Ms. Muna, an act which the court has found to constitute the crime of disturbing the peace. As such, the court finds that Defendant committed an illegal act, disturbing the peace, under color of his office by using his position as the director of CRM to obtain a room for Ms. Muna which was away from other CRM employees for the improper purpose of attempting to kiss a subordinate employee while traveling on a government trip on official CRM business. As such, Defendant is hereby adjudged **GUILTY** of the offense of Misconduct in Public Office, in violation of 6 CMC § 3302, as alleged in Count VIII of the Information.

#### **V. CONCLUSION**

For the foregoing reasons, the court finds Defendant **GUILTY** as to Counts III, VI, VII, and VIII of the Information. Sentencing is hereby set for August 22, 2000, in Courtroom 223A at 1:30 p.m. Counsel for the Defendant shall provide counsel for the Commonwealth with a list of anticipated witnesses at least ten days prior to the sentencing hearing. A pre-sentencing investigation will be prepared by the Office of Probation for the court’s consideration pursuant to Defendant’s request.

So ORDERED this 23 day of June, 2000.

/s/ Juan T. Lizama  
JUAN T. LIZAMA, Associate Judge