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

STANLEY T. TORRES and JEANNE H.
RAYPHAND,

Plaintiffs,

v.

FROILAN C. TENORIO, Governor,
Commonwealth of the Northern Mariana
Islands, and C. SEBASTIAN ALOOT,

Defendants.

Civil Action No. 96-1200

**MEMORANDUM DECISION
DENYING PLAINTIFFS'
MOTION TO DISQUALIFY**

Stanley T. Torres and Jeanne H. Rayphand (collectively "Plaintiffs"), through their attorney Theodore R. Mitchell, filed a Motion to Disqualify the undersigned judge from presiding over the above matter. Froilan C. Tenorio, CNMI Governor, and C. Sebastian Aloit (collectively "Defendants") oppose Plaintiffs' motion. A similar motion was in Civil Action No. 95-390 ("Case 95-390"). Both motions were heard on May 6, 1997. The Court orally denied Plaintiffs' motion. The Court now issues its decision in writing.

I. FACTS AND PROCEDURAL BACKGROUND

On March 11, 1997, the Defendants filed separate motions to dismiss in the above-entitled case. These motions were to be heard on April 15, 1997. On March 20, 1997, Plaintiffs filed an

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1 Opposition to Defendants' motions. All the pleadings list the undersigned judge as the assigned judge
2 in this case.

3 The Plaintiffs were on notice that the undersigned judge was assigned to this matter since
4 March 20, 1997. Nonetheless, just eight minutes before a scheduled hearing, Plaintiffs filed a Notice
5 and Motion to Disqualify and requested that the Court hear their motion. The Court continued the
6 hearing on all of the motions to May 6, 1997, primarily to allow the Plaintiffs to comply with Rule
7 6(d)(1) of the Com.R.Civ.P. Plaintiffs subsequently filed a Notice and Motion to Disqualify in Case
8 95-390, another matter over which I preside. That motion was also set for hearing on May 6, 1997.

9 On May 6, 1997, the Court heard both of Plaintiffs' Motion to Disqualify, pursuant to the
10 Commonwealth judicial disqualification statute, 1 CMC § 3308^{1/}. In both cases, Plaintiffs contend
11 that the Court is personally biased and prejudiced against them and their counsel. There has been no
12 ruling, adverse or otherwise, or any assignment to the other judges in this case. Instead, Plaintiffs
13 allege that sixteen of the Court's rulings in Case 95-390 show "a personal bias and prejudice, or the
14 appearance of partiality, in favor of the Governor and his attorneys and against the plaintiffs and their
15 attorney." *See* Plaintiffs' Motion to Disqualify Judge Edward Manibusan, p. 8. Particularly,
16 Plaintiffs rely on this Court's statements, excerpted in part and out of context, with regard to two
17 contempt proceedings born out of Case 95-390. *See* Plaintiffs Notice And Motion To Disqualify
18 Judge Edward Manibusan, pp. 6-7.

19 20 II. ISSUE

21 Whether this Court should disqualify itself under 1 CMC § 3308.

22 23 III. ANALYSIS

24 A judge may be disqualified when "his or her impartiality might reasonably be questioned"
25 or when "he has a personal bias or prejudice concerning a party." 1 CMC §§ 3308(a) and (b)(1).

26
27 ^{1/} 1 CMC § 3308 is modeled on the federal statute, 28 U.S.C. § 455.

1 The relevant language in the federal recusal provision, 28 U.S.C. §§ 455(a) and (b)(1), is identical. To
2 interpret sections 3308(a) and (b)(1) of our Code, this Court looks to the construction given sections
3 455(a) and (b)(1) by federal courts. See *Cepeda v. Hefner*, 3 N.M.I 121, 127 n.
4 (1992)(“interpretations of similar federal rules are helpful in interpreting our rules.”).

5 In *Liteky v. United States*, 114 S.Ct. 1147 (1994), the Supreme Court established the rule that
6 adverse rulings cannot form the basis for judicial disqualification:

7 *[J]udicial rulings alone almost never constitute a valid basis of a bias or*
8 *partiality motion... Almost invariably, they are proper grounds for appeal, not*
9 *for recusal. Second, opinions formed by the judge on the basis of facts*
10 *introduced or events occurring in the course of the current proceedings, or of*
11 *prior proceedings, do not constitute a basis of a bias or partiality motion unless*
they display a deep-seated favoritism or antagonism that would make fair
judgment impossible. Thus, judicial remarks during the course of a trial that
are critical or disapproving of, or even hostile to, counsel, the parties, or their
cases, ordinarily do not support a bias or partiality challenge.

12 *Id.* at 1157(emphasis added). See also *Duckworth v. Department of Navy*, 974 F.2d 1140, 1142 (9th
13 Cir. 1992)(“To provide grounds for recusal, prejudice must result from an extrajudicial source. A
14 judge's adverse ruling alone is not sufficient bias.”); *Mayes v. Leipziger*, 729 F.2d 605, 607 (9th Cir.
15 1984); *United States v. Chischilly*; 30 F.3d 1144, 1149 (9th Cir. 1994), *cert. denied*, 115 S.Ct.
16 946(1995)(rulings “cannot possibly show reliance upon an extrajudicial source in a judge's
17 deliberation”); *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 566(9th Cir.1995)(“bias
18 or prejudice stem[ming] from an extrajudicial source and not from conduct or rulings made during
19 the course of the proceeding” is required); *In re International Business Machines Corp.*, 618 F.2d 923,
20 929 (2nd Cir. 1980)(“the bias to be established must be extrajudicial and not based upon in-court
21 rulings”).

22 Furthermore, “a trial judge must be free to make rulings on the merits without the apprehension
23 that if he makes a disproportionate number in favor of one litigant, he may have created the impression
24 of bias.” *In re International Business Machines Corp.*, *supra*, at 929. That court further stated that
25 “[t]here is no authority for, and no logic in, assuming that either party to a litigation is entitled to a certain
26 percentage of favorable decisions.” *Id.* at 930.

1 In regard to the *criminal contempt* proceedings alluded by Plaintiffs in their briefs as the basis for
2 disqualification, Fed.R.Crim.P. 42, the federal counterpart to Com.R.Crim.P. 42, requires a judge to
3 recuse himself or herself from *contempt proceedings* where the contempt alleged involves criticism of,
4 or disrespect to, the judge. *United States v. Purgh*, 479 F.2d 611, 613 (8th Cir. 1973)(emphasis added).
5 In other contempt cases, not personally involving the judge, reassignment is generally not necessary. *Id.*
6 In *Mayberry v. Pennsylvania*, the United States Supreme Court suggests that a rule of caution be
7 followed.

8 The power of contempt which a judge must have and exercise in protecting the
9 due and orderly administration of justice, and in maintaining the authority and
10 dignity of the court, is most important and indispensable. But its exercise is
11 a delicate one, and care is needed to avoid arbitrary or oppressive conclusions.
12 *This rule of caution is more mandatory where the contempt charged has in it*
13 *the element of personal criticism or attack upon the judge. The judge must*
14 *banish the slightest personal impulse to reprisal, but he should not bend*
15 *backward, and injure the authority of the court by too great leniency.* The
16 substitution of another judge would avoid either tendency but it is not always
17 possible. Of course where acts of contempt are palpably aggravated by a
18 personal attack upon the judge in order to drive the judge out of the case for
19 ulterior reasons, the scheme should not be permitted to succeed ...

20 *Mayberry v. Pennsylvania*, 91 S.Ct. 499, 504 (1971)(emphasis added)(quoting *Cooke v. United*
21 *States*, 45 S.Ct. 3900; accord *United States v. Martin-Trigona*, 759 F.2d 1017 (1985).

22 *Liteky* and the string of Ninth Circuit cases cited above clearly establish that any alleged prejudice
23 must stem from an extrajudicial source to require this Court's disqualification. Plaintiffs fail to allege
24 extrajudicial bias. Instead, Plaintiffs argued at the May 6, 1997 hearing, that this Court is impatient,
25 inexperienced, abrupt and hostile. They further asserted that this Court chastises the Plaintiffs and their
26 counsel in court without legal basis.

27 Despite the fact that Plaintiffs' quest for public and political support of their cause lead them
28 to attack the integrity and impartiality this Court, its judges and the entire judiciary, they fail to show
or demonstrate that this Court's decisions are based on anything other than the merits of the case.
Plaintiffs' motion is devoid of any allegations tending to show personal bias stemming from an
extrajudicial source. In fact, Plaintiffs have shown no ground for disqualification but the bare fact of the
adverse rulings in Case No. 95-390 and conjecture as to its lingering prejudicial effect.

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IV. CONCLUSION

Plaintiffs state no legal or factual basis under existing case law for their motion. They fail to demonstrate, in any way, a personal bias or prejudice this Court has against Plaintiffs or their attorney requiring this Court's disqualification.^{2/} For the foregoing reasons, this Court finds the reasons and circumstances raised by the Plaintiffs as the basis for their motion insufficient to disqualify the undersigned judge. Accordingly, Plaintiffs motion is hereby DENIED.

So ORDERED this 29 day of May, 1997.


EDWARD MANIBUSAN, Associate Judge

^{2/} The Court is compelled to note Plaintiffs counsel's disregard of Court Rules and case law, along with his blatant disrespect of this Court, as demonstrated in the record of May 6, 1997 Hearing, are all acts unbecoming of an officer of the court. Indeed, Mr. Mitchell's filing of this motion is sanctionable conduct. *See generally*, Com.R.Civ.P.11.