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

JOAQUIN M. MANGLONA	)	Civil Action No.97-486
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	ORDER RE MOTION TO
	)	DISQUALIFY SPECIAL
<b>GOVERNMENT OF THE</b>	)	JUDGE DAVID A. WISEMAN
<b>COMMONWEALTH OF THE</b>	)	
<b>NORTHERN MARIANA ISLANDS</b>	)	
	)	
Defendant.	)	

I. INTRODUCTION

On August 20, 1997, the CNMI Government's Motion to **Disqualify** Special Judge David A. **Wiseman** from presiding over **this** matter came before this Court. Sally B. **Pfund**, Assistant Attorney General, appeared on **behalf** of the CNMI Government. Douglas F. **Cushnie** appeared on behalf of **Joaquin M. Manglona**. Ms. **Manglona** did not file a written brief on the motion and at oral argument did not join or oppose the motion to disqualify. The Court, having considered the written and oral arguments of the **This** Court further finds that there is no appearance of impartiality ~~mandating~~ Special Judge **Wiseman's** disqualification, and the record herein, hereby rules on the **CNMI** Government's motion as follows.

II. FACTS

On July 9 1997, this Court heard oral argument on Defendant CNMI's motion to dismiss pursuant to Com. R. Civ. P. 12(b)(1). The CNMI Government moved to dismiss Plaintiff's

1 **complaint** on the grounds that Plaintiff failed to exhaust his administrative remedies under § 5-  
2 of the CNMI Procurement Regulations, prior to filing the instant action.

3 On July 11, 1997, this Court issued the following Order:

4 Both parties have taken the position that § 5-201 of **the CNMI Procurement**  
5 Regulations **governs** this lease agreement. However, the Court questions whether  
6 the CNMI Procurement **Regulations** governs lease agreements for real **property** or  
7 whether these Regulations are limited to construction related **matters**. **Accordingly,**  
8 both parties are Ordered to submit to the Court within ten calendar **days** of this  
9 Order written briefs on the **following issues**:

10 1. Do the CNMI Procurement Regulations set forth at 12 **Com.**  
11 Reg. No. 9 (September 15, 1990) 7274-7320 and especially §5-201  
12 apply to lease agreements for real property?

13 2. If the **CNMI Procurement Regulations** set forth at 12 Com. Reg.  
14 No. 9 (September 15, 1990) 7274-7320 do apply to lease agreements  
15 for real property, **can** a landlord leasing real **property** to the CNMI  
16 Government be bound by the requirements of § 5-201 if the lease  
17 agreement does not include, and in fact contradicts, the dispute  
18 requirements set for in **§ 5-201?**

19 Following the issuance of the July 11, 1997, Order, the CNMI Government filed the  
20 **present** motion to dismiss. In doing so, the **CNMI Government** argues **as** follows:

21 The **particular issues** which Special Judge **Wiseman** has indicated **will** be decided  
22 create a conflict of interest for the special judge because a decision on those issues  
23 **will** substantially affect Special Judge **Wiseman's** rights and obligations **as** a current  
24 contractor with the **CNMI** and **will affect** Special Judge **Wiseman** in his private  
25 practice of law by affecting the rights and obligations of private parties he  
26 represents in their dealings with the CNMI under government contracts, as well as  
27 those of public agency **clients** he represents in their contractual **dealings** with  
28 private parties.

Motion at 4. The **CNMI Government** argues **further**:

The special judge's request for briefing on these issues makes it clear that he  
intends to make a decision which may limit the coverage of the CNMI Procurement  
Regulations to certain types of contracts and to decide whether parties may, by  
contract, exempt themselves from those regulations. Such a decision would have  
far reaching effects on all parties involved in contracting with the CNMI. One of  
those parties would be Special Judge Wiseman.

Motion to Disqualify at 5. (emphasis added).

### III. ISSUE PRESENTED

Is there a conflict of interest under 1 CMC § 3308(b)(5) which requires Special Judge  
**Wiseman** to **recuse** himself from presiding over this matter.

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IV. ANALYSIS

1 CMC § 3308 sets forth the grounds for the **disqualification** of Commonwealth judges.

The statute provides, in **pertinent** part:

(a) A justice or judge **shall disqualify** himself or herself in any proceeding in which his or her impartiality might reasonably be questioned.

(b) A justice or judge shall also **disqualify** himself or herself in the following circumstances:

\* \* \*

(4) He or she, **individually** or **as** a fiduciary . . . **has** a financial interest **in** the subject matter in controversy or **in a party** to the **proceeding**, or any other interest that could be substantially affected **by the** outcome of the **proceeding** . . . .

"**Financial Interest**" is defined at 1 CMC § 3308(d)(3) as being "**an** ownership or a legal or **equitable** interest, however **small**, or a relationship as director, advisor, or other active **participan**: in the affairs of **aparty** . . . ."

**Thus**, in order for a judge's disqualification to be mandated, he or she must:

- (1) Have a **financial** interest in the subject **matter** in controversy; or
- (2) Have a **financial interest** in the affairs of a **party**; or
- (3) Have **any** other interest that **could** be substantially affected by the outcome of the **proceeding**.

The **CNMI** Government has cited no cases in its Motion to **Disqualify**. Instead, it relies on **the** following facts to argue that Special Judge **Wiseman** should be disqualified from **this** matter:

1. Special Judge **Wiseman** "**has a** currently effective contract to provide legal services to the Mayor of **Saipan** and a proposed contract currently being processed to provide legal services to **the Saipan** and Northern **Islands** Municipal Council." Motion at 5-6.

2. Special Judge **Wiseman** "**currently represents a** laboratory services contractor in a **contract** termination situation invoiving the **Commonwealth** Hospital Center." Motion at 6.

The **Court** finds that the **CNMI** Government's arguments and concerns are unfounded.

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2 A. There is No Reasonable Basis to Question Judge Wiseman's Impartiality in This Matter

3 1 CMC § 3308(a) mandates a judge's **disqualification** from a proceeding only if his or h  
4 impartiality might reasonably be questioned. In interpreting this requirement, Courts use the  
5 "reasonable person standard" and determine whether a reasonable person, knowing all of the  
6 circumstances, would believe that the judge's impartiality could be questioned. See *e.g.*, *U.S. v.*  
7 *Heldt*, 668 F.2d 1238, 1271 (D.C. 1981)("We must . . . test appellant's motion on the basis of  
8 whether or not they have established an appearance of bias or prejudice under the reasonable  
9 person standard.")

10 As discussed, supra, the CNMI Government's motion for disqualification relies on two  
11 factual arguments which will be addressed in order:

12 1. Special Judge Wiseman "has a currently effective contract to provide legal  
13 services to the Mayor of Saipan and a proposed contract currently being processed  
to provide legal services to the Saipan and Northern Islands Municipal Council."

14 Motion at 5-6.

15 This argument of Defendant is without merit in view of Section 3-107 of the CNMI  
16 procurement regulations which specifically apply to lawyers. Section 3-107 reads as follows:

17 Section 3-107 Competitive Selection Procedures of Professional Services.

18 (1) Procurement Method. The services of accountants, physicians or  
19 lawyers shall be procured as provided in this section except when  
20 authorized as a small purchase, emergency procurement, expedited  
procurement or sole-source procurement.

21 Thus, the procurement regulations at issue in this case have no legal or factual relationship  
22 to the procurement regulations governing Special Judge Wiseman's contract to provide legal  
23 services to the Saipan and Northern Mariana Islands Council. Defendant's argument is not a  
24 basis for Special Judge Wiseman's disqualification in this matter.  
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1 2. Special Judge Wiseman "currently represents a laboratory services contractor in  
2 a contract termination situation involving the Commonwealth Hospital Center."

3 Motion at 6.

4 The contract termination of the Laboratories services contractor represented by Special  
5 Judge **Wiseman** was based on a mutual agreement between the parties and has been completed.  
6 The relationship between CHC and the contractor was borne out of the **CNMI** procurement  
7 regulations and **several** of the aspects of such termination have been implemented or are in the  
8 process of implementation, pursuant to the procurement regulations. The leases of **real property**  
9 referred to have been terminated by **mutual** consent, and are no longer an issue of dispute.  
10 Defendant's argument is not a basis for Special Judge **Wiseman's disqualification** in this **matter**.

11 **B. Special Judge Wiseman has no financial interest in the subject matter in controversy.**

12 1 CMC § 3308 **mandates** a judge's disqualification if the judge **has** a financial interest in  
13 the subject matter in controversy. The "subject matter in controversy" in the present case is  
14 limited to a **dispute** over a lease of real property owned by Plaintiff. **Special Judge Wiseman** has  
15 no financial interest in this property and thus **has** no **financial** interest in the subject matter in  
16 **controversy**. See *e.g.*, Department of Energy v. Brimmer, 673 F.2d 1287, 1295(Em.App. 1982)  
17 (**We** hold that the judge who holds stock in other participants in the Entitlements **Program** but not  
18 in **any** of the parties before **him** does not have a financial interest in the subject matter of the  
19 litigation before **him**.) **Because** Special Judge **Wiseman** has no **financial** interest in the subject  
20 matter in controversy in this matter, his disqualification is not mandated.

21  
22 **C. Special Judge Wiseman has no financial interest in the affairs of any litigant in this matter.**

23 1 CMC § 3308(d)(3) mandates a judge's disqualification if the judge has a financial interest  
24 "in the affairs of a party." (emphasis added) **The** definition of party is limited to participants in  
25 the litigation before the presiding judge. See *e.g.*, In re Cement Antitrust Litigation, 688 F.2d  
26 1297, 1313 (9th Cir. 1982) (**We conclude** that the term 'party' . . . must be given its broad  
27

1 customary meaning . . . and hold that for purposes of the **recusal statute**, the term 'party' inclu  
2 class members."); **U.S. v. Sellers**, 566 F.2d 884 (4th Cir. 1977)(Judge was not disqualified in  
3 bank robbery case because he held stock in the bank robbed, since the bank was not a **party and**  
4 neither it nor its stockholders had a financial stake in the **outcome**.) Because Special Judge  
5 **Wiseman has no financial** interest in any of the parties to this action, his **disqualification** is not  
6 required.

7  
8 D. Special Judge Wiseman has no other interest that could be substantially affected by  
9 the outcome of this proceeding.

10 The phrase "any other interest" is imprecise. See in *re Virginia Elec. & Power Co.*, 539  
11 F.2d 357, 367-68 (4th Cir. 1976). ("It is not easy to conclude what the term **means.**") See also  
12 Disqualification of Judges and Justice in the Federal Courts, 1973, 86 *Harv.L.Rev.* 736,753 (If  
13 the interest strongly resembles a direct interest - for example, stock held in a subsidiary (or parer  
14 of the corporate party - any amount should **disqualify**, just **as** does any stock held in the party  
15 itself. **As** the interest becomes **less** direct, such as that in an enterprise **carrying** on business **with**  
16 the party, **only** if the extent of the interest is itself substantial can the judge's impartiality be  
17 reasonably questioned.")

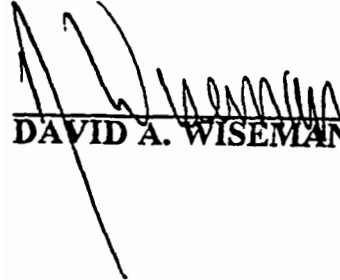
18 **This** Court, after **careful** consideration, perceives no "interest" **financial** or otherwise, 'that  
19 could be substantially affected by the outcome of this proceeding.'

## 20 V. CONCLUSION

21 For the foregoing reasons this Court **finds** that there is no appearance of impartiality  
22 mandating Special Judge **Wiseman's** disqualification. **This** Court further finds that there is no  
23 statutory basis **mandating** Special Judge **Wiseman's** disqualification **from this** matter. Therefore,  
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1 the CNMI Government's Motion for Disqualification of Special Judge Wiseman is **HEREB**  
2 **DENIED.**

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4 So ORDERED this 30 day of September, 1997.

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8 **DAVID A. WISEMAN, Special Judge**  
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JOAQUIN M. MANGLONA

)

Civil Action No. 97-486

Plaintiff,

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v.

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ERRATA ORDER

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GOVERNMENT OF THE  
COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS

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Defendant.

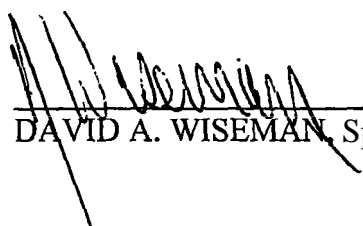
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The court's decision of September 30, 1997, entitled "Order Re Motion to Disqualify

Special Judge David A. Wiseman", is hereby ordered to be published.

So ORDERED this 16 day of July, 1999

  
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DAVID A. WISEMAN, Special Judge