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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, vs. JEFFREY SABLAN BASA, Defendant.	)	CRIMINAL CASE NO. 98-432D **ORDER DENYING DEFENDANT'S MOTION FOR DISQUALIFICATION OF ASSOCIATE JUDGE JOHN A. MANGLONA**

I. PROCEDURAL BACKGROUND

This matter came before the Court on April 14, 1999, in Courtroom 202 on Defendant's motion for disqualification of Judge John A. Manglona. Assistant Attorneys General Aaron Williams and Marvin Williams appeared on behalf of the Commonwealth. Public Defender Harvey M. Palefsky appeared on behalf of the defendant, Jeffrey Basa, who was also present. The Court, having reviewed the memoranda, declarations, having heard and considered the arguments of counsel and being fully informed of the premises, now renders its written decision.

II. FACTS

On November 25, 1998, Defendant was charged with one count of Escape in violation of 6 CMC § 3203. On December 14, 1998, Defendant, represented by Chief Public Defender Harvey **[p. 2]** Palefsky, appeared for arraignment before Presiding Judge Edward Manibusan. After waiving the reading of the Information and advisement of his personal and constitutional rights, Defendant

entered a plea of not guilty. Defendant was subsequently ordered to appear for status conference on January 12, 1999 before Associate Judge John A. Manglona. On three occasions, on January 12, 1999, February 3, 1999 and March 16, 1999, Associate Judge Manglona continued the status conference. On March 22, 1999, defendant, through his attorney, moved to disqualify Associate Judge John A. Manglona pursuant to 1 CMC § 3308(a). At no time did Assistant Attorney General Ramona V. Manglona appear or represent the government in this case.

III. ISSUE

Whether a sitting judge, who is married to a criminal prosecutor employed by the government, should be disqualified from any criminal proceedings where the criminal case is being handled by a prosecutor other than the judge's spouse?

IV. ANALYSIS

1 CMC § 3308(a) provides that "[a] justice or judge of the Commonwealth shall disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned." Similarly, its federal counterpart, 28 U.S.C. § 455(a) states that "[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Since the CNMI statute on judicial disqualification is almost identical to its federal counterpart and there is no CNMI case law on point, the use of federal case law on this matter for guidance is appropriate.

The provisions in 28 U.S.C. § 455(a) contains a substantially broader and more inclusive language and covers a wider range of bases for disqualification of a judge. *Virginia Electric and Power Company v. Sun Shipbuilding and Dry Dock Co.*, 407 F. Supp. 324, 329 (E.D. Va. 1976). "The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the **[p. 3]** appearance of impropriety whenever possible." *Liljeberg v. Health Services Acquisition Corp.*, 108 S.Ct. 2194, 2203-05 (1988).

In *Potashnick v. Port City Const. Co.*, 609 F.2d 1101 (5th Cir. 1980), the court noted the

objectiveness of the statutory test:

> Because 28 U.S.C. § 455(a) focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street. Use of the word "might" in the statute was intended to indicate that disqualification should follow if the reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality."

Id. at 1111. *See also Chitimacha Tribe of Louisiana v. Harry L. Laws Company, Inc.*, 690 F.2d 1157, 1165 (5th Cir. 1982) *cert. denied,* 104 S.Ct. 69 (1983). Therefore, "disqualification is appropriate only if the facts would provide an objective, knowledgeable member of the public with a *reasonable basis* for doubting a judge's impartiality." *Perkins v. Spivey,* 911 F.2d 22, 33 (8th Cir. 1990) (emphasis added).

While the appearance of impartiality is the general standard for disqualification, ". . . no factual or concrete examples of the appearance of impartiality were provided in the Congressional debates." *SCA Services, Inc. v. Morgan*, 557 F.2d 110, 116 (7th Cir. 1977). Consequently, the general standard created by the statute is difficult to define. *Id.* at 116. Recognizing the difficulties, Congress indicated that:

> "in assessing the reasonableness of a challenge to his impartiality, each judge must be alert to avoid the possibility that those who would question his impartiality are in fact seeking to avoid the consequences of his expected adverse decision. Disqualification for lack of impartiality must have a reasonable basis. Nothing in this proposed legislation should be read to warrant the transformation of a litigant's fear that a judge may decide a question against him into a 'reasonable fear' that the judge will not be impartial. Litigants ought not have to face a judge where there is a reasonable question of impartiality, but they are not entitled to judges of their own choice."

Matter of Searches Conducted on March 5, 1980, 497 F. Supp. 1283, 1290 (E.D. Wis. 1980) (*citing U.S. Code Cong. & Admin. News* (1974) at 6355).

The relevant inquiry of a judge's impartiality requires consideration of "all the **[p. 4]** circumstances." Thus, in making an assessment on a motion for disqualification, a judge is not limited to those facts presented by the challenging party. *Matter of Searches Conducted on March 5, 1980,* 497 F. Supp. at 1291. "[I]t is the Court's duty to consider all evidence of bias or prejudice, whether revealed in the affidavit or not." *Id.* Moreover, the circumstances should be viewed

"through the eyes of a reasonable person rather than a person who is highly sensitive." *Id.*

In his motion for disqualification, Defendant relies on a state appellate court, *Smith v. Beckman,* 683 P.2d 1214 (Colo. App. 1984), to support the argument of an appearance of impartiality. In *Beckman,* the county judge who presided over a criminal case brought by the county prosecutor was required to disqualify himself solely because he was married to a deputy district attorney working in the same county office. In that case, the Colorado appellate court noted that the judge's wife neither appeared nor was involved in the case in any capacity but nevertheless ruled that the appearance of impropriety was created by the close nature of the marriage relationship. *Id.* at 1216.

Aside from the *Beckman* case, *supra*, this Court found only a handful of cases which addresses judicial disqualification based on a spouse's involvement in a case. In *Perkins v. Spivey,* 911 F.2d 22 (8th Cir. 1990), a plaintiff employee filed a lawsuit against her employer for Title VII violation. The federal judge sitting on the case was married to an attorney specializing in labor law. *Id.* at 33. The Eight Circuit Court of Appeals held that basing a motion for disqualification on the above facts was legally insufficient. As the court put it:

> Merely because his wife is a labor attorney does not mean that Judge . . . must recuse himself from all labor cases. Otherwise, every judge married to an attorney would be forced to recuse himself or herself from every case involving matters in which the spouse specializes. In fact, a judge whose spouse is a general practitioner would have to recuse himself or herself in almost every case.

Id.

Another federal court has also denied a motion for disqualification of a judge who was married to an attorney. *In the Matter of Billedeaux,* 972 F.2d 104 (5th Cir. 1992), a judge was presiding over a case in which the defendant was, on various previous occasions, represented by a **[p. 5]** firm that the judge's husband was a partner in. *Id.* at 105. The plaintiff argued that the judge's impartiality might reasonably be questioned because the judge and her husband benefit from fees from the client. *Id.* at 105-106. The court stated that there was no reason to conclude or speculate that the judge's actions would affect her husband's law firm and that any interest that could be attributed to the judge "is so remote and speculative as to dispel any perception of

impropriety." *Id.* at 106. "A 'remote, contingent, or speculative' interest is not one 'which reasonably brings into question a judge's partiality.'" *Id.* (*citing In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1313 (2nd Cir. 1988), *cert. denied*, 109 S.Ct. 2458 (1989)).

The federal cases cited above applied a broad, objective statutory test enabling courts to follow a comprehensible analysis in determining a judge's partiality. The analysis includes consideration of all the circumstances from a reasonable person's perspective and is not based solely on the familial or marital relationship between a judge and his spouse.

In claiming that Judge Manglona's partiality might be questioned, Defendant cites no other facts other than that the judge's wife, Assistant Attorney General Ramona V. Manglona, "works in the same small office as the attorney prosecuting the instant matter" and that "the prosecuting attorney is Mrs. Manglona's direct supervisor." *See Motion for Disqualification of Judge*, at 2 (filed March 23, 1999). While these facts *could* raise a reasonable question about the judge's impartiality, it is not legally sufficient in providing an objective, knowledgeable member of the public with a *reasonable basis* for doubting Judge Manglona's impartiality. *See Perkins v. Spivey*, 911 F.2d at 33. Here, the judge's wife was never "engaged in the case" in any capacity. As noted above, the challenge to impartiality must be a reasonable one, *Virginia Electric and Power Company v. Sun Shipbuilding and Dry Dock Co.*, 407 F. Supp. at 329, and "all the circumstances" must be considered. *Potashnick*, 609 F.2d at 1111.

In a community such as ours where familial relationships are prevalent, a marriage relationship, in and of itself, should not be the deciding factor in determining a judge's partiality. To disregard consideration of all other circumstances where a marital relationship exists would have **[p. 6]** overreaching implications. Defendant's position in the case at bar, if accepted, would require that judge Manglona disqualify himself whenever a party, represented by the Attorney General's Office, brings an action before him without regard to the stage of the proceedings of the action, the relative interests of the common party in the actions, the actual involvement of his spouse in the case, or the possible prejudice to the other parties in the case before him. Further, among other legal divisions, the CNMI Attorney General's Office also operates a Civil Division. If Defendant's

arguments were to be accepted, then all civil cases brought by or against a party represented by the Attorney General's Office would prevent Judge Manglona from presiding over such cases. This is especially true since all assistant attorney generals, including Assistant Attorney General Ramona V. Manglona, ultimately answer to the head of the office, the Attorney General. Due to the overreaching implications that will result in granting a disqualification, Defendant's concerns cannot be accepted. The *Beckman* case is, therefore, distinguishable and, as a matter of law and policy, this Court adopts the objective statutory test laid down in the federal cases.

V. CONCLUSION

The safeguards contemplated by the statute to protect the integrity and dignity of the judicial process is protected by the mandate of 1 CMC § 3308 and § 3309, and each judge's duty to adhere to the Code of Judicial Conduct. Despite the broader and more inclusive language of the disqualification requirements, the facts in the instant case are, at best, remote or speculative. The fact that Judge Manglona's wife is a criminal prosecutor, without more, does not reasonably bring into question the judge's partiality.

The Court declines to follow the more drastic and unrealistic holding of the *Beckman* case, *supra.* Judges take an oath not only to uphold the Constitution and follow the law, but also to perform their judicial duties impartially and diligently. Canon 3B, *ABA Model Code of Judicial Conduct (1990); See also* 1 CMC § 3309(a). Unless reasonable grounds are provided, it is presumed that Judge Manglona has adhered to the judicial oath. **[p. 7]**

For the foregoing reasons, Defendant's motion for disqualification is **DENIED.**

SO ORDERED this 23rd day of April, 1999.

/s/ Virginia Sablan Onerheim
VIRGINIA SABLAN ONERHEIM
Associate Judge