

1 **FOR PUBLICATION**

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

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OPC

CRIMINAL CASE NO. 13-0073(B)

**COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,**

Plaintiff,

v.

AMBROSIO OGUMORO,

Defendant.

**ORDER DENYING
DEFENDANT'S
MOTION TO DISQUALIFY**

INTRODUCTION & BACKGROUND

The Defendant filed a Motion to Disqualify the Judge on September 2, 2014 and placed his own date of hearing thereon for September 3, 2014. Said motion was not properly on the Court's calendar due to it not being consistent with the Com. R. Cr. P. 45, which requires a 5 day period for motions to be heard and the Court's policy that it is the Court and not counsel to set the Court's hearing date. Notwithstanding these improprieties, the Court addressed the motion in general. Absent any objection, the Court stated it would rule on the matter without a hearing. The Government was represented by Prosecutor, George Hasselback. The Defendant appeared with counsel, Edward C. Arriola, Esq.

Defendant's motion urges recusal of the undersigned pursuant to 1 CMC § 3308(a) which states:

A justice or judge of the Commonwealth shall disqualify himself or herself in any proceeding in which his or her impartiality may reasonably be questioned.

Although Defendant states other reasons, that he submits should also form a basis for recusal, they are, in effect, an indirect attack on either the constitutionality, or in his opinion, wrongful procedures of several of the CNMI statutes and rules that govern criminal proceedings in the CNMI.

*OPA
E. Arriola*

1 The Court will not address such concerns in a motion for recusal pursuant to 1 CMC §
2 3308(a), which provides for recusal alleging an appearance of impropriety.

3 The appearance of impropriety that Defendant claims is based on the Court performing
4 judicial functions that it is constitutionally and statutorily authorized and obligated to do. The Court
5 will summarize below the functions that Defendant claims create an appearance of impartiality, and
6 hence, claims are grounds for recusal.

- 7 1. The Court appointed a special prosecutor for this case.
- 8 2. The Court reviewed an Affidavit of Probable Cause supporting an Arrest Warrant for
9 Defendant and issued an Arrest Warrant for Defendant.
- 10 3. Defendant claims that based on the Court's findings of probable cause and the
11 appointment of a Special Prosecutor, an Information was filed charging Defendant
12 with fifteen (15) counts of criminal code violations.

13 **LEGAL STANDARD**

14 Motions seeking disqualification due to a judge's impartiality being reasonably questioned
15 under § 3308(a) have no strict procedural requirements and the motion is not strictly construed
16 against recusal. *Saipan Lau Lau*, 2000 MP 12 ¶ 5 (citing *In re Corrugated Container Antitrust*
17 *Litigation*, 614 F.2d 958, 963 n.9 (5th Cir. 1980)). That is, the challenged judge has the discretion
18 to evaluate and rule on the litigant's motion. *See Tudela*, 2010 MP 6 ¶ 23.

19 In § 3308(a) motions, a trial judge is required to recuse himself when "a reasonable person
20 with knowledge of all the facts would conclude that the judge's impartiality might be questioned."
21 *Saipan Lau Lau*, 2000 MP 12 ¶ 5 (citations omitted). Again, the reasonable person standard is used
22 in order to prevent justice-shopping and to ensure that a justice or judge does not, at the mere sound
23 of controversy, abdicate his or her duty to preside over cases assigned to him or her, including the
24 most difficult cases. *Bank of Saipan*, 2002 MP 16 ¶ 29.

25 Lastly, a judge's duty to sit is as strong as his duty to recuse himself where disqualified. *See*
26 *Maeda Pacific Corp. v. Radiocom Saipan, Inc.*, Civ. No. 13-0112 (NMI Super. Ct. Sep. 17, 2013)
27 (Order Regarding Oral Motion for Recusal) (unpublished).

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DISCUSSION

Accordingly, the Court now addresses whether, under the standards established by § 3308(a) and applicable case law, Judge Wiseman’s impartiality could reasonably be questioned by each of the bare and unsupported allegations contained in the Affidavit filed in Support of Defendant’s Motion.

I. APPOINTMENT OF SPECIAL PROSECUTOR

All Judges of the Superior Court on a very frequent basis appoint the Public Defender’s Office or private counsel to represent a party or parties in criminal, and some other cases before it. In addition, in special situations as in this case the authority exists to appoint a special prosecutor. These acts of appointing counsel to represent a party, on either side, are judicial functions, and therefore, are not extra judicial actions. To attach some notion that there is an appearance of impropriety to such actions is without merit. A reasonable person would look at such actions and view it as a Judge just doing his job.

II. ARREST WARRANT ISSUED FOLLOWING REVIEW OF PROBABLE CAUSE AFFIDAVIT

The second ground stated by Defendant for recusal is that the Judge reviewed an Affidavit of Probable Cause and issued an Arrest Warrant. Judges perform these functions also on a very frequent basis in the Court as well as other times from their homes when police contact them at night, weekends, and other times that are necessary to process an arrest. The fact that a Judge may get the assignment of a case within which he reviewed the Probable Cause Affidavit to issue an Arrest Warrant does not affect the handling of a case by the Judge. It is a very basic and frequent function of a Judge and any reasonable person would see it as such.

It does not in any way create the slightest appearance of impropriety and such claim is also without merit.

III. INFORMATION CHARGED AGAINST DEFENDANT FOLLOWING ARREST WARRANT

With respect to Defendant’s third claim, to wit: Defendant claims that based on the Court’s findings of probable cause and the appointment of a Special Prosecutor, an Information was filed charging Defendant with fifteen (15) counts of criminal code violations.

1 Surely, the fact that a Judge reviews the Affidavit of Probable Cause for an Arrest Warrant
2 and issues an Arrest Warrant does not mean that the person arrested will be charged. In other words,
3 it is not one that automatically flows therefrom. The charging of crimes against a Defendant is within
4 the exclusive province of the Attorney General. Although in many, but not in all cases, an arrest will
5 precede a charging document, and in many cases there are no criminal charges filed after one is
6 arrested. Defendant's attempted logical connection here is erroneous and totally without merit.

7 Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.
8 *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966). In essence, opinions formed by the judge
9 on the basis of facts introduced or events occurring in the course of the current proceedings, or of
10 prior proceedings, do not constitute a basis for recusal or create an appearance of impropriety.
11 Clearly, most matters arising from judicial proceedings are not a proper basis for recusal.

12 To take a common example, litigants (like petitioners here) often seek disqualification based
13 upon a judge's prior participation, in a judicial capacity, in some related litigation. Those allegations
14 are meritless in most instances, and their prompt rejection is important so the case can proceed.
15 Judges, if faithful to their oath, approach every aspect of each case with a neutral and objective
16 disposition. They understand their duty to render decisions upon a proper record and to disregard
17 earlier judicial actions in a case or a contact with a party.

18 A judge's duty to sit is as strong as his duty to recuse himself where disqualified. *See Maeda*
19 *Pacific Corp. v. Radiocom Saipan, Inc.*, Civ. No. 13-0112 (NMI Super. Ct. Sep. 17, 2013) (Order
20 Regarding Oral Motion for Recusal) (unpublished); *Laird v. Tatum*, 409 U.S. 824, 837 (1972) ("A
21 federal judge has a duty to sit where not disqualified which is equally as strong as the duty not to sit
22 where disqualified."); *Clemens v. United States District Court*, 428 F.3d 1175, 1179 (9th Cir. 2005)
23 (internal citation omitted) ("[A] judge has 'as strong a duty to sit where there is no legitimate reason
24 to recuse as he does to recuse when the law and facts require.'").

25 The undersigned acknowledges his duty to sit and finds he cannot recuse absent a legitimate
26 ground. The Court acknowledges that no interaction with Counsel or any of the other attorneys of
27 record in this case, whether in open court or otherwise, could create an appearance of favoritism
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1 toward one party or another. Thus, the Court finds that no reasonable person with knowledge of all
2 the facts would doubt Judge Wiseman's impartiality in light of the extended history of the present
3 case and as a judge in the Commonwealth Superior Court. In fact, the Court further believes that a
4 reasonable person with knowledge of the surrounding facts of this case would find that the Court
5 acted as a neutral and impartial arbiter performing those everyday functions of a Judge.

6 Accordingly, based on the above facts and circumstances claimed by Defendant, the Court
7 finds there is no appearance of impartiality as envisioned by 1 CMC § 3308(a).

8 **IV. REQUIREMENTS FOR MOTIONS FOR RECUSAL**

9 Finally, a motion for recusal should be filed only after a diligent review of all the facts and a
10 sincere belief that the motion is based on solid and meritorious ground. Therefore, the Court must
11 examine whether a reasonable person with knowledge of the surrounding facts of this case would find
12 that the Court's impartiality could reasonably be questioned.

13 Take *Commonwealth v. Diego Mundo*, Crim. No.04-0283 (NMI Sup. Ct. Dec. 28, 2004)
14 (Order Denying Recusal), for example, whereby a party moved to recuse this Court from hearing any
15 further motion pursuant to 1 CMC § 3308(a). At that time, this Court stated,

16 A motion to recuse a judge is not just another procedural or
17 evidentiary motion. It is a direct attack on one of the basic principles
18 of the judiciary, the impartiality of trial courts. A recusal motion is
19 unlike other motions in that the mere filing of the motion impacts
20 unfavorably upon the public's perception of the administration of
21 justice. **As a result of the foregoing principles, a motion for
22 recusal should be filed only after a diligent review of all the facts
23 and a sincere belief that the motion is based on solid and
24 meritorious grounds.**

25 *Id.* at 2. (emphasis added)

26 The Court would be remiss not to remind Defense counsel and all attorneys practicing in this
27 Court of their obligation to the Court as an attorney to diligently review the legal merit or basis of
28 their position prior to filing a motion to recuse a judge, as well as for any other filing.

As stated above, judicial rulings alone almost never constitute a valid basis for a bias or
partiality motion. *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966). A judge is presumed

1 to be impartial, and [Defendant] bears the substantial burden of proving otherwise. *First Interstate*
2 *Bank of Arizona, N.A. v. Murphy, Weir & Butler*, 210 F.3d 983, 985 (9th Cir. 2000).

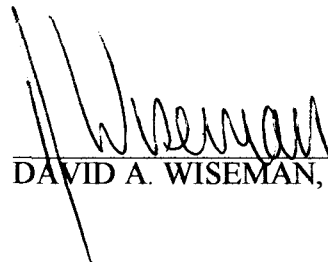
3 Here, such observations made in Court and commented on by the Court is information that
4 was available to the public and did not come from an extrajudicial source, and therefore, does not
5 constitute grounds for recusal. As such, Defendant has failed to carry his burden and thus, failed to
6 demonstrate a right to recusal.

7 **CONCLUSION**

8 Thus, in ruling on the merits of the portion of Counsel's motion brought under § 3308(a), the
9 Court finds that no reasonable person with knowledge of all the facts would conclude that Judge
10 Wiseman's impartiality might be questioned.

11 As such, Defendant's Motion to Recuse is hereby **DENIED**.

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13 So **ORDERED** this 9th day of October, 2014.

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17 DAVID A. WISEMAN, Associate Judge
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