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

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Plaintiff,

vs.

HEIDI CAJA.

Defendant.

CRIMINAL CASE NO. 99-040D

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 the disqualification of Associate 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 Defendant, Heidi Caja, 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.

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II. FACTS

On February 4, 1998, Defendant was charged with violating 3 CMC § 4363(a) for fraudulent representation of a non-resident employment application and contract. On February 22, 1999,

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1 Defendant, represented by Assistant Public Defender Masood Karimipour, Esq. appeared for
2 arraignment before Presiding Judge Edward Manibusan. The government was represented by
3 Assistant Attorney General Kevin Lynch. After waiving the reading of the Information and
4 advisement of his personal and constitutional rights, Defendant entered a plea of not guilty.
5 Presiding Judge Manibusan assigned the matter to Associate Judge John A. Manglona and set a
6 status conference hearing for March 16, 1999. On March 16, 1999, the matter was continued to
7 March 22, 1999. On March 22, 1999, Defendant, through his attorney, Chief Public Defender
8 Harvey Palefsky, moved to disqualify Associate Judge John A. Manglona pursuant to 1 CMC §
9 3308(a). At no time did Assistant Attorney General Ramona V. Manglona appear or represent the
10 government in this case.

11 12 III. ISSUE

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

16 17 IV. ANALYSIS

18 1 CMC § 3308(a) provides that “[a] justice or judge of the Commonwealth shall disqualify
19 himself or herself in any proceeding in which his or her impartiality might reasonably be
20 questioned.” Similarly, its federal counterpart, 28 U.S.C. § 455(a) states that “[a]ny justice, judge,
21 or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality
22 might reasonably be questioned.” Since the CNMI statute on judicial disqualification is almost
23 identical to its federal counterpart and there is no CNMI case law on point, the use of federal case
24 law for guidance is appropriate.

25 The provisions in 28 U.S.C. § 455(a) contains a substantially broader and more inclusive
26 language and covers a wider range of bases for disqualification of a judge. *Virginia Electric and*

1 *Power Company v. Sun Shipbuilding and Dry Dock Co.*, 407 F. Supp. 324, 329 (E.D. Va. 1976).

2 “The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the
3 appearance of impropriety whenever possible.” *Liljeberg v. Health Services Acquisition Corp.*, 108
4 S.Ct. 2194, 2203-05 (1988).

5 In *Porashnick v. Port City Const. Co.*, 609 F.2d 1101 (5th Cir. 1980), the court noted the
6 objectiveness of the statutory test:

7 Because 28 U.S.C. § 455(a) focuses on the appearance of impartiality,
8 as opposed to the existence in fact of any bias or prejudice, a judge faced with
9 a potential ground for disqualification ought to consider how his participation
10 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.”

11 *Id.* at 1111. See also *Chitimacha Tribe of Louisiana v. Harry L. Laws Company, Inc.*, 690 F.2d
12 1157, 1165 (5th Cir. 1982) *cert. denied*, 104 S.Ct. 69 (1983). Therefore, “disqualification is
13 appropriate only if the facts would provide an objective, knowledgeable member of the public with
14 a *reasonable basis* for doubting a judge’s impartiality.” *Perkins v. Spivey*, 911 F.2d 22, 33 (8th Cir.
15 1990) (emphasis added).

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

21 “in assessing the reasonableness of a challenge to his impartiality, each judge
22 must be alert to avoid the possibility that those who would question his
23 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
24 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
25 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.”

26 *Matter of Searches Conducted on March 5, 1980*, 497 F. Supp. 1283, 1290 (E.D. Wis. 1980) (citing

1 U.S. Code Cong. & Admin. News (1974) at 6355).

2 The relevant inquiry of a judge's impartiality requires consideration of "all the
3 circumstances." Thus, in making an assessment on a motion for disqualification, a judge is not
4 limited to those facts presented by the challenging party. *Matter of Searches Conducted on March*
5 *5, 1980*, 197 F. Supp. at 129 1. "[I]t is the Court's duty to consider all evidence of bias or prejudice,
6 whether revealed in the affidavit or not." *Id.* Moreover, the circumstances should be viewed
7 'through the eyes of a reasonable person rather than a person who is highly sensitive." *Id.*

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

16 Aside from the *Beckman* case, *supra*, this Court found only a handful of cases which
17 addresses judicial disqualification based on a spouse's involvement in a case. In *Perkins v. Spivey*,
18 911 F.2d 22 (8th Cir. 1990), a plaintiff employee filed a lawsuit against her employer for Title VII
19 violation. The federal judge sitting on the case was married to an attorney specializing in labor law.
20 *Id.* at 33. The Eight Circuit Court of Appeals held that basing a motion for disqualification on the
21 above facts was legally insufficient. As the court put it:

22 Merely because his wife is a labor attorney does not mean that Judge . . . must
23 recuse himself from all labor cases. Otherwise, every judge married to an
24 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.

25 *Id.*

26 Another federal court has also denied a motion for disqualification of a judge who was

1 married to an attorney. *In the Matter of Billedeaux*, 972 F.2d 104 (5th Cir. 1992), a judge was
2 presiding over a case in which the defendant was, on various previous occasions, represented by a
3 firm that the judge's husband was a partner in. *Id.* at 105. The plaintiff argued that the judge's
4 impartiality might reasonably be questioned because the judge and her husband benefit from fees
5 from the client. *Id.* at 105-106. The court stated that there was no reason to conclude that the
6 judge's actions would affect her husband's law firm and that any interest that could be attributed to
7 the judge "is so remote and speculative as to dispel any perception of impropriety." *Id.* at 106. "A
8 'remote, contingent, or speculative' interest is not one 'which reasonably brings into question a
9 judge's partiality.'" *Id.* (citing *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1313 (2nd Cir.
10 1988), cert. denied, 109 S.Ct. 2458 (1989)).

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

15 In claiming that Judge Manglona's partiality might be questioned, Defendant cites no other
16 facts other than that the judge's wife, Assistant Attorney General Ramona V. Manglona, "works in
17 the same small office as the attorney prosecuting the instant matter" and that "the prosecuting
18 attorney is Mrs. Manglona's direct supervisor." See *Motion for Disqualification of Judge*, at 2 (filed
19 March 23, 1999). While these facts *could* raise a reasonable question about the judge's impartiality,
20 it is not legally sufficient in providing an objective, knowledgeable member of the public with a
21 *reasonable basis* for doubting Judge Manglona's impartiality. See *Perkins v. Spivey*, 911 F.2d at 33.

22 Here, the judge's wife was never "engaged in the case" in any capacity. As noted above, the
23 challenge to impartiality must be a reasonable one, *Virginia Electric and Power Company v. Sun*
24 *Shipbuilding and Dry Dock Co.*, 407 F. Supp. at 329, and "all the circumstances" must be
25 considered. *Potashnick*, 609 F.2d at 1111.

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1 In a community such as ours where familial relationships are prevalent, a marriage
2 relationship, in and of itself, should not be the deciding factor in determining a judge's partiality.
3 To disregard consideration of all other circumstances where a marital relationship exists would have
4 overreaching implications. Defendant's position in the case at bar, if accepted, would require that
5 Judge Manglona disqualify himself whenever a party, represented by the Attorney General's Office,
6 brings an action before him without regard to the stage of the proceedings of the action, the relative
7 interests of the common party in the actions, the actual involvement of his spouse in the case, or the
8 possible prejudice to the other parties in the case before him. Further, among other legal divisions,
9 the CNMI Attorney General's Office also operates a Civil Division. If Defendant's arguments were
10 to be accepted, then all civil cases brought by or against a party represented by the Attorney
11 General's Office would prevent Judge Manglona from presiding over such cases. This is especially
12 true since all assistant attorneys general, including Assistant Attorney General Ramona V.
13 Manglona, ultimately answer to the head of the office, the Attorney General. Due to the
14 overreaching implications that will result in granting a disqualification, Defendant's concerns cannot
15 be accepted. The *Beckman* case is, therefore, distinguishable and, as a matter of law and policy, this
16 Court adopts the objective statutory test laid down in the federal cases.

17 18 **V. CONCLUSION**

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

25 The **Court** declines to follow the more drastic and unrealistic holding of the *Beckman* case:
26 *supra*. Judges take an oath not only to uphold the Constitution and follow the law, but also to

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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.

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

SO ORDERED this 23rd day of April, 1999.


VIRGINIA S. SABLAN-ONERHEIM, Associate Judge