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FOR PUBLICATION

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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

**EDITH ELEANOR DELEON
GUERRERO,**

Defendant.

TRAFFIC CASE NO. 16-02199

**ORDER DENYING COMMONWEALTH'S
MOTION AS IT IS WHOLLY DEFICIENT
AND FAILED TO ARTICULATE THE
LEGAL BASIS FOR THE MOTION**

I. INTRODUCTION

This matter came before the Court on January 31, 2018 on the Commonwealth's Motion for Clarification of Law. The Commonwealth was represented by Assistant Attorney General J. Robert Glass, Jr. The Defendant, Edith Eleanor Deleon Guerrero, was present and represented by Assistant Public Defender Heather Zona.¹

Based on a review of the filings, oral arguments, and applicable law, the Court **DENIES** the Commonwealth's Motion for Clarification of Law.

II. BACKGROUND

The Defendant is charged with three violations related to Restriction Upon Use of Government Vehicles: having tinted windows on government vehicle in violation of 1 CMC § 7406(e); failing to properly mark a government vehicle in violation of 1 CMC § 7406(f); and,

¹ At the time of the citation, the Defendant was the Secretary of the Department of Labor. Later, the Defendant became unemployed and thus eligible for representation by the Office of the Public Defender.

1 failing to put government license plates on a government vehicle in violation of 1 CMC §
2 7406(g)(1).

3 On June 5, 2017, the Commonwealth filed its Motion for Clarification of Law. The
4 Commonwealth directs the Court to this Court’s order in *Commonwealth v. Sablan*, Traffic No. 15-
5 00305. In *Sablan*, this Court analyzed the definition of “government vehicle” in 1 CMC §
6 7406(a)(2), finding that a “government vehicle” is “a vehicle owned by the Commonwealth
7 government or leased by the Commonwealth government for more than twelve months.” *Sablan*,
8 (NMI Super. Ct. Jan. 8, 2016) (Order Denying Defendant’s Motion to Dismiss as 1 CMC § 7406 Is
9 Not Unconstitutionally Vague As Applied, As a Government Vehicle Is A Vehicle Owned Or
10 Leased by the Commonwealth Government at 5) (hereinafter “*Sablan* Superior Court Order”).²

11 The matter proceeded to trial and the defendant in *Sablan* was ultimately acquitted, and the
12 Commonwealth appealed the acquittal, arguing that the Court had invalidated 1 CMC § 7406(a)(2).
13 *Commonwealth v. Sablan*, 2016 MP 12 ¶¶ 2-3, 12 (hereinafter “*Sablan* Supreme Court Opinion”).
14 The Commonwealth Supreme Court held that the Superior Court did not invalidate Section
15 7406(a)(2), but rather had “engaged in statutory interpretation to determine whether Sablan’s
16 conduct violated 1 CMC §§ 7406(e), (f), and (g)(2).” *Id.* ¶ 13. The Commonwealth Supreme Court
17 ultimately sanctioned the Office of the Attorney General for filing a frivolous appeal. *Id.* ¶¶ 15, 20.

18 The Commonwealth filed a motion for reconsideration³ of the Commonwealth Supreme
19 Court’s opinion in *Sablan*, which the Commonwealth Supreme Court addressed on January 16,
20 2018, denying the motion for reconsideration as to whether the Commonwealth had grounds to
21 appeal, but granting the motion as to its imposition of sanctions on the Office of the Attorney

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23 ² 9 CMC § 1103(e) defines the owner of a motor vehicle as “the government, when entitled to the possession and use of
a vehicle under a lease, lease-sale, or rental-purchase agreement for a period of 12 months or more.”

24 ³ The Commonwealth Supreme Court described the Commonwealth’s motion as a motion for reconsideration, rather
than a petition for rehearing. *Commonwealth v. Sablan*, (NMI Sup. Ct. Jan. 16, 2018) (Order).

1 General. *Commonwealth v. Sablan*, (NMI Sup. Ct. Jan. 16, 2018) (Order) (hereinafter “*Sablan*
2 Supreme Court Order”).

3 The Commonwealth’s Motion for Clarification of Law, then, moves the Court to “provide
4 clarification on how it intends to interpret ‘Government Vehicle.’” Mot. for Clarification at 5. Since
5 the Motion for Clarification of Law in the present case was filed before the Commonwealth
6 Supreme Court issued the *Sablan* Supreme Court Order, the Commonwealth sought clarification on
7 whether this Court would follow its prior interpretation of “government vehicle,” which the
8 Commonwealth believed to be incorrect. Mot. for Clarification at 1-2. The Defendant filed her
9 Response to the Government’s Motion for Clarification of Law on November 27, 2017. The
10 Commonwealth filed its reply on January 5, 2018.

11 III. DISCUSSION

12 A. The Commonwealth Fails to Provide Legal Basis For Its Motion

13 Before turning to any potential interpretation or re-interpretation of the definition of
14 “government vehicle,” the Court must first turn to the threshold issue of whether the Court may
15 even rule on the Commonwealth’s Motion for Clarification of Law. The Defendant argues that the
16 Commonwealth “does not present a single rule, statute, or case giving the legal authority to bring its
17 motion for clarification.” Def.’s Resp. at 2. The Commonwealth, in its reply, argues that its motion
18 for clarification is proper pursuant to NMI R. Crim. P. 12(b) (hereinafter “Rule 12(b)”). Reply at 1.

19 Rule 12(b) allows “[a]ny defense, objection, or request which is capable of determination
20 without the trial of the general issue may be raised before trial by motion.” NMI R. Crim. P. 12(b).
21 Rule 12(b) then lists a number of motions which *must*⁴ be raised prior to trial, including motions
22 related to defects in prosecution, defects in the complaint, motions to suppress, discovery motions,

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4 “The following must be raised prior to trial...” NMI R. Crim. P. 12(b).

1 and severance motions. NMI R. Crim. P. 12(b)(1)-(5). Generally, these motions are made by the
2 defense. Although “requests” are listed as a type of pretrial motion, often these “requests” are
3 requests for translators or requests that parties or counsel appear telephonically, which do not
4 require the opposing party to file oppositions.

5 A party submitting a motion “*shall state with particularity* the grounds therefor, and *shall*
6 set forth the relief or order sought.” NMI R. Civ. P. 7(b)(1) (emphasis added). If the motion
7 “involves a question of the interpretation of law,” the movant “*shall . . . file together with the*
8 motion a separate memorandum of reasons, including citation of supporting authorities, why the
9 motion should be granted.” NMI R. Prac. 8(a)(1) (emphasis added). The motion must contain legal
10 arguments and analysis, and “[a]n issue is insufficiently developed if it is raised in a conclusory
11 manner, or when the overall analysis of the issue is so lacking as to shift the burden of research and
12 argument to the reviewing court.” *Commonwealth v. Guiao*, 2016 MP 15 ¶¶ 12-13 (internal
13 citations and quotation marks omitted). “Asserting a contention, citing a case, then offering a
14 conclusion, without offering applicable analysis, is deficient.” *Id.* ¶ 13 (citation omitted).

15 The Commonwealth’s argument regarding whether its Motion for Clarification is
16 permissible is a brief quote from Rule 12(b): “any defense, objection, or *request* which is capable of
17 determination without the trial of the general issue may be raised before trial by motion. Motions
18 may be written or oral at the discretion of the judge.” Reply at 1 (emphasis in original). The
19 Commonwealth’s sole argument as to how this motion is proper is to quote Rule 12(b) with the
20 word “request” italicized.

21 The Commonwealth has failed to articulate the legal authority for how its Motion for
22 Clarification of Law is a proper 12(b) “request” filed for the Court’s consideration. Instead of
23 properly articulating how this motion is a proper “request” pursuant to Rule 12(b), the
24 Commonwealth’s argument emphasized that the Commonwealth Supreme Court had yet to rule in

1 *Sablan*, arguing that “[d]ue to the uncertainty of how the Supreme Court may choose to rule, the
2 law is not conclusive at this point which is why the Commonwealth seeks clarification from the
3 Trial Court as to which framework will be used for the trial.” *Id.* at 2.

4 The Commonwealth’s Motion for Clarification is so wholly deficient of supporting legal
5 authority that the “motion” could be any of a variety of improper motions. First, the motion could
6 be an improper motion for reconsideration of this Court’s order in *Sablan*. Second, the motion
7 could be some other kind of improper collateral attack on this Court’s order in *Sablan*. Third, the
8 motion could be an improper certified question filed with the Commonwealth Superior Court rather
9 than in the Commonwealth Supreme Court.⁵ Fourth, the motion could be an improper motion
10 moving that the Court do legal research for the Commonwealth. Fifth, the motion could be an
11 improper Order to Show Cause demanding that the undersigned judge explain himself to the Office
12 of the Attorney General because of this Court’s order in *Sablan*. In short, the Commonwealth’s
13 motion for clarification is so wholly deficient of legal authority that it is impossible for the Court to
14 guess what type of motion the Commonwealth is making. All of these potential motions are
15 procedurally improper and cannot be brought in this fashion.

16 The Commonwealth has failed to articulate why this motion is proper, beyond a basic
17 quotation of the rule. Merely quoting Rule 12(b) with italics added, without explaining what a
18 “request” is pursuant to Rule 12(b), and without explaining why this motion is proper pursuant to
19 Rule 12(b), is not legal analysis. “A party must take the step to apply the facts of the case to the
20 authorities offered in a non-conclusory manner.” *Guiao*, 2016 MP 15 ¶ 13 (citation omitted). In
21 *Guiao*, the appellant’s attorney at least attempted to provide legal citations, although the cases were

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23 ⁵ Certified questions to the Commonwealth Supreme Court are addressed in Rules 13 and 14 of the Northern Mariana
24 Islands Supreme Court Rules, and the proper venue for certified questions is the Commonwealth Supreme Court. The
Court’s reference to “certified questions” filed in the Commonwealth Supreme Court is not meant to be any indication
of whether or not this topic could be a proper certified question pursuant to Rules 13 or 14 of the Northern Mariana
Islands Supreme Court Rules.

1 not on point—and even then, the Commonwealth Supreme Court found the pleadings deficient. *Id.*
2 ¶¶ 15-18. Here, there is no legal analysis or arguments as to how this motion is proper under Rule
3 12(b) beyond a quotation with italics added.⁶ Although the Court “will, at times, supplement or
4 extend legal arguments as needed with research . . . [the Court] will not construct [a case] . . . out of
5 whole cloth.” *Id.* ¶ 19 (internal citation and quotation marks omitted). Without any analysis, it is
6 unclear how this motion, which could be one of any number of improper requests, is a proper
7 motion for the Court to rule on.

8 Accordingly, the Court need not reach the issue of whether the Commonwealth has standing
9 to bring this motion, nor whether the Court will consider the issue of the interpretation of the
10 meaning of “government vehicle.”

11 **B. The Court Reminds Counsel of his Duty of Candor to the Tribunal and Duty of**
12 **Diligence**

13 The Court takes this opportunity to remind counsel of his duty of candor to the tribunal and
14 duty of diligence. At the January 31, 2018 hearing, the Commonwealth’s attorney repeatedly
15 emphasized that *Commonwealth v. Sablan* was still awaiting rehearing at the Commonwealth
16 Supreme Court, specifically on the issue of the definition of “government vehicle.”

17 First, the Court emphasizes that, even if *Sablan* was awaiting rehearing at the time of the
18 January 31, 2018 hearing on this motion, that the Commonwealth Supreme Court’s opinion in
19 *Sablan*, 2016 MP 12, is valid law until it is either reconsidered or overturned. Second, the Court
20 notes that the Commonwealth’s attorney misrepresented the status of *Sablan* in the Commonwealth
21 Supreme Court. In fact, the Commonwealth Supreme Court had already issued an order regarding

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24 ⁶ While the Commonwealth did provide analysis as to why it believes this Court ruled incorrectly in *Sablan*, the Commonwealth provided no analysis of the facts and law to explain why this motion is a proper motion that the Court may rule on.

1 the motion for reconsideration in *Sablan*.⁷ The Commonwealth’s attorney repeatedly stated that the
2 Commonwealth Supreme Court was still considering the Commonwealth’s motion for rehearing
3 and that the Commonwealth Supreme Court would be deciding the exact issue of what constitutes a
4 “government vehicle.” This representation was wholly incorrect, since the Commonwealth Supreme
5 Court had issued an order regarding the motion for reconsideration sixteen days earlier, and the
6 *Sablan* Supreme Court Order did not address the definition of “government vehicle.”

7 The Office of the Attorney General handles both *Sablan* and the present case. The
8 representations made by the Commonwealth’s attorney, that there had been no ruling in *Sablan*,
9 was simply not true. The Commonwealth’s attorney failed to do his due diligence regarding *Sablan*,
10 a separate case handled by his office that he relied on in his brief. The Commonwealth’s attorney
11 misrepresented the status of *Sablan*, which the Commonwealth alleged to be fundamental to its
12 motion. The Court admonishes the Commonwealth’s attorney and reminds him to be cognizant of
13 his duty of candor toward the tribunal pursuant to ABA Model Rules of Professional Conduct Rule
14 3.3, and his duty of diligence, pursuant to ABA Model Rules of Professional Conduct Rule 1.3.

15 **IV. CONCLUSION**

16 Accordingly, because the Commonwealth provided no legal basis for why it may bring this
17 motion, the Commonwealth’s Motion for Clarification of Law is **DENIED**.

18 **SO ORDERED** this 13 day of February, 2018.

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21 **JOSEPH N. CAMACHO**, Associate Judge

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23 ⁷ The Court takes judicial notice of an order issued by the Commonwealth Supreme Court in *Sablan* on January 16,
24 2018. In the January 16, 2018 *Sablan* Supreme Court Order, the Commonwealth Supreme Court did not touch on
whether the Superior Court’s interpretation of “government vehicle” was proper. Instead, the *Sablan* Supreme Order
dealt with whether the Commonwealth had the right to appeal in *Sablan*, and whether sanctions were appropriate.
Sablan Reconsideration Order.