

1
2
3 **FOR PUBLICATION**
4

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

8 COMMONWEALTH OF THE NORTHERN
9 MARIANA ISLANDS,

10 Plaintiff,

11 v.

12 BERNARDINO DIZON,

13 Defendant.

CRIMINAL CASE No. 03-0005E

**ORDER GRANTING REQUEST FOR
SPECIFIC NOTICE OF INTENT TO
INTRODUCE OTHER ACT EVIDENCE**

14 **I. INTRODUCTION**

15 THIS MATTER came before this Court on July 8, 2003 for a hearing on Defendant's *Motion*
16 *Requesting Prosecution To Provide Specific Notice of Any Intent to Attempt to Introduce Other Act*
17 *Evidence*. The Commonwealth was represented by Assistant Attorney General Alex Shapiro. The
18 Defendant was represented by Assistant Public Defender Mitchell J. Ahnstedt.

19 **II. FACTS**

20 The Defendant contends there is reason to believe that the Commonwealth will introduce "other
21 acts" evidence as defined in Com. R. Evid. 404(b). At this time it is unclear specifically what the intended
22 evidence is. The Defendant bases his motion on FED. R. EVID. 404(b), which was amended in 1991 to
23 include a notice requirement on behalf of the prosecution when they intend to introduce other acts evidence.
24 Com. R. Evid. 404(b) is identical to FED. R. EVID. 404(b) save the 1991 amendment language. Currently,
25 the final draft of the Proposed Rules of Evidence, as designated by The Committee on Commonwealth
26 Rules of Evidence, alters the current Commonwealth rule to add the prosecution notice requirement.

27 **III. DISCUSSION**

28 The Rules of Evidence are construed to secure fairness and prevent delay. Com. R. Evid. 102.
The Court possesses the "authority to fashion evidentiary procedures to deal with situations not specifically

1 covered by the Rules.” See FED. R. EVID. 102 (Commentary by Stephen A. Satzberg, Daniel J. Copra,
2 and Michael M. Martin).¹ Rules of evidence cannot simply be abandoned, but FED. R. EVID. 102 provides
3 some manner of flexibility in the interpretation of evidentiary rules. *Id.* This Court has continually followed
4 the spirit of the Commonwealth Rules of Evidence, which were patterned after the Federal Rules of
5 Evidence.

6 Commonwealth Rules of Evidence 404(b) states:

7 Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not
8 admissible to prove the character of a person in order to show that he acted in conformity
9 therewith. It may, however, be admissible for other purposes, such as proof of motive,
opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or
accident.

10 Federal Rules of Evidence 404(b) states:

11 Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible
12 to prove the character of a person in order to show action in conformity therewith. It may,
13 however, be admissible for other purposes, such as proof of motive, opportunity, intent,
14 preparation, plan, knowledge, identity, or absence of mistake or accident, *provided that*
15 *upon request by the accused, the prosecution in a criminal case shall provide*
16 *reasonable notice in advance of trial, or during trial if the court excuses pretrial*
17 *notice on good cause shown, of the general nature of any such evidence it intends to*
18 *introduce at trial.* (emphasis added)

19 In 1991, FED. R. EVID. 404(b) was amended to add the notice requirement of specific, bad, or
20 other act evidence. The amendment added “provide reasonable notice in advance of trial, or during trial
21 if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it
22 intends to introduce at trial.” The purpose of the amendment was “to reduce surprise and promote early
23 resolution on the issue of admissibility” of prior crimes, wrongs or acts in criminal cases. *Id.* (Notes of
24 Advisory Committee on December 1991 amendment). Courts have the power to determine preliminary
25 questions of admissibility. Com. R. Evid. 104(a). Before admitting evidence under Com. R. Evid. 404(b),
26 the Court is required to perform a Com. R. Evid. 403 balancing test in order to determine if the intended
27 evidence’s prejudice substantially outweighs its probative value. *Commonwealth v. Brel*, 4 N.M.I. 200,
28 203 (1999). Introduction of other acts evidence is a preliminary question that the court must evaluate in
terms of prejudicial and probative nature.

¹ Com. R. Evid. 102 is patterned after, and substantially identical to, FED. R. EVID. 102.

1 The Federal Rules of Evidence often provide guidance to this Court in rendering decisions. As a
2 close counterpart to our own Commonwealth Rules, the Federal Rules can aid in the interpretation of our
3 rules, and as such, are highly persuasive. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179, 184
4 (1990). To not use or advocate the use of Federal Rules would impact the expediency and thoroughness
5 of a court's adjudication. While this Court does not state here today that it will adopt wholesale
6 amendments to the Federal Rules, it will do so where the process of adjudication is improved. Where
7 judicial efficiency and fairness concerns are present the Court will consider the application of amendments
8 not adopted in the Commonwealth in certain instances. Application of amended Federal Rules can be
9 supported here, with the potential amendment of our Commonwealth Rules by the Committee on
10 Commonwealth Rules. Amendments to the rules of evidence and criminal procedure are frequently
11 adopted for the purpose of refining the process. They reflect the import of fairness and certain process
12 concerns that have been analyzed through the common law. Today this Court holds that where an
13 amendment to a Federal Rule has not yet been implemented in the Commonwealth, this Court will consider
14 its application in matters where necessary.

15 **IV. ORDER**

16 The Defendant's *Motion Requesting Notice of Intent to Introduce Other Act Evidence* is
17 **GRANTED**. The Commonwealth is hereby ordered to comply with the request for other act evidence
18 disclosure. The Court maintains its authority to determine whether such a request made by the accused
19 is reasonable.

20
21 **SO ORDERED** this 14th day of July 2003.

22
23
24 /s/
25 David A. Wiseman
26 Associate Judge
27
28