

1 **FOR PUBLICATION**

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7 **IN THE SUPERIOR COURT**  
8 **OF THE**  
9 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

10 **COMMONWEALTH OF THE NORTHERN ) CRIMINAL CASE NO. 04-0116(T)**  
11 **MARIANA ISLANDS, )**  
12 **Plaintiff, ) ORDER GRANTING THE**  
13 **v. ) COMMONWEALTH’S MOTION**  
14 **LI GUANG HUI, ) TO DISMISS INFORMATION**  
15 **Defendant. )**  
16 \_\_\_\_\_ )  
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19 **I. INTRODUCTION**

20 This matter came before the Court October 8, 2004, for a Bench Trial, at which time the  
21 Commonwealth moved to Dismiss the Information without prejudice. The Commonwealth was  
22 represented by Grant D. Sanders. Defendant was represented by Douglas Hartig, Assistant Public  
23 Defender.  
24

25 The trial date previously was set for October 8, 2004. On this day of trial the Government  
26 informed the Court that they were not ready to proceed and did not have their witnesses. Defendant  
27

1 was ready and at the public's expense had two interpreters travel from Saipan.

## 2 **II. DISCUSSION**

3 Defendant objected to a dismissal without prejudice, and preferred it to be with prejudice.  
4 Although neither counsel referred to the rule governing dismissal of a case, the Court finds it  
5 necessary to discuss the rule and its ramifications.  
6

### 7 **A. Dismissal Pursuant to Rule 48(a)**

8 Rule 48 of the Commonwealth Rules of Criminal Procedure provides a mechanism for the  
9 Government to dismiss charges against a defendant, stating, in pertinent part: "(a) By Attorney for  
10 the Government. The attorney for the government may by leave of court file a dismissal of an  
11 information or complaint and the prosecution shall thereupon terminate. Such a dismissal may be  
12 filed during the trial without the consent of the defendant." Com. R. Crim. P. 48(a).  
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14 Because the Commonwealth Rules of Criminal Procedure are patterned after the Federal  
15 Rules of Criminal Procedure, interpretations of the federal rules are instructive. *Commonwealth v.*  
16 *Ramangmau*, 4 N.M.I. 227, 233 n.3 (1995). Rule 48(a) of the Federal Rules of Criminal Procedure  
17 differs from our local rule in that it requires the consent of the defendant if the dismissal is filed  
18 during trial, while our rule does not so require. However, federal interpretation of the court's  
19 discretion under this rule is still instructive.  
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### 21 **1. Leave of Court**

22 The "leave of court" language in the rule encompasses a court's limited discretion to deny  
23 the government's request to dismiss charges, consistent with separation of powers. The prosecutorial  
24 function of a criminal case is historically within the province of the Executive Branch. However,  
25 the "leave of court" language in Rule 48(a) permits a court to exercise discretion as to whether a  
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1 pending prosecution should be terminated and whether it should be with or without prejudice, if so  
2 terminated. The principal object of the “leave of court” requirement is apparently to protect a  
3 defendant against prosecutorial harassment, *e.g.*, charging, dismissing, and recharging.  
4

5 **III. CONCLUSION**

6 Defendant was ready for his trial, which would have occurred, but for the Government’s not  
7 being prepared to go forward. Under such circumstances, the Court finds good cause to deviate from  
8 the usual standard of dismissal under Rule 48, which is without prejudice, and dismiss the case with  
9 prejudice. A defendant charged in a criminal case should not have to be in an indefinite period of  
10 uncertainty as to whether or not he or she will be recharged some day.  
11

12 This case is hereby **DISMISSED WITH PREJUDICE**.

13 Any bail posted shall be returned to the bailor and any documents surrendered as a condition  
14 of pretrial release shall be returned.

15 So **ORDERED** this 15th day of November 2004.

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18 /s/ \_\_\_\_\_  
19 DAVID A. WISEMAN  
20 Associate Judge  
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