



By the order of the court, Judge David A Wiseman

1 FOR PUBLICATION

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

<p>IN THE MATTER OF THE ESTATE OF:</p> <p>RITA ROGOLIFOI,</p> <p style="text-align: center;">Deceased.</p> <hr/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL ACTION NO. 03-0079</p> <p>ORDER DENYING COUNSEL’S MOTION TO DISQUALIFY</p>
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INTRODUCTION

THIS MATTER came before the Court on February 24, 2014, on the motion of Brian Sers Nicholas, Esq. (“Counsel”), appearing *pro se*. Mr. Sers Nicholas moved this Court for an Order disqualifying Associate Judge David A. Wiseman from further presiding over the underlying matter, pursuant to 1 CMC § 3308 *et. seq.* and further accompanied by an affidavit as required by Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct.

For the reasons stated below, the Court **DENIES** Counsel’s Motion to Disqualify.

BACKGROUND

I. MOTION AND ACCOMPANYING AFFIDAVIT

Counsel 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). (Counsel’s Mot. to Disqualify, at 3-5.)

1 Counsel has alleged, as the bases for his motion to disqualify Associate Judge Wiseman, that
2 his bias and prejudice toward Counsel, as well as his appearance of impartiality, requires his recusal
3 from presiding over the underlying case. In support of his motion, Counsel makes several allegations
4 within both his affidavit and the motion itself, encompassing two criminal cases in which Counsel had
5 appeared before Judge Wiseman. (Counsel’s Mot. to Disqualify, at 4.)

6 While Counsel does not specifically enumerate which aspects of each case support each of his
7 bases for disqualification, Counsel claims that Judge Wiseman’s treatment of Counsel with respect to
8 *CNMI v. Edward T. Buckingham*, Criminal Case No. 12-0134 [hereinafter “*Buckingham*”], as well as
9 *CNMI v. Francisco Q. Guerrero*, Criminal Case No. 12-0111 [hereinafter “*Guerrero*”], in which
10 Counsel originally represented the defendants, reasonably calls into question Judge Wiseman’s
11 impartiality and establishes bias and prejudice against Counsel. (Counsel’s Mot. to Disqualify, at 4-5.)

12 **A. *Buckingham* Case**

13 First, specifically regarding Counsel’s allegations relative to *Buckingham* and notwithstanding
14 the legal and procedural merits of the underlying case, Counsel claims that Judge Wiseman’s decision
15 to continue to preside over the CNMI’s Motion to Disqualify Counsel – despite transferring the
16 remainder of the case to the Honorable Kenneth L. Govendo, Associate Judge – as well as this Court’s
17 August 16, 2013 Order Granting the Commonwealth’s Motion to Disqualify Counsel and Denying
18 Defendant’s Cross-Motion to Disqualify Counsel, indicates that his impartiality might reasonably be
19 questioned, and establishes that Judge Wiseman harbors bias and prejudice over Counsel. (Counsel’s
20 Affidavit, at 5-6.)

21 **B. *Guerrero* Case**

22 Second, with respect to *Guerrero*, Counsel makes explicit allegations which require this Court’s
23 full candor in addressing the merits of the instant motion. As an initial matter, Judge Wiseman presided
24 over the jury trial in *Guerrero*, which commenced before him on July 8, 2013. On the second day of
25 trial, the Court ordered the parties to submit proposed jury instructions in Word document versions on
26 a flash drive for the Court’s convenience and to conserve the resources of the parties, and each party
27 did so. Following the proceedings that day, Counsel asked to retrieve his flash drive, to which Counsel
28 alleges Judge Wiseman responded, “it was sent to the NSA.” (Counsel’s Affidavit, at 6.)

1 **II. PROCEDURAL POSTURE**

2 To remind the parties of the procedural aspect of the case, the Court again acknowledges the
3 general principle that the judge sought to be disqualified hears the motion. *See Tudela v. Superior*
4 *Court*, 2010 MP 6 ¶ 23.

5 In the Court’s previous order, dated March 7, 2014, the Court determined that it has the authority
6 to evaluate: (1) the grounds for disqualification alleged pursuant to § 3308(b)(1), and (2) the grounds
7 for disqualification alleged pursuant to § 3308(a) on its merits without reassigning the matter to another
8 judge in the Commonwealth Superior Court. The Court concluded that the next step in the present
9 matter is to evaluate: (1) regarding the grounds enumerated under § 3308(b)(1), whether the
10 accompanying affidavit Counsel submitted to the Court satisfied the requirements under Canon 3(D)(c),
11 and whether to assign the matter to another judge to further evaluate the merits of such a claim; (2)
12 regarding the grounds alleged under § 3308(a), whether the facts introduced in such an affidavit would
13 lead a reasonable person to conclude that the Court’s impartiality may be questioned; and (3) whether
14 Counsel’s Motion complies with the requirements of Rule 11(b) of the Commonwealth’s Rules of Civil
15 Procedure, dealing with a party’s representations to the Court.

16 Further, in its March 7, 2014 Order, the Court disposed with a procedural aspect of the present
17 matter regarding the Supplemental Affidavit filed on February 27, 2014, striking the aforementioned
18 Supplemental Affidavit from the record pursuant to the “one affidavit rule” established by Canon
19 3(D)(c) of the Commonwealth Code of Judicial Conduct.

20 Lastly, the Court denied Counsel’s March 12, 2014 Motion to Reconsider this Court’s March
21 7, 2014 Order on Motion to Disqualify, reasoning that: (1) the proper grounds for reconsideration —
22 intervening changes in controlling law and the availability of new evidence — were not alleged by
23 Counsel as grounds for his motion; (2) the striking of Counsel’s Supplemental Affidavit — not allowed
24 by the “one affidavit rule” — was not clear error; (3) the Court’s continued involvement in light of
25 Counsel’s Motion to Disqualify was not clear error; and (4) the Court’s failure to remove itself did not
26 constitute manifest injustice in view of the extensive history of this case and the fact that Counsel has
27 only now elected to move this Court to disqualify itself.

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1 **LEGAL STANDARD**

2 As Counsel in this matter has elected to move for disqualification under both bases enumerated
3 in Canon 3(D)(c) of the Code of Judicial Conduct — those based on impartiality being reasonably
4 questioned, as well as bias or personal prejudice — the Court will adduce the legal standards for both
5 in turn, as well as provide separate legal reasoning for each aspect of Counsel’s motion.

6 **I. § 3308(b)(1) — PERSONAL BIAS OR PREJUDICE**

7 First, the CNMI Supreme Court in *Tudela* recognized that Canon 3(D)(c) of the Commonwealth
8 Code of Judicial Conduct establishes the procedure for a motion to disqualify where the basis of the
9 motion is § 3308(b)(1). Canon 3(D)(c) provides:

10 If the ground for disqualification is that the justice or judge has a
11 personal bias or prejudice against or in favor of any party, an
12 affidavit shall accompany the motion. Such justice or judge shall
proceed no further therein but another justice or judge shall be
assigned to hear such motion.

13 In other words, the procedural requirements of Canon 3(D)(c) are activated only after a party
14 files a motion for disqualification on the basis of personal bias or prejudice, accompanied with the
15 attached affidavit offering a showing of actual bias or prejudice. *See Saipan Lau Lau Dev., Inc. v.*
16 *Superior Court*, 2000 MP 12 ¶ 4 n.5. The accompanying affidavit required by Canon 3(D)(c) must first
17 state facts evidencing personal bias with sufficient particularity such as to convince a reasonable person
18 that a bias or prejudice exists. *See id.* (citing *Berger v. United States*, 255 U.S. 22, 33-34 (1921)).
19 Second, the facts represented in the affidavit must “show that the bias and prejudice is personal: that is,
20 it stems from some extrajudicial source and would thus result in an opinion on the merits on some basis
21 other than what the judge has learned from his participation in the case.” *Id.* (citing *United States v.*
22 *Grinnell Corp.*, 384 U.S. 563 (1966)); *see also Bank of Saipan v. Superior Court*, 2002 MP 16 ¶ 39;
23 *Saipan Lau Lau*, 2000 MP 12 ¶ 4; *Commonwealth v. Kaipat*, 1996 MP 20 ¶ 11.

24 Lastly, the affidavit must be filed by a party and may only be filed once in any case, no matter
25 how many judges happen to successively preside over the proceeding. *Giebe v. Pence*, 431 F.2d 942
26 (9th Cir. 1970); *United States v. Hoffa*, 245 F. Supp. 772 (E.D. Tenn. 1965). Both the motion and
27 affidavit must be filed in a timely manner, so as not to delay any proceedings. Canon 3(D)(c); *Bank of*
28 *Saipan*, 2002 MP 16 ¶ 16 (stating that “[a] disqualification motion filed after the proceedings have

1 commenced or just shortly before a motion is to be heard are deemed untimely, especially where the
2 proceedings are so far along that the grant of recusal and assignment of a new judge would delay the
3 proceedings.”) (citations omitted). A delayed motion and affidavit may be considered by the Court if
4 the moving party is able to show that he or she had no reason to previously question the judge’s bias or
5 prejudice, or the proceeding was recently assigned to the challenged judge. *Id.* at ¶ 15.

6 After evaluating such an affidavit filed by the movant, “the challenged judge may rule on
7 whether the motion strictly complies with the procedural requirements [of Canon 3(D)(c)].” *Tudela*,
8 2010 MP 6 ¶ 23. In the event that the challenged judge determines that the movant complied with said
9 procedural requirements, the merits of the motion shall be resolved by a different judge. *See id.*
10 However, if the challenged judge determines the “affidavit does not meet the requirements imposed by
11 law, the judge has an obligation not to disqualify himself.” *See Bank of Saipan v. Superior Court*, 2002
12 MP 17 ¶ 15 (citing *United States v. Anderson*, 433 F.2d 856, 860 (8th Cir. 1970)).

13 **II. § 3308(a) — IMPARTIALITY REASONABLY QUESTIONED**

14 Unlike the strict requirements of the affidavit procedure of Canon 3(D)(c), motions seeking
15 disqualification due to a judge’s impartiality being reasonably questioned under § 3308(a) have no strict
16 procedural requirements and the motion is not strictly construed against recusal. *Saipan Lau Lau*, 2000
17 MP 12 ¶ 5 (citing *In re Corrugated Container Antitrust Litigation*, 614 F.2d 958, 963 n.9 (5th Cir.
18 1980)). That is, the challenged judge has the discretion to evaluate and rule on the litigant’s motion.
19 *See Tudela*, 2010 MP 6 ¶ 23. In § 3308(a) motions, a trial judge is required to recuse himself when “a
20 reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might
21 be questioned.” *Saipan Lau Lau*, 2000 MP 12 ¶ 5 (citations omitted).

22 Finally, it is worth noting that 1 CMC § 3308 and Canon 3(C) are modeled after the federal
23 recusal statute, codified in 28 U.S.C. § 455, while Canon 3(D)(c) substantially models the affidavit
24 procedure established by 28 U.S.C. § 144. *See Bank of Saipan*, 2002 MP 16; *Saipan Lau Lau*, 2000
25 MP 12. Thus, the Court may rely on federal cases interpreting these sections in deciding upon the
26 instant motion. *Id.*

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1 **DISCUSSION**

2 As mentioned above, the Court will address each aspect of Counsel’s motion – based upon §§
3 3308(a) and 3308(b)(1) – in turn.

4 **I. INSUFFICIENCY OF AFFIDAVIT**

5 As an initial matter and as part of its evaluation of Counsel’s Motion brought under § 3308(b),
6 the Court finds that Counsel’s Motion and accompanying Affidavit has failed to meet the procedural
7 requirements provided by Canon 3(D)(c) and applicable case law.

8 **A. Reasonable Person Would Not Be Convinced**

9 First, the test is not whether actual bias and prejudice exists, but whether a reasonable person
10 would have factual grounds to doubt the impartiality of the court. 46 Am. Jur. 2d, *Judges*, § 140, n.4
11 (2006). In other words, the accompanying affidavit must state facts evidencing personal bias with
12 sufficient particularity such as to convince a reasonable person that a bias or prejudice exists. *See*
13 *Saipan Lau Lau Dev., Inc. v. Superior Court*, 2000 MP 12 ¶ 4 n.5 (citing *Berger v. United States*, 255
14 U.S. 22, 33-34 (1921)). The standard for finding actual bias is objective, in that “it is with reference
15 to the ‘well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical, and
16 suspicious person.’” *Andrade v. Chojnacki*, 338 F.3d 448, 462 (5th Cir. 2003) (quoting *United States*
17 *v. Jordan*, 49 F.3d 152, 156 (5th Cir. 1995)); *see also Commonwealth v. Repeki*, 2004 MP 8 ¶ 12
18 (stating the standard is the “perspective of a reasonable observer who is informed of the surrounding
19 facts and circumstances”); *Commonwealth v. Camacho*, 2002 MP 22 ¶ 18 (recognizing the objective
20 standard focuses on “a person with knowledge of all the circumstances”).

21 Here, Counsel has made a number of accusations based upon two criminal cases elucidated
22 above. With regard to the *Buckingham* case, the Court refuses to acknowledge the argument that it
23 retained the Motion to Disqualify Counsel despite transferring the remainder of the case to Associate
24 Judge Govendo as a legitimate grounds to convince a reasonable person that a bias or prejudice exists.
25 As a procedural matter, this Court has no authority to assign or transfer cases, as those duties fall
26 explicitly within the ambit of the Presiding Judge of the Superior Court. Moreover, no “well-informed,
27 thoughtful and objective observer” would believe that a judge hearing one aspect of a case before it was
28 transferred to a new judge without immediate and adequate prior knowledge of the record to further

1 judicial economy indicates that the challenged judge harbors some bias or prejudice against any of the
2 parties in the underlying case. To believe otherwise is to impart the musings of the “hypersensitive,
3 cynical, and suspicious person,” as envisioned in *Chojnacki*, to the judicious conduct of a trial judge
4 presiding over matters which require fairness to be applied evenhandedly.

5 More importantly, Counsel’s accusations regarding the *Guerrero* case are unfounded and
6 nothing less than benign as seen from an objective standard. Counsel claims that Judge Wiseman
7 “attack[ed his] honor and integrity by accusing him . . . of criminal acts in the highest order, so to speak
8 . . . [those] deemed ‘terroristic’ in all respect.” (Counsel’s Affidavit, at 8.) Further, Counsel implies
9 that Judge Wiseman, by and through his comments, was under the “impression that Counsel was
10 somehow a treat [sic] to the national security of the United States of America, much less her peoples.”
11 (*Id.* at 9.)

12 To be clear, “[j]udicial remarks during the course of a trial that are critical or disapproving of,
13 or even hostile to, counsel . . . ordinarily do not support a bias or partiality challenge. They *may* do so
14 if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such
15 a high degree of favoritism or antagonism as to make fair judgment impossible.” *Liteky v. United*
16 *States*, 510 U.S. 540, 550-51 (1994). In *Liteky*, although the challenged judge “displayed impatience,
17 disregard for the defense and animosity toward the defendant,” the Supreme Court upheld his denial
18 of the disqualification motion, holding that “all occurred in the course of judicial proceedings, and
19 neither (1) relied upon knowledge acquired outside such proceedings nor (2) displayed deep-seated and
20 unequivocal antagonism that would render fair judgment impossible.” *Id.* at 542, 556. Similarly, in
21 *Chojnacki*, the Fifth Circuit held that the challenged judge’s off-the-record insults and expressions of
22 distaste for several of the parties were not enough to meet the standard for disqualification. *Chojnacki*,
23 338 F.3d at 462 (citing *Liteky*, 510 U.S. at 555-56).

24 Here, even if the allegations contained in Counsel’s Affidavit were entirely true, Judge
25 Wiseman’s comments did not rise to level of a “deep-seated and unequivocal antagonism that would
26 render fair judgment impossible.” Based upon the Court’s knowledge and recollection, as well as that
27 of his court clerk and law clerk, Judge Wiseman responded to Counsel’s inquiry of the whereabouts of
28 his flash drive with a jest made off the record: “I don’t know, maybe the NSA has it.” In light of the

1 surrounding circumstances at the time – the height of the NSA scandal which pervaded the media in
2 response to the public discovering a massive government surveillance program that targeted the
3 communications and devices of millions of Americans, independent of threats to national security – the
4 Court’s comment, while deemed unnecessary in retrospect, was intended to be a satire on the state of
5 affairs regarding government spying on the mainland and around the world. Nothing said during the
6 Court’s proceedings that day or any other would lead the Court to genuinely believe Counsel was a
7 threat to national security or that the NSA would have some legitimate reason to intercept Counsel’s
8 flash drive in the hopes of recovering evidence of terrorist activity. To suggest otherwise is
9 inappropriate, unprofessional, and unacceptable to this Court.

10 The Court’s response to Counsel’s allegations parallels that of the challenged judge’s comments
11 in *Hook v. McDade*, 89 F.3d 350 (7th Cir. 1996). In that case, the challenged judge called the motion
12 for his disqualification by a lawyer-litigant “offensive,” claiming it “impugned” his integrity, and
13 thereafter directed the party to testify under oath about the judge’s alleged bias, because the judge
14 claimed the motion reflected unethical behavior. The Seventh Circuit upheld his denial of
15 disqualification, holding the judge reacted “albeit strongly” to a motion brought on the eve of trial, and
16 that his comments did not “reflect a bias or prejudice gained from outside the courtroom.” *Hook*, 89
17 F.3d at 356.

18 Accordingly, Counsel’s allegations and colossal leaps in logic regarding said statement are
19 equally offensive to the Court, and certainly impugn Judge Wiseman’s integrity as a long-time member
20 of the CNMI bar and extended tenure as an associate judge.¹ Even assuming such comments were, in
21 fact, made to Counsel off the record, a well-informed, thoughtful, and reasonable person would not find
22 that Judge Wiseman actually believed Counsel to be a terrorist or a threat to national security,
23 especially, in Counsel’s words, “[g]iven the times we all live at the present.” (Counsel’s Mot. to
24 Disqualify, at 8.) On the other hand, the Administrator argues that “the conjecture, speculation,
25 assumptions, and conclusions that are appropriately drawn in the Motion and Affidavit must be
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27 ¹ As such, the Court makes it a point to recognize that it is considering the possibility of sanctions pursuant to Rule 11
28 of the Commonwealth Rules of Civil Procedure as a result of the instant Motion and Affidavit filed by Counsel, with
specific regard to the allegations made and conjecture drawn in Counsel’s Motion and Affidavit.

1 disregarded,” and that “a reasonable person would find it unfathomable.” The Court agrees, finding that
2 while a highly suspicious and cynical person without knowing all of the facts may believe that Judge
3 Wiseman’s comment indicated some deeply buried bias or prejudice toward Counsel, any reasonable
4 person would recognize the Court’s comments as an attempted jape directed at making light of the
5 infamous NSA scandal of dragnet government surveillance, which became a topic of great concern to
6 the vast majority of the American people as the result of the nearly universal coverage throughout news,
7 print, and social media in the days or weeks preceding and during Guerrero’s trial.

8 Accordingly, the Court finds that no reasonable person could find that the facts represented by
9 Counsel supported the contention that Judge Wiseman harbored bias or prejudice toward Counsel.

10 **B. Extrajudicial Source Doctrine & Pervasive Bias Exception**

11 Second, the facts represented in the affidavit must “show that the bias and prejudice is personal:
12 that is, it stems from some extrajudicial source and would thus result in an opinion on the merits on
13 some basis other than what the judge has learned from his participation in the case.” *Liteky*, 510 U.S.
14 at 550 (citing *United States v. Grinnell Corp.*, 384 U.S. 563 (1966)); *see also Bank of Saipan v.*
15 *Superior Court*, 2002 MP 16 ¶ 39; *Saipan Lau Lau*, 2000 MP 12 ¶ 4; *Commonwealth v. Kaipat*, 1996
16 MP 20 ¶ 11.

17 Here, Counsel claims that Judge Wiseman’s conduct in relation to two completely unrelated
18 criminal cases has influenced his treatment of the present case such that disqualification is necessary.
19 Counsel alleges that Judge Wiseman should have transferred the entirety of the *Buckingham* case to
20 Associate Judge Govendo, as opposed to retaining the Commonwealth’s Motion to Disqualify Counsel.
21 Again, the Court stresses that Associate Judge Wiseman has no authority to assign or transfer cases, as
22 those duties remain strictly within the authority and discretion of the Presiding Judge of the Superior
23 Court, the Honorable Robert C. Naraja.

24 Regardless, the Commonwealth Supreme Court has held that “[I]tigators’ allegations challenging
25 the court’s ruling as unfair or wrongly decided cannot form the basis of a proper motion to disqualify
26 a judge for prejudice or bias. *Saipan Lau Lau*, 6 N.M.I. at 135. As such, judicial rulings alone rarely
27 constitute a valid basis for recusal on the basis of partiality or bias. *Liteky*, 510 U.S. at 555; *Grinnell*,
28 384 U.S. at 583; *see Bank of Saipan*, 2002 MP 16 ¶ 39. On the contrary, such unfavorable judicial

1 rulings are certainly proper grounds for appeal, rather than recusal. *Id.* If Counsel believed Judge
2 Wiseman’s treatment of his recusal in the *Buckingham* case as improper, he may seek the proper
3 avenues for appeal in that case, as it is unrelated to and has no incidental effect on the present case.

4 Further, in order to meet the high standard for intrajudicial comments to rise to the threshold of
5 a proper basis for disqualification – what is known as the “pervasive bias” exception – the challenged
6 judge’s actions would need to be “so extreme as to display clear inability to render fair judgment.”
7 *Estate of Malite*, 2011 MP 4 ¶ 58 (citing *Liteky*, 510 U.S. at 551). However, expressions of impatience,
8 dissatisfaction, annoyance, anger, and even comments that are deemed imprudent do not necessarily rise
9 to the level of pervasive bias. *See generally id.* (internal citations omitted). Further, considering the
10 Commonwealth’s Supreme Court’s inherent authority to remedy abuses of judicial process, the mere
11 exercise of judicial authority, without more, would not in and of itself demonstrate bias. *See generally*
12 *Saipan Lau Lau*, 2000 MP 12 ¶ 9.

13 Accordingly, the facts represented by Counsel, even if all true, are related to judicial
14 administration and do not rise to level of pervasive bias as contemplated by the Commonwealth
15 Supreme Court or the United States Supreme Court.

16 C. Untimeliness of Motion

17 Lastly, both the motion and affidavit must be filed in a timely manner, so as not to delay any
18 proceedings. Canon 3(D)(c); *Bank of Saipan*, 2002 MP 16 ¶ 16 (stating that “[a] disqualification
19 motion filed after the proceedings have commenced or just shortly before a motion is to be heard are
20 deemed untimely, especially where the proceedings are so far along that the grant of recusal and
21 assignment of a new judge would delay the proceedings.”) (citations omitted). A delayed motion and
22 affidavit may be considered by the Court if the moving party is able to show that he or she had no
23 reason to previously question the judge’s bias or prejudice, or the proceeding was recently assigned to
24 the challenged judge. *Id.* at ¶ 15.

25 Here, the Administrator claims that Counsel’s Motion was not brought at the earliest possible
26 date, first available opportunity, or at a time when it would not delay the proceedings, arguing that
27 Judge Wiseman was not just recently assigned to the present matter, and that Counsel’s claim for
28 attorney’s fees in the underlying case was pending well before Judge Wiseman began presiding over

1 the case. (Administrator’s Opp., at 8.) More importantly, the Administrator also argues that Counsel
2 did not bring the instant Motion at or near any of the times of the events represented to give rise to the
3 alleged factual basis of the prejudice and bias claims as set forth in his Affidavit (July, August, and
4 October 2013). (*Id.*) Counsel claims that at the time of the July 2013 incident cited in his Affidavit,
5 he “did look into the possibility of disqualifying Judge Wiseman based on his comments directed at
6 Counsel.” (Counsel’s Mot. to Disqualify, at 5, n.8.) However, Counsel failed to file the instant motion
7 until over six months later. Lastly, any argument regarding the Supplemental Affidavit that was
8 previously stricken pursuant to the “one affidavit rule” is hereby null and void.

9 Thus, the Court finds that Counsel’s Motion was not timely filed and cannot be held to conform
10 to the procedural requirements of Canon 3(D)(c).² Accordingly, the Court refuses to consider a transfer
11 to another judge to hear the merits of Counsel’s Motion brought on the basis of bias and prejudice.

12 **II. UNQUESTIONABLE IMPARTIALITY**

13 Lastly, the Court addresses whether, under the standards established by § 3308(a) and applicable
14 case law, Judge Wiseman’s impartiality could reasonably be questioned by the facts contained in the
15 Affidavit filed in Support of Counsel’s Motion.

16 In § 3308(a) motions, a trial judge is required to recuse himself when “a reasonable person with
17 knowledge of all the facts would conclude that the judge’s impartiality might be questioned.” *Saipan*
18 *Lau Lau*, 2000 MP 12 ¶ 5 (citations omitted). Again, the reasonable person standard is used in order
19 to prevent justice-shopping and to ensure that a justice or judge does not, at the mere sound of
20 controversy, abdicate his or her duty to preside over cases assigned to him or her, including the most
21 difficult cases. *Bank of Saipan*, 2002 MP 16 ¶ 29.

22 As stated above, no reasonable person with knowledge of all the facts would doubt Judge
23 Wiseman’s impartiality in light of the extended history of the present case and as a judge in the
24 Commonwealth Superior Court. No interaction with Counsel or any of the other attorneys of record

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26 ² Again, the Court heeds the Administrator’s arguments concerning undue delay in that any disqualification at this
27 juncture of the proceedings in the underlying case disrupts the entire probate of the Estate, as well as impact and delay
28 the probate the four Heir estates and the many heirs in each of those estates. The Court also establishes that its
consideration of the possibility of sanctions pursuant to Rule 11 of the Commonwealth Rules of Civil Procedure is in
light of the fact that Counsel directly benefits by delaying the distribution to the Heirs of the Estate, which directly
impacts his claim for attorney fees in the Quiet Title Action.

1 in this case could create an appearance of favoritism toward one party or another, and to suggest so due
2 to an off-the-cuff comment made off the record and taken disproportionately out of context is
3 inappropriate, especially coming from an experienced trial attorney with whom the Court has extensive
4 litigation history.

5 Thus, in ruling on the merits of the portion of Counsel’s motion brought under § 3308(a), the
6 Court finds that no reasonable person with knowledge of all the facts would conclude that Judge
7 Wiseman’s impartiality might be questioned.

8 **CONCLUSION**

9 For the foregoing reasons, the Court **HEREBY DENIES** Counsel’s Motion to Disqualify Judge
10 David A. Wiseman, retaining the present matter to continue to preside over it until its ultimate, and
11 hopefully expeditious, disposition.

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SO ORDERED this 5th day of June 2014,

/s/
David A. Wiseman, Associate Judge