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CLERK OF COURT

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	Traffic Case Nos. 93-7529TDD and 93-8739TDD
)	
Plaintiff,)	MEMORANDUM DECISION ON
)	DEFENDANT'S MOTION TO
v.)	RECONSIDER SENTENCE
)	
VICENTE KAIPAT,)	
)	
Defendant.)	

This matter came before the Court on June 30, 1994, on the motion of Defendant Vicente Kaipat for reconsideration of the traffic fine imposed upon him. Defendant argues that his due process rights were violated because the fines collected by the Court are placed in a fund earmarked for courthouse construction, thus giving the Judges of the Court an improper incentive to levy heavier fines.

I. FACTS

Following a trial on January 18 and 19, 1994, the Court found Defendant guilty of a variety of traffic offenses committed in two separate incidents on October 16, 1993, and November 14, 1993.

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1 These offenses included speeding, driving under the influence of
2 alcohol, reckless driving, and eluding a police officer. See
3 Order, (Super. Ct. Jan. 20, 1994). On March 11, 1994, Defendant
4 was sentenced to sixty days imprisonment, two yearsⁱ probation,
5 100 hoursⁱ community work service, a suspension of his driver's
6 license for one year, alcohol counseling, and a \$1000 fine. See
7 Judgment and Probation Order (Super. Ct. Mar. 11, 1994). At the
8 announcement of this sentence, Defendant's counsel made an oral
9 motion for reconsideration, arguing that the fine violated his
10 rights to due process. The Court informed counsel that it would
11 only examine Defendant's constitutional contention on the basis of
12 a written motion. Defendant responded by filing this motion on
13 April 12, 1994.

14 15 II. ISSW

16 A single issue is presented: whether the Judicial Building
17 Fund Act of 1990, 1 CMC § 3405 ("the Act"), creates an improper
18 incentive for the Court to levy a fine against Defendant such that
19 the impartiality of the trial Judge might reasonably be
20 questioned, in violation of Defendant's right to due process of
21 law under the Fourteenth Amendment to the U.S. Constitution and
22 Article I, § 5 of the Commonwealth Constitution.

23 24 III. ANALYSIS

25 A. THE JUDICIAL BUILDING FUND

26 Title 1, CMC § 3405 provides that "all criminal and civil
27 fines and all revenues collected by the courts of the Commonwealth
28

1 [...] shall be deposited and credited to the Judicial Building
2 **Fund.**" The stated purpose of this Fund is to:

3 renovate and furnish existing Commonwealth judicial
4 facilities in an aggregate amount not to exceed
5 \$250,000, and to construct and furnish a suitable
6 building or buildings for the judicial branch of the
7 government.

8 1 **CMC § 3405 (b)**. Expenditure authority over this Fund is vested
9 in the Governor in accordance with the Planning and Budgeting
10 provisions of the Code. Section **3405 (d)** of the Act empowers the
11 Governor to use the Fund "**as** collateral for the advancement of
12 architectural, design and construction **services**" in conjunction
13 with "**other** funds properly allocated pursuant to local **or** federal
14 law."

15 On June 20, 1994, the Governor signed Public Law 9-3, the
16 Judicial Building Financing Act of 1994, which approved a fifteen
17 million dollar loan from the **NMI** Retirement Fund. This loan is to
18 be repaid not only from the Judicial Building Fund but also from
19 the General Fund as an obligation of the Commonwealth Government
20 if the Fund proves inadequate. Pub. L. No. 9-3, § 4.

21 **B. PROXIMITY OF JUDICIAL INTEREST**

22 The U.S. Supreme Court has long held that:

23 it certainly violates the Fourteenth Amendment and
24 deprives a defendant in a criminal case of due process
25 of law to subject his liberty or property to the
26 judgment of a court, the judge of which has a direct,
27 personal, substantial pecuniary interest in reaching a
28 conclusion against him in his case.

Tumey v. Ohio, 47 **S.Ct.** 437, 441 (1927). In *Tumey*, a village
mayor presided over a "liquor court," a portion of the fines from
which were paid directly to the mayor in compensation for his
services as judge. The Court held that such a system gave the

1 judge a direct pecuniary interest in convicting defendants in his
2 court, and that that interest violated due process. *Id.* In the
3 decades since *Tumey*, courts facing instances of interest by judges
4 in the outcomes of the cases before them have applied somewhat
5 varied legal tests. No Commonwealth Court has yet determined the
6 proper standard to be applied in the **Commonwealth**. Therefore, the
7 Court will consider each standard in turn.

8 **1. "Direct, Personal, Substantial Pecuniary Interest"**

9 Some state courts have held that only a "**direct**, personal,
10 substantial pecuniary **interest**" violates due process, while lesser
11 degrees of judicial interest do not. See *State v. Conlin*, 832
12 **P.2d** 225, 227 (*Ariz. App.* 1992) (earmarking of fines for drug
13 enforcement fund does not impair judges' impartiality); *Maes v.*
14 *People*, 454 **P.2d** 792, 795 (*Colo.* 1969) (interest must be direct,
15 apparent, substantial, certain or immediate); *Maxey v. Citizens'*
16 *National Bank of Lubbock*, 489 **S.W.2d** 697, 702 (*Tex. App.* 1972)
17 (interest must be direct, real and certain).

18 Applying such a standard to the facts here, the Court has no
19 doubt that 1 CMC § 3405 does not create a "**direct**, personal,
20 substantial pecuniary interest^N for Judges to levy fines. The
21 Judicial Building Fund was created solely for the purpose of
22 constructing improved judicial facilities, not for paying any
23 funds to any Judge. Moreover, since the Fund is administered by
24 the Governor, no Judge has any control over expenditures. This
25 factor was deemed critical in *State v. Conlin*, *supra*, 832 **P.2d** at
26 227-228, where no judge could control how fines levied in her
27 court would be used in the drug enforcement fund, and no judge
28 exercised executive responsibilities for raising revenue.

1 Likewise here, no Judge has any direct pecuniary interest in the
2 amount of money in the Judicial Building Fund.

3 **2. "Possible Temptation to the Average Man"**

4 Other courts have opted for a more expansive test, based on
5 an alternative passage from *Tumey* which finds a due process
6 violation in instances:

7 which would offer a possible temptation to the average
8 man as judge to forget the burden of proof required to
9 hold the balance nice, clear and true between the state
 and the accused.

10 *Tumey*, supra, 47 **S.Ct.** at 444. See also *Ward v. Village of*
11 *Monroeville, Ohio*, 93 **S.Ct** 80, 83 (1972) (due process violated
12 where mayor who presided over court was also responsible for
13 **town's** finances and major portion of town income came from court
14 fines); *State v. Chinn*, 121 **S.E.2d** 610, 612 (**W.Va.** 1961) (due
15 process violated where **judges'** fixed salaries drawn solely from
16 fund replenished by court fines).

17 This test appears to encompass at least a major part of
18 Defendant's claim. In his brief, he argues that:

19 each and every member of the **CNMI** Judiciary has an
20 incentive to maximize revenue from criminal and other
21 fines, so as to hasten the day of departure from the
 old, miserable facilities into a shiny, new judicial
 complex.

22 **Defendant's** Points and Authorities at 4. Thus, according to
23 Defendant, the more fines the Court levies the faster the Judicial
24 Complex will be built. However, a reading of § **3405(d)** shows that
25 the actual timing of construction of the new judicial complex is
26 dependent upon "[o]ther funds properly allocated pursuant to local
27 or federal **law,**" not upon the comparatively much smaller sums
deposited into the Judicial Building Fund. This fact was made

1 abundantly clear by the passage of Public Law 9-3 on June 20,
2 1994, which authorized a fifteen million dollar loan to cover the
3 cost of the new judicial complex. Even prior to the passage of
4 Pub. L. No. 9-3, the Chief **Justice's** State of the Commonwealth
5 Judiciary address, delivered June 9, 1994, emphasized that the
6 Judiciary was looking to the Legislature to authorize the loans
7 necessary for construction of the judicial complex. See
8 **Defendant's** Exh. at 4-6.

9 To be sure, the Judicial Building Fund is an important part
10 of the financing for the new structure. But no Superior Court
11 Judge would reasonably believe that marginal increases in the size
12 of the Fund would hasten the ultimate completion of the complex,
13 affecting his judgment as to the size of a fine in a criminal
14 case.

15 3. "Appearance of Partiality"ⁿ

16 The third legal test employed by some courts focuses on the
17 appearance of judicial partiality alone, drawing from the
18 statement in *In re Murchison*, 75 **S.Ct.**, 623, 625 (1955), that
19 "justice must satisfy the appearance of justice." Courts have
20 translated this rather nebulous standard into the following
21 concrete terms:

22 The test for an appearance of partiality is [...] whether an objective, disinterested observer fully
23 informed of the facts underlying the grounds on which
24 recusal was sought would entertain a significant doubt
that justice would be done in the case.


25 *Pepsico, Inc. v. McMillan*, 764 **F.2d** 458, 460 (7th **Cir.** 1985); see
26 also *National Union Fire Insurance v. Continental Illinois Corp.*,
27 639 **F. Supp.** 1229, 1230 (N.D. **Ill.** 1986); *Bradshaw v. McCotter*,
28 796 **F.2d** 100, 102 (5th **Cir.** 1986) (concurring opinion).

1 This distinction between the perceptions of a fully informed,
2 neutral observer and those of a casual, uninformed observer is
3 crucial. Judges are often the subject of speculation and
4 commentary in the media, among members of the private bar, and
5 among the citizenry in general. The article cited by Defendant is
6 a good example of this type of commentary. See "Do They Have
7 Laws;" Washington State Bar News, at 23 (Feb. 1994). How a
8 judge's conduct looks to such informal observers is certainly a
9 matter of concern to any court; however, these uninformed
10 appearances cannot govern the standards of due process in a
11 criminal trial. The Court finds that a neutral observer, fully
12 informed as to the relationship between the Judicial Building Fund
13 and the new judicial complex at the time of Defendant's
14 sentencing, would not entertain significant doubts that Defendant
15 would receive impartial justice in this case.

16
17 **IV. CONCLUSION**

18 Defendant's claim that the Judicial Building Funds violates
19 his rights to due process of law does not meet the standards of
20 any of the applicable tests for judicial partiality. For these
21 reasons, Defendant's motion to reconsider the monetary portion of
22 the fine levied against him is DENIED.

23
24 So ORDERED this 20 day of September, 1994.

25
26 
27 MIGUEL S. DEMAPAN, Associate Judge
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