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4 **IN THE SUPERIOR COURT**
5 **OF THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7 Commonwealth of the Northern Mariana
8 Islands,

9 Plaintiff,

10 v.

11 Norman L. Tenorio and
12 Rex R. Jose,

13 Defendants.

Criminal Case No. 02-0265-CR

**ORDER GRANTING SEVERANCE and
LEAVE TO AMEND INFORMATION**

14 **ORDER**

15 **THIS MATTER** came before this Court for a hearing on the Commonwealth's Motions for
16 Severance and Leave to Amend Information, on January 27, 2004. The Commonwealth was
17 represented by Assistant Attorney General Alexander Shapiro. Brien Sers Nicholas represented Co-
18 Defendant, Norman L. Tenorio. Joseph Horrey represented Co-Defendant, Rex R. Jose.

19 The Commonwealth moved to sever the Defendants on the basis of the following facts. Each
20 Defendant is alleged to have committed one count each of Sexual Abuse of a Minor and one count
21 each of Incest. Both Defendants were charged through a single information filed August 29, 2002.
22 While both Defendants stand accused of committing the same crimes against the same victim, the
23 alleged incidents did not occur during the same time period. The two Defendants acts were entirely
24 separate. The Commonwealth discovered this error only recently, despite the nearly year and half
25 tenure of the case. Disclosure of this fact was made only weeks before the commencement of the
26 February 9, 2004, upcoming trial date. The Commonwealth's inattention in this matter is extremely
27 troubling to this Court. Was the situation not appropriately resolved through mandatory procedural
28 devices, other remedies may have been considered by this Court.

1 The Commonwealth Rules of Criminal Procedure permit the joinder of defendants in
2 criminal cases where they “have participated in the same act or transaction or in the same series of
3 acts or transactions constituting an offense or offenses.” Com. R. Crim. P. 8(b). This is not a
4 permissive rule, wherein the court has discretion to allow severance in cases where the defendants
5 did not allegedly commit acts as part of the same transaction or occurrence. It is appropriate to
6 consult interpretation of the counterpart federal rules in interpreting Commonwealth rules of
7 procedure, as the interpretation of such rules can be highly persuasive. *Tudela v. Marianas Pub.*
8 *Land Corp.*, 1 N.M.I. 179, 184 (1990). Commonwealth Rule of Criminal Procedure 8(b) is
9 substantially identical to the counterpart federal rule.

10 “[W]here multiple defendants are charged with offenses in no way connected, and are tried
11 together, they are prejudiced by that very fact, and a trial judge has no discretion to deny [a motion
12 for severance].” *Ingram v United States*, 272 F.2d 567, 570 (4th Cir. 1959). Under Rule 8(b) “when
13 there is joinder of defendants and offenses totally unconnected, there is no room for judicial
14 discretion and court must grant severance.” *United States v Eagleston*, 417 F.2d 11, 14 (10th Cir.
15 1969) *disapproved on other grounds by United States v. Lane*, 474 U.S. 438, 440, 106, S. Ct. 725,
16 727, 88 L. Ed. 2d 814, 820. Joinder of multiple defendants is proper only if there is proof of their
17 joint participation in same act or transaction or series of acts or transactions but if this proof is
18 lacking there is no room for exercise of judicial discretion and court must grant severance. *United*
19 *States v Jorgenson*, 451 F.2d 516, 522 (10th Cir. 1971). A court has no discretion to refuse
20 severance where improper joinder of defendants has been made. *United States v Pacente*, 490 F.2d
21 661, 665 (7th Cir. 1973). “Misjoinder of defendants under Rule 8(b) is inherently prejudicial and,
22 therefore, the granting of a motion for severance, where misjoinder is found, is mandatory and not
23 within the discretion of the trial court.” *United States v Nettles*, 570 F.2d 547, 551 (5th Cir. 1978).

24 This Court is without discretion in this matter. If the allegations are not part of the same
25 transaction or occurrence, then there has been a misjoinder and the Defendants’ cases must be
26 severed. The *Motion to Sever* is **GRANTED**.

27 The Commonwealth also filed a *Motion for Leave to File Amended Information*. That
28 Motion was unopposed at the hearing on this matter and is also **GRANTED**. The amended

1 information shall be filed on or before January 30, 2004.

2 The trial date of February 9, 2004, shall proceed with respect to Defendant Rex. R. Jose. The
3 trial date for Defendant Norman Tenorio, shall be on March 15, 2004, at 9:00 a.m. A new pretrial
4 order shall issue for Defendant Norman Tenorio in keeping with the revised trial date.

5 Both Defendants are ordered to be present for their respective trial dates.

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7 **SO ORDERED** this 27th day of January 2004.

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/s/
David A. Wiseman
Associate Judge

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