

1 **FOR PUBLICATION**

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BY: *[Signature]*
J. [Signature]

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

7 **COMMONWEALTH OF THE**
8 **NORTHERN MARIANA ISLANDS,**

9 **Plaintiff,**

10 **v.**

11 **JOSEPH A. CRISOSTIMO,**

12 **Defendant.**

CRIMINAL CASE NO. 12-0045E

**ORDER DENYING DEFENDANT'S
MOTION FOR DISQUALIFICATION**

13 **I. INTRODUCTION**

14 **THIS MATTER** came before the Court for a hearing on Defendant's motion to disqualify
15 Judge Joseph N. Camacho from presiding over further proceedings, on September 25, 2012, at 1:30
16 p.m. in Courtroom 217A. The Government appeared through Assistant Attorneys General Nicole
17 Driscoll and James McAllister. Defendant Joseph A. Crisostimo appeared under the custody of the
18 Department of Corrections and with his counsel, Assistant Public Defender Douglas Hartig.

19 Based on the papers filed and arguments of counsel, the Court hereby **DENIES** Defendant's
20 motion for disqualification.

21 **II. BACKGROUND**

22 On February 23, 2012, the Government filed a first amended Information charging
23 Defendant with one count of Illegal Possession of a Controlled Substance and one count of
24 Criminal Contempt. The case was assigned to Judge David A. Wiseman.

1 The alleged crimes took place while Defendant was on probation in Criminal Case No. 07-
2 0147C. The terms of Defendant's probation prohibited him from possessing or consuming alcohol
3 or any other intoxicating substance. *Commonwealth v. Crisostimo*, Criminal Case No. 07-0147C
4 (NMI Super. Ct. May 8, 2008) (Amended Judgment of Conviction and Order at 3 ¶ 11). On March
5 13, 2012, Defendant appeared in Judge Camacho's court for a revocation hearing. Judge Camacho
6 found by a preponderance of the evidence that Defendant violated the terms of his probation by
7 being in possession of a controlled substance. *Crisostimo*, Criminal Case No. 07-0147C (NMI
8 Super. Ct. March 13, 2012) (Revocation of Probation and Commitment Order at 2). The court
9 revoked Defendant's probation and reimposed the remaining five years sentence without the
10 possibility of parole or early release. *Id.* at 3.

11 In August 2012, former Attorney General Edward T. Buckingham resigned from his
12 position and the vacancy was temporarily filled by Acting Attorney General Ellsbeth Viola
13 Alepuyo ("Ms. Alepuyo"). On September 7, 2012 the above-entitled case was reassigned by
14 Presiding Judge Robert C. Naraja from Judge Wiseman to Judge Joseph N. Camacho. On
15 September 11, 2012, Defendant filed a motion to disqualify Judge Camacho from presiding over
16 further proceedings in this matter.

17 On October 23, 2012, Governor Benigno Fitial nominated Joey P. San Nicolas for Attorney
18 General. On November 17, 2012, San Nicolas was confirmed by the Senate, and was immediately
19 sworn into office. Ms. Alepuyo ceased being Acting Attorney General but remained with the
20 Office of the Attorney General. On November 23, 2012, San Nicolas designated Ms. Alepuyo as
21 the Deputy Attorney General with certain enumerated powers and duties. (OAG Memo at 1-2.)

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1 **III. DISCUSSION**

2 Defendant argues Judge Camacho should be disqualified from presiding over any further
3 proceedings Under 1 CMC § 3308(a) and Canon 3(C)(a) of the Code of Judicial Conduct because
4 Judge Camacho (A) has already made a factual determination as to this case pursuant to his
5 previous probation revocation ruling and (B) is married to Ms. Alepuyo. (Def.'s Disqualification
6 Mot. at 2-3.)¹ The standard for disqualification under both 1 CMC § 3308(a) and Canon 3(C)(a) of
7 the Code of Judicial Conduct is whether under the circumstances a judge's impartiality might
8 reasonably be questioned. See *Lucky Dev. Co. v. Tokai*, 3 NMI 79, 85 (1992).

9 "There is a presumption that a judge is qualified to hear a case and, thus, the burden is on
10 the movant to overcome this presumption." *Commonwealth v. Sanchez*, Crim. No. 11-0269 (NMI
11 Super. Ct. Nov. 21, 2012) (Order Denying Defendant's Motion for Disqualification at 6) (citing
12 *Saipan Lau Lau Dev., Inc.*, 2000 MP 12 ¶ 4 and *Eychaner v. Gross*, 779 N.E.2d 1115, 1146 (Ill.
13 2002)²). If the movant fails to show good cause for recusal or disqualification, the judge is
14 obligated to remain on the case. *Laird v. Tatum*, 409 U.S. 824, 837 (1972) ("[A] federal judge has
15 a duty to *sit* where *not disqualified* which is equally as strong as the duty to *not sit* where
16 *disqualified*.").

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21 ¹ In the first paragraph of Defendant's disqualification motion, Defendant asserted that 1 CMC § 3308(b)(1) constitutes
22 a basis for disqualification. (Def.'s Disqualification Mot. at 1.) However, Defendant does not discuss 1 CMC §
23 3308(b)(1) anywhere else in his motion. Therefore, the Court limits its review of Defendant's argument to 1 CMC §
24 3308(a) and Canon 3(C)(a) of the Code of Judicial Conduct.

² The Court may look to federal cases interpreting the grounds and procedure for disqualification motions because the
Commonwealth and federal law are equivalent on this issue. *Saipan Lau Lau Dev., Inc.*, 2000 MP 12 ¶ 3 ("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.").

1 **A. JUDGE CAMACHO'S RULING IN DEFENDANT'S PRIOR PROBATION REVOCATION HEARING**
2 **SERVES NO BASIS FOR DISQUALIFICATION.**

3 In attempting to meet his burden, Defendant argues that a person can reasonably question
4 the impartiality of Judge Camacho since he made an adverse ruling in Defendant's probation
5 revocation hearing based on the same factual matter in this case. (Def.'s Disqualification Mot. at 2)
6 (citing 1 CMC § 3308(a) ("A justice or judge of the Commonwealth shall disqualify himself or
7 herself in any proceeding in which his or her impartiality might reasonably be questioned.")). In
8 response, the Government cites several federal cases for the proposition that a judge's prior adverse
9 ruling rarely constitutes grounds for disqualification or recusal. The Government also notes the
10 different standards of proof between the prior revocation hearing that required only a
11 preponderance of the evidence and the instant criminal matter that requires the Government to
12 show proof beyond a reasonable doubt.

13 The Commonwealth case law is in accord with the United States Supreme Court and other
14 federal jurisdictions that hold "[j]udicial rulings alone rarely constitute a valid basis for recusal."
15 *Bank of Saipan v. Superior Court*, 2002 MP 16 ¶ 39 (quoting *In re Diaz*, 182 B.R. 654, 661 (Bankr.
16 P. R. 1995)); *Commonwealth v. Kaipat*, 1996 MP 20 ¶ 11 (citing *Liteky v. United States*, 510 U.S.
17 540 (1994)); *Liteky*, 510 U.S. at 555 ("[J]udicial rulings alone almost never constitute a valid basis
18 for a bias or partiality motion."). Defendant attempts to distinguish the instant matter from the
19 mainland jurisdictions because here the trier of fact is the judge as opposed to a jury, which is
20 uncommon in the mainland. (Def.'s Disqualification Mot. at 2-3.) However, the above-referenced
21 cases do not emphasize this distinction between a judge or jury as the trier of fact. Also, the
22 significance of Judge Camacho acting as the trier of fact in this case is diminished by the fact that
23 he will be applying the much stricter "reasonable doubt" standard to the facts as opposed to the
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1 more relaxed “preponderance of evidence” standard he used previously in Defendant’s revocation
2 hearing.

3 Judge Camacho’s preview of the facts in this case arose in the course of ordinary judicial
4 proceedings rather than from an extrajudicial source,³ which militates against disqualification.
5 “The basis for questioning the judge’s impartiality is commonly derived from an extrajudicial
6 source.” *Kaipat*, 1996 MP 20 ¶ 11; *see also Bank of Saipan*, 2002 MP 16 ¶ 39 (“Under either
7 section 3308(a) or 3308(b)(1), the bias or prejudice against a party must derive from an extra-
8 judicial source.”); *Commonwealth v. Sanchez*, Crim. No. 11-0269 (NMI Super. Ct. Nov. 21, 2012)
9 (Order Denying Defendant’s Motion for Disqualification) (Denying the defendant’s motion to
10 disqualify a judge from presiding over further proceedings even though the challenged judge had
11 previously reviewed and rejected the defendant’s plea agreement). The binding and persuasive
12 case law opposes disqualification under the circumstances of the case at bar, and Defendant does
13 not cite any legal authority to the contrary or otherwise. Defendant did not meet his burden in
14 showing that Judge Camacho’s impartiality might be reasonably questioned based on his previous
15 ruling.

16 **B. JUDGE CAMACHO’S SPOUSAL RELATIONSHIP WITH ELLSBETH VIOLA ALEPUYO DOES NOT**
17 **REQUIRE DISQUALIFICATION.**

18 Defendant contends Judge Camacho’s impartiality might be reasonably questioned based on
19 his spousal relationship to the former Acting Attorney General and the current Deputy Attorney
20 General, Ms. Alepuyo. Defendant’s argument relies on the two general points that “all criminal
21 actions must be brought in the name of the attorney general” and “[t]he Attorney General’s name
22 appears on every legal document filed in the Commonwealth Superior Court.” (Def.’s
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24 ³ “[E]xtrajudicial source means a source outside the judicial proceedings at hand – which would include as extrajudicial sources earlier judicial proceedings conducted by the same judge.” *Kaipat*, 1996 MP 20 ¶ 11 (quotation omitted).

1 Disqualification Mot. at 4.) In applying these general points of contention to the specific facts of
2 this case, the Court finds little evidence of any basis to reasonably question Judge Camacho's
3 impartiality.

4 The first amended Information was filed on February 27, 2012 in the name of then-Attorney
5 General Edward T. Buckingham, and the case was assigned to Judge Wiseman. Almost seven
6 months later, on September 7, 2012, the case was reassigned to Judge Camacho while Ms. Alepuyo
7 served as Acting Attorney General. Subsequently, during Ms. Alepuyo's limited tenure as Acting
8 Attorney General, the only legal document filed in this case bearing her name is the Government's
9 opposition brief to Defendant's motion for disqualification.

10 After Ms. Alepuyo's role changed to the Deputy Attorney General, the Court held a status
11 conference during which Defendant maintained his position that Judge Camacho's disqualification
12 is necessary due to Ms. Alepuyo's continued supervisory role in the prosecutor's office. In
13 response, the Government submitted a memorandum issued by Attorney General Joey P. San
14 Nicolas specifying the powers and duties of Ms. Alepuyo as the Deputy Attorney General. (OAG
15 Memo at 1-2.) None of the enumerated powers and duties permit Ms. Alepuyo to have any role in
16 the prosecution of criminal cases. (*Id.*) Moreover, the prosecutor assigned to this case, Ms.
17 Driscoll, stated in her opposition brief and in open court that Ms. Alepuyo has not discussed this
18 case with Ms. Driscoll nor conducted any work relating to this case.

19 It is well established that recusal is not automatically required when a judge's spouse or
20 close relative is employed by a party to the dispute. *Commonwealth v. Caja*, 2001 MP 6 ¶ 22 (“[A]
21 judge need not recuse himself when members of his family are attorneys for the litigants so long as
22 that family member is not directly involved in the case.”); *see also Sensley v. Albritton*, 385 F.3d
23 591, 599 (5th Cir. 2004); *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 520, 521 (8th Cir. 1998);
24 *Datagate, Inc. v. Hewlett-Packard Co.*, 941 F.2d 864, 871 (9th Cir. 1991); *Hewlett-Packard Co. v.*

1 *Bausch & Lomb, Inc.*, 882 F.2d 1556, 1568 (Fed. Cir. 1989). The determination of whether a judge
2 must recuse himself when the judge's spouse or relative is an attorney in the case is fact-specific
3 and depends on "whether the interest of the judge's spouse and the involvement of that spouse are
4 extensive enough to warrant the judge's recusal." *Caja*, 2001 MP 6 ¶ 24.

5 *Caja* and over a dozen other courts analyzing whether a judge must recuse himself or
6 herself because the judge's spouse or close relative was employed by the prosecutor's office or law
7 firm involved in the litigation answered in the negative. *Adair*, 709 N.W.2d at 575-76 (citing
8 cases). The holdings for these cases cited in *Adair* reasoned that the judge's spouse or relative did
9 not actively participate in the litigation. "Unless the prosecuting attorney appears personally and
10 participates in the action, he is not the attorney or counselor for any party." *People v. Dycus*, 246
11 N.W.2d 326, 327 (Mich. Ct. App. 1976).

12 The instant case is similar to *Commonwealth v. Repeki*, 2004 MP 8. There, the CNMI
13 Supreme Court held that a justice's spousal relationship with the Attorney General did not warrant
14 disqualification in a criminal case. The Court reasoned that the Attorney General was appointed
15 after all strategic actions and procedural decisions were made. *Commonwealth v. Repeki*, 2004 MP
16 8. Therefore, the Attorney General could not have engaged in any meaningful participation in the
17 case. *See id.*

18 Similar to *Repeki*, Ms. Alepuyo was appointed Acting Attorney General well after the first
19 amended Information was filed and after many strategic and procedural actions were made. During
20 Ms. Alepuyo's limited tenure as Acting Attorney General, no action took place in this case other
21 than the instant motion for disqualification. Furthermore, she had no involvement in this case since
22 she purportedly screened herself off from this matter. Even now as the Deputy Attorney General,
23 she works exclusively in the civil division of the Office of the Attorney General. (OAG Memo at
24 1-2.)

1 In addition to scrutinizing the involvement of a judge's spouse or relative in a case for a
2 motion to disqualify, it is also important to analyze the interests involved. "The court may
3 consider: (1) the nature of the attorney's interest in the law firm; (2) whether that interest could be
4 affected by the outcome of the case, and if so, whether it could be substantially affected; and (3) the
5 judge's knowledge regarding the attorney's interest in the firm." *Adair*, 709 N.W.2d at 575.

6 A person working in the attorney general's office has no financial interest in the outcome of
7 a case. Second, the objective of the attorney general's office is to serve justice, not simply to
8 convict defendants. *Adair*, 709 N.W.2d at 576. Therefore, there is a reduced risk of conflict
9 between judges and their relatives in the public sector. *Id.* Along these same lines, *State v.*
10 *Harrell*, 546 N.W.2d 115, 118 (Wis. 1996) provides:

11 Finally, the special characteristics of government attorneys make it
12 unlikely that a judge's relationship with one would affect his or her
13 impartiality. For example, a member of a government prosecutor's
14 office does not have the same type of interest in the outcome of a
15 trial as does a member of a private law firm. See Advisory
16 Committee on Judicial Activities for the Judicial Conference of the
17 United States, Advisory Op. 38, II-104 (1974). The prosecutor has
18 no financial interest in the outcome of the case and any
19 reputational interest "without the financial interest, is not enough
20 to create [even] an appearance of partiality [in the judge]." *State v.*
21 *Logan*, 236 Kan. 79, 689 P.2d 778, 785 (Kan. 1984). The thought
22 that a judge would have an increased propensity to convict
23 criminals because of such a relationship is equally "preposterous."
24 *People v. Moffat*, 202 Ill. App. 3d 43, 560 N.E.2d 352, 361, 148
Ill. Dec. 50 (Ill. App. 1990). Furthermore, a government
prosecutor's sole goal is not simply to convict criminals.

20 A person working in the attorney general's office also has no significant reputational
21 interest in the outcome of a case. *Id.*; *Sensley v. Albritton*, 385 F.3d 591, 600 (5th Cir. 2004)
22 (dismissing the argument that the outcome of a criminal case could have an indirect impact on the
23 employment status for an employee of the attorney general's office); *see IQ Prods. Co. v. Pennzoil*
24 *Prods. Co.*, 305 F.3d 368, 378 (5th Cir. 2002). Here, as the former Acting Attorney General for

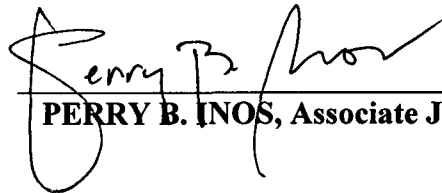
1 less than three months and the current Deputy Attorney General, Ms. Alepuyo has no significant
2 interest in this case to warrant disqualification of Judge Camacho. Furthermore, as discussed
3 above, she has had no personal involvement in this case and continues to be uninvolved.

4 Under the circumstances where Ms. Alepuyo served as Acting Attorney General for a very
5 limited time long after this case was filed and has not participated or appeared in this case, and
6 continues to be screened off, Judge Camacho's impartiality could not be reasonably questioned.

7 **IV. CONCLUSION**

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

10 **IT IS SO ORDERED** this 19th day of December 2012.

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14 **PERRY B. INOS, Associate Judge**