

1 Court judge the authority to hear and rule on the disqualification of an equal in the judicial
2 hierarchy, assigning a Superior Court judge to review the actions of a colleague sitting in the
3 same small jurisdiction presents obvious practical difficulties. The Court believes that
4 determinations regarding disqualification are best referred to an appellate body, a Judge from
5 the Guam Superior Court or an ad hoc council and suggests that this matter be examined
6 closely to determine if revision in the present court policy is necessary to insure the efficient
7 administration of the Superior Court.

8 9 **II. BACKGROUND**

10 This matter involves a physical altercation among several young men that occurred on
11 October 9, 2011. Defendant allegedly participated in the fight for which he was charged with
12 two counts of Assault and Battery, one count of Rioting and one count of Disturbing the Peace.

13 On July 23, 2012, Defendant agreed to plead guilty to two counts of Assault and Battery
14 in exchange for a reduced sentence and dismissal of the remaining charges. The
15 Commonwealth filed a declaration in support of the plea agreement, noting in part that the
16 defendants had no previous criminal history, none of the victims were seriously hurt, the
17 primary victim may have played a role in provoking the incident, and the Commonwealth
18 believes Don is the real instigator and main cause of the incident. As part of his plea
19 agreement, Defendant admitted to aiding and abetting Co-Defendants Kelvin, Joaquin, and Don
20 in punching and kicking the victim, Domingo Cruz. (Plea Agreement at 4.)

21 On July 26, 2012, Judge Camacho rejected the plea agreement. Under the plea
22 agreement, Defendant would have served five days of imprisonment and one year of probation,
23 which the court noted was too lenient of a sentence “[g]iven that the victim was clearly
24 outnumbered” in the physical altercation. (Order Rejecting Plea Agreement at 2, 3.) The
25 matter was then set for a bench trial.

26 On September 10, 2012, Defendant moved to disqualify Judge Camacho pursuant to 1
27 CMC sections 3308(a) and 3308(b)(1) based on an appearance of partiality created by Judge
28 Camacho’s awareness of Defendant’s guilty plea and factual admissions. Since the motion was

1 brought in part pursuant to 1 CMC section 3308(b)(1), Judge Camacho requested reassignment
2 of the motion to disqualify based on Canon 3(D)(c) of the Commonwealth Code of Judicial
3 Conduct and the CNMI Supreme Court’s ruling in *Tudela v. Superior Court*, 2010 MP 6.
4 Judge Camacho’s request was granted and the motion was reassigned to the Honorable David
5 A. Wiseman by the Presiding Judge.

6 7 **III. DISCUSSION**

8 Defendant argues Judge Camacho should be disqualified from presiding over the bench
9 trial because he gained personal knowledge of disputed evidentiary and highly prejudicial facts
10 when he reviewed and rejected Defendant’s plea agreement. The Commonwealth counters that
11 disqualification is not required because all the knowledge Judge Camacho possesses regarding
12 this matter was gained in the course of performing his judicial duties rather than from any
13 “extrajudicial source.”¹

14 **A. THE REASSIGNMENT OF DEFENDANT’S MOTION WAS NOT REQUIRED.**

15 As a preliminary matter, the Court notes that the reassignment of Defendant’s motion
16 for disqualification was not required. Generally, the judge sought to be disqualified hears the
17 motion. *See Tudela v. Superior Court*, 2010 MP 6 ¶ 23 (“[W]hen a litigant seeks to prevent a
18 particular judge from participating in a proceeding because the judge’s impartiality might
19 reasonably be questioned under § 3308(a), the challenged judge has the discretion to evaluate
20 and rule on the litigant’s motion for disqualification.”). However, if the basis of the motion is
21 for personal bias or prejudice under § 3308(b)(1), then “the challenged judge may rule on
22 whether the motion strictly complies with procedural requirements [of Canon 3(D)(c)].” *See*
23 *id.* If the challenged judge determines the movant complied with Canon 3(D)(c) then the merits
24 of the motion shall be resolved by a different judge. Canon 3(D)(c) of the Commonwealth
25 Code of Judicial Conduct provides:

26 If the ground for disqualification is that the justice or judge
27 has a personal bias or prejudice against or in favor of any

28 ¹ “[E]xtrajudicial source’ means ‘a source outside the judicial proceedings at hand ,’” *Commonwealth v. Kaipat*,
1996 MP 20 ¶ 11 (quoting *Liteky v. United States*, 510 U.S. 540, 545 (1994)).

1 party, an affidavit shall accompany the motion. Such
2 justice or judge shall proceed no further therein but another
3 justice or judge shall be assigned to hear such motion.

4 The CNMI Supreme Court held that Canon 3(D)(c) establishes the procedure for a
5 motion to disqualify when the basis of the motion is 1 CMC section 3308(b)(1), which states in
6 pertinent part that a judge “shall disqualify himself . . . [w]here [he] has a personal bias or
7 prejudice concerning a party” *Tudela*, 2010 MP 6 ¶ 13 (omitting the second clause in §
8 3308(b)(1) that refers to “personal knowledge of disputed evidentiary facts concerning the
9 proceeding”). If, on the other hand, the basis of the motion is the “appearance of partiality,”
10 Canon 3(D)(c) does not apply and the challenged judge may hear the motion. *Tudela*, 2010 MP
11 6 ¶ 15 (“This position reflects a strict interpretation of Canon 3(D)(c), which refers only to
12 ‘personal bias or prejudice,’” and makes no mention of a motion based on the *appearance* of
13 partiality.”); *Bank of Saipan v. Superior Court*, 2002 MP 17 ¶ 18 (“Because the affidavit
14 requirement is only specifically applicable to motions citing ‘bias or prejudice,’ then under a
15 plain reading of the statute, the affidavit requirement does not apply to motions citing the
16 ‘partiality’ ground of section 3308(a).”).

17 Here, Defendant states that “judicial disqualification is not being sought on the basis of
18 any *actual bias or personal prejudice* of the trial judge against the Defendant. Rather, the basis
19 for recusal is the *appearance of partiality*. . . .” (Def.’s Reply to Opp’n at 1.) Therefore, under
20 the plain language of Canon 3(D)(c) and the controlling statutes and case law, Judge Camacho
21 may have ruled on Defendant’s motion that expressly denied the existence of any actual bias or
22 personal prejudice and the reassignment to another Judge by the Presiding Judge was not
23 required.²

24 ² The application of Canon 3(D)(c), which requires reassignment of a motion for disqualification, is triggered only
25 when the movant files a motion for disqualification on the basis of personal bias or prejudice with an attached
26 affidavit that states “the facts and reasons for the belief that bias or prejudice exists.” *Saipan Lau Lau Dev., Inc. v.*
27 *Superior Court*, 2000 MP 12 ¶ 4 n.5. Furthermore, the alleged personal bias or prejudice must stem from an
28 extrajudicial source. *Bank of Saipan v. Superior Court*, 2002 MP 16 ¶ 39 (“Under either section 3308(a) or
3308(b)(1), the bias or prejudice against a party must derive from an extra-judicial source.”); *Saipan Lau Lau,*
Dev., Inc. 2000 MP 12 ¶ 4; *Commonwealth v. Kaipat*, 1996 MP 20 ¶ 11. Simply filing a motion to disqualify
pursuant to § 3308(b)(1) is insufficient. Every Commonwealth case analyzing a disqualification motion brought
under § 3308(b)(1) has held that a showing of actual bias or prejudice is required to trigger application of the
procedure described in Canon 3(D)(c).

1 Furthermore, reassignment was also not required because Defendant failed to comply
2 with the strict rules governing the affidavit requirement. *See Bank of Saipan*, 2002 MP 17 ¶ 15
3 (“The affidavit requirement under Canon 3(D)(c) must be strictly and fully complied with”)
4 (citing *United States v. Anderson*, 433 F.2d 856, 860 (8th Cir. 1970)³ (“When an affidavit does
5 not meet the requirements imposed by law, the judge has an obligation not to disqualify
6 himself.”)). The accompanying affidavit must “state facts evidencing personal bias” and “show
7 that the bias and prejudice is personal: that is, it stems from some extrajudicial source and
8 would thus result in an opinion on the merits on some basis other than what the judge has
9 learned from his participation in the case.” *Saipan Lau Lau Dev., Inc. v. Superior Court*, 2000
10 MP 12 ¶ 4 (citing *Berger v. United States*, 255 U.S. 22, 33-34 (1921) and *United States v.*
11 *Grinnell Corp.*, 384 U.S. 563 (1966)). Here, Defendant filed a declaration in lieu of an
12 affidavit,⁴ that expressly disclaims the existence of personal bias or prejudice, and fails to
13 identify an extrajudicial source for bias or prejudice or even for the appearance of partiality.
14 Consequently, reassignment of the motion was not required.

15 Notwithstanding Defendant’s noncompliance with Canon 3(D)(c) and the unnecessary
16 reassignment, the Court will rule on the merits of the motion. *Cf. Bank of Saipan*, 2002 MP 17
17 ¶ 18. It is important to emphasize the proper procedure for a motion to disqualify in order to
18 prevent unnecessary expenditure of limited judicial resources in the future. *See Tudela*, 2010
19 MP 6 ¶ 18 (noting that the challenged judge’s initial review of whether the movant complied
20 with Canon 3(D)(c) “ensures that limited judicial resources are not expended by transferring a
21 procedurally defective disqualification motion or affidavit to another judge for review”).

23
24 ³ The Court may look to federal cases interpreting the grounds and procedure for disqualification motions because
25 the Commonwealth and federal law are equivalent on this issue. *Saipan Lau Lau Dev., Inc.*, 2000 MP 12 ¶ 3
26 (“The Commonwealth code sections are the equivalent of the federal disqualification statute found at 28 U.S.C. §
455, while Cannon 3 sets forth, with some modification, the affidavit procedure for disqualification derived from
the federal procedure.”).

27 ⁴ Defendant filed a declaration that verified he attached true and correct copies of various documents and that
28 Defendant’s motion for disqualification was brought in good faith. (Declaration of Michael W. Dotts.) However,
Defendant failed to provide an affidavit that provides specific facts for the basis of personal bias or prejudice or to
do so in said declaration as required by Canon 3(D)(c).

1 **B. THERE IS NO VALID BASIS FOR DISQUALIFICATION.**

2 There is a presumption that a judge is qualified to hear a case and, thus, a substantial
3 burden is on the movant to overcome this presumption. *See Saipan Lau Lau Dev., Inc.*, 2000
4 MP 12 ¶ 4; *Eychaner v. Gross*, 779 N.E.2d 1115, 1146 (Ill. 2002). The presumption is based
5 on the faith that trial judges sitting as triers of fact are able to weed out inadmissible and
6 incompetent evidence in making fair and impartial findings of fact. *Banks v. United States*, 516
7 A.2d 524, 527 (D.C. Ct. App. 1986); *United States v. Walker*, 473 F.2d 136, 138 (D.C. Cir.
8 1972). Defendant, as the movant, argues for disqualification based on (1) 1 CMC section
9 3308(a) because Judge Camacho’s “impartiality might reasonably be questioned” and (2) 1
10 CMC section 3308(b)(1) because Judge Camacho has “personal knowledge of disputed
11 evidentiary facts concerning the proceeding.” Both arguments stem from the fact that Judge
12 Camacho presided over Defendant’s plea hearing in which Defendant admitted to aiding and
13 abetting the codefendants in kicking and punching the victim.

14 **1. There is No Appearance of Partiality.**

15 The source of alleged “partiality” arose from Judge Camacho’s performance of his
16 ordinary judicial duties in reviewing Defendant’s plea agreement and ruling on it. A judge’s
17 involvement in previous court proceedings with the same defendant rarely presents grounds for
18 recusal or disqualification. *Bank of Saipan v. Superior Court*, 2002 MP 16 ¶ 39 (“The source
19 of the appearance of partiality must arise from some source other than the judge’s previous
20 involvement with cases that concerned the parties or witnesses in the present case.”) (quotation
21 omitted); *Commonwealth v. Kaipat*, 1996 MP 20 ¶ 11 (“The basis for questioning the judge’s
22 impartiality is commonly derived from an extrajudicial source.”); *Liteky v. United States*, 510
23 U.S. 540, 555 (1994) (“[J]udicial rulings alone almost never constitute a valid basis for a bias
24 or partiality motion.”).

25 On the other hand, when the trial judge gains knowledge of a matter from a source
26 outside the course of ordinary court proceedings, an appearance of partiality may arise. For
27 example, in *Kaipat*, 1996 MP 20 ¶ 10, the Court held that the trial judge’s impartiality might be
28 reasonably questioned because he gained *personal* knowledge of the charged offense of witness

1 tampering. Most notably, the trial judge observed the witness' reaction and demeanor
2 immediately after the witness was allegedly threatened by a police officer just outside the
3 courtroom. *Id.* Conversely, here, Judge Camacho gained no *personal* knowledge of this case
4 because all the evidence and facts arose in the ordinary course of the court proceedings
5 involving Defendant.

6 Notwithstanding, Defendant contends that his plea agreement and admissions
7 constituted such highly prejudicial information that Judge Camacho's impartiality can
8 reasonably be questioned. In support thereof, Defendant cites six cases in which defendants
9 appealed their criminal convictions on the basis that the same judge who reviewed their
10 unsuccessful plea agreements also presided over their trials. Four of Defendant's cited cases
11 rejected the argument that recusal or disqualification is necessary whenever a judge reviews a
12 defendant's unsuccessful plea agreement.⁵ The holding in *Brent v. State*, 492 A.2d 637, 643
13 (Md. Ct. Spec. App. 1985), cited by Defendant, was based on a state statute, Maryland Rule 4-
14 243(c)(5), which is not recognized in the Commonwealth and thus not persuasive. Lastly,
15 Defendant's cited case of *State of Minnesota v. Osterkamp*, 2012 Minn. App. Unpub. LEXIS
16 730, at *16 (Minn. Ct. App. 2012) is an unpublished and distinguishable case.

17 In *Osterkamp*, the defendant agreed to plead guilty to one count of second-degree
18 criminal sexual conduct. *Id.* at *2. In open court, the defendant admitted to touching his four-
19 year-old granddaughter's vaginal area with sexual intent. *Id.* at *2-*4. The trial judge also
20 reviewed the presentence investigation report which revealed a previous criminal sexual
21 conduct conviction and inculpatory statements made by the defendant. *Id.* at *2, *4. The plea
22 agreement was rejected and the same judge presided over the bench trial, which the appellate
23 court held was in error. *Id.* at *4, *18.

24
25 ⁵ Defendant cited the following cases in his motion for disqualification: *Plummer v. United States*, 43 A.3d 260,
26 270 (D.C. Ct. App. 2012); *Addison v. State of Maryland*, 990 A.2d 614, 623 (Md. Ct. Spec. App. 2010); *United*
27 *States v. Farid*, 733 F.2d 1318, 1321 (8th Cir. 1984); *United States v. Walker*, 473 F.2d 136, 138-39 (D.C. Cir.
28 1972). The holdings in each of these cases confirmed the defendants' convictions. Generally, the cases held that it
was not plain error for the judges to preside over the bench trials after reviewing the defendants' plea agreements,
which were either rejected or withdrawn, because the defendants failed to object to the judges' ability to remain
impartial. The cases did note that the *preferred* procedure would be for the judge to recuse himself or herself after
learning of a defendant's intention to plead guilty. But these cases did not hold that such a procedure is *necessary*.

1 Unlike in *Osterkamp*, Judge Camacho did not hear and review any presentence
2 investigation report that contained highly prejudicial and inflammatory evidence nor did he
3 hear any of the same. In fact, most of the facts Judge Camacho gained from the plea agreement
4 were mitigating. Judge Camacho learned that Defendant is young, has no criminal history,
5 none of the victims were seriously injured, further investigation reveals that the primary victim
6 may have played a role in provoking the incident, and the codefendant Don is likely the real
7 instigator and main cause of the incident. (Commw.'s Decl. in Supp. of Plea Agreement.)
8 Also, Defendant's factual admission for the guilty plea was very broad and not overly
9 inflammatory. Defendant admitted he "aided and abetted" the codefendants in kicking and
10 punching an adult male. In considering the totality of the circumstances, Judge Camacho's
11 impartiality cannot be reasonably questioned because all the facts he acquired were derived
12 from court proceedings and the facts were not highly prejudicial.

13 **2. The Trial Judge Did Not Acquire Personal Knowledge of Disputed Evidentiary**
14 **Facts Concerning the Proceeding.**

15 As previously discussed, Judge Camacho's knowledge of this matter is entirely derived
16 from previous court proceedings involving Defendant. *See supra* pp. 7-8. Therefore, this
17 knowledge is not "personal" within the meaning of 1 CMC § 3308(b)(1). *See supra* p. 6; *see*
18 *Bank of Saipan v. Superior Court*, 2002 MP 16 ¶ 39 ("Under either section 3308(a) or
19 3308(b)(1), the bias or prejudice against a party must derive from an extra-judicial source."). If
20 the Court were to accept Defendant's argument that knowledge acquired during court
21 proceedings is "personal," then every judge would have to recuse themselves after signing a
22 bench warrant for a suspect or conducting an arraignment or preliminary hearing. Such a result
23 would make the prosecution of a criminal defendant nearly impossible.

24 Section 3308(b)(1) serves no basis for Defendant's motion since Defendant did not
25 allege any actual personal bias or prejudice but on the contrary, refutes any bias or prejudice as
26 a basis of his motion, and did not identify any personal knowledge Judge Camacho gained
27 regarding disputed evidentiary facts concerning this case.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

For the foregoing reasons, the Court hereby **DENIES** Defendant's motion for disqualification.

IT IS FURTHER ORDERED that this order applies to Co-Defendants' Joaquin and Kelly's verbal joinder in Defendant's motion for recusal made without any distinguishing grounds from the movant herein.

IT IS SO ORDERED this 21st day of November, 2012.

/s/
DAVID A. WISEMAN, Associate Judge