FOR PUBLICATION

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

JUAN B. CAMACHO,	CIVIL ACTION NO. 08-0183C
)	
Petitioner,	
)	
vs.)	ORDER REASSIGNING THE MATTER
)	OF THE APPLICATION FOR WRIT OF
LINO S. TENORIO,	HABEAS CORPUS TO ASSOCIATE
Commissioner/Secretary of the Department)	JUDGE DAVID A. WISEMAN, SUPERIOR
of Corrections,	COURT COURTROOM 223A
Respondent.	

THIS MATTER of Applicant Juan B. Camacho's Application for Writ of Habeas Corpus pursuant to 6 CMC § 7102 and filed on May 9, 2008 was designated for consideration by the undersigned judge upon its filing with the Clerk of the Superior Court and assigned case number.¹

Based on a procedural review of the criminal case that underlies the claim or authority by which Petitioner Camacho is being imprisoned, to wit: Criminal Case No. 04-0261B, it has come to the attention of the Court that this habeas corpus matter was previously assigned to Associate Judge David A. Wiseman by the Presiding Judge, and that that the parties have appeared on the matter before Judge

¹ Pursuant to 6 CMC § 7103, the Clerk was to bring the Application immediately to the personal attention of a judge. However, the Application was not promptly presented to the undersigned. On August 6, 2008, Petitioner filed his motion for order to show cause and motion to set for hearing and specifically identified the undersigned as the assigned judge. Again, the motion and the Application was not brought to the attention to the undersigned judge. Sometime on or about September 4, 2008, almost four months after the first filing, and almost one month after the second filing, Petitioner's counsel, Assistant Public Defender Richard C. Miller, court appointed counsel for Petitioner in the habeas petition, inquired informally about the status of the Application and motion to the undersigned's courtroom clerk. It is very troubling that only then did the undersigned learn of this pending case.

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RAMONA V. MANGLONA, Associate Judge

Wiseman in Courtroom 223A under the caption and case number of Applicant's related criminal proceeding, Commonwealth v. Juan B. Camacho, Super.Ct. Crim. No. 04-0261B. The file record in that case shows that Applicant was allowed to withdraw his application for writ of habeas corpus without prejudice to re-file the same in accordance with the procedural requirements of 6 CMC §§ 7101-7107. The record also shows that Applicant moved to disqualify Judge Wiseman on April 17, 2008, and that the motion was denied.

Applicant's May 9, 2008, Application for Writ of Habeas Corpus was appropriately given a new case number and designated as Civil Action No. 08-0183C, which, however, improvidently redesignated the undersigned as the Judge assigned to the matter. The current Application for Writ of Habeas Corpus is based in part on a claim of ineffective assistance of counsel. (Appl., p.2). An application for a writ of habeas corpus to the Superior Court that is based upon matters occurring at the petitioner's prior criminal trial will generally only be procedurally viable if the petitioner alleges facts that are not determinable from the record; and for this reason, the policy of the courts is that the judge who presided at the applicant's trial is the one best suited to determine the merits of such an application. Massaro v. United States, 538 U.S. 500, 505-506, 123 S.Ct. 1690, 155 L.Ed.2d 714 (2003); United States v. Brasswell, 501 F.3d 1147, 1149 n.1 (2007).

The Presiding Judge appropriately assigned this habeas corpus matter to Associate Judge David A. Wiseman in the first instance, but it was re-designated as a matter for the undersigned judge by error of the Clerk. Accordingly, all parties shall take notice that that the matter of the captioned Application for Writ of Habeas Corpus is hereby ordered transferred and committed for all proceedings to Courtroom 223A, before the Honorable David A. Wiseman, Associate Judge.

IT IS SO ORDERED this 17th day of September, 2008.