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SUPERIOR COURT
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1 FOR PUBLICATION

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6 **IN THE SUPERIOR COURT**
7 **OF THE**
8 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

9 **COMMONWEALTH OF THE**)
10 **NORTHERN MARIANA ISLANDS,**)

11 Plaintiff,)

12 v.)

13 **AMBROSIO T. OGUMORO,**)
14 **D.O.B. 05/21/1958**)

15 Defendant.)

CRIMINAL CASE NO. 12-0134
(formerly CRIMINAL CASE NO. 13-0073B)

ORDER DENYING THE SPECIAL
PROSECUTOR'S ORAL MOTION TO
WITHDRAW FROM REPRESENTATION

16 This MATTER came before the Court on April 13, 2016, at 1:30 p.m. in Courtroom 223A.
17 Defendant, Ambrosio T. Ogumoro, was represented by Attorney Daniel T. Guidotti. The Government was
18 represented by court-appointed Special Prosecutor, George L. Hasselback. The Court heard the matter
19 telephonically.¹

20 At the hearing, the Special Prosecutor orally moved to withdraw as counsel for the Government.
21 Defendant Ogumoro did not oppose, subject to the condition that no conflict of interest would prevent
22 appointment of new counsel for the Government. The Court then took the matter under advisement.

23 Upon review of the applicable law, the Court **DENIES** the Special Prosecutor's motion for
24 withdrawal, without prejudice.

25

¹ The hearing came upon Defendant Ogumoro's motion for stay of execution pending appeal. An order on Defendant Ogumoro's motion is forthcoming.

1 **BRIEF HISTORY ON THE SPECIAL PROSECUTOR'S APPOINTMENT**

2 The Special Prosecutor was appointed by this Court's order of August 17, 2012, upon counsel's ex
3 parte petition for appointment as special prosecutor. The special prosecutor's duties were "limited to the
4 investigation and prosecution of matters or persons that are connected or relevant to the charges filed in [Co-
5 Defendant Edward T. Buckingham's] case." *Commonwealth v. Buckingham*, No. 12-0134 (NMI Super. Ct.
6 Aug. 17, 2012) (Granting Ex Parte Pet. for Appointment of Special Prosecutor at 4).² The order also
7 disqualified the Office of the Attorney General and the Office of the Public Auditor, in part, because those
8 offices represented Co-Defendant Buckingham at the arraignment held more than three years ago, on August
9 6, 2012.

10 The Office of the Attorney General challenged said court order in the Supreme Court, arguing that
11 this Court lacked the inherent authority to disqualify the entire criminal prosecution branch of the
12 Commonwealth. *In re San Nicolas*, 2013 MP 8. However, the Supreme Court affirmed the trial court's
13 inherent authority to appoint a special prosecutor. *Id.* ¶ 20. The case was remanded to this Court for a
14 disqualification hearing, but the parties to *In re San Nicolas* stipulated to the Special Prosecutor's
15 appointment without said hearing. Defendant Ogumoro also challenged the Court's subsequent ruling
16 accepting the parties' stipulated appointment of the Special Prosecutor, but the Supreme Court denied his
17 petition for writ of mandamus—finding the argument "meritless." *In re Ogumoro*, 2015 MP 9 ¶ 17.

18 On January 22, 2016, at the conclusion of a four-day trial, the jury found Defendant Ogumoro guilty
19 on two counts: one count of conspiracy to commit theft of services, and one count of theft of services. This
20 Court further found Defendant Ogumoro guilty on seven counts of the information: five counts of
21 misconduct in public office, one count of obstructing justice, and one count of criminal coercion. The Court
22 sentenced Defendant Ogumoro to a combined sentence of six and a half years of total incarceration, all
23 suspended, except for a consecutive sentence of one year.

24 _____
25 ² Buckingham was convicted and sentenced to three and a half years of incarceration, all suspended, on February 18,
2014. The Honorable Kenneth L. Govendo presided over Buckingham's trial and sentencing.

1 On April 7, 2016, Defendant Ogumoro filed a timely appeal.

2 **DISCUSSION**

3 The Court does not find good cause to grant the Special Prosecutor's motion to withdraw at this time.
4 Attorney withdrawal is governed by Rule 1.16 of the ABA Model Rules of Professional Conduct. Here, the
5 Court may grant the Special Prosecutor's motion for "other good cause," pursuant to Rule 1.16(7). However,
6 an attorney may withdraw only if it can be accomplished without a material adverse effect on the client's—in
7 this case, the Government's—interests. MODEL RULES OF PROF'L CONDUCT r. 1.16 cmt. 7 (AM. BAR ASS'N
8 1983).


9 At the April 13, 2016 hearing, the Special Prosecutor did not submit any affidavit or testimony as
10 to whether his withdrawal would have a material adverse effect on his client. Accordingly, the Special
11 Prosecutor's oral motion to withdraw from representation is denied.

12 However, the Court will allow the Special Prosecutor until April 29, 2016, to submit on an ex parte
13 basis any stipulation as to alternate candidate(s) for appointment of special counsel, or to return prosecution
14 to the Office of the Attorney General or to the Office of the Public Auditor for the remaining prosecution
15 in this matter. Any stipulation must include a sworn affidavit that replacement counsel for the Government
16 would not be conflicted from such representation, in accordance with *In re San Nicolas*, 2013 MP 8 ¶ 23.
17 The Court shall issue a ruling on the Special Prosecutor's submission without a court hearing.

18 If new counsel is appointed for the Government, the requirements of Rule 11-1 of the Supreme Court
19 Rules will be deemed to have been suspended. Any deadlines provided therein shall commence running after
20 10 business days have passed from the Court's order of appointment.

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22 **SO ORDERED** this 18th day of April, 2016.

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David A. Wiseman, Associate Judge