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**FOR PUBLICATION**

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

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **MD. SAIFUL ISLAM, MUNNAF MIAH,** )  
 **MINTO MINTO, and MARIA AURELIA** )  
 **RAY** )  
 )  
 **Defendants.** )  
 )  
 \_\_\_\_\_ )

**Criminal Action No. 07-0088E**

**RULING AND ORDER:**

**DENYING DEFENDANT’S MOTION  
TO DISMISS**

**GRANTING DEFENDANT’S MOTION  
FOR JURY TRIAL**

THIS MATTER CAME FOR HEARING at December 20, 2007 in Courtroom 223A. Counsel Steve Woodruff appeared on behalf of Defendants MD. Saiful Islam and Munnaf Miah. Counsel Jed Horey appeared on behalf of Defendant Maria Aurelia Ray. Counsel Steve Pixley appeared on behalf of Defendant Minto Minto. Assistant Attorney General Melissa Sims appeared on behalf of the Commonwealth. The hearing was conducted pursuant to several motions filed by Maria Ray and joined partly by her co-defendants by and through counsel. Specifically, Ms. Ray requested dismissal of all charges on the grounds that the underlying statute of which she is accused of conspiring with her co-defendants to violate is unconstitutional per the substantive due process clause and per the equal protection clause of the fourteenth amendment of the U.S. Constitution and

1 article one of the CNMI Constitution. Moreover, Ms Ray requested that the information against her  
2 be dismissed because it failed to accurately set out each of the elements to each of the offenses of  
3 which she is charged. Lastly, Ms. Ray has requested that she receive a jury trial on all counts should  
4 the Court decide not to dismiss the information against her. The Commonwealth has opposed each  
5 request in writing and at hearing.

## 7 **FACTS**

8 According to the information filed against Ms. Ray is charged with two counts of Conspiracy  
9 to Commit Marriage Fraud and two counts of Solicitation. According to Count I, Ray violated 6  
10 CMC § 303(a), by doing the following:

11 [W]ith the intention to promote and facilitate the commission of the crime of Marriage  
12 Fraud, unlawfully agree with [her co-defendants] to commit the offense of marriage fraud  
13 (3 CMC § 4366), did unlawfully agree with each other to commit the offense of Marriage  
14 Fraud (3 CMC § 4366), to wit: defendants did unlawfully agree that Md. Saiful would  
15 marry Alsiyno Mallens for the sole purpose of obtaining a labor or immigration benefit  
16 ... and that one or more of them committed an overt act in pursuance of such conspiracy,  
17 in violation of 6 CMC § 303(a), punishable by 6 CMC § 304(b) and 3 CMC § 4366.

18 According to Count II, Ray violated 6 CMC § 303(a) by doing the following:

19 [W]ith the intention to promote and facilitate the commission of the crime of Marriage  
20 Fraud, unlawfully agree with [her co-defendants] to commit the offense of marriage fraud  
21 (3 CMC § 4366), did unlawfully agree with each other to commit the offense of Marriage  
22 Fraud (3 CMC § 4366), to wit: defendants did unlawfully agree that Munnaf Miah would  
23 marry Severene Kosam for the sole purpose of obtaining a labor or immigration benefit  
24 ... and that one or more of them committed an overt act in pursuance of such conspiracy,  
25 in violation of 6 CMC § 303(a), punishable by 6 CMC § 304(b) and 3 CMC § 4366.

26 According to Count III, Ray violated 6 CMC § 302(a) by doing the following:

27 On or about March 27, 2007, on Saipan ... [with her co-defendants], with intent to  
28 promote or facilitate the commission of Marriage Fraud, defendant unlawfully  
encouraged or requested Severene Kosam and Alsiyno Mallens to arrange the marriage  
of Md. Saiful Islam and Alsiyno Mallens, with the intent to promote or facilitate the  
commission of Marriage Fraud, in violation of 6 CMC § 302(a).

Lastly, according to Count IV, Ray violated 6 CMC § 302(a) by doing the following:

On or about March 27 , 2007, on Saipan ... [with her co-defendants], with intent to  
promote or facilitate the commission of Marriage Fraud, defendant unlawfully  
encouraged or requested Severene Kosam to marry Munnaf Miah, with the intent to  
promote or facilitate the commission of Marriage Fraud, in violation of 6 CMC § 302(a).

1  
2 **DISCUSSION**

3 **A. 3 CMC § 4366 is Constitutional**

4 Defendant first asks this Court to dismiss all counts of the information against her because  
5 the underlying marriage fraud statute upon which the Conspiracy and Solicitation counts are based, 3  
6 CMC § 4366, is unconstitutional. Specifically, Defendant claims that the marriage fraud statute  
7 violates the protections provided in the substantive due process clauses and equal protection clauses  
8 of both the United States and CNMI Constitutions. *See* U.S. CONST. AMEND. XIV, § 1 and N.M.I.  
9 Const. art. I, §§ 5-6. Although it is a well-tread tradition for courts to abstain from addressing a  
10 constitutional issue when the circumstances allow for alternative paths of analysis, the circumstances  
11 in the case at hand squarely present an unavoidable constitutional question. The Court will therefore  
12 confront each of Defendant’s challenges to this statute.

13 Before jumping into Defendant’s substantive attacks on the constitutionality of 3 CMC §  
14 4366, it is helpful to examine the plain language of the statute. The statute, in pertinent part, reads  
15 as follows:

16 Marriage Fraud. Any individual who knowingly enters into a marriage for the sole  
17 purpose of obtaining a labor or immigration benefit, or for the sole purpose of evading  
18 any provision of Chapter 3, Chapter, 4 or Chapter 6 of this Title, or any United States  
19 immigration law, shall be guilty of marriage fraud.  
20 3 CMC § 4366.

21 Defendant first premises that marriage is a fundamental right recognized by the U.S. Supreme  
22 Court through substantive due process analysis. *See Zablocki v. Redhail*, 434 U.S. 374, 383 (1978);  
23 *Loving v. Virginia*, 388 U.S. 1, 12 (1967). Upon that premise, Defendant claims that by  
24 criminalizing marriages entered into solely to obtain an immigration benefit, § 4366  
25 unconstitutionally restricts the fundamental right of marriage, and that the statute should be subject  
26 to strict scrutiny.

27 Secondly, Defendant, argues that the because § 4366 could only logically operate against a  
28 couple in which one of the parties is a non-citizen or non-resident, it violates the equal protection  
clause by discriminating on the basis of alienage. In short, Defendant argues that because only

1 marriages involving non-U.S. citizens are subject to § 4366, §4366 should also be subject to strict  
2 scrutiny analysis under the equal protection clause.

3 Under fourteenth amendment substantive due process and equal protection analyses, when a  
4 statute is found to restrict a fundamental right or when legislation discriminates based on alienage,  
5 respectively, the reviewing court applies a strict scrutiny test to determine whether the legislation is  
6 unconstitutional. *See In re Blankenship*, 3 N.M.I. 209, 219 (1992) (“Traditional equal protection  
7 analysis under the U.S. Constitution scrutinizes laws which (a) affect a "suspect class," or (b) violate  
8 a fundamental right.”). Here, although the Court is not completely convinced that Defendant’s  
9 objections to § 4366 merits any stricter scrutiny than to determine whether there is a rational basis  
10 for the law, § 4366 survives even when examined through the lense of heightened scrutiny.<sup>1</sup>

11 Under strict scrutiny analysis, a law which discriminates against a recognized suspect class of  
12 persons or a law which curtails a recognized “fundamental right” must be narrowly tailored to reflect  
13 a compelling state interest. *See In re Blankenship*, 3 N.M.I. 209, 219 (1992) (“Traditional equal  
14 protection analysis under the U.S. Constitution scrutinizes laws which (a) affect a "suspect class," or  
15 (b) violate a fundamental right.”). More specifically, the Supreme Court applied strict scrutiny to  
16 strike down a state law which restricted the eligibility of aliens to receive welfare benefits where no  
17 such barrier existed for citizens. *See Graham v. Richardson*, 403 U.S. 365, 91 S. Ct. 1848, 29  
18 L.Ed.2d 534 (1971) (“It is true that this Court on occasion has upheld state statutes that treat  
19 citizens and non-citizens differently, the ground for distinction having been that such laws were  
20 necessary to protect special interests of the state or its citizens.”); *see also Takahashi v. Fish &*  
21 *Game Comm’n*, 334 U.S. 410, 420, 68 S.Ct. 1138, 1143, 92 L.Ed. 1478 (1948) (holding that “the  
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24 <sup>1</sup>Simply stated, the Court is not convinced that § 4366 curtails the right for individuals to  
25 engage in a legal marriage or that it truly discriminates on the basis of alienage. However, because  
26 neither of the parties choose to debate this threshold question at length or with any depth, the Court  
27 will so too refrain.  
28

1 power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within  
2 narrow limits.”).

3 Moreover, laws which restrict recognized fundamental rights receive close scrutiny by courts.

4 A statute violates substantive due process when a litigant with standing shows that a  
5 challenged statute adversely affects a recognized life, liberty, or property entitlement and  
6 in doing so does not promote a legitimate state objective by reasonable means. A due  
7 process infringement of an individual's non-fundamental life, liberty, or property  
8 entitlement occurs only when it amounts to an arbitrary deprivation of that entitlement.  
9 But when the individual interest restricted by statute is a fundamental right, the  
10 appropriate test, in determining the constitutionality of the statute, is the compelling state  
11 interest test--i.e., is there a compelling need or justification for the state action, by statute  
12 or otherwise, to override the personal right asserted.

13 *See In re Seman*, 3 N.M.I. 57 (1992) (internal citations omitted)

14 Thus, this Court will examine the legislation challenged by Defendant under the substantive due process  
15 clause and equal protection clause using the strict scrutiny standard. Such analysis requires the Court  
16 to answer two questions 1) whether immigration control is a compelling interest; and 2) whether § 4366  
17 is narrowly tailored to preserve the stated interest.

18 “Controlling immigration is an important government interest over which the “Commonwealth  
19 Legislature exercises plenary power . . . pursuant to section 503 of the Covenant.” *Office of the*  
20 *Attorney General v. Estel*, 2004 MP 20 ¶ 20, quoting *Office of the Attorney General v. Sagun*, 1999 MP  
21 19 ¶ 8. As this Court has already recognized, “[f]or reasons including the population and size disparity  
22 between the CNMI and the rest of the U.S. and preservation of the unique CNMI’s [sic] Chamorro and  
23 Carolinian ethnic and cultural heritage, the CNMI has been permitted to exercise plenary authority over  
24 its own immigration.” *Sagun*, 1999 MP 19 (quoting *Tran v. CNMI*, 780 F. Supp. 709, 713 (D.N.M.I.  
25 1991) *aff’d*, 993 F.2d 884 (9th Cir. 1993)). “With respect to Commonwealth immigration matters, the  
26 Commonwealth is sovereign and this Court is duty-bound to apply only the immigration laws of the  
27 Commonwealth.” *Id.* Given the clear weight of authority supporting the Commonwealth’s interest in  
28 controlling immigration, the Court cannot but recognize that controlling immigration is a compelling  
interest. Hence, the only remaining question is whether section 4366 is narrowly tailored to serve the  
Commonwealth’s purpose of controlling immigration.

Though the Court feels that there are other alternatives which are less restrictive against the  
institution of marriage, it nevertheless agrees that section 4366's restriction on entering into sham

1 marriages is narrowly tailored to criminalize only those marriages which would potentially subvert or  
2 circumvent the Commonwealth's control over immigration.

3 First, the plain language of the statute section in question seeks to control immigration by  
4 criminalizing marriages which are entered into solely for the purpose of obtaining an immigration benefit.  
5 3 CMC § 4366. Plainly, under substantive due process case law, legislation which bans a marriage  
6 between a Citizen and an alien to prevent immigration fraud would fail the clear precedent set by *Loving*  
7 *v. Virginia*, where the United States Supreme Court struck down the anti-miscegenation laws of  
8 Virginia. However, where there is an independent, legitimate, and compelling state interest apart from  
9 the invidious motive of preventing miscegenation or marriages of mixed alienage, the state may restrict  
10 it in the narrowest of terms. Here, section 4366 only targets those individuals who abuse and dilute the  
11 institution of marriage to obtain an immigration benefit, and its narrowly worded language does not  
12 prevent other individuals who are similarly situated from engaging in a lawful marriage and enjoying  
13 whatever benefits or fruits that accompany the union. Indeed, the law is so narrowly worded that it does  
14 not criminalize the motive of obtaining an immigration benefit as long as it is not the sole motive for  
15 engaging in matrimony.

16 Though the Court agrees that marriage is indeed a fundamental right, Defendant's argument that  
17 criminalizing fraudulent marriages restricts the ability of individuals to engage in a lawful marriage,  
18 regardless of the alienage of either party, is unavailing. Here, Defendant chiefly complains that section  
19 4366 is not narrowly tailored because it fails to directly constrain an individual's illegal attempt to obtain  
20 better immigration status in the Commonwealth. Instead, Defendant argues that the Commonwealth,  
21 by criminalizing marriages created for the sole purpose of obtaining an immigration benefit, places heavy-  
22 handed restraints on a legal institution, but ultimately fails to constrain the attainment of the immigration  
23 status. Though Defendant's argument is not completely without merit, it nevertheless rings empty for  
24 the purposes of analyzing whether the law is narrowly tailored to control immigration in the CNMI.

25 As stated in the findings of Public Law 15-59, the legislature determined that fraudulent  
26 marriages for the purpose of obtaining an immigration benefit are increasing. Furthermore, the findings  
27 indicated that in addition to paying money to engage in such marriage, the individuals involved "usually  
28 do not cohabit, or hold themselves out to the public as husband and wife." See Public Law No. 15-

1 59, Section 1, Findings. Moreover, the legislature made findings that the increase in fraudulent  
2 marriages to obtain an immigration benefit would potentially have a harmful impact on the  
3 Commonwealth's fragile island economy. *Id.* Lastly, the legislature made a value judgment by  
4 recognizing the institution of marriage as a sacred one, and found that the "arrangement is somewhat  
5 of a business deal in total contradiction to the sanctity of marriage." *Id.* Defendant's argument that  
6 marriage is often used as a means to evade tax laws or obtain economic benefits is noted but unavailing.  
7 A legislature is endowed with broad powers to create laws based on its perception of morality, ethics,  
8 or sound policy, and in this case the legislature has plenary authority over immigration control. Those  
9 who wish to change those laws are able to through the use of elections. However, this Court is reluctant  
10 to override such a value judgment unless it is a clearly egregious offense. Rather the Court, like Justice  
11 Holmes, prefers to cautiously approach its role as a constitutional arbiter when asked to determine  
12 whether the fourteenth amendment invalidates a lawfully enacted statute:

13 I have not yet adequately expressed the more than anxiety that I feel at the ever  
14 increasing scope given to the Fourteenth Amendment in cutting down what I believe to  
15 be the constitutional rights of the States. As the decisions now stand, I see hardly any  
16 limit but the sky to the invalidating of those rights if they happen to strike a majority of  
17 this Court as for any reason undesirable. I cannot believe that the Amendment was  
18 intended to give us carte blanche to embody our economic or moral beliefs in its  
19 prohibitions. Yet I can think of no narrower reason that seems to me to justify the  
20 present and the earlier decisions to which I have referred. Of course the words due  
21 process of law, if taken in their literal meaning, have no application to this case; and  
22 while it is too late to deny that they have been given a much more extended and artificial  
23 signification, still we ought to remember the great caution shown by the Constitution in  
24 limiting the power of the States, and should be slow to construe the clause in the  
25 Fourteenth Amendment as committing to the Court, with no guide but the Court's own  
26 discretion, the validity of whatever laws the States may pass.  
27 *Baldwin v. Missouri*, 286 U.S. 586, 595 (1930) (J. Holmes dissenting).

21 Therefore, although there may be other means of controlling immigration loopholes available, e.g.  
22 more stringent lawful permanent residency requirements, or stricter enforcement, such alternatives  
23 do not detract from the narrow wording of the statute at issue. Those persons wishing to engage in  
24 marriage for any purpose other than solely to obtain an immigration benefit may do so without  
25 repercussion, regardless of their alienage. Consequently, Defendant's constitutional challenge based  
26 on the equal protection and substantive due process clauses of the U.S. and CNMI constitutions is  
27 rejected.

28 **B. The Information Sufficiently States the Elements for the Offenses Charged**

1 Next, Defendant argues that the information fails to properly set out each of the elements of  
2 the offenses of which Defendant is charged. Specifically, Defendant complains that because the  
3 elements of underlying offense of marriage fraud, which Defendant is charged with conspiring to  
4 commit and solicitation, are not explicitly pleaded in the information, the information fails to conform  
5 with Rule 7(c)(1) of the Commonwealth Rules of Criminal procedure.

6 Rule 7 requires that the “information shall be a plain, concise and definite written statement  
7 of essential facts constituting the offense charged.” Com. R. Crim. P. 7 (c)(1). According to federal  
8 case law interpreting the Commonwealth’s federal counterpart, “an indictment is sufficient if it, first,  
9 contains the elements of the offense charged and fairly informs a defendant of the charge against  
10 which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future  
11 prosecutions for the same offense.” *Hamling v. United States*, 418 U.S. 87, 117, 94 S.Ct. 2887, 41  
12 L.Ed.2d 590 (1974).

13 “Further, ‘in an indictment for conspiring to commit an offense-in which the conspiracy is the  
14 gist of the crime-it is not necessary to allege with technical precision all the elements essential to the  
15 commission of the offense which is the object of the conspiracy.’” *United States v. LaSpina*, 299  
16 F.3d 165, 177 (2d Cir. 2002) (internal cites omitted). In *LaSpina*, the Court found that the  
17 perpetrator of a conspiracy received sufficient notice from the language of the indictment when the  
18 material facts tracked the statute. Indeed, it found that the indictment in question provided more  
19 precision than that which was required under rule 7. Here, also, the information language for each  
20 charge sufficiently tracks the conspiracy and solicitation statutes. That the offense which is the  
21 object of conspiracy is not stated with absolute precision is inconsequential. The information  
22 unequivocally alleges that Defendant conspired or solicited to facilitate a marriage for the sole  
23 purpose of obtaining an immigration benefit, and moreover, it alleges the necessary facts, however  
24 unartfully, of marriage fraud as is practicable. Defendant’s motion is therefore rejected.

25  
26 **C. The Information Accurately States the Penalty for the Offenses Charged**

27 Defendant further complains that the information against her is defective because it does not  
28 refer to the proper penalty section as instructed by the Article 7 of the Commonwealth Entry and



1 Deportation Act, as amended by Public Law 15-17. Specifically, Defendant alleges that because  
2 Public Law 15-17, Article 7 prescribes the penalties for the inchoate crimes (i.e., conspiracy and  
3 solicitation) associated with the offenses contained in the Commonwealth Entry and Deportation Act  
4 as provided in Title 9 of the Commonwealth Code, the information erroneously references Title 6 in  
5 its information. As provided in Defendant’s brief, Title 9 of the Commonwealth Code refers to  
6 traffic offenses, and not inchoate crimes. The Commonwealth has responded that the reference made  
7 to Title 9 of the Commonwealth Code, pursuant to Article 7 of the Commonwealth Entry and  
8 Deportation Act is simply a scrivener’s error, and that the Court should ignore the error for the  
9 purposes of determining the intent of the legislature, rather than dismissing the information.

10 “Generally, a statute should be so interpreted to give it effect. It is presumed that the  
11 legislature intended to enact an effective law; it is not to be presumed that legislation is a vain effort,  
12 or a nullity.” *Estate of Faisao v. Tenorio*, 4 N.M.I. 260 (1995). Moreover, “a court should avoid  
13 interpretations of a statutory provision which would defy common sense or lead to absurd results.”  
14 *Commonwealth Ports Auth. v. Hakubotan Saipan Enters. Inc.*, 2 N.M.I. 212 (1991). Lastly,  
15 principles of statutory interpretation and construction instruct that “one statutory provision should  
16 not be construed to make another provision inconsistent or meaningless.” *In re Estate of Rofag*, 2  
17 N.M.I. 18 (1991).

18 While the Court is reluctant to subscribe to any argument offering that the legislature does  
19 not intend what it has written, when plain interpretation of the language leads to absurd results, the  
20 Court must attempt to divine the practical result intended by the legislature. Here, if one dutifully  
21 follows the letter of Article 7 of the Commonwealth Entry and Deportation Act, the penalties for  
22 conspiring, soliciting or attempting any offense in the Act are located in Title 9 of the  
23 Commonwealth Code. However, such mechanical application of the statutory language leads to the  
24 absurd result that the traffic code should inform the Defendant of the penalties for inchoate offenses,  
25 when the actual language of the traffic code offers no such relevant instruction on the matter.  
26 Moreover, the statutory language demonstrates that the legislature plainly intended that the  
27 Commonwealth Code Sections “governing inchoate crimes” instruct which penalties would be  
28 applied for conspiracy, attempt or solicitation of any offense contained in Article 7. 3 CMC § 4371.

1 Given that following the language of § 4371 instructing that the penalties for solicitation, attempt  
2 and conspiracy should be found in the Commonwealth's traffic code, when taken to its logical  
3 conclusion, would lead to absurd results, the Court is inclined to interpret the more logical rather  
4 than the mechanically obvious intent of the legislature. Defendant's motion is therefore rejected.  
5

6 **D. Defendant is Entitled to a Jury Trial.**

7 The criminal jury trial right under 7 CMC § 3101(a) is reserved exclusively to defendants  
8 charged with "a felony punishable by *more than* five years in prison or by a fine of *more than* \$2,000,  
9 or both." 7 CMC § 3101(a) (*emphasis added*). As presented in the information, Defendant is  
10 charged with two counts of conspiracy to commit marriage fraud, and two counts of solicitation of  
11 the same. The penalty for conspiracy pursuant to 6 CMC § 304 is no more than the maximum  
12 sentence provided for the offense which was the object of the conspiracy. 6 CMC § 304(b).  
13 Moreover, the maximum penalty for solicitation is "imprisonment for not more than one-half of the  
14 maximum penalty provided for the underlying offense which was the object of the attempt or  
15 solicitation." 6 CMC § 304(a)(2).

16 Here, the underlying offense of marriage fraud is punishable by no more than 5 years of  
17 prison or no more than a \$2000 fine, or both. 3 CMC § 4366(b). As applied in conjunction with the  
18 penalties for inchoate crimes, if convicted, Defendant stands to be penalized by no more than 5 years  
19 of prison or \$2000 fine, or both. The cap of the imprisonment at five years and of the fine at \$2000  
20 is insufficient to warrant a jury trial pursuant to 7 CMC § 3101(a). Thus, because none of the counts  
21 against the Defendant carry a penalty greater than five years imprisonment or a \$2000 fine, or both,  
22 Defendant, at first glance, is not entitled to a jury trial pursuant to 7 CMC § 3101(a). Defendant's  
23 argument that she is entitled to a jury trial because she may incur a fine of \$5,000 pursuant to the  
24 sentencing instruction in 6 CMC § 4101(b), however, requires a more involved discussion.

25 Defendant premises her argument on the basis that because the sentencing prescription for  
26 solicitation in 6 CMC § 304(a)(2) fails to explicitly prescribe fines, that 6 CMC § 4101(b) mandates  
27 a \$5,000 fine, or at least a \$2500 fine per solicitation conviction, thus clearing the \$2000 fine  
28 threshold to be eligible for a jury trial pursuant to 7 CMC § 3101(a). Indeed, *Commonwealth v.*

1 *Oden* instructs that according to 6 CMC § 4101(b), a potential \$5,000 fine may be imposed if a  
2 penalty for an offense carrying a potential of 5 years imprisonment. 3 N.M.I. 186, 200-01 (1992).  
3 However, such a fine is reserved for instances where the statute penalizing an offense fails to  
4 prescribe a fine specific to that offense. “A person who has been convicted of any offense under this  
5 title, *unless a fine is elsewhere prescribed by law*, in addition to any other punishment authorized by  
6 law, may be sentenced to pay a fine....” 6 CMC § 4101 (*emphasis added*).

7 Here, any fine provision for solicitation is conspicuously absent. Specifically, the sentencing  
8 provision for solicitation instructs that the maximum *imprisonment* may not exceed one-half of the  
9 maximum *penalty* provided for the underlying offense which is the object of the solicitation, but lacks  
10 any provision prescribing a fine. *See* 6 CMC § 304(a)(2). The problem, then is that the word  
11 penalty, which is typically a broad term used to describe any punishment associated with an offense,  
12 appears to be limited in capacity because of its syntactical association with the preceding term  
13 *imprisonment*, which by its definition is limited to incarceration. Moreover, further ambiguity is  
14 added because the statutory scheme makes no attempt to define penalty for the purposes of statutory  
15 application.

16 Defendant argues that according to the principle of statutory construction known as *noscitur*  
17 *a sociis*---literally, “it is known from its associates” or a “a word is known by the company it keeps”-  
18 --the term *penalty* should take on the limited meaning of *imprisonment* for the purposes of the  
19 sentencing provisions for conspiracy and solicitation. *See* BLACK’S LAW DICTIONARY (6th ed. 1990)  
20 (defining *noscitur a sociis*). *See also* *Ali v. Federal Bureau of Prisons*, 128 S.Ct. 831, 839-40, 169  
21 L.Ed.2d 680 (2008). Though this Court certainly suspects that the statutory language which places  
22 the specific term *imprisonment* before a typically broadly-defined term *penalty* may be accurately  
23 described as the result of a drafting error, the Commonwealth makes no argument supporting such  
24 an interpretation. Indeed the Commonwealth does not even bother to squarely rebut any of  
25 Defendant’s arguments beyond its conclusory reliance of its own interpretation of the inchoate  
26 sentencing provisions. Instead, the Commonwealth avoids the issue by framing the statutory  
27 language as if the term *imprisonment* was never imprinted on the page: “Solicitation is punishable by  
28

1 not more than one-half of the maximum penalty for the underlying offense, i.e., Marriage Fraud.”  
2 See Commonwealth’s Response to Defendant’s Information, Or For Trial By Jury, page 8.

3 Therefore, the Court, without more to indicate that the drafters intended otherwise, is  
4 inclined to construe that the drafters intended to confine the scope of *penalty* in section 304(a)(2)  
5 and 304(b) to the *imprisonment* specified section 304(a)(2). Thus, according to the plain language  
6 of the statute, the sentencing provision of 6 CMC § 304(a)(2) appears to fail to prescribe a fine, and  
7 consequently appears to invite the application of 6 CMC § 4101. However, in application the  
8 provisions within 6 CMC § 4101 do not appear to fit so snugly as if they were intended to apply in  
9 this instance.

10 Particularly, section 4101(b) prescribes a fine of “\$5000 when the conviction is for an offense  
11 punishable by a maximum of 5 years imprisonment.” 6 CMC § 4101(b). Here, though Defendant  
12 argues that section 4101(b) is the applicable provision, the plain language of section 304(a)(2) only  
13 subjects a person convicted of solicitation to---at maximum---a two and one-half years term of  
14 imprisonment—not five years imprisonment as suggested by the statute, further introducing  
15 ambiguity into the matter. Nevertheless, in light of the serious ambiguities apparent from the face of  
16 the statutory language, and the rather non-responsive response from the Commonwealth the Court  
17 feels constrained to resolve any statutory ambiguities in the favor of the criminal defendant.  
18 Moreover, the Court feels equally compelled to err in favor of a jury trial consistent with common  
19 law principles rather than to unfairly deprive a defendant of his or her right to be tried by his or her  
20 peers in conflict with the common law. Accordingly, the Court finds that the Defendant and her Co-  
21 defendants shall be entitled to a jury trial on each of the counts charged.

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25 **CONCLUSION.**

26 Consistent with the foregoing opinion Defendant Ray’s motions for dismissal are DENIED.  
27 Moreover, consistent with the foregoing opinion Defendant Ray’s motion for a jury trial is  
28 GRANTED.

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A **Status Conference** is hereby set for **April 3, 2008** at **9:00 a.m.** in **Courtroom 223A**, for the purpose of setting a new trial date in view of the foregoing.

**So ORDERED** this 26<sup>th</sup> day of March 2008,

/S/ \_\_\_\_\_

DAVID A. WISEMAN, ASSOCIATE JUDGE