

1 **FOR PUBLICATION**

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

6 **COMMONWEALTH OF THE**
7 **NORTHERN MARIANA ISLANDS,**

8 **Plaintiff,**

9 **vs.**

10 **ZHANG, CUI YANG,**

11 **Defendant.**

) **CRIMINAL CASE NO. 04-0083E**

) **ORDER DENYING PROSECUTION’S**
) **MOTION TO AMEND**

12
13 This matter came before the Court on February 15, 2005, pursuant to the Government’s oral
14 request for leave to amend the Information filed against Defendant, Cui Yang Zhang (“Zhang” or
15 “Defendant”). Rebecca Warfield, Assistant Attorney General, made the motion on behalf of the
16 Government. Angela Krueger of the Public Defender’s office was present for the Defendant.

17 The initial Information was filed February 24, 2004, alleging one count Assault & Battery,
18 and one count Disturbing the Peace. A penal summons was served on Zhang August 5, 2004.
19 Thereafter, Presiding Judge Robert Naraja issued a Case Management Order, dated August 30, 2004,
20 authorizing the Government to amend the Information, without permission of the court, within 21
21 days of the Order. As such, the Government had until September 20, 2004 to amend the Information
22 at the Government’s discretion. The Government failed to amend the Information until November
23 18, 2004, at which time the Government added one count of Assault with a Deadly Weapon. *See*
24 *First Amended Information*. The Amended Information was not accompanied by a Request for
25 Leave to Amend and such motion was not filed until February 7, 2005. The Government cites “the
26 best interests of the Commonwealth” as its purpose for amending the Information, but offers no
27 explanation for its failure to comply with the Case Management Order’s deadline, nor does the
28 Government allege that any new information precipitated the Amended Information.

1 An Information provides a defendant notice of the offense charged so that he may prepare,
2 in advance of trial, an informed and effective defense. *See e.g. Garcia v. Texas*, 981 S.W.2d 683,
3 685 (Tex. Crim. App. 1998). Once an Information is filed against a defendant, the prosecution is
4 formally handing the case to the Court. The Court then has inherent authority to manage its calendar
5 concerning the case, and likewise issue a case management order. This inherent right is designed
6 to ensure that at some point, the charges against the defendant(s) will be fixed, and is reflected in
7 Rule 7(e), which allows an Information to be amended at any time before verdict *with the court's*
8 *permission* and only "if substantial rights of the defendant are not prejudiced." Com. R. Crim. P.
9 7(e).

10 Here, the matter was scheduled to go to trial on April 4, 2005. The Case Management Order
11 gave the Government until the end of September 2004, to file an amended Information without
12 seeking leave of the Court. The Defendant prepared his defense and made his decisions based on
13 the Information charging Assault & Battery and Disturbing the Peace. Not until February 15, 2005,
14 nearly a year after the first Information was filed, and only a short time before the scheduled trial,
15 the Government sought to amend the Indictment to include a felony offense. While an amendment
16 is freely given, and the Defendant here does not allege any specific prejudice, the Government offers
17 no explanation whatsoever for completely disregarding the Case Management Order. Without any
18 reason for the delay in amending the Order, the Court will not allow the Government to amend an
19 Information at anytime it chooses. To do so would undermine the Court's ability to control its
20 docket, as well as potentially disrupt the agreed-upon course of action, prejudice the Defendant, and
21 reward the indolent.

22 The Government's Motion is hereby **DENIED**.

23
24 So ORDERED this 22nd day of April 2005.

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