



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION



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

IN THE MATTER OF THE ESTATE OF:	}	CIVIL ACTION NO. 03-0079D
RITA ROGOLIFOI,	}	ORDER DENYING MOTION FOR RECONSIDERATION OF MOTION TO DISQUALIFY
Deceased.	}	

THIS MATTER came before the Court on the March 12, 2014 motion of Brien Sers Nicholas, Esq., appearing *pro se*. Mr. Sers Nicholas moved this Court to reconsider its March 7, 2014 Order on Motion to Disqualify Associate Judge David A. Wiseman. After reviewing the written memoranda submitted by the parties, the Court **DENIES** Movant’s motion to reconsider for the following reasons.

I. RECONSIDERATION OF MARCH 7, 2014 ORDER ON MOTION TO DISQUALIFY

Movant filed a Motion to Disqualify Associate Judge David A. Wiseman on February 18, 2014, naming multiple grounds for disqualification based upon the appearance of impartiality and personal prejudice or bias, pursuant to both §§ 3308(a) and 3308(b)(1). (Movant’s Mot. to Disqualify, at 3-5.) Movant submits that the Court must reconsider its March 7, 2014 Order by (1) vacating the striking of the February 27, 2014 Supplemental Affidavit, and (2) returning this matter to Presiding Judge Naraja for reassignment to another Associate Judge (if necessary) to consider Movant’s Disqualification Motion. (Mov.’s Mot. to Reconsider, at 2.) Thus, each claim will be evaluated in turn.

1 NMI R. Civ. Pro. Rule 59(e) controls motions for reconsideration. Rule 59(e) states that “[a]
2 motion to alter or amend the judgment shall be served not later than ten days after entry of the
3 judgment.” NMI R. Civ. P. 59(e). The Supreme Court has previously noted that the major grounds
4 justifying reconsideration involve an intervening change in the controlling law, the availability of new
5 evidence, or the need to correct a clear error or prevent manifest injustice. *See Commonwealth v. Eguia*,
6 2008 MP 17 ¶ 7; *Camacho v. J.C. Tenorio Enter. Inc.*, 2 NMI 407, 414 (1992) (quoting Charles Wright,
7 et al., *Federal Practice and Procedures: Jurisdiction* § 4478 (1981)).

8 As the first two grounds for reconsideration, intervening changes in controlling law and the
9 availability of new evidence, are not alleged here, the Court will evaluate each of Movant’s claim in the
10 context of the need to correct a clear error or prevent manifest injustice.

11 **A. STRIKING OF SUPPLEMENTAL AFFIDAVIT WAS NOT CLEAR ERROR**

12 First, Movant claims the Court’s striking of his February 27, 2014 Supplemental Affidavit was
13 clear error on the grounds that it cannot be deemed to violate the “one affidavit rule” because his
14 Supplemental Affidavit contained additional reasons for this Court’s disqualification that were not
15 known when Movant filed his initial Affidavit on February 24, 2014. (Mov.’s Mot. to Reconsider, at
16 3-4.) Movant argues that his initial February 24, 2014 Affidavit and his subsequent February 27, 2014
17 Supplemental Affidavit constitute one Affidavit for purposes of the “one affidavit rule.” (*Id.* at 4.) A
18 “supplemental affidavit” is “[a]n affidavit made in addition to a previous one, usually to supply
19 additional facts.” *Black’s Law Dictionary* 45 (7th ed. 2000).

20 The Court declines to interpret the “one affidavit rule” as allowing a supplemental affidavit days
21 after Movant’s initial affidavit was filed. The definition of “supplemental affidavit” itself alludes to
22 the fact that it is filed in addition to a previously filed affidavit. The definition cited fails to suggest that
23 a supplemental affidavit can be considered joined with a initial affidavit to constitute a single affidavit
24 for purposes of the “one affidavit rule.” Further, Movant’s memorandum fails to cite any authority
25 which establishes that a supplemental affidavit does not violate the “one affidavit rule” as a matter of
26 law. Thus, the Court finding that Movant’s additional filing of a supplemental affidavit violates the
27 “one affidavit rule” is not clear error. Moreover, the Court finds that the grounds alleged in the
28 supplemental affidavit are not so groundbreaking as to suggest any manifest injustice has occurred by

1 way of the Court's striking it in its March 7, 2014 Order. The Court rejects any grounds for
2 disqualification due to prejudice and bias based on Movant's claims regarding the Order received in
3 another case after Movant had filed his initial affidavit in the present case.

4 **B. COURT'S CONTINUED INVOLVEMENT IS NOT CLEAR ERROR**

5 Second, Movant claims that the Court's continued involvement of this Court in the present case,
6 taken in light of Movant's previous motion to disqualify, is clear error and that the Court "has the legal
7 duty to 'proceed no further' in this case and have the merits of [Movant's] Disqualification Motion
8 resolved by another judge." (Mov.'s Mot. to Reconsider, at 5.)

9 Movant's citations to the Commonwealth Code of Judicial Conduct Canon 3(D)(c) and *Tudela*
10 *v. Superior Court*, 2010 MP 6, as well as numerous federal circuit court cases, are well taken.
11 However, these apply solely to motions to disqualify pursuant to 1 CMC § 3308(b)(1), which allege bias
12 or prejudice. Here, even if the one affidavit requirement has been violated and the initial affidavit is
13 held legally insufficient, the Court has no legal obligation to "proceed no further" and may continue to
14 review Movant's disqualification motion made pursuant to § 3308(a). *See Bank of Saipan v. Superior*
15 *Court*, 2002 NMI LEXIS 29, *15 (citing *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*
16 *Orig. Action 00-001 (N.M.I. Sup. Ct. Sept. 8, 2000) (Order Denying Motion for Disqualification of*
17 *Justice Pro Tempore Alberto C. Lamorena, III at 3-4, 7) (distinguishing between motions made on the*
18 *ground of "bias or prejudice" and those made under section 3308(a) and determining that the affidavit*
19 *filed was defective and thereafter reviewing whether the facts supported recusal under section 3308(a)'s*
20 *"impartiality" provision)). Contrary to Movant's claims that a challenged judge does not possess the*
21 *legal authority to consider the substantive aspects of a disqualification motion, the Supreme Court held*
22 *that the Superior Court may therefore continue to preside over the case to analyze the merits of the*
23 *disqualification motion under section 3308(a), notwithstanding non-compliance with the affidavit*
24 *requirement of Canon 3(D)(c).*

25 Thus, the Court does not find clear error in its continued involvement of Movant's
26 disqualification motion, as it may still evaluate its sufficiency in light of the affidavit requirement under
27 section 3308(b)(1), as well as the merits of claims made under section 3308(a). The Court took the
28 disqualification motion under advisement for further review, and will issue an order with its findings.

1 **C. COURT’S FAILURE TO REMOVE ITSELF DOES NOT CONSTITUTE MANIFEST INJUSTICE**

2 Lastly, Movant claims that this Court must remove itself from this case to prevent manifest
3 injustice due to its inability to be impartial in its consideration of Movant’s claim. (Mov.’s Mot. to
4 Reconsider, at 6.)

5 “Manifest injustice” is “‘a fundamental defect which inherently results in a complete miscarriage
6 of justice’ or ‘an omission inconsistent with the rudimentary demands of fair procedure.’” *See Hill v.*
7 *United States*, 368 U.S. 424 (1962) (defining manifest injustice in the context of a habeas corpus
8 petition). Alternatively, “manifest injustice” may be defined as “[a]n error in the trial court that is
9 direct, obvious, and observable . . .” *Black’s Law Dictionary* 780 (7th ed. 2000).

10 Here, as discussed above, the Court properly retained the present case and Movant’s
11 disqualification motion pursuant to the applicable rules in the Commonwealth Code of Judicial
12 Conduct. The Court has not discussed or expressed an intention to evaluate the merits of Movant’s
13 claim made pursuant to 1 CMC § 3308(b)(1), but rather, in the previous order issued in this case, has
14 established that the Court will evaluate “whether the accompanying affidavit Movant submitted to the
15 Court satisfies the requirements of Canon 3(D)(c), and whether to assign the matter to another Judge
16 for further evaluation.” (March 7, 2014 Order on Motion to Disqualify, at 3.) The Court also found
17 that Movant violated the “one affidavit rule,” which resulted in the striking of the Supplemental
18 Affidavit filed days after the initial affidavit. Thus, the remaining issues in the present case have not
19 changed. The Court will evaluate the sufficiency of Movant’s initial affidavit accompanying the claim
20 made pursuant to § 3308(b)(1), as well as whether the facts alleged as part of Movant’s claim made
21 pursuant to § 3308(a) would lead a reasonable person to conclude that the Court’s impartiality may be
22 questioned. No manifest injustice has or will result from the Court’s proper handling of Movant’s
23 disqualification motion as provided for in the Code of Judicial Conduct and precedential case law.

24 Accordingly, in view of the extensive history of this case and the fact that Movant has only now
25 elected to move to disqualify the Court, the Court finds that no direct, obvious, and observable error has
26 occurred by the Court’s extended review of the materials submitted, including the motion and attached
27 affidavit of counsel, to discover if the procedural requirements of the disqualification process have been
28 met by such materials and whether the motion contains sufficient merit to be considered by the Court.

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CONCLUSION

For the foregoing reasons, it is **HEREBY ORDERED** that Movant's Motion to Reconsider the Court's March 7, 2014 Order on the Motion to Disqualify is **DENIED**. The Court's written order dispensing with the remaining issues discussed above will be forthcoming.

SO ORDERED this 10th day of April, 2014,

/ s /
David A. Wiseman, Associate Judge