

1 **FOR PUBLICATION**

2
3 **IN THE SUPERIOR COURT**
4 **OF THE**
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **COMMONWEALTH OF THE NORTHERN) CRIMINAL CASE NO. 04-0283T**
7 **MARIANA ISLANDS,)**
8 **Plaintiff,)**
9 **v.)**
10 **DIEGO S MUNDO,) ORDER DENYING RECUSAL**
11 **Defendant.)**
12 _____)

13 **BACKGROUND**

14
15 **THIS MATTER** came before the Court on December 28, 2004 at 9:00 a.m. in courtroom
16 223A pursuant to Defendant’s motion to disqualify this Court from handling this case. Assistant
17 Attorney General Grant D. Sanders, appeared on behalf of the Government. Public Defender
18 Douglas Hartig, Esq., appeared on behalf of Defendant DIEGO S. MUNDO.

19 **DISCUSSION**

20 **A. *Recusal Standard***

21
22 Defendant has moved this court pursuant to 1 CMC § 3308(a) and § 3309 for this court to
23 recuse itself in this matter.

24
25 A Commonwealth of the Northern Mariana Islands Judge is not, and should not be, immune
26 from questions about impartiality or other misconduct. The lack of such immunity is amply
27 demonstrated by the mere existence of 1 CMC § 3308 and § 3309. However, a motion to recuse a

1 judge is not just another procedural or evidentiary motion. It is a direct attack on one of the basic
2 principles of the judiciary, the impartiality of trial courts. A recusal motion is unlike other motions
3 in that the mere filing of the motion impacts unfavorably upon the public's perception of the
4 administration of justice. *See Ramirez v. State Bar of California*, 619 P.2d 399, 406 (Cal. 1980). As
5 a result of the forgoing principles, a motion for recusal should be filed only after a diligent review
6 of all the facts, and with a sincere belief that the motion is based on solid and meritorious grounds.
7

8 Pursuant to 1 CMC § 3308(a), “[a] justice or judge of the Commonwealth shall disqualify
9 himself or herself in any proceeding in which his or her impartiality might reasonably be
10 questioned.” The test for recusal is “whether a reasonable person with knowledge of all the facts
11 would conclude that the judge’s impartiality might reasonably be questioned.” *Saipan Lau Lau Dev.*
12 *Co. v. Superior Court (San Nicolas)*, 2000 MP 15 ¶ 15 (*citing Milgard Tempering, Inc. v. Selas*
13 *Corp. of Am.*, 902 F.2d 703, 714 (9th Cir. 1990); *see also Commonwealth v. Kaipat*, 1996 MP 20
14 ¶ 14, 5 N.M.I. 36, 38. Since the Commonwealth statute is fashioned after the federal disqualification
15 statute found at 28 U.S.C. § 455(a), the court may look to federal law for guidance when interpreting
16 local statutory law. *In re Magofna*, 1 N.M.I. 449, 453-54 (1990).
17
18

19 As grounds for the Defendant’s motion he has erroneously stated that in Criminal Case No.
20 01 -0692T this Court sentenced Defendant for several misdemeanors. Defendant further stated that
21 this Court found the Defendant, in a prior proceeding, guilty of contempt of court and sentenced
22 Defendant to the maximum sentence allowable therefor.
23

24 First, the only case that this Defendant was convicted and sentenced by this Court for was
25 Criminal Case No. 01 -0398T, not Criminal Case No. 01-0692T as stated by Defendant.
26

27 Second, there were not several misdemeanors that this Court sentenced Defendant for, but
28

1 rather only two: resisting arrest and disturbing the peace.

2 And lastly, the Court has never found Defendant in contempt of court nor sentenced him for
3 contempt. According to Defendant this act, which never occurred, is the basis for the claimed
4 hostility the Court is alleged to have toward Defendant, and hence, Defendant's claim that the
5 Court's impartiality may reasonably be questioned.
6

7 Since part of the basis for Defendant's claimed hostility of this Court are acts that did not
8 occur, there is no sound basis for recusal. However, even if such acts did occur, it would not
9 constitute grounds for recusal under well settled case law, for the reasons stated below.
10

11 Defendant, however, correctly stated that at a recent hearing the Court said that Defendant
12 had missed court dates, had slept during a trial and had appeared to be drunk during at a court
13 hearing, and that Defendant had otherwise displayed inappropriate behavior during court
14 proceedings. Such observations made in court and commented on by the Court are information that
15 is available to the public and did not come from an extraneous source, and therefore, does not
16 constitute grounds for recusal.
17

18 Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.
19 *See United States v. Grinnell Corp.*, 384 U.S. 563, 583, 86 S. Ct. 1698, 1710, 16 L. Ed. 2d 778, 793
20 (1966). In addition,

21 opinions formed by the judge on the basis of facts introduced or events occurring in
22 the course of the current proceedings, or of prior proceedings, do not constitute a
23 basis for a bias or partiality motion unless they display a deep-seated favoritism or
antagonism that would make fair judgment impossible.

24 *Liteky v. United States*, 510 U.S. 540, 554, 114 S. Ct. 1147, 1157, 127 L. Ed. 2d 474, 491 (1994).

25 *See also United States v. Monaco*, 852 F.2d 1143, 1147 (9th Cir. 1988) (holding that a judge's
26 impartiality could *not* be attacked "on the basis of information and beliefs acquired while acting in
27

1 his or her judicial capacity”).

2 Any knowledge that the Court has regarding this Defendant was gained through the prior
3 judicial handling of Defendant’s case.

4 The Supreme Court has articulated the following rule:

5 [J]udicial remarks . . . that are critical or disapproving of, or even hostile to, counsel,
6 the parties, or their cases, ordinarily do not support a bias or partiality challenge.
7 They *may* do so if they reveal an opinion that derives from an extrajudicial source;
8 and they *will* do so if they reveal such a high degree of favoritism or antagonism as
9 to make fair judgment impossible.

10 *Liteky*, 510 U.S. at 555, 114 S. Ct. at 1157, 127 L. Ed. 2d at 491.

11 Further, pursuant to 1 CMC § 3308(a), and the relevant case law, a justice or judge is only
12 under a duty to disqualify himself or herself in any proceeding in which his or her impartiality might
13 *reasonably* be questioned.

14 A judge is presumed to be impartial, and the petitioner bears the substantial burden of
15 proving otherwise. *Hirsh v. Justices of Supreme Court of Cal.*, 67 F.3d 708, 713 (9th Cir. 1995)
16 (*quoting Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 1464, 43 L. Ed. 2d 712, 723-24
17 (1975)); *First Interstate Bank of Ariz., N.A. v. Murphy, Weir & Butler*, 210 F.3d 983, 985 (9th Cir.
18 2000). In this case Defendant has, indeed, failed to carry this burden and thus fails to demonstrate
19 a right to recusal.
20

21 **CONCLUSION**

22 For the foregoing reasons, Defendant’s Motion to Recuse is hereby **DENIED**.
23 So **ORDERED** this 28th day of December 2004.
24

25
26 /s/
27 DAVID A. WISEMAN, Associate Judge